Riverine Rights:

Exploring the Currents and Consequences of Legal Innovations on the Rights of Rivers

1. Excellence

In the past three years, rivers have been granted rights as legal subjects or persons in countries as different as New Zealand, Colombia and India. These cases are concrete manifestations of broader proposals of giving legal rights to nature, which have been discussed by scientists, environmental activists, indigenous communities and policy-makers for some time. In this project, we will investigate the implications of this socio-legal innovation through comparative and in-depth studies of these three country cases. We wish to explore possible tensions and synergies between human rights and nature's rights, and whether the cases of riverine rights are convincing attempts to establish a new mode of human-nature relations. While rivers' rights followed from grassroots activism in all these cases, it is not a given that this legal innovation will serve grassroots interests, nor that it will ensure the protection of rivers. We will explore these issues through an interdisciplinary approach, involving experienced researchers with backgrounds from social anthropology, law, environmental governance and economics, with in-depth experience with the case countries.

The project will produce new, relevant and critical knowledge about an innovative form of environmental protection, with particular attention to a) the mechanisms established for enforcing river rights and their implications for river protection and for the different water user groups; b) implications for existing legal frameworks and debates on the rights of nature, and c) the insights these cases may offer for current debates about how to understand the relationship between society and the natural world.

1.1 State of the Art: In 2016 and 2017, rivers in New Zealand (the Whanganui) Colombia (Río Atrato) and India (the Ganges and Yamuna, and the Narmada), were separately recognized as legal subjects or legal persons.[1] This was not the first time that the idea of granting legal rights to nonhuman entities has been considered or implemented. The origin of the idea of granting rights to nature is often credited to Stone's article "Should Trees Have Standing" from 1972, although there are traces of the idea further back in environmentalist thought and philosophy. In 2008, Ecuador passed a new constitution that included the protection of the rights of nature, and in 2010, Bolivia adopted a constitution and "Law of Mother Earth" with a similar protection. In the United States, Canada, Chile, Mexico and Bangladesh local organizations have also been working to embed the rights of nature within local legislation (Kauffman & Martin 2018; O'Donnell & Macpherson 2018). However, whilst the concept of rights for nature is not new, the recent cases of riverine rights are amongst the first examples of legal rights being recognized for a specific, identifiable, bounded natural feature (a river and its catchment area). These cases have for the first time anchored ideas of the rights of nature as a means of environmental protection and of securing the rights of indigenous peoples and other local communities in concrete legal arrangements. It is striking that these developments occurred over such a short period of time and in such different countries. By recognizing the legal personhood of rivers, these cases create new legal and cultural precedents. Indeed, as we mean to explore in this project, this does not only have "significance as a fresh pathway for water resource management" (O'Donnell & Talbot-Jones 2018:1) but implications for the wider practice of environmental governance, human rights and understandings of human-nature relations.

Our project recognizes the need for research on these legal innovations and their implications. While a few academic articles have been written on these cases (e.g. O'Donnell & Macpherson 2018; O'Donnell & Talbot-Jones 2018), no in-depth study has been made of individual cases, or comparative consideration made of their wider global significance. There is a significant knowledge gap to be addressed, considering the importance of these cases for environmental law and natural resource management, as well as the possibilities and challenges they present for broader debates concerning human rights (Chapron et al. 2019). These legal precedents create new mechanisms and institutions for individual and social protection, while challenging earlier anthropocentric assumptions favouring humans over nature and legal principles protecting nature only in its capacity as property or resource to humans. Earlier histories of indigenous peoples' struggles for autonomy and territorial rights are a common feature of these cases of riverine rights. They also often take place in the context of extreme environmental degradation and conflict. Claims are made that recognizing riverine rights represents "a highly significant development in the recognition of indigenous rights: settling complex claims by Indigenous Peoples to a river, in a way that attempts to reflect Indigenous worldviews with

[1] The decision for the Yamuna and Ganges in India was subsequently overturned by the Supreme Court, while the resolution by the legislative assembly of the state of Madhya Pradesh Narmada stands, although so far without legal regulation for implementation.

respect to the natural environment" (Magallanes 2015). However, bestowing legal personality on rivers introduces new complications into these settings that could make resource and territorial rights claims more difficult.

A river's legal rights will only be effective if they are practiced and enforced. This implies that someone has a commensurate duty to observe the rights, in both law and practice (Schlager and Ostrom 1992). Given that this may require an individual or organization to be appointed to act on the river's behalf, questions of choice of guardian, mandate, financing, and legitimacy are likely to arise. If, in the process of recognising legal personhood, rivers are framed as competitors to human interests, perverse outcomes may result. Increased legal powers may undermine rather than support the cultural narrative of protection expressed by riverine peoples. The rights of rivers may conflict with the rights of indigenous peoples or other groups involved in river governance (O'Donnell & Macpherson 2018: 7). Thus, among the reasons for overturning the granting of rights to the Ganges and Yamuna rivers were concerns over the way in which this had problematically blurred distinctions between legal rights and human rights "by conflating the legal person with the living person" (O'Donnell 2017). However, despite these limitations and concerns, granting self-standing rights to nature also has potential as a transformative socio-legal tool. In the context of climate change, nature rights cases are likely to become more common. Indeed, riverine rights cases have spread to ever new locations as coalitions of local communities, scientists, activists and policy-makers become aware of strategic litigation as a means to confront the links between climate change, mega-infrastructure projects and resource extraction. We further note that the conditions surrounding these cases – changing land use, increased levels of extraction, and indigenous marginalization – are features shared by Scandinavian countries, including Norway.

The central *aim* of this project is to explore whether the cases of riverine rights are convincing attempts to establish a new mode of human-nature relations. More specifically, our *objectives* are to produce new knowledge of a) the mechanisms established for enforcing river rights and their implications for river protection and for the different water user groups; b) implications for existing legal frameworks and debates on the rights of nature, and c) the insights these cases may offer for current debates about how to understand the relationship between society and the natural world.

1.2 Novelty and Innovation: *Interdisciplinarity.* To date, whilst academic and media attention has grown around these cases of riverine rights, there has been no comprehensive attempt to jointly consider all of their dimensions. The project responds to this need with a research model that studies the complex intersection between law, politics and cultural histories. Recognizing the importance of inter-disciplinary research to understand the dynamics of these intersections, our project draws on expertise from across the social sciences, including law, politics, environmental and development studies, social anthropology and resource economics. The inter-disciplinary research teams will explore the cases; i.e. consider their legal basis, their situation within national contexts of environmental challenge and governance, their linkage to histories and persisting dynamics of territorial struggles between competing social interests, and their implications as attempts to change the logics of development through legal recognition of other ontological or eco-philosophical perspectives on human-nature relations. The project team will also give particular focus to the distinct models of practice employed to manage and enforce legal person arrangements. As such, the project will not only interrogate the contrasting terms of river "ownership" and "guardianship", but the legal, political and cultural practices that are implicated by these ideas.

Comparison and multi-sited research. Our project relies on a research model with a series of qualitative in-depth river case studies from different countries. Based on this, the project seeks to build the knowledge necessary for the comparative analysis of the cases and their impact on wider politics, legal practice and rights. Reflecting this ambition, our project includes scholars who have considerable experience working with each of these national contexts (Colombia, New Zealand, India), who are affiliated with research institutions in each country case and who have experience of comparative international study. Doing research in teams that include experts on different country cases allows a comparative perspective from the outset. Our approach to multi-sited research (Marcus 1995) fits with the practice refined in recent years by a series "of global ethnographers" who link the study of large-scale processes, or issues that represent a global challenge, with fine-grained observations of national and local dynamics (Buroway 2000; Scott 1999; Tsing 2005; Ong 2006).

Theoretical implications. An exploration of the cases of riverine rights and their enforcement will not only assist us to evaluate their impact on the rivers and people involved but provide an important foundation from which to consider their significance as a strategy or legal instrument for water management. Furthermore, we will address debates over rights, in particular the synergies and trade-offs between human rights and nature's rights. As well as a consideration of the political and legal significance of these cases, their implications for

pre-existing logics of practice also provides an opportunity to further interrogate recent trends in social science theory regarding human-nature relations and legitimate governance. We suggest that a study of these cases of riverine rights will provide a new way of testing the validity of the models, and thereby add critically to broader debates on theory and practice.

1.3 Research questions and methodology: The project will address the following three research questions:

- *RQ1 Politics:* What historical, social and political processes led to the granting of legal personhood to rivers in these cases?
- *RQ2 Law:* How are riverine rights created, enabled and enforced?
- *RQ3 Social science theory:* How can these cases inform current debates regarding expanding notions of rights, sustainable development and the relationship between nature and society?

RQ1 will yield crucial background information for answering RQ2. RQ1 and RQ2 will be investigated empirically in each case study (RQ1a and RQ2a), as well as analytically through comparison of the cases with a view to generalize findings (RQ1b and RQ2b). RQ3 is an analytic research question that will draw on the findings of the case studies and their comparison.

(RQ1) ***Politics:*** We will investigate the relevant actors/interest groups/institutions, the arguments and forms of knowledge used, and the dynamics of the political-legal processes. In terms of actors and groups, it is striking that indigenous peoples – often in alliance with other local communities – have been key drivers pushing for the recognition of riverine rights. There are also common concerns that the contamination of rivers and disruptions of water flows are affecting those living along the rivers, while economic interests related to extraction and infrastructural, industrial and agricultural development often oppose measures to protect rivers. Still, the make-up of the different stakeholder groups involved, the balance of power, the institutional setting, and the time frame of the process, vary greatly between the cases. For example, the New Zealand process – where the granting of legal personhood was the outcome of decades of negotiations between the state and an indigenous group whose relations are based on a 140 year old treaty, later confirmed by the passing of an Act of Parliament – is quite different from the cases where riverine rights were created through court decisions (Colombia and the Ganges/Yamuna case in India).

These processes cannot be understood without taking into account the development of the idea of rights of nature, which has been unfolding globally since the 1970s, as promoted by environmentalists and environmental lawyers, and, more recently, by international rights of nature movements. We must also recognize the way in which these ideas gain legitimacy through being integrated into the legislation of countries in different parts of the world. Global flows of knowledge interact with local political processes. Other bodies of knowledge have also been crucial: understandings of river contamination underpinned by scientific knowledge; information on the living conditions of people living along the rivers; ideas about the rights of indigenous peoples; actual and perceived differences of indigenous ontologies and epistemologies from those of the majority population; the way the economic interests of infrastructural and extractive activities are conceptualized and given relevance. Indeed, it was argued in the Whanganui case that the granting of legal personhood to the river was the legal possibility that most closely approximated indigenous conceptions of nature and the river. The interaction of different forms and bodies of knowledge is a crucial component of the processes to be studied (Borchgrevink 2014).

(RQ2) ***Law:*** In all cases, the legal recognition or declaration of rivers as legal persons has been *ad hoc* and responsive; as an attempt to reset relationships between governments and local communities, in the face of political contestation and serious environmental concerns (Macpherson and Clavijo, 2018). There has been very little theorizing of what legal rights for rivers are intended to achieve in legal and political theory, let alone a proper understanding of whether such models are being properly implemented.

Legal rights for rivers create new paradoxes in law. Allowing rivers the protection of their rights against damage and misuse by humans sits uneasily with regulatory systems premised on the "sustainable" development of natural resources for the benefit of humans. Pursuant to these approaches river "territories" are often recognised, but planning systems still divide off and separately regulate components of the territory (e.g. water, resources, plants, minerals, beds, subterranean waters and airspace are typically all regulated separately within such models). Rights for nature are often dichotomized with proprietary models for natural resource management, on the basis that nature "cannot be owned", yet legal rights for rivers are required to exist alongside existing proprietary models for the distribution of use rights. Intermediate models like the "bio-cultural" rights approach, have been used for instance in the Río Atrato River (Colombia). Finally, legal rights for rivers as the rights of nature are often counter posed with the utilitarian rights of humans, yet they have in

many cases only been possible by co-opting human rights protections as the so-called “third generation of human rights”. The project will critically explore these assumptions and contradictions, and their implications for legal models.

The project will also critically examine the *implementation* of legal rights for rivers in the countries studied. Early rights of nature protections in Ecuador and Bolivia have been criticised for being aspirational but little implemented in practice. Commentators have already suggested that the more recent cases of riverine rights may be symbolic only, although symbolic effects and discursive change could also be seen as important effects of legal rulings (Rodríguez-Garavito 2011). Legal rights for rivers in the countries studied have been devised with the question of enforceability in mind, often being accompanied by a designated range of institutions, including guardians, advisory panels, and planning frameworks to further the river’s rights and make sure they are upheld. Still, questions of enforceability remain, especially in India, where an ambitious judicial recognition of rivers as persons was promptly overturned. In the case of Colombia we will also consider whether the administrative state is prepared to “catch up” with innovative environmental rulings handed down by the court system. There are further unanswered questions in terms of the content of a river’s rights, or causes of action available to rivers, and whether a river with personhood may in fact be liable for causing damage to others. In this project, we will track the implementation of the riverine rights models, and critically assess whether the concept of the legal person does in fact “make a difference”.

RQs 1&2 require interdisciplinary perspectives. Legal rights for rivers involve not only changes in law, but also cultural changes in terms of how we think about nature, which may be as pervasive as formal legal doctrine (Macpherson and O’Donnell 2018), and social changes in the relations between people, and between people and nature. We will draw on the relational approaches of actor network theory and assemblage theory (i.e. Latour 2005; Callon 1984; Ong and Collier 2008, Tsing 2005). By “following the actors”, networks and connections, we will map the interactions between humans, forms of knowledge, and non-humans (such as rivers), at different scales and over geographical distance, and the temporary assemblages that arise. From the field of environmental governance, we will draw on critical institutionalism (Cleaver 2012), which echoes post-structural and constructivist perspectives and renews an emphasis on the importance of aligning scientific knowledge with practice-based knowledge. From a legal and socio-legal perspective, we will consider both the legal theory underpinning and the legal mechanisms implementing riverine rights, in their historical, political and social context. This analysis will explore both rights-based and regulation-based aspects (Morgan 2007), and situate legal rights for rivers within and alongside constitutional, human rights, indigenous rights and environmental and natural resource planning frameworks.

(RQ3). ***Social Science Theory:*** In recent years, there have been a series of important trends that destabilize earlier anthropocentric understandings of man´s dominion over and separation from the natural world. Whilst inspired by many of these perspectives, we recognize that these theories are little tested in any empirical sense – even when theory has been inspired by ethnographic research. The cases of riverine rights provide the opportunity to consider how such understandings may have a practical application for everyday environmental governance. We aim in the project to consider how new thought is expressed in legal and political reality, and whether it offers new insight on how to confront persisting dynamics that threaten sustainable development. Indeed, we suggest that by bringing theory into tension with the complexity of empirical cases it might be possible to develop a new theory of practice, and/or critically engage through law with existing proposals for a *political ontology*.

The work of science scholars who have been rethinking human-nature relations is relevant for analyzing the rights of nature. Their work on the interfaces between science and technology, society and nature enables an approach that is grounded in the materiality of the sciences, and that asks about different versions of the natural world without reducing them to "cultural constructions, religion, indigeneity or superstition" (Green 2013). Influentially arguing for scientific accountability to be expanded to include the human and nonhuman, Latour does not argue against the idea that sciences can know reality, but for what he calls an expanded reality that is not bound to the nature-culture divide (Latour & Porter 2017). Other social theorists suggest a "post-humanist" turn, which further reworks our understanding of human-nature relations. Haraway (2017) suggests that we need to relearn humans, not as separate, but rather as a "companion species" within a complex assemblage of natural relations. Ingold (2011), together with other anthropologists, has proposed the foundation of more-than-human anthropology. As Tsing (2017) suggests, in this anthropology we don't just identify non-humans as static others, but learn them and ourselves in action, through common activities.

There is an urgent political significance to the critiques of traditional understanding of the nature-society distinction. Indeed, de Castro argues that we have arrived at a moment in the history of the planet in which "it

is no longer possible to practice politics without considering the space in which all real politics unfolds, the space of terrestrial immanence" (Viveiros de Castro 2013:35). His comment reflects an increasing and widespread observation of the connections between human industrial development and climate change, deforestation and degradation. Recognizing the lasting physical impacts that humans have had on the planet, social and natural scientists now claim we are living a new era of geological and natural time i.e the anthropocene (or alternatively the capitalocene, e.g. Moore 2016). Understanding that natural disasters and processes of environmental destruction are often as much political as natural, that they are aggravated by war and conflict, and that they frequently have the most severe impacts on poor and marginalized communities, new academic perspectives have developed in the fields of environmental justice, political ecology and environmental peace-building. Renewed concern has furthermore been given by ecological economics to ideas of *degrowth* and the foundation of *circular economies.* Reconsidering the idea of justice, Viveiros de Castro (2013) suggests that there are now conditions for a targeted rethinking of the whole notion of "rights" as the default mode of codifying intrahuman relationality, or ontologizing sociality, or of expressing ethical commitment. To respond to other beings, to become responsible for them, is not necessarily expressed in a bill of rights or the idea of sustainable development. These are ideas that echo earlier philosophies of deep ecology (i.e. Næss 1973).

Since the 1990s, paralleling the spread of rights based development and constitutional reforms, the courts have become an increasingly central arena for attempts by individuals and communities to claim rights and justice. This judicialization of politics – the reliance on courts and judicial means for addressing core moral predicaments, public policy questions and political controversies (Hirschl 2008) – has been an important trend worldwide. In the 2000s, and especially with the expansion of extractive industrial and infrastructural development, there has been a rising tendency by communities and allied civil and human rights organizations to look optimistically at the courts and judicial process as a site to resolve complicated issues of social and environmental impacts, benefit sharing and territorial rights. The cases of riverine rights can be understood as a new form of this judicialization. In our project we have the opportunity to consider whether they are convincing attempts to establish a new mode of human-nature relations.

Methodological approach. This is a comparative and inter-disciplinary project. It brings anthropological and legal/socio-legal perspectives to bear on the comparison of three empirical cases. The river cases we will study in detail are the Whanganui (*Te Awa Tupua* in Māori) in New Zealand; the Atrato in Colombia; and the Ganges/Yamuna and the Narmada in India, all involving high level decisions (national level in New Zealand and Colombia, federal state level in India). In the two former cases, elaborate structures for enforcing the river rights have been set up. The two Indian cases comprise explicit political conflict (Narmada) and relevant juridical reasoning (the decision overturning the Ganges/Yamuna case). We believe this selection of cases offers the best opportunities for gaining insights on the legal innovation of riverine rights among the existing cases (see below).

In each of these country studies, a team consisting of at least one social anthropologist / social scientist and one researcher with a background in law will conduct fieldwork together. We will combine different methods for data collection:

- *Desk-based and archival study* of legal documentation, studies, media-reports, policy papers, meeting minutes and other relevant written sources regarding the chosen cases.
- *Semi-structured interviews* with key individuals involved in each of the cases, and with representatives of stakeholders (local communities, private business, industry representatives, the state, environmental organizations, civil society organizations, users of the rivers for recreational purposes, etc). These interviews will cover both the process leading up to the granting of legal personhood, the functioning of the mechanisms established to enforce the river rights, and the understandings the actors have of the process, the different interests to be resolved, and the meanings and implications of river rights.
- *Participant-observation:* In order to get a deeper understanding of the stakeholder knowledge involved, we will conduct phenomenological and practice oriented ethnographic study of riverine life and usage in selected communities along each of the rivers, and moreover, travel and experience the passage of the river over large stretches from source to estuary.
- *Semi-structured interviews* with national experts in law, administration and natural resource governance in order to understand how the adopted legal measures work in accordance with general legal principles and the institutional context of the country.

On this basis, we will build a thorough understanding of each case that will allow us to answer RQ1a&2a.

In order to realize the comparative ambition of the project, and for answering RQ3, the knowledge from the case studies must be pooled and analysed comparatively. For this analysis, we will also draw on information from written sources on other relevant cases from around the world, such as: the Río Vilcabamba in Ecuador (granted protection in a 2011 court decision based on Ecuador's constitutional granting of rights to nature); the Colorado River in the US (court case was filed by activists in 2017, later to be withdrawn); the Magdalena River in Mexico (proposed law aims to give rights, under the 2017 Mexico City constitution that recognizes the rights of nature); the Colombian Amazon (given the status as a subject of rights in a Supreme Court decision in 2018); the Turag River in Bangladesh (which was given legal status in a ruling in January 2019); Lake Erie in the US (the Lake Erie Bill of Rights was passed by voters in Toledo, Ohio in February 2019); and the La Plata River in Colombia (which was declared a legal subject in March 2019).

While all these cases involve recognizing the rights of rivers, there are important differences in the constellations of actors and interests involved, in the processes of granting such rights, and in the legal mechanisms established. This latter dimension includes differences in the legal status granted to rivers and in the mechanisms for enforcing rights, including legal guardians, new institutions or allowing any person to file in court on behalf of the river. The Ganges/Yamuna case is distinctive in that the court decision was overturned, with reference to a number of legal dilemmas implied by the granting of legal personhood. India is also special in that the idea of rivers as persons is not so foreign for the majority population: for Hindus, rivers are commonly perceived as demi-Goddesses. The selection of cases from three distinct continents ensures a wide spread in terms of cultural and institutional contexts. Together with the secondary cases, we will have a broad combination of similarities and differences as the basis for comparison. This sampling of cases is inspired by Ragin's idea of a range of case studies selected on the basis of an outcome (in this case, the creation of riverine rights) as a means of gaining insights into enabling mechanisms for and implications of the phenomenon in question (Ragin 2009), and Flyvbjerg's notion of maximum variation cases as a means of producing tentative generalizations (Flyvbjerg 2006).

The comparative analysis of the cases is expected to yield valuable insights into relevant social mechanisms that explain different outcomes in different contexts, into the potential and the limitations of recognizing the rights of rivers; and into the theoretical and legal implications of this way of redefining the relationship between humans and nature. As this is an exploratory study, we do not develop systematic hypotheses. Still, among mechanisms to look for, one might for instance expect that the active involvement of indigenous peoples and local communities in developing the institutional arrangements will tend to produce outcomes where conflicts are minimized. Or that the forms of legal and institutional measures to enforce the riverine rights will have different effects in terms of upholding these rights in practice, and of balancing the interests of different actors. We also expect the case studies to reveal valuable knowledge about the practical implications of these new "river persons", and whether they live up to their expectations.

When it comes to *risks*, we see them mainly in terms of gaining access to all relevant actors in situations of strong conflicts of interests, fundamental for answering both RQ1&2. We will minimize this risk by communicating an open stance and a willingness to understand the positions of all actors, from indigenous communities to business interests and extractive industries. Moreover, because of the recent nature of these riverine rights, mechanisms for enforcement may be still developing or yet to be established in some cases. While this could limit our ability to draw conclusions from comparing enforcement mechanisms, it will allow us to explore the reasons for the delays, which may offer other types of insights.

We will carry out this study in an *ethically* sound and careful way, adhering to Norwegian laws and the GDPR, as well as the laws in the case countries. The project will acquire active consent from all the relevant people prior to the actual data gathering. Anonymization of participants will be the general rule. Care will be taken to ensure that no harm will befall participants because of the project. Working with indigenous peoples requires particular attention to issues of cultural appropriateness, representation and inclusion (Smith 2012). In New Zealand, we will comply with the University of Canterbury's Human Ethics process and have already been in contact with the University's Māori research advisors about the project, who have expressed willingness to provide ongoing support, advice and contacts. In Colombia, the project will be submitted for pre-approval to the Universidad Autónoma Latinoamericana's Ethics Board. Research should in some way benefit those who are studied. We will make findings available and discuss implications in workshops with communities and relevant institutions.

The research team is as *gender* balanced as can be with five named members. Under otherwise equal circumstances, we will hire a female candidate for the postdoc. Country teams should be gender balanced. When exploring the interests of different river users and the different perceptions of rivers, persons and rights,

we will pay particular attention to gendered differences. Therefore, we will make efforts to ensure that our interviews and ethnographic research adequately reach women and let their concerns be voiced and heard (Ardener 2006).

2. Impact

2.1 Potential impact of the proposed research: Through in-depth and interdisciplinary case studies and systematic comparison, the project will produce new and necessary knowledge of several types:

- *Documenting and analysing the experiences of individual cases*: We will study the physical threats to these rivers; the interests and involvement of their different user groups; the political and legal processes that led to the granting of legal rights to the rivers; the mechanisms established to uphold these rights; and the way these mechanisms function in practice and the impacts they have on different actors, including the rivers themselves.
- *Knowledge of the effects of recognizing the rights of nature*: We will produce knowledge regarding the different ways of enabling and enforcing the legal models. This includes effects on river conservation and on access to water and related resources for different types of user groups (with a particular attention to indigenous peoples) as well as the social mechanisms that tend to bring about these effects under given circumstances.
- *An understanding of how these legal innovations fit within the broader legal and institutional context*: We will show how different ways of enacting river rights may support or be in conflict with other legal principles, such as property or user rights. At the most fundamental level, this addresses the question of how the rights of nature can be compatible with human rights.
- *Insight as to whether, how and under what circumstances rights of nature can be used to promote sustainable development.* Based on the findings above, we will propose principles for the conditions and safeguards required for the rights of nature to be an effective and socially just measure for attaining the Sustainable Development Goals.
- *Contribute to ongoing debates within social science theory:* These insights into the recent experiences of riverine rights will allow us to critically examine the relevance and usefulness of current theoretical approaches to the conceptualization of the relations between society and nature. We recognize an opportunity to use the empirical study of these cases to add significantly to theories on more-than-human and relational environmental governance.

This is new knowledge that will significantly advance the state of the art in an as yet little researched empirical field, and will be an important and original contribution to the interdisciplinary academic fields of environmental governance and sustainable development. We believe it can have important conceptual impacts, with the ability to reframe academic and political debates, as well as a direct instrumental impact, to the extent conclusions of the project are taken up in legal development and environmental governance.

This is not a field of purely academic interest. In the age of the Anthropocene, where there is an urgent need to establish ways of balancing the needs of society with those of nature, the knowledge produced by this project (especially the second, third and fourth bullet point above) has an important practical value. The project directly addresses The Sustainable Development Goal 6, on clean water and sanitation, which includes the targets 6.6 *By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes* and 6.B *Support and strengthen the participation of local communities in improving water and sanitation management.* The project also contributes to the fulfillment of other SDGs (i.e. Goals 15 and 16), and provides the international community with new knowledge to address the multiple development challenges facing indigenous peoples. Moreover, it is of relevance to the UN Human Rights Council mandate to study the intersection between human rights obligations relating to the enjoyment of safe, clean, healthy and sustainable environment, and promote best practices relating to the use of human rights in business and environmental policy-making.

2.2 Measures for communication: Recognizing this broad impact we envisage multiple target audiences and stakeholders/users (please see online application form for further information on dissemination).

- *Indigenous and local Communities:* We aim through our research to ensure that new knowledge production is not only of value to scholarship but can provide data and analysis useful to the legal and

political struggles in local communities where lives and livelihoods are at risk. We will link up with indigenous, afro-descendant and grassroots organizations in project areas during fieldwork. Moreover, workshops for disseminating and validating findings will be held with local communities in all case countries.

- *Institutions for Environmental Governance* (national, international, corporate): The project aims to produce knowledge that can allow governance institutions to make better and more just policies. We aim to arrange workshops with these audiences in each country plus in Norway.
- *Public Debate*: We further suggest that the project can contribute to popular media debates on a series of related issues, i.e. the rights of indigenous peoples, environmental governance, human-nature relations. We will use traditional channels (op-ed pieces in newspapers) as well as social media.
- *Academia:* We mean to make significant academic contributions to the fields of law and juridical theory, empirical social science studies of environmental governance, and theory of human-nature relations. Academic publications and conference presentations are the main channels.
- *Teaching:* The themes and issues are of importance to research based teaching in several fields, including international environment and development studies, human and indigenous rights, environmental politics and governance, and comparative legal studies. The team members all teach and will make use of the findings of the project.

3. Implementation

3.1. Project manager and project group. *Axel Borchgrevink*, the PM, is a social anthropologist and professor of development studies with broad research experience. Among other subjects, he has studied resource conflicts in Nicaragua over energy politics, hydropower plants, plans for a mega-canal, and agricultural policies and land rights issues; human rights and relations between state, civil society and non-state actors in the Horn of Africa; and knowledge of and attitudes towards the environment and the interactions of global and local knowledge systems in the Philippines. He has been Deputy Project Manager of two large research programmes/projects funded by the Norwegian Research Council (*Regional Dimensions of State Failure*, 2006-2008 and *Contested Powers*, 2010-2013), and has been team leader for more than 20 consultancy missions, coordinating up to 10 researchers. He is currently engaged in an ethnographic study of rural Cuba. He will manage the project and take part in and provide guidance to the research in New Zealand and India.

John-Andrew McNeish, is a social anthropologist and professor of international environment and development studies. He has a strong record of research focused on natural resource conflicts and indigenous rights and politics. In recent years, he has been part of several international research projects exploring questions of environmental governance, extractive development and indigenous rights and environmental peace-building in Bolivia, Colombia and Guatemala. His monograph *Sovereign Forces: The Political Energy of Natural Resources in Latin America* will be published by Berghahn Books in 2019. He has led several previous NRC funded projects including *Contested Powers: Towards a Political Anthropology of Energy in Latin America*; *Flammable Societies: The Role of the Oil and Gas Industry in the Promotion of Poverty Reduction or Social Volatility*; and *Gender Justice and Poverty Reduction in Latin America and Africa*. He will directly contribute and provide guidance to the research to be carried out in Colombia and India.

Elizabeth Macpherson, is a lawyer and Senior Lecturer at the University of Canterbury, New Zealand. She researches water law and policy and the protection of indigenous rights and environmental outcomes in relation to water resources in Australasia and Latin America. Her monograph *Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience* will be published by Cambridge University Press in 2019. She has a special interest in legal rights for rivers in comparative contexts, and the use of human rights norms in securing environmental objectives. Prior to her PhD (Melbourne) Macpherson practiced as an indigenous rights and environmental lawyer in New Zealand, Australia and Chile. In April 2019 she will be a panelist at the UN General Assembly Interactive Dialogue on Harmony with Nature. Macpherson will be responsible for the New Zealand case.

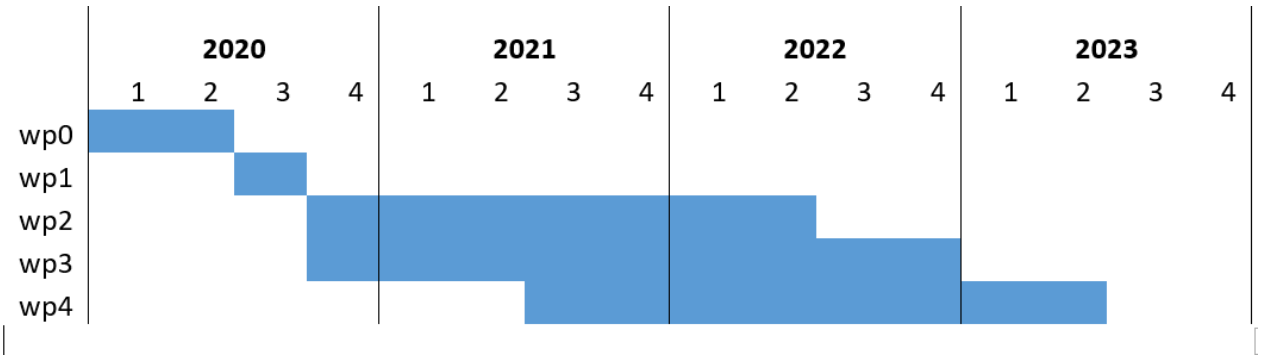
Bibhu Prasad Nayak, responsible for the India case study, is an Associate Professor at Tata Institute of Social Sciences, Hyderabad Campus, India. Nayak holds a PhD in natural resources economics from the Jawaharlal Nehru University. In his research, he has focused on environmental governance issues in India. He has worked on studies of community based resource management institutions and the socio-economics of conservation. The interaction between socio-cultural context of indigenous communities and natural resource governance is one of his research interests. Nayak will be responsible for the India case study.

Catalina Vallejo, is a legal scholar with a special focus on public interest law, peace studies, and the environment. She has recently returned to Colombia following the completion of a PhD and years of research for both CMI in Norway and the University of Innsbruck in Austria. She has experience in the use of socio-legal research methods and from legal practice in the public sector in Colombia related to human rights education and urban change projects. Her main area of expertise is in constitutional, environmental, and administrative la;, theories of peace, security, development; and nature-society relations. She has extensive experience with field and theoretical research in Latin America. She is interested in critical legal thinking and conflict resolution. Vallejo will be responsible for the Colombia case study.

The research team will include one *post-doc*, preferably with a background in environmental law or similar specialization and with research experience from at least one of the countries to be studied.

We intend to form an *advisory board* for the project that will provide assistance on both stakeholder engagement and academic publication. We envisage the following people as part of this board: Omaira Bolanos, Rights and Resources Institute, Washington D.C; Ken Conca, American University and UNEP, Washington D.C; Nancy Postero, University of California in San Diego; Rachel Sieder, CIESAS Mexico; Gro Ween, Cultural History Museum, Oslo; Grant Wilson, Director, Environmental Law Centre, New York. Members of the advisory board will be invited to project workshops in the case countries and the final conference in Oslo.

3.1 Project organization and management. The project will be organized into work packages:



WP0 Project preparation. Before the formal start of the project, the PM will arrange contracts with all partners, and announce and hire the post-doc.

WP1 Establish joint analytical framework and parameters for case studies. Headed by AB, participation by all team members. AB will initiate this component by making a literature review and prepare a draft analytic framework for the project, to be discussed in detail during the kick-off workshop in New Zealand. During this workshop, parallel plans for the case studies will be made, with an eye to ensuring comparability. This workshop will also expose team members to the details of Whanganui case.

WP2 Country case studies: *WP2a New Zealand*. RQ1a&2a. Lead researcher EM, with participation from AB and postdoc. This will involve desktop analysis of the historical, political and socio-cultural context behind the Whanganui case, field visits to the Whanganui, interviews with key political, cultural and legal drivers, stakeholders and decision-makers, and detailed contextual and theoretical analysis. *WP2b India*. Mainly RQ1a. Lead researcher BPN, with participation from post-doc, AB and JMN. Based on both written sources and fieldwork, the WP will compare the two cases of Ganges/Yamuna and Narmada, with particular attention to the politics that led to the first decision being overturned and left the second short of full implementation (so far), as well as to how the campaigns for river rights are being carried on. *WP2c Colombia*. RQ1a&2a. Lead researcher CV with participation from JMN and postdoc. Analysis of public documents from the legal case and governmental entities involved with implementing the Río Atrato ruling. Interviews with petitioners, judiciary and Ministry functionaries and the many organizations involved in the case, as well as with different types of experts. Semi-structured interviews and participant observation among indigenous, afro-descendant and other communities along the river.

WP3 Bridging studies. AB, JMN and postdoc, with participation of all. Through comparison and analysis of the cases, one objective is to identify the effects of different ways of enabling nature's rights and the underlying

social mechanisms that tend to produce these effects under given circumstances (RQ1b&2b). Another objective is to analyse how rights for nature align or fail to align with other legal principles, most crucially human rights (RQ2b). The third objective is to analyse how these experiences can inform on-going debates in social science theory about how to conceptualize society – nature-relations and rethink environmental governance (RQ3). The involvement of AB, JMN and the postdoc in two case studies each will facilitate this meta-analysis. Project workshops with all project researchers in year 2 (Colombia) and 3 (India) will be dedicated to this WP.

WP4 Communication. AB and all researchers. Stakeholder workshops (with local/indigenous communities and with institutions of environmental governance) will be arranged in all country cases, coordinated by the respective lead researchers. Policy papers will be produced in cooperation with relevant research institutes. Findings of the project will be disseminated to a wider audience through webpage, social media and op-ed pieces. The project researchers will present papers at international conferences, and we aim to arrange at least one panel at such a conference. The project includes a conference at the end of the project period. For details on publication and dissemination plan, please see 2.2 above and the project application form.

4. References

Ardener, E. (2006). Belief and the problem of women and the 'problem'revisited. *Feminist anthropology: A reader*, 47-65.

Borchgrevink, A. (2014). *Clean and green: Knowledge and morality in a Philippine Farming Community*. Ateneo de Manila University Press.

Buroway, M (2000) *Global Ethnography: Forces, Connections and Imaginations in a Postmodern World*. University of California Press.

Callon, M. (1984). Some elements of a sociology of translation: domestication of the scallops and the fishermen of St Brieuc Bay. *The sociological review*, *32*(1_suppl), 196-233.

Chapron, G; Epstein, Y & López-Bao, JV (2019) A Rights revolution for Nature? *Science* 10.1126/science.aav5601

Cleaver, F (2012) D*evelopment through Bricolage. Rethinking Institutions for Natural Resource Management.* Routledge: Earthscan.

Flyvbjerg, B. (2006). Five misunderstandings about case-study research. *Qualitative inquiry*, *12*(2), 219-245.

Green, L (2013) *Contested Ecologies: Reimagining the Nature-Culture Divide in the Global South.* HSRC Press.

Haraway, D (2017) *Staying with the Trouble: Making Kin in the Cthulocene.* Duke University Press.

Hirschl, R (2008) The Judicialization of Mega-Politics and the Rise of Political Courts. *Annual Review of Political Science*. Vol 11. pp93-118

Ingold, T (2011) *Being Alive: Essays on Movements, Knowledge and Description*. Routledge.

Magallanes, C. J. I. (2015). Maori cultural rights in Aotearoa New Zealand: Protecting the cosmology that protects the environment. *Widener L. Rev.*, *21*, 273.

Kauffman, C. M., & Martin, P. L. (2018). Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand. *Global Environmental Politics*, *18*(4), 43-62.

Latour, B. (2005). *Reassembling the social: An introduction to actor-network-theory*. Oxford university press.

Latour, B & Porter, C (2017) *Facing Gaia: Eight Essay on the Climatic Regime*. Polity Press.

Macpherson, E & Clavijo Ospina, F (2018) 'The Pluralism of River Rights in Aotearoa New Zealand and Colombia' 25 *Journal of Water Law* 283.

Marcus, G. E. (1995). Ethnography in/of the world system: The emergence of multi-sited ethnography. *Annual review of anthropology*, *24*(1), 95-117.

Moore, J (2015) *Anthropocene or Capitalocene. Nature Culture and the Crisis of Capitalism*. PM Press.

Morgan, B. (Ed.). (2017). *The intersection of rights and regulation: New directions in sociolegal scholarship*. Routledge.

Naess, A. (1973). The shallow and the deep, long-range ecology movement. A summary. *Inquiry*, *16*(1-4), 95-100.

O'Donnell, E., & Macpherson, E. (2018). Voice, power and legitimacy: the role of the legal person in river management in New Zealand, Chile and Australia. *Australasian Journal of Water Resources*, 1-10.

O'Donnell, E., & Talbot-Jones, J. (2018). Creating legal rights for rivers: lessons from Australia, New Zealand, and India. *Ecology and Society*, *23*(1).

Ong, A (2006) *Flexible Citizenship.* Duke University Press.

Ong, A., & Collier, S. J. (Eds.). (2008). *Global assemblages: Technology, politics, and ethics as anthropological problems*. John Wiley & Sons.

Povinelli, E (2017) *Geontologies: A Requiem to Late Liberalism*. Duke University Press.

Ragin, C. C. (2009). Reflections on casing and case-oriented research. *The Sage handbook of case-based methods*, 522-534.

Rodriguez-Garavito, C. (2011). Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America. *Tex. L. Rev.*, *89*, 1669.

Schlager, E and Ostrom, E (1992) Property Rights, Institutions and Forest Resource Management in Developing Countries. *Natural Resources.* Vol 68. pp249-262

Scott, J (1999) *Seeing Like a State: Hoe Certain Schemes to Improve the Human Condition Failed.* Yale University Press.

Smith, L. T. (2012). *Decolonizing methodologies: Research and indigenous peoples*. Second edition. Zed Books Ltd..

Stone, C. D. (1972). Should Trees Have Standing--Toward Legal Rights for Natural Objects. *S. CAl. l. rev.*, *45*, 450.

Tsing, A. L. (2005). *Friction: An ethnography of global connection*. Princeton University Press

Tsing, A. L (2017 *Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins*. Duke University Press.

Vivieros de Castro, E (2013) The relative native. *Journal of Ethnographic Theory*. 3 (3). pp 469-471