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Exploring Contestation in Rights of River Approaches: Comparing Colombia, India and New Zealand

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ABSTRACT: Rights of Nature (RoN) approaches as a tool to protect ecosystems and nature is gaining growing attention in academic and societal debates. Despite this new momentum, theoretical work is increasingly pointing out major problems and uncertainties related to such approaches. Inspired by this critical work, the paper considers RoN as a type of intervention that competes with those of other actors for the control of, and decision-making power over, natural resources. To understand the implications of such interventions, it is necessary to investigate how they shape, and are shaped by, local context. To that end, we look at Rights of Rivers (RoR) cases in New Zealand, Colombia and India. Investigating these well-researched cases, we aim to tease out the material and discursive contestations that emerge from the establishment and implementation of RoR interventions. We then propose an analytical approach that has emerged from our fieldwork and which can be useful in identifying the conflicts and contestations underpinning RoR.

KEYWORDS: Rights of Nature, Rights of Rivers, value of nature, ecocentrism, dimensions of contestation, water governance, socionature, Whanganui, Atrato, Ganga

INTRODUCTION

Rights of Nature (RoN) are growing increasingly popular with citizens, Indigenous groups, social movements, environmental organisations, governments and international non-governmental organisations (Davies et al., 2020; Kinkaid, 2019). The idea of making nature the subject of rights can be traced back to the early 1970s, when Stone (1972) published his seminal work *Should Trees Have Standing?*; however, it has recently been going through a worldwide revival (see, for example, Kauffman

and Martin, 2017). This trend seems to have gained new momentum in 2017 when three rivers in different parts of the world were given the status of legal persons; these were the Whanganui River in New Zealand, the Ganga and Yamuna Rivers in India, and the Atrato River in Colombia. These events garnered broad media coverage and widespread scientific and policy attention. They have inspired similar initiatives for rivers and other natural elements elsewhere, from the Turag River in Bangladesh to the Wadden Sea in the Netherlands (Lambooy et al., 2019).

This article seeks to contribute to theoretical debates about the use of RoN to protect rivers through Rights of Rivers (RoR) approaches. Increasingly, rivers are at the centre of debates about legal personhood and have captured the imagination of many legislators and courts as targeted ecosystems for RoR interventions. This recent turn in river governance offers opportunities to explore options for mobilising legal mechanisms to protect rivers against environmental threats in relation to various socio-economic, cultural and political issues (Eckstein et al., 2019). It is too early, however, to declare this to be the magic bullet that will save and protect riverine environments. Various authors have already pointed to major problems and uncertainties related to RoR approaches (Kinkaid, 2019; O'Donnell and Talbot-Jones, 2018; O'Donnell, 2018a). Laws and principles are strongly embedded in sociocultural, economic and political processes, with unclear outcomes and consequences for living with rivers and for practices of governing and controlling specific hydrosocial contexts. Even more important, whether as objects of governance institutions or as subjects of rights, rivers cannot be unproblematically separated from the wider socio-ecological systems of which they are a part. RoR approaches thus unavoidably entail contested interventions that involve multiple conceptualisations of the relationships between the parts of nature, as well as involving multiple actors and their agendas, needs and worldviews (Kothari and Bajpai, 2017; Macpherson, 2019).

In this paper, we propose an analytical approach that can help disentangle and understand the ways in which RoR approaches interact with the local contexts into which they are drawn. In describing, analysing and problematising these interactions, we show how they are rife with potential contradictions and conflicts (see O'Donnell, 2018a,b). This approach was inspired by our fieldwork, in which we explored three well-known RoR cases in Colombia, India and New Zealand. In 2016/2017, these countries conferred legal personhood on the Atrato, Ganga and Whanganui rivers, respectively. These cases have already been subject to careful technical, legal and political scrutiny (see Eckstein et al., 2019; Kauffman and Martin, 2018; Cano Pecharroman, 2018). However, by exploring them from another angle, we seek to untangle the material and discursive contestations rooted in the establishment and implementation of these RoR interventions. From this fieldwork, four dimensions of contestation emerged that proved to be relevant in teasing out the conflicts and contestations underpinning the establishment and implementation of the three RoR interventions. The first dimension explores the cultural negotiations behind such interventions. The second is concerned with how the distribution of political power among actors influences, and is affected by, RoR provisions. The third and fourth dimensions engage with how definitions of river development and river rights differ among actors because of different understandings of the relations among rivers, nature and people, and how this influences the establishment and implementation of RoR.

The next section provides a theoretical understanding of RoR as a field of contestation. This is followed by an explanation of the methods used for this study and a brief introduction of the three cases and the dimensions of contestation. The paper then looks into the four dimensions in greater detail and analyses them. It concludes with a discussion of our findings, zooming out from RoR to draw broader conclusions for RoN.

RIGHTS OF NATURE AND OF RIVERS AS A FIELD OF CONTESTATION

RoN discourses and practices arose from the need to balance off anthropocentric legal and governance systems that conceptualise nature as an object of exploitation (Burdon, 2011; Berry, 2011; Chapron et

al., 2019). Over the years, legal frameworks have been developed which grant nature legal personhood that can stand up in court against environmental threats and harms (Berry, 2011). RoN has captured the imagination of legislative assemblies around the world. This started in Ecuador, where the 2008 Constitution acknowledges and protects the rights of *Pachamama*, or Mother Earth (Kauffman and Martin, 2017; also see Cano Pecharroman, 2018, for a detailed history of the RoN movement). RoN interventions aim to shift expert and public attention from utilitarian and anthropocentric perspectives on nature – which are dominant in Western natural resource governance – to more ecocentric perspectives (Macpherson and Ospina, 2018). As such, RoN is imbued with a narrative that resembles that of human rights and incorporates indigenous thinking; it 'naturalises' the recognition of legal rights to nature and poses it as a moral imperative (Chapron et al., 2019; Rawson and Mansfield, 2018). Questions remain, however, as to the terms that characterise this imperative, that is, what 'nature' and what 'rights' are being referred to here. Chapron et al. (2019: 1393) propose that, "a solution may be to identify ecologically informed criteria through which natural entities become rightsholders". They further suggest that, "[i]t may be easier to scientifically define species or populations than Mother Earth". In opposition to this, the tendency to limit RoN definitions to ecological and legal knowledge risks technifying and simplifying the complexity of the issues at stake and can overlook the plurality of actors, interests and worldviews that are involved in, and affected by, the legislations (Macpherson, 2019).

A similar narrative has been deployed in opposition to the utilitarian exploitation of rivers (Macpherson and Ospina, 2018). The Whanganui River in New Zealand, for instance, was granted legal personhood and was acknowledged as an "indivisible and living whole", and India's Ganga was granted legal rights on the basis of a moral duty towards the river (Hutchison, 2014; O'Donnell, 2018b). While these are mere statements in a much more complicated political transformation that has been brought forward by RoR interventions, the adoption of such a narrative raises important theoretical questions that need to be addressed. These are questions that problematise the separation of river ecosystems from the wider social and natural environment with which they are connected through multiple and mutually constitutive ecological, sociocultural and political ties. We therefore understand RoR, following Joy et al., as "socio-environmental processes that (…) create new patterns and mechanisms of access, establish new rights, forms of marginalization and in-/exclusion, and thus new constellations of winners and losers" (Joy et al., 2014: 955). Informed by this perspective, RoR interventions do not simply target rivers and their ecological components. They are, rather, political interventions in which the ecological conditions of the river ecosystem and the social processes around it and in connection to it operate together and co-constitute each other as 'socionatures' that "embody chemical, physical, social, economic, political, and cultural processes in highly contradictory but inseparable manners" (Swyngedouw, 1999: 447). Rivers and their legal rights, therefore, cannot possibly be reduced to a host of ecological criteria, as Chapron et al. (2019) suggest, nor are they a mere 'ecocentric' matter that is disconnected from sociocultural, economic and political considerations. On the contrary, when dealing with RoR interventions, questions should be advanced about the tensions and frictions that exist between rivers, surrounding nature, and people and their respective uses of and claims to nature, whether or not expressed in discrete rights or not.

Treating RoR as socio-environmental and political interventions in a continuum of degrees of eco-/anthropocentricity opens up avenues for research and critical engagement. The aim is to understand how the local context shapes and is shaped by these legislations, and how RoR can either reinforce or transform processes of marginalisation, contestation and even environmental harm to the rivers themselves (Kinkaid, 2019). This complicates the ecocentric narrative, which often glosses over clashes between river rights and the rights of people (Chapron et al., 2019; Macpherson and Ospina, 2018; Tanasescu, 2020). Careful consideration is thus required of the material and discursive ways in which RoR approaches come into being, and of their implications.

RESEARCH APPROACH, METHODS AND SHORT CASE DESCRIPTIONS

In this section, we present our data collection and research methods. We elaborate on the dimensions of contestation mentioned above and clarify how these dimensions emerged from our fieldwork. We conclude with a short description of the three case studies.

Methods

This research is the result of three MSc thesis projects. The first three authors performed field research for two to three months in 2018 and 2019 in India, New Zealand and Colombia, respectively. The three research projects shared general objectives and basic questions about the legal personhood of rivers but developed differently according to the specific country contexts. Similar methods were adopted across the three projects; these comprised interviews with stakeholders including members of local communities, activists, representatives from non-governmental organisations, academics and government officials, as well as content analysis of policy documents. A literature review was also conducted based on scientific research, grey literature, legal texts, policy documents and newspaper articles.

Each of the three researchers encountered limitations during data collection and analysis. In Colombia, it was impossible to access the Chocó Department where the Atrato River is located, because of its status as a red-code security area with access restrictions for Dutch citizens and Netherlands-based academics. It was thus impossible to make on-the-ground observations; all interviews with local communities and organisations were carried out on the phone. Similarly, in New Zealand it was not possible to conduct interviews with members of local communities from *Ngā Tāngata Tiaki o Whanganui* (the trust established as post-settlement river governance entity), despite formal applications and multiple attempts to schedule meetings. This seriously hampered the identification of important issues that can emerge from in situ research and from in-person discussions with respondents. To overcome these impediments, interviews were held with people who were directly or indirectly involved in the settlement in order to shed light on their experiences and perceptions.

Different challenges emerged for fieldwork in India, where the decision of the Uttarakhand High Court to declare the Ganga and Yamuna Rivers legal persons was stayed by the Supreme Court in the summer of 2017. This made the study of RoR in India particularly challenging and required a reconsideration of research aims. Localisation of the issues and data collection were also complicated by the length of the Ganga (2500 km). For this reason, two case studies were selected to analyse water governance, river discourses and the sociocultural dimensions of the Ganga. One of these case studies was carried out at the Kumbh Mela festival which takes place every 12 years at one of four locations on the Ganga (Allahabad, Haridwar, Ujjain or Nasik), and the other took place at the city of Haridwar, which is in the state of Uttarakhand.

Dimensions of contestation

Our separate fieldwork experiences inspired us to develop an analytical framework for the study of RoR that was rooted in the tensions, conflicts and contestations that we had encountered in the field. From our discussion of the material and discursive contestations around RoR interventions of each case, four dimensions of contestation emerged. These dimensions helped untangle the social, political, economic and cultural dimensions that affect, and are affected by, RoR interventions. These categories, therefore, neither precede nor guide the investigation of the cases; rather, they emerged on the basis of insights drawn in the course of our engagement with the cases. Our research experiences inspired us to develop this framework, with the aim of contributing to future research.

The first dimension, *cultural negotiations behind RoR interventions*, emerged from all the cases. Recognising and highlighting cultural negotiations opens avenues for foregrounding the important role that cultural negotiations play in shaping RoR interventions. Our prime objective here is to understand

what this cultural negotiation consists of and how it unfolds materially in the case study localities. The second dimension, *distribution and control of political resources*, arises from the consideration that in each of the three cases RoR legislations have been used as tools to access political control of the river. Emphasising this dimension allows us to reveal the realignments and new arrangements of political power and resource control following RoR legislation. The third and fourth dimensions, *conflicting interpretations of river development* and *conflicting rights of rivers*, arose from our investigation into how different stakeholders understand rivers and river rights and how they frame the connection of rivers and river rights to other socio-economic issues.

Although these dimensions are far from exhaustive, we propose this analytical framework as an innovative way to analyse RoR interventions and tease out major contestations that otherwise risk remaining unheard and unseen while still operating in the background.

Colombia: The Atrato River

The Atrato River is located in the Chocó Department in northwestern Colombia. Historically, this is a site of armed conflict, poverty and violence, but it is also one of the world's most biodiverse regions. It is inhabited mostly by Afro-Colombians and indigenous communities. Because of the richness of its subsoil resources and the limited government control due to armed conflicts, this region became a target for the expansion of illegal gold mining. The discharge of tons of mercury into the Atrato every year has caused environmental damage and has led to social injustice for nearby communities (Delfado-Duque, 2017). In 2016, after many years of social and political mobilisation by local communities, the Colombian Constitutional Court, through Judgment T-622/16 (Colombian Constitutional Court [Sixth District], 2016) recognised the river's serious degradation and proclaimed it to be the subject of rights. The Court, recognising the importance of the Atrato to the physical, cultural and spiritual existence of the communities living close to its banks, assigned biocultural rights to those communities. These rights acknowledged the cultural nexus between local communities and nature and politically recognised these communities as fundamental actors in the protection of the Atrato.

New Zealand: The Whanganui River

The Whanganui River was the first river in the world to be granted legal personhood (Charpleix, 2018). This decision was part of a settlement that ended a long dispute between the indigenous Māori population of New Zealand and the central government regarding the right to govern the river (Cheater, 2018). The dispute originated in a conflict between the Māori population and the English government – often called 'settlers' – about the Treaty of Waitangi, signed in 1840. This founding document was drafted in both English and Māori, giving rise to confusion because of differences between the two versions. The Māori version stated that the Māori would only transfer limited control to the British under Article 1 and, as stated in Article 2, would retain sovereignty over their lands and other resources (Sanders, 2018; Magallanes, 2015). The English version, however, granted the settlers the right of pre-emption; this allowed the British government the exclusive right to acquire lands from the Māori (Magallanes, 2015). Conflict thus arose when the Crown confiscated land and the adjoining waters inhabited by the Māori, which included the Whanganui River. The Waitangi tribunal – an official advisory body constituted in 1975 with the Treaty of Waitangi Act to address breaches of the Treaty of Waitangi – recommended that this dispute be settled and, with that, the negotiations began. In 2017, as part of the culmination of the negotiation process, the Whanganui riverbed was granted legal personhood.

India: The Ganga and Yamuna rivers

In March 2017, in light of the dwindling ecological conditions of the Ganga and Yamuna, the Uttarakhand High Court (UHC) declared both rivers to be legal persons. The UHC appointed a limited number of representatives to bring forward the rivers' voices in Court; they were mostly officials from governmental

institutions and from the State of Uttarakhand. The case was soon brought to the Supreme Court of India by the Government of Uttarakhand. It contended that, as the Ganga runs through many Indian states and into Bangladesh, it would be impossible for Uttarakhand to take responsibility for the whole river. The state's government also contested the lack of clarity with regard to the role of the river's 'representatives'. Critics also contested the selection of representatives for its exclusion of civil society organisations. The Supreme Court accepted the Uttarakhand government's complaints and stayed the UHC's decision; until now, there are no RoR provisions concerning the Ganga.

In what follows, we present the four dimensions of contestation that together constitute our analytical framework. Each dimension is first explored by zooming in on one of the river cases that most clearly illustrates the dimension of contestation under discussion. We then explore the same dimension of contestation as it manifests in the other cases. The 'I' used in these sections refers to the author who conducted the field research, as indicated above.

CULTURAL NEGOTIATIONS BEHIND RoR INTERVENTIONS

The first dimension of contestation that emerged from our studies is that of cultural negotiations behind RoR interventions. This dimension is best illustrated by unravelling the dynamics of the New Zealand case. In what follows, the second author demonstrates the crucial role of cultural negotiations in the process leading to the recognition of the Whanganui River as a legal subject. After that, we contextualise the importance of cultural negotiations with reference to the other cases.

The Whanganui River dispute is rooted in part in differences between Western and Māori worldviews with regard to human – nature relationships. In my research, I interviewed a politician who was closely involved in the Treaty of Waitangi Negotiations. He took part in the negotiation process to solve the historical grievances between the Crown and Māori tribes across New Zealand in relation to breaches of the Treaty of Waitangi, a process which led to the Whanganui River settlement. During the first interview, he explained that the dispute was rooted in what he called, "a complete misunderstanding between the Crown and the Māori, going back many years, as to who owns the river and what ownership of the river really means". With this, he referred to the confusion that had emerged from the Treaty of Waitangi, whereby a conflict arose between transfer of ownership (as interpreted by the British) and the establishment of a guardianship model that included the Māori as custodians. In Māori cosmology, the idea of ownership in relation to the river does not exist (Magallanes, 2015; van Meijl, 2015). Māori instead believe in their ancestral relationship with the Whanganui River (Cheater, 2018; Magallanes, 2015; Rodgers, 2017). The Māori never intended, with the signing of the Treaty of Waitangi, to cede to the settlers their *mana* (ancestral authority) over the river (Salmond, 2014).

The Whanganui River Settlement Act of 2017 conferred legal personhood on the Whanganui riverbed. This legal 'person' would be represented by *Te Pou Tupua* (the human face of the river), a two-person structure tasked with protecting "the interests and well-being of the river" (Magallanes, 2015; Rodgers, 2017). A collaborative structure that included both the government and the Māori was introduced by having one government-appointed and one tribe-appointed person. Legal personhood was thus deployed as a political as well as a cultural compromise between worldviews and interests. According to the interviewed politician,

> What we have tried to do is get away from thinking about the river in Anglo-Saxon terms and to say, well, there is another worldview out there and you've got to try and marry that worldview into what we're trying to do here. So that's what we've tried to do in part two [the second Act of the settlement legislation], which sets up the framework, trying to get away from looking at the river in purely European terms to something that tries to reflect the worldviews of the Maori and putting that into legislation (interview with politician, February 2019, Wellington, New Zealand).

This view resonates with Anne Salmond's argument, as presented in the article *Tears of Rangi: Water, Power, and People in New Zealand* (Salmond, 2014), in which she claims that the Whanganui River settlement juxtaposes ancestral Māori and modernist framings.

According to the interviewed politician, another reason for introducing legal personhood was the varied interests of multiple actors. He argued that, since the Whanganui tribes who jointly reclaimed river ownership are spread along the river, different interests exist within a seemingly homogenous group. Legal personhood, then, provides the space to converse with all stakeholders including local businesses, farmers and other actors, thanks to post-settlement structures like Te Pou Tupua, whereby the two human river representatives take a stance whenever a resource management issue impacts the river. For guidance, they can turn to a strategy group called *Te Kōpuka* (*nā Te Awa Tupua*); this group is composed of various actors ranging from local tribes to Genesis Energy, a hydropower company (Argyrou and Hummels, 2019). While the structure introduced by the settlement is supposed to represent the river's interests rather than those of the people, it still allows multiple actors to express and defend their interests.

At a deeper level of analysis, however, the choice for legal personhood was primarily aimed at settling Māori claims on river ownership. According to the interviewed politician,

> Quite a lot has changed greatly because you don't have the assertion of ownership of the underlying bed of the river by the Crown. So you get away from all those sorts of issues like who owns the bed of the river. The stance of the Crown has always been that no one owns the water. So we have gotten away from that way of thinking to say: look at the river in its entirety, and it has got legal personality. It is a fundamentally different way of looking at this entity (interview with politician, February 2019, Wellington, New Zealand).

Clearly, the political and cultural compromise that comes with legal personhood does not come without problems. Legal personhood resembles the idea of guardianship more than Western ownership could ever do, and therefore inherently better connects *Te Ao Māori* (the Māori world) with *Te Ao Pakeha* (the European/Western way of being); however, it does not grant the Māori direct control over water allocation (Salmond, 2014; *Whanganui Chronicle*, 2020). While Te Pou Tupua (the two-person representative structure) needs to be consulted by the local authorities when making governance decisions that affect the river, the settlement legislation does not grant it veto power over decisions made by these authorities. This is the result of the cultural compromise behind the legislation. It prevents the Māori from being able to directly influence river governance decisions such as the continuation of the hydropower schemes that violate the free flow of the river and contribute to its degradation.

The cultural negotiations that precede and inform the establishment of legal personhood are intertwined with political interests and struggles. Foregrounding these negotiations is important for understanding the implications of legal personhood as well as what it can accomplish within the local context in which it is embedded.

In the Colombia Atrato case, the importance of cultural negotiations became apparent in the establishment of biocultural rights. Here, the guardianship model was explicitly developed to make river governance more inclusive of indigenous and local community worldviews. This resulted from another cultural compromise, by which the Colombian Court connected RoR to the establishment of the collective rights of local communities to regulate nature and carry out their traditional practices, that is, biocultural rights. Biocultural rights are at the heart of cultural compromise as they recognise alternative ways of living with nature and provide a framework for its protection. Based on the recognition of biocultural rights by the Constitutional Court, local communities were included in the Commission of Guardians of the Atrato, which was composed of Chocó communities and responsible regional governmental authorities. In this way, the recognition of biocultural rights and consequently the inclusion of local communities in the guardianship model ensure, at least on paper, room for discussion among stakeholders about the protection of the Atrato River and local communities' fundamental rights.

The Indian case does not show a cultural compromise as explicitly as do the New Zealand and Colombia cases. This is primarily because indigenous or local groups living along the Ganga did not initiate this approach, nor were they included in the process. The Uttarakhand High Court, however, referred to Hinduism and to the central role of the Ganga in "the existence of half the Indian population" (Mohd. Salim v. Uttarakhand, 2017; O'Donnell, 2018b). According to the Court, this creates a moral duty to protect the Ganga that is, more or less directly, based on religious motifs. While this is an important cultural mediation that bridges religious beliefs and legal frameworks, the direct reference to Hinduism is also potentially controversial, especially with the growth of Indian Hindu nationalism in a context in which not all Indians are Hindus who worship – and hence relate to – the rivers as sacred (Kothari and Bajpai, 2017; Jain and Lasseter, 2018; O'Donnell, 2018b).

We conclude that legal personhood for these rivers emerged from, and was crucially shaped by, political – cultural struggles and negotiations; this is clearly illustrated by our research. The idea of integrating different cultures and worldviews can be used both to produce more inclusive governance approaches and to achieve other political goals dictated by different, and sometimes clashing, interests between actors. Foregrounding the cultural negotiations behind RoR interventions reveals the political – cultural struggles that animate RoR and that may affect its implementation and functioning in the future.

DISTRIBUTION AND CONTROL OF POLITICAL RESOURCES

The second dimension includes contestations over distribution and control of political resources. This dimension is best captured by unravelling the dynamics of the Colombian case. In what follows, the third author shows how the conferring of legal rights to the Atrato has altered (or has attempted to alter) the distribution of political control over the river and its resources. We then contextualise the importance of this dimension by referring to the other cases.

A representative of an Afro-Colombian community stated in an interview that "Afro-descendants' communities have historically been exploited in the Chocó Department of Colombia; first in the mining industries during Spanish colonization and now by armed groups" (interview with representative of an Afro-Colombian community, March 2019, Bogotá, Colombia). After the abolishment of slavery in 1851, the Chocó Department remained a poor and underdeveloped area with little protection from governmental authorities (Sánchez and Bryan, 2003). Armed groups present in the country took advantage of the fragile situation in the Department to take control of the territory, regulating local communities' access to, and use of, the water of the Atrato River. At the same time, illegal gold mining companies, mostly managed by armed groups, spread on its banks, causing massive deforestation and mercury pollution of the river. This caused tremendous harm to the local communities that depend on a healthy environment for their economies and the satisfaction of their essential biological, cultural and social needs (Delfado-Duque, 2017).

Despite the multiple attempts made by Chocó communities to advance their political views and cultural traditions in the area, they were never able to gain full control over their territories and natural resources. In 2015, local communities presented an *acción de tutela* (action for protection) to the Colombian Constitutional Court. The aim was to defend their constitutional rights and the natural entities on which they depend for their survival against the limited action on their behalf by governmental authority (Colombian Constitutional Court, 1991). In so doing, local communities highlighted the biological, social and cultural importance of the Atrato for them and denounced the lack of state presence on issues related to the protection of their fundamental human rights. The Colombian Constitutional Court responded favourably and, in 2016, it released the sentence T-622/16. This assigned legal rights to the Atrato River and, with the introduction of biocultural rights, recognised the profound interdependence between communities and the river (Colombian Constitutional Court, 2016).

Biocultural rights have been introduced in Colombia to recognise the intrinsic interdependence between local communities and their natural resources, which is so profound that neither can be

understood in isolation. Through the assigning of biocultural rights, the Court recognises that problems generated by water pollution affect local communities both by impeding the satisfaction of their biological needs and by hampering their cultural connection with nature. The Constitutional Court first recognised the importance of the biological and cultural needs of local communities that were linked to the Atrato River. On this basis, it later offered local communities the political means and rights to protect and control this natural resource. In practice, this is done by including these communities in the Commission of Guardians of the Atrato, which is an entity that legally represents the river. Colombian government representatives make up 50% of its membership; the other 50% are from Chocó communities. Through the recognition of their biocultural rights, local communities acquired the means to legally manage their territories in collaboration with government authorities (Colombian Constitutional Court, 2016).

The steps undertaken by Chocó communities and the assigning of biocultural rights by the Colombian Constitutional Court are a clear example of how political power and control over natural resources has shifted thanks to RoR. From being long-standing victims of extreme environmental and social injustice, communities became part of decision-making processes through the Commission of Guardians. They thus began to play an active role in the protection of their rights and those of the river. Notably, however, when I conducted my fieldwork in Colombia and interviewed local communities and relevant governmental authorities, the so-called 'action plans' meant to protect the Atrato River and local communities had still not been implemented. Action plans are a set of projects created by the Commission of Guardians of the Atrato to protect the river's ecosystem and local communities' biological and cultural needs as they are linked with the environmental condition of the river. So far, it is still not possible to conclude if local communities' perspectives and needs will be reflected in such action plans. This being said, the sentence T-622/16 is one of the first constitutional judgments in Colombia that involves local communities in policy-making processes through the guardianship model. Local communities and humanitarian NGOs that I interviewed already considered the introduction of biocultural rights to be a success for the recognition and empowerment of local communities and the redistribution of political power over the river.

From this it emerges that the establishment of legal rights to rivers has more to do with the distribution of political control over the river than with – as a certain ecocentric narrative would have it – conferring on nature a voice. Attending to these shifts in power and resources is thus vital to understand the implications of RoR interventions.

In India, the implications of RoR for political power and control over the Ganga are complicated by numerous elements. On the one hand, the Uttarakhand High Court followed Colombia and New Zealand by appointing legal representatives for the Ganga; on the other hand, all representatives were Uttarakhand government officials, some of whom were already in charge of protecting the Ganga. Unlike the other cases, the judicial decision did not take into consideration local communities nor did it include them in the guardianship model (Kothari and Bajpai, 2017). As in Colombia, in India there are concerns over the actual capacity of legal provisions like RoR to empower (especially rural) communities. Differences between (urban) middle class environmentalism and (rural) environmentalism of the poor are relevant here (Baviskar, 2005; Bello, 2018; Martinez-Alier, 2002; Williams and Mawdsley, 2006), especially as they relate to interests in the river and access to justice and legal tools. In the Indian case, the lack of any noticeable shift in political power and control over the river may indeed give rise to questions on the effectiveness of such RoR interventions.

Like Colombia, New Zealand established a guardianship model that included Māori and governmental officials; however, by granting legal personhood only to the Whanganui riverbed and not to the entire river, control of water remains with the New Zealand government. The Horizons Regional Council, which is the local governmental resource management authority, still holds decision-making power over water distribution. Even though Te Pou Tupua can speak on behalf of the river and provide recommendations on river governance, these are not binding for the Council. While non-governmental actors in the strategy

group can advise Te Pou Tupua, it remains unclear to what extent they can influence river governance, considering the non-binding nature of the latter's recommendations. According legal personhood to the Whanganui, therefore, while allowing Māori communities access to the decision-making arena, could in fact impede the actual shift of political control over the river.

In sum, RoR is intimately related to broader political issues of distribution and control of resources. As the cases show, it can be used to gain control over rivers, to impede other groups from accessing this control, or (as in the case of New Zealand) to deal with broader political issues. Attending to the ways that political power can shift and be redistributed among competing actors helps to nuance the narrative which frames RoR as simply 'ecocentric' as it allows nature to 'speak for itself'.

CONFLICTING INTERPRETATIONS OF RIVER DEVELOPMENT

The third dimension, conflicting interpretations of river development, includes the different conceptualisations of river development that are held by multiple actors and how these different interpretations, on the ground, affect the implementation and functioning of RoR. This dimension is best captured by the Indian case. In what follows, the first author elaborates on the conflicts between different ideas around Ganga development. After that we contextualise the importance of this dimension by referring to the other cases.

During my research on the Ganga, I visited the Matri Sadan ashram in Haridwar (Uttarakhand) where *sadhus* (monks) live and, as they claim, fight for the life of the Ganga. Their non-violent protest takes the form of the practice of *satyagraha*, that is, "an ancient Vedic spiritual practice, of which fasting is the external component". Currently 58 dams are planned in the Ganga valley (Bhai, 2019), and the demand is for the cancellation of their construction and for a ban on sand mining. As part of their struggle, the protest group supported the Uttarakhand High Court decision to recognise the legal rights of the Ganga. This, they told me, would have provided them with a tool for holding the authorities accountable.

The Ganga's sacred values are widely recognised across India; however, the river is in dire ecological condition because of water pollution primarily from city and industrial sewage, and poor water flow due to hydroelectric dams and water diversions (Narayanan, 2001; Sanghi, 2013). Because of its centrality to Indian culture, economy, ecology and politics, Prime Minister Narendra Modi devoted much of his last two political campaigns to the issue of saving – or "rejuvenating" – the Ganga. In 2014, as a symbol of his commitment, Modi changed the name of the Ministry of Water Resources into the Ministry of Water Resources, River Development and Ganga Rejuvenation. The term 'rejuvenation' is now well recognised in India; it was used very specifically by a sadhu from Matri Sadan who questioned it sharply, saying that,

> Government has set up a Ministry to rejuvenate Ganga. What is the meaning of rejuvenating Ganga? Rejuvenate means: we have to put it [Ganga] in its ordinary form and to keep it there. But the government talks about rejuvenating and at the same time it makes dams? What is the definition of a river? River means it should flow from its origins to its end without any obstruction. Dams have destroyed the real nature of Ganga (interview with environmental activist, February 2019, Haridwar, India).

The questions posed here are relevant. How one defines a river and how that river can be used is basic to any debate around RoR. The alluring and seemingly neutral connotation of 'rejuvenation' obscures the political contestation around its meaning and its material implications for river governance that the sadhu was hinting at. In his words, rejuvenation means letting the river flow freely without obstacles, a position with which the government may officially agree while at the same time planning still more dams along the Ganga. So, what is the meaning of rejuvenation and how does it unfold materially?

This resonates with another interview that I had some weeks before my visit to Matri Sadan. Allahabad is a city at the crossroads of the Ganga and Yamuna Rivers. I was there to conduct field research on the Kumbh Mela, an ancient Hindu festival that celebrates the bounty and the holiness of water. I visited Prof. Derrick M. Denis, Dean of the Vaugh Institute of Agricultural Engineering and Technology, University

of Allahabad. Despite my intention to discuss the water interventions on the Ganga in the context of the Kumbh Mela, the conversation moved to the concept of river development more generally. This passage struck me particularly:

> There are several development projects on the river and the concept is that you can't waste water. Water is an important resource and the intensity of many activities [that require water, such as agriculture] has increased. It is not useful to release more water than required because water is an important resource to harness and not to waste (interview with Prof. Derrick M. Denis, January 2019, Allahabad, India).

River development, in the words of Prof. Denis, means that a river must be tamed, with dams and barrages, to make use of every single drop of water. This 'hydraulic mission' perspective (Molle et al., 2009) finds its logic in the need to support development and economic growth. In the words of Prof. Denis, "Development cannot be stopped at any cost because you must give a developed world to the next generation. If we cannot give a better India in terms of economic gains, technology, resources, infrastructure to the next generation, then we go back".

According to this perspective, the Ganga – like other rivers in India – becomes a means to development. According to the sadhus of Matri Sadan and to other environmentalists, this logic has not helped restore the Ganga's ecological condition. While plurality of perspectives and definitions is normal and even desirable, according to the members of the Matri Sadan and many other activists Modi's government has embraced an interpretation of river development that is based on the exploitation of water for economic growth, an approach that is not recognised as legitimate by other parts of society (Kothari and Bajpai, 2017). This raises questions about how RoR legislation and legal personhood for the Ganga could coexist with such a framework of river development.

The way various actors conceptualise river development has to do with their different visions of what a river should be. Considering these sometimes conflicting conceptualisations is crucial to understanding how RoR does or does not fit within these visions, and to whether the rights of rivers are destined to remain formal rights on paper or to actually bring about a change in the local context.

As in India, in the Whanganui case there are different perceptions of river development. The Māori, like the sadhus, want the river to flow freely, while the government promotes tourism and supports the building of dams to generate hydropower. The government acknowledged the existence of different perspectives on good river governance during the Whanganui River settlement process, however no discussion has yet been initiated by the government on these topics. The Māori vehemently opposed the decision to install the Tongariro hydropower station on a nearby lake and to redirect river water into this lake, as this was against their belief in the river's right to flow freely.

In Colombia, different perspectives on river development exist as well. These are based on the demographic diversity of the Chocó and the contrasting uses of natural resources. Indigenous communities often give a spiritual value to the river as part of their sociocultural identity. Afro-Colombians, on the other hand, value the river primarily for its utilitarian uses such as drinking water and irrigation, without wanting to compromise its flow, environmental quality, or natural beauty. Mining companies, which illegally operate on the banks of the Atrato, consider the river as an economic resource to be exploited despite damage to the river's ecology and the well-being of communities. In light of this clash of perspectives, the Colombian RoR case represents an attempt to empower local communities (indigenous and Afro-Colombians) and *their* conceptualisation of river and river use, in order to fully eradicate illegal mining activities close to the river and, in the process, protect the river's well-being.

In sum, these cases show that multiple perspectives on river development exist and may limit or support the establishment of RoR. These perspectives do not exist in a vacuum; rather, they have a strong influence on river governance and management. It is thus important, when engaging with RoR, to attend to these different and at-times conflicting perspectives in order to uncover the power imbalances and injustices behind RoR compromises.

CONFLICTING RIGHTS OF THE RIVER

This fourth and final dimension of contestation entails the conflicting definitions of what a river's rights entail – a dimension that is best captured by the Indian case. In what follows, the first author elaborates on the diverging conceptualisations of 'rights' that inform the different approaches to RoR for the Ganga. After that, we refer to other cases in order to contextualise the importance of this dimension.

Nirmalta (water purity) and *aviralta* (free flow) are believed to be the Ganga's rights. There appears overall to be a formal agreement on this, including within government and among local activists. In 2014, Prime Minister Modi established the Namami Gange Programme, a flagship project that was aimed at protecting the rights of the Ganga. Similarly, in the interview with sadhus from the Matri Sadan, they mentioned aviralta as the fundamental right of Ganga. In my research, however, I discovered that when translating these rights into material interventions and river management practices, the upholding of nirmalta and aviralta becomes more complicated and more contested than it seems at a purely discursive and ideological level. This also shows the tensions between a certain interpretation of RoR and the rights of people.

In my interviews with anonymous informants from NGOs working on environmental issues and, specifically, on rivers in India, it became evident that the Namami Gange Programme has mostly directed its resources to cleaning the river through abatement of pollution and wastewater treatment (enhancing nirmalta, or water purity), while neglecting the Ganga's free flow (SANDRP, 2018). This is striking, considering that the latter is recognised as having greater legitimacy than nirmalta in terms of rejuvenating the Ganga (SANDRP, 2018). During interviews with a young environmental activist from Uttarakhand and other members of the Matri Sadan ashram, the concept of nirmalta was contested:

> The government only works on *nirmalta*, and for the government *nirmalta* means crystal clear water, so when you see the water it should be clear. However, for us *nirmalta* is not only crystal-clear water. For us, it should contain the properties of Gangatva [the Ganga's self-purifying and bactericidal properties] (interview with environmental activist, February 2019, Dehradun, India).

> They [the Namami Gange project] only clean the outside aspect of the Ganga. This doesn't purify the water. The only way to purify it is to let the river flow (interview with environmental activist, February 2019, Haridwar, India).

> The government is making *ghats* [cemented banks] and in doing so they say that Ganga is getting clean. Making ghats has nothing to do with cleaning Ganga (interview with environmental activist, February 2019, Haridwar, India).

Capturing the true nature of nirmalta is evidently more complicated than it appears to be, as there is a range of definitions of a 'clean' river. The interviewees suggested that the government aims primarily at beautifying the Ganga. These efforts are best understood as part of a broader turn towards beautification of rivers in India, its flagship being the River Front Development (RFD) project which is part of the Namami Gange. This project builds on the well-known case of the Sabarmati River which was, according to the government, a success story as it revived, restored and rejuvenated the river. Critics point out, however, that the Sabarmati model, along with other planned RFD projects, are nothing but river beautification, the creation of new riverfront real estate, and the concretisation of riverbanks (Dharmadhikary, 2018; Dutta, 2018; Pradhan, 2014). Projects aimed at protecting rivers thus can potentially damage the river ecology and the riverbank's identity. According to an environmental activist:

> RFD, the way I see it, is a way to divert attention. Actually, they call it river beautification. It has two goals: one to show that they are protecting the river, when actually RFD is doing the opposite because it is taking the river away from its natural state into a more built-up space. Second, lots of these projects are about creating expensive real-estate space in the middle of the city and selling them to large corporates (interview with environmental activist, February 2019, online).

These words should be seen in the context of the emergence and expansion of urban middle class environmentalism mentioned above. They show that different societal groups can have diverging interests in rivers and can translate them into different articulations of rights. Nirmalta is agreed upon by activists and the government at a discursive level, however its realisation as 'river beautification' is ambiguous and is criticised by numerous activists as an attempt to deflect attention from what is thought to be the real issue: the river's water flow. This brings me to the other fundamental right of the Ganga: aviralta. At a discursive level, aviralta is recognised by the government and, to some extent, by the Namami Gange project. However, much less effort is being directed at freeing the river from dams and barrages and, in fact, more hydroelectric dams are being planned for the coming years. The question then is: how can aviralta coexist with a water governance framework that seems to prioritise a narrow definition of nirmalta to beautify the river?

Finally, along with clashing river rights, the issue of rights of people also emerges. In my conversation with the environmental activist, I was told that RFD projects threaten to limit access to riverbanks as part of the process of gentrification mentioned above. He stated that,

> [RFD] makes parts of the river exclusively accessible. For example, a huge corporation is going to pay a lot of money for a river front office only if it is exclusive to them. So you are making parts of the river exclusively available to some parts of the city. (…). In Sabarmati [case] huge amounts of people were displaced (…). And only when they fought – they had agitations and movements for some years – only then they got some alternative housing scheme (interview with environmental activist, February 2019, online).

This shows that the needs and interests that different societal groups attach to the river can differ greatly, as can the articulation of what the rights of a river should be. Understanding these different definitions of a river's rights and how they interact with each other and with the local socio-economic, cultural and political context is fundamental to reflecting and engaging with the implications behind claims for RoR interventions.

In the Whanganui case it is also clear that different groups hold different beliefs regarding the rights of the river. For the Māori, this strongly correlates with the rights and responsibilities of the people who are spiritually connected to the river. On another level, like for the Ganga, the Whanganui River settlement is centered around legal personhood rather than river rights. This is visible in the settlement documentation, which emphasises the 'good governance' of the river rather than making explicit its rights. Even though the government acknowledges the ancestral relationship between the river and the Whanganui tribes in the settlement legislation, little is said about the rights of the legal person. This case thus shows that the use of the legal personhood concept as a form of RoN can cause the discussion to turn away from rights.

The dimension of rights is also central to the Colombian case, and its discussion can shed further light on the possible conflicts between the rights of people and those of nature, as it emerged above. The establishment of RoR in Colombia came along with the creation of biocultural rights. These were aimed at reconciling local communities' traditions and their role as stewards with the conservation and use of 'nature', as they define it (Macpherson et al., 2020). In this framework, the distinction between people's and nature's rights disappears, since nature and cultural diversity are intertwined and mutually supportive (Bridgewater and Rotherham, 2019). In Colombia, the concept of biocultural rights integrates RoR approaches and is used to redistribute decision-making power towards local communities. Judicial decisions in favour of ethnic communities already exist but have not been implemented. It remains to be seen whether this rights framework will actually be implemented by governmental decisions.

Similar to the alternative perspectives on river's development, the case studies show that different actors have different ideas of what a river's right should be. RoR thus emerges as a (contested) compromise between different interpretations of 'rights'. Attending to these contestations prevents us from taking for granted the existence of a consensus around rights. It also uncovers the political interests and games that often hide behind rights-based approaches to environmental issues.

DISCUSSION AND CONCLUSION

In this article, we engaged with the increasingly popular concept and practices of establishing legal rights for nature, with a focus on three riverine ecosystems that have become the objects of RoR approaches: Colombia's Atrato River, New Zealand's Whanganui River, and India's Ganga. Critically reflecting on these well-known cases, we have shown how RoR interventions come into being, how they (can) work on the ground, and how they can be mobilised by actors in different ways and for multiple interests. Although more time is needed to see the actual long-term consequences of such RoR interventions, our research explored the material and discursive contestations that emerge from the interactions between RoR interventions and their existing socionatural contexts. From this effort, we explored the potential of distinguishing four dimensions of contestation as an analytical approach that can help to explore the conflicts and contestations that may be part of RoR interventions. We find that this helps to nuance ecocentric narratives that are often associated with RoN and primarily focus on moral human obligations towards nature. While the latter is a valid point, it also risks presenting RoR approaches as 'neutral' legal-technical interventions that do nothing but recognise nature's rights in the same way as – following Stone's (1972) famous argument – human rights also had to become recognised in the past. This risks treating all humans as an undifferentiated group that ravages pristine nature (Moore, 2017), without recognising fundamental differences between actors and their needs, interests and impacts on nature (Eckstein et al., 2019; Martinez-Alier, 2002 White, 1996).

In this paper we have approached RoR as a political intervention that targets the socionature of rivers, incorporating the related and interconnected ecological, sociocultural, political and economic processes that constitute it. We second Kinkaid's (2019) proposition not to approach RoR as a global discourse, but rather as a boundary object that is interpreted and translated in local circuits of meaning-making and governance (see also O'Donnell, 2018a,b). In New Zealand, this meant that legal personhood for the Whanganui River had less to do with the moral imperative to protect the river than with attempts to settle a very old dispute between the Māori and the government (see also Macpherson, 2019; Macpherson and Ospina, 2018). As such, the choice of legal personhood was mediated by the need to recognise the Māori's cultural and social relations with the river without giving up actual control over it (Te Pou Tupua gives only non-binding recommendations on the river's governance). Guardianship and personhood (and, in Colombia, biocultural rights) end up being tools that mediate between actors' interests and ontologies, but they also embody existing power struggles over natural resource control. As such, RoR approaches mobilise political narratives and governance approaches that exceed simple river protection; this was shown by the Indian case, where critics lamented the possible manipulation of the legislation because of the strong ideological reference to Hinduism. We therefore agree with Macpherson and Ospina (2018) that RoN is ultimately about governance and the (power) relations between state and communities. In other words, RoR is far from being a neutral and uncontested intervention.

We have thus proposed an analytical approach that allows for the exploration of material and discursive contestations and accounts for some of the political struggles that accompany RoN interventions. This does not mean, however, that we deny the political novelty of these measures. We agree with Valladares and Boelens (2017) that RoN is an epistemic pact bridging Western and indigenous ontologies, which could redefine governance of natural resources; however, we also draw attention to the fabric of this pact. It would be too simplistic to believe that the legal personhood of an ecosystem would harmoniously synthesize the plurality of perspectives, worldviews and interests of all the actors involved. As we have shown through the discussion of alternative conceptualisations of river development and rights, these perspectives are often in opposition or even mutually exclusive. Free river flow can hardly be reconciled with exploitation for hydropower production (India and New Zealand), or with mining of the riverbed (Colombia). Legal personhood has emerged from the tension of these very struggles and histories and thus will not simply get rid of them. The fundamental question is: how does legal personhood deal with different and clashing perspectives on nature and on living with nature?

Appointing guardians from both local communities and the state may partially tackle this, as shown by the cases of Colombia and New Zealand, but doubts remain about the actual implementation of these measures and about their capacity to create more substantial socio-ecological, cultural and political change.

Accommodating clashing interests and perspectives is thus at the core of RoN approaches. More than an ecocentric narrative, this shifts the focus towards humans and governance. If RoN is ultimately a framework "to regulate human relationships" (Sanders, 2018), then more attention should be devoted to the plurality of the humans involved and to the ways in which this plurality can be managed. Chapron et al. (2019) suggest that clashes between human rights and the rights of nature should be adjudicated in the way that any other clash between different human rights is nowadays settled. We believe, however, that this misses the point that is highlighted throughout this paper, which is that one cannot distinguish between the river, the surrounding nature, and the people living in the riverine ecosystem. Applying such an artificial distinction in the governance of socio-ecological systems misses the complexity of such systems and does not address the frictions and tensions emphasised in our case studies. In this sense, the recognition of biocultural rights in Colombia gives reason for hope, since it addresses the interrelation between human cultures, societies and nature. In New Zealand, personhood was partly conferred in an attempt to recognise the ancestral relationship of the Māori to the river, hence, again, tackling human – nature coexistence. All three cases, however, show that not every group living on the river has the same interests, needs, and options for accessing and making use of legal personhood. This further complicates the picture and shows again that RoN approaches create and reproduce patterns of inclusion and exclusion, power and marginalisation. This risks polarising communities and environmental protection, pitting some groups against others and prioritising some values and interests over others.

Tracing the routes of material and discursive contestations in RoN opens up an important analytical focus. The four dimensions of contestation explored here can help inform future analyses of RoR and RoN issues. In order to develop a more critical scientific appreciation for RoR approaches as political interventions that shape power and access to decision-making, it is urgent to reflect on the ways these dimensions exist and interact with each other (while not excluding others that have not been discussed here). To account for all the implications of RoR approaches and to further enrich our understanding of these approaches, it is necessary to untangle the complexity of the contestations that are inevitably involved.

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