Asian Journal of Law and Society (2022), **9**, 187–206
doi:10.1017/als.2022.2

CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Can Rights of Nature Save Us from the Anthropocene Catastrophe? Some Critical Reflections from the Field

Lieselotte Viaene

Department of Social Sciences, University Carlos III de Madrid, Spain
E-mail: lviaene@clio.uc3m.es

Abstract

The world can no longer deny that the planet is on the verge of an Anthropocene catastrophe. As scientists from different fields and from around the globe are discussing the causes, impacts, challenges, and solutions to the arrival of this human-induced new geological time, the field of law cannot remain behind. Rights of Nature (RoN), granting legal personhood to nature and its elements such as rivers, is an emerging transnational legal framework fast gaining international traction among Euro-American legal scholars as a new tool to combat environmental destruction. Grounded in reflections derived from long-term collaborative ethnographic work among indigenous communities, this article aims to critically and empirically unpack several interrelated concerns and blind spots at this moment of the RoN snowballing effect around the globe related to claims that this new legal proposal is rooted in indigenous lifestyles and views about nature/the environment.

Keywords: Rights of Nature; Anthropocene; indigenous peoples; river rights; natural resources

1. Introduction

Qawa Roberto looked closer with a very worried face at the map I had laid in front of him. The map, elaborated by the Association of Communities for Development and the Defense of Land and Natural Resources (ACODET), visualized the expected impact of the Xalalá dam, the second biggest in Guatemala, a national priority according to the then president and ex general Otto Perez Molina, on the Maya Q'eqchi' communities alongside the Chixoy river. I explained that the almost 40 red dots on the map are Q'eqchi' communities that will disappear, while the whimsical blue thick string represented the water reservoir, which is almost 60 kilometres long. I also mentioned that the project manager of the National Institute of Electrification (INDE), the state institution and promoter behind this hydroelectric dam project, bluntly said in an interview: "This region and its river are the new green and blue gold!"[1]

"What do you think about this new threat to your region?" I asked qawa Roberto, a survivor of the state-led genocide against indigenous peoples in the 1970s and 1980s. Softly he said, with eyes that expressed huge sadness:

[1] Personal interview with the project manager of the National Electrification Institute, February 2014, Guatemala City.

> We should contact the other spiritual guides in this region, those who live close to the river and organize a trip—a trip to visit all sacred places including caves and mountains—alongside this river to perform *mayejaks*[2] in these different sacred places. We need to organize to gather a lot of offerings: candles, *pom*,[3] cacao, *boj* … everything in order to ask the *Tzuultaq'a*[4] for protection against this dam. If not, the big river will suffer, the lands along the river will suffer. This river is a mother, the fertile lands the father, the side rivers their children. We need to protect this family; if not, the life of this family will be killed.

This conversation took place in 2014 in Nimlaha'kok, an indigenous community almost two days' drive from the capital, during consultancy research that I was asked to undertake regarding the human rights impact of this hydroelectric dam on the indigenous peoples of that region, the Maya Q'eqchi'. The final title of the policy report was: "What will happen with our sacred river and sacred lands?"[5] because that was one of the main concerns that I heard over and over again when I listened to the many Q'eqchi' elderly women and men and war survivors when they talked about this dam project.

These days, this Xalalá dam project no longer stands at the top of Guatemala's energy development agenda because of a corruption scandal about the 5-million-dollar contract between INDE and a Brazilian company to conduct the geological feasibility studies as well as the huge resistance by the dam-threatened indigenous communities. However, if this threat to the Chixoy river and its communities had remained as immense as it was in previous years, one of the Guatemalan human rights organizations in the capital would likely have suggested starting a litigation process seeking the river's protection through granting it rights and legal personhood using the emerging Rights of Nature (RoN) framework. This hypothetical case of litigation would echo the legal hype in the world of international law world since 2017 when, in a short space of time, New Zealand, India, and Colombia granted legal personhood to rivers in groundbreaking legal decisions.[6] Indeed, there is a now fast-growing interest in the international legal world regarding the possibilities that the attribution of legal personhood to nature and its elements can offer to combat the environmental crisis the world is facing. Since these first three novel domestic legal decisions, other high and local courts around the world have followed, and different rulings and declarations have emerged granting legal personhood to non-humans such as rivers, glaciers mountains, forests, etc.[7]

Actually, RoN has become a buzzword in international law: these days it is difficult to keep track of the countless RoN seminars, webinars, documentaries, or whatever forum comes to mind in the English- and Spanish-speaking academic worlds. Internationally recognized environmental lawyers, such as the Canadian David Boyd, who is the current UN Special Rapporteur on human rights and the environment, have labelled this new legal trend a "legal revolution" in the field of international law.[8] Legal scholars have recognized

[2] A fire offering-sacrifice ritual.

[3] Resin with a strong sacred aroma.

[4] Literal translation is "Hill-Valley."

[5] Viaene (2015).

[6] The Parliament of New Zealand declared by way of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 declaring the Whanganui River in Aotearoa to be a legal person in March 2017. In the same month, the high court of Uttarakhand, India declared in the case of *Mohd Salim v. State of Uttarakhand & Others* (20 March 2017) the Ganga river and its main tributary, the Yamuna, to be accorded the status of living human entities, while the Colombian Constitutional Court published in May 2017 ruling T-622/16 granted legal personhood to the Atrato river. Both the Indian and Colombian court rulings cite the legal precedent of New Zealand.

[7] For an overview of such laws, jurisprudence, and declarations at the domestic level as well as regional and international levels, see the database created by the United Nations Programme UN Harmony with Nature, available at http://www.harmonywithnatureun.org/ (accessed 4 December 2020).

[8] Boyd (2017).

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

that RoN, also called Earth-centred law or ecological jurisprudence, is an emerging new normative order or global meta-norm in construction regarding the legal status of nature.[9]

In fact, RoN is clearly turning into a legal "nirvana concept"[10]—a highly attractive and promising new legal tool that embodies the ideal image that it can save humanity from the Anthropocene catastrophe. This article is not intended as a total rejection or throwing the RoN baby out with the bathwater, because indeed "we need to fundamentally change how we treat nature under the law."[11] Rather, it aims at taking a step back to observe and create a space of deep reflection, given that RoN is having a "snowballing effect"[12] around the globe with the risks that dissenting trends will be suppressed and RoN ideas will be accepted without being questioned, thus turning into a truly hegemonic discourse. Some critical scholars have already described RoN in terms of a transnational policy network and a new epistemic community that celebrates RoN as a universal but non-Western truth.[13] Further, despite a euphoria among a growing group of legal scholars, RoN remains controversial among conventional international law scholars belonging to the fields of environmental law and human rights, and brings many debates to the legal arena.

Despite the fact that it did not cross qawa Ricardo's mind when reflecting on the impact of this hydroelectric dam on the river and almost 220 indigenous communities, or how to stop it, proponents of RoN claim that the idea of granting rights to nature is deeply influenced by indigenous thinking and norms about nature.[14] In fact, RoN is often portrayed as a "scaling up [of these indigenous] local norms ... to the global level"[15] and "opposing commodification of life and anthropocentric dualism of western thought."[16]

In the context of this emerging nirvana legal framework of RoN, two realities should not be forgotten. First, law is a source of "constituting and legitimating power,"[17] even if it is presented as a much-needed counter-hegemonic answer to human-induced environmental degradation. Second, historically, international law exhibits a "predatory behaviour"[18] resulting in a destructive legal imperialism. This article aims at addressing multiple concerns regarding the RoN legal hype that are derived from my original legal ethnographic field research and policy work as a human rights practitioner with indigenous peoples in Guatemala, Peru, Ecuador, and Colombia. Drawing on grounded narratives as a result of long-term collaborative ethnographic work among indigenous communities, mostly with Maya Q'eqchi' survivors of the Guatemalan genocide and now affected by multiple large-scale monocultural agricultural projects and extractive development projects in their territories, this article wants to critically unpack not only the possible risks of tapping into indigenous knowledge about nature/the environment as one of RoN's foundational bases, but also raise several questions that so far have not been sufficiently addressed by legal scholars.

In fact, it is not the first time in my academic career that I have witnessed how Western legal theories and practices make what could be labelled as an "indigenous turn." As a graduate student in criminology at the end of the 1990s, I learned from my criminal law professors that the then emerging restorative justice paradigm shift, presented as a much-needed alternative to the punitive criminal justice system, was rooted in traditional justice and reconciliation conceptions and norms of indigenous peoples from

[9] Clark et al. (2018); Kauffman & Martin (2018).
[10] Molle (2008).
[11] Margil (2018), p. 1.
[12] Molle, *supra* note 10, p. 143.
[13] Rawson & Mansfield (2018).
[14] Kauffman & Martin (2014a).
[15] Kauffman & Martin (2014b).
[16] Rawson & Mansfield, *supra* note 13, p. 99.
[17] Von Benda-Beckman, Von Benda-Beckman, & Griffiths (2009).
[18] Fukurai (2019), p. 200.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

New Zealand and Canada. During my PhD research about transitional justice and cultural contexts in the mid-2000s, a huge debate was sparked in the international human rights and transitional justice academic and policy community, mainly on the African continent, about the usefulness and pitfalls of turning traditional justice systems into another tool of the transitional justice toolbox.[19] These days, legal scholars mainly from the environmental law field are taking their indigenous turn, this time tying the narratives of Latin American indigenous peoples about life and nature to the RoN.

The article starts by briefly providing a RoN roadmap highlighting some important starting points, landmark publications, and legal decisions that marked groundbreaking turning points regarding in the emergence of this framework. In the following three sections, several interrelated blind spots, concerns, and questions are teased out. First, I pose the question as to what extent this legal turn to nature can undo the historical and colonial roots not only of the concept of nature, but also the colonial legality of indigenous knowledge. Thereafter, I ask to what extent this emerging RoN may not constitute legal competition to the implementation of the global package of international legal instruments that has gradually recognized indigenous peoples' rights. In the third section, I explore concerns about the possible negative impacts the general tendency of essentializing and codifying indigenous visions and practices of nature might entail. The article ends with some final reflections regarding how legal scholars might address these multiple concerns and blind spots.

2. The emerging framework of RoN: some highlights

The RoN proposal draws attention to the fact that at the heart of international law lies the intertwined core assumptions that nature is "property"[20] and a "resource for wealth generation to enable societies to continually develop."[21] This dominant legal positivist view of nature-environment is actually embedded in all international legal norm constructions regarding nature, but also its fundamental concepts such as sovereignty, human rights, and development; therefore, it should not be a surprise that current international environmental law "treats the environment as a natural resource, a bundle of commodities to be used in our economy."[22] For example, the UN human rights system reinforced this view by proclaiming water and sanitation as a new human right in 2010, and the dominant assumption is that water is a commodity and a resource for human consumption—something that was already expressed by General Comment No. 15 of 2002 of the Committee on Economic, Social and Cultural Rights, which defined the right to water as "the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses." It is important to recognize that access to water, which is protected by this new human right, is predominately "understood and seen as organized through market mechanisms and the power of money, irrespective of social, human or ecological need."[23]

In fact, the conceptualization of water was already laid out in the Fourth Principle with "water has an economic value in all its competing uses and should be recognized as an economic good" in the Dublin Statement of Water and Sustainable Development in 1992, a result of the International Conference on Water and the Environment, which moreover states that: "[m]anaging water as an economic good is an important way of achieving

[19] Huyse & Salter (2008); Viaene (2010); Viaene & Brems (2010).
[20] Boyd, *supra* note 8, p. 112.
[21] Natarajan & Khoday (2014).
[22] *Ibid.*
[23] Syngedouw (2009), p. 58.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

efficient and equitable use, and of encouraging conservation and protection of water resources."[24]

Currently, there is a growing number of international law scholars who recognize the importance of critically scrutinizing to what extent this dominant assumption about nature in international law has contributed to the environmental degradation the world is facing and is calling for a rethink regarding how to use human rights and environmental law to mediate the human-environment/natural resources/nature relationship.[25] For example, the anthropocentric worldview, embedded in international environmental law, is increasingly being critiqued and there is a growing call among environmental lawyers to shift to an ecocentric and ecosystem approach, though describing these debates in detail goes beyond the scope of this article.[26] These legal scholars are joining a rapidly growing group of international scientists from the fields of natural sciences, social sciences, and humanities who are discussing the causes, impacts, challenges, and solutions of the arrival of the new human-centred epoch or the Anthropocene[27] on the planet: global warming, the global water crisis, climate emergency, species extinctions, ecological devastation, and also pandemics.

Against this background, this emerging RoN legal framework has been presented by its proponents as a radical shift not only in relation to the conventional anthropocentric understanding of law, but also as an "alternative to development."[28] One of the main international lobby networks is the Global Alliance for Rights of Nature (GARN),[29] which defines RoN as:

> the recognition that our ecosystems—including trees, oceans, animals, mountains—have rights just as human beings have rights. It is the holistic recognition that all life, all ecosystems on our planet are deeply intertwined. Rather than treating nature as property under the law, rights of nature acknowledges that nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles.[30]

As described above, the construction of this new legal order "occurs simultaneously at the domestic and international levels, with influence moving in multiple directions"[31] applying ideas circulating in different parts of the world, though mainly from Latin America. It should not come as a surprise that this legal revolution has sparked many kinds of legal debates. A growing body of Euro-American legal literature is addressing, for example, from a legal philosophical perspective, its implications for the general concept of legal personhood,[32] analyzing from a legal comparative approach the different cases and their enforceability,[33] the shift from anthropocentrism to ecocentrism, and exploring its potential to

[24] Principle 4: "Water has an economic value in all its competing uses and should be recognized as an economic good," available at https://www.wmo.int/pages/prog/hwrp/documents/english/icwedece.html (accessed 4 December 2020).

[25] Burdon (2011); Natarajan & Khoday, *supra* note 21; Kotzé (2014); De Lucia (2015); Berros (2019).

[26] See e.g. De Lucia, *supra* note 25.

[27] The term "Anthropocene" was originally coined by natural scientists Paul Crutzen and Eugene Stoemer in 2000.

[28] Gudynas (2011); Svampa (2019).

[29] An international network of organizations and individuals committed to the universal adoption and implementation of legal systems that recognize, respect, and enforce RoN. GARN was formed in 2010 in Ecuador, and its Executive Committee is composed of Euro-American-based environmental-legal organizations (for a critical analysis, see Rawson & Mansfield, *supra* note 13).

[30] GARN, "What Is Rights of Nature," available at https://therightsofnature.org/what-is-rights-of-nature/ (accessed 4 December 2020).

[31] Kauffman & Martin (2018), *supra* note 9, p. 44.

[32] Fischer-Lescano (2020).

[33] Clark et al., *supra* note 9; Macpherson & Clavijo Ospina (2018); Kauffman & Martin, *supra* note 9.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

give legal fundaments to the concept of Earth stewardship.[34] At the risk of oversimplifying these diverse and complex legal debates, this section discusses briefly some landmarks in the creation of this emerging transnational legal framework.[35]

2.1 An old Euro-American philosophical idea finally in practice?

First, it should be recognized that in the Euro-American legal philosophy field, the idea of extending legal personhood to nature is not new. In 1972, the American law professor Christopher Stone had already raised the question of whether trees should have procedural legitimacy in his provocative article "Should Trees Have Standing?".[36] Stone argued that trees, but also the environment in general, should be allowed to file a lawsuit and to enjoy legal rights. He acknowledged however that "there will be resistance to giving the thing 'rights' until it can be seen and valued for itself; however, it is difficult to see and value it for itself until we can dare to give it 'rights'."[37]

Two decades later, this legal philosophical idea was further elaborated on first by the American eco-theologist Thomas Berry and then by the South African environmental lawyer Cormac Cullinan, by proposing the creation of ecocentric legal reasoning and Earth law and jurisprudence.[38] In *Wild Law: A Manifesto for Earth Justice*, Cullinan describes Earth Jurisprudence as:

> a philosophy of law and human governance ... based on the idea that humans are only one part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole. From this perspective, human societies will be viable and flourish if they regulate themselves as part of this wider Earth community and so in a way that is consistent with the fundamental laws or principles that govern the Universe Functions.[39]

Inspired by these radically different normative proposals, diverse centres and alliances were created in the early 2000s to develop and promote RoN, mainly in the UK, US, Australia, and New Zealand.[40]

2.2 Ecuador and Bolivia: constitutional recognition of Pacha Mama

It was not until Ecuador's 2008 and Bolivia's 2009 Constitutions recognized RoN (the first states in the world to do so) that the philosophical legal debates about RoN's normative foundations gained international momentum. In Articles 10 and 71–74, Ecuador's Constitution introduced basic rights for the ecosystem (or Pacha Mama), stating that "Nature is a legal subject for those rights that the constitution accords to it" (Article 10.2) and

> Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles,

[34] Ogden et al. (2013); Knauβ (2018).

[35] The website of GARN displays a timeline of the conceptualization of RoN: https://therightsofnature.org/timeline/ (accessed 4 December 2020). Also, the website of the UN Programme Harmony with Nature displays an international database of legal provisions around the world regarding Earth law and Earth Jurisprudence: http://www.harmonywithnatureun.org/rightsOfNature/ (accessed 4 December 2020).

[36] Stone (1972).

[37] *Ibid.*

[38] Berry (1999); Cullinan (2002).

[39] Cullinan (2011), p. 12.

[40] Boyd, *supra* note 8; Kauffman & Martin, *supra* note 9; Rawson & Mansfield, *supra* note 13.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

> structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. (Article 71)

Bolivia followed with its new Constitution of 2009 and later enacted two laws of Mother Earth in 2010 and 2012.[41]

It is important to state that both Constitutions marked a clear turning point in Latin American constitutionalism, introducing a new phase of what has been labelled as "neo or transformative constitutionalism."[42] These Constitutions not only granted rights to nature, but also recognized the state as being plurinational, attributed a comprehensive set of collective rights for indigenous peoples, and included the indigenous concept of Buen Vivir/Good Living or *sumak kawsay* (Quechua) and *suma qamaña* (Ayamara). Much scholarly attention, mainly Latin American, has been focused on the development, content, and impact of this indigenous concept of Good Living, often described as referring to wellbeing with others/the community and nature, and as a platform against the dominant neoliberal development model marked by the extraction of natural resources.[43] It is beyond the scope of this article to deepen these debates, but it is important to note that the idea that RoN has evolved from this indigenous concept of Buen Vivir is ubiquitous and even the understanding that in RoN such concepts have been internationally scaled up.[44]

However, against this background and anticipating the next section, three critical points should be made. First, scholars have stressed that the concept of Buen Vivir is in fact a "recent social-historical construction,"[45] and it seems that there is no explicit record, in for example dictionaries, of this indigenous concept prior to 2000. Second, the concept of *Pachamama*, which has been translated as Mother Earth, is not synonymous with nature.[46] Third, as already mentioned in the introduction, it is often forgotten that indigenous philosophy does not include rights to nature. RoN in fact fits in the Western history of rights and universalizes Eurocentric colonial concepts of rights and legal personhood.[47]

2.3 New legal hype: river rights

As mentioned earlier, this generic constitutional recognition of nature as a legal subject in the late 2000s has been followed by a global wave granting legal personhood to specific natural elements: mainly rivers, but also moors, glaciers, mountains, and tropical forests through case-law in countries including Argentina, Australia, Colombia, India, Bangladesh, New Zealand, and the US, etc.[48] In general terms, the common objective is to ensure the protection, recovery, and conservation of these rivers and other elements of nature because they are severely polluted and/or altered by climate change and extractive development projects such as mining, oil pipelines, and palm oil plantations. RoN law has

[41] Ley 300, 12 October 2012, Spanish version available at http://files.harmonywithnatureun.org/uploads/upload655.pdf (accessed 4 December 2020); Ley 071, 21 December 2010, English translation is available at http://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html (accessed 4 December 2020).

[42] Uprimmy (2011).

[43] There exists a very rich and diverse Spanish literature body discussing these topics. Here are some English references: Gudynas, *supra* note 28; Radcliff (2012); Acosta (2013); Burchardt & Dietz (2014); Tanasescu (2015); Sieder & Vivero (2017); Svampa, *supra* note 28.

[44] Martínez & y Acosta (2011); Gudynas, *supra* note 28; Svampa, *supra* note 28.

[45] Svampa, *supra* note 28, p. 43.

[46] Tanasescu, *supra* note 43.

[47] *Ibid.*; Rawson & Mansfield, *supra* note 13.

[48] For a comprehensive overview, see http://www.harmonywithnatureun.org/rightsOfNature/ (accessed 4 December 2020).

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

recently reached Europe too. In fact, in July of 2020, the Municipality of Los Alcázares in Spain adopted a legislative initiative to grant rights to Mar Menor, which is the largest saltwater lagoon in Europe, and its basin, and to recognize it as a subject of rights, in order to protect this lagoon against further degradation,[49] while in November 2020, the European Economic and Social Committee launched a comprehensive study to set a framework for the legal recognition of the RoN in the European Union's legal order resulting the development of an EU's Charter on the Fundamental Rights of Nature.[50]

In parallel with the emergence of these legal provisions, initiatives began to promote RoN internationally. In 2010, a Universal Declaration of the Rights of Mother Earth, of which the lead author was the above-mentioned South African Cormac Cullinan, was proposed for discussion at the People's World Conference on Climate Change in Bolivia.[51] The previous year, the UN General Assembly proclaimed 22 April as "International Mother Earth Day"[52] and a UN Program called Harmony with Nature was created. At the time of writing, a proposal for a Universal Declaration of the Rights of Rivers, drafted by the US-based Earth Law Center, is circulating amongst the broad international RoN network.[53]

Therefore, it is to be expected that this emerging transnational RoN framework will be further consolidated through a mixture of domestic and international norm production via jurisprudence, law, but also by governance practices and programmes, and growing scholarly interest among the more conventional legal scholars. In the next sections, several blind spots in the current legal debates and mutually reinforcing concerns will be discussed that provoke many critical questions that in my opinion have been insufficiently considered to date.

3. Can this legal turn to nature undo its historical colonial roots?

In this growing debate among Euro-American-trained legal scholars, a blind spot that needs to be addressed in more depth is the fact that "colonialism universalized European notions of nature as a commodity for human exploitation,"[54] which, as mentioned above, became the main foundation of international environmental doctrine. Critical legal scholars have emphasized that international law—international institutions and human rights—is not only a clear product of the colonial encounter, but under the premises of the Enlightenment project justified the legal and political subordination of native populations in Latin America, Asia, and Africa by constructing them as racially and culturally inferiors who needed to be developed and civilized.[55] Moreover, this legal and political subordination went hand in hand with the commodification and despoliation of their lands, labour, and natural resources that were determined by the demands of the European metropolitan centres of nascent capitalism.[56] This extractive development model continues in many countries of the Global South. Since the early 2000s, a lively academic debate has existed among Latin American scholars about what is now commonly known as "extractivism"[57]—discussions that are interrelated with the above-mentioned

[49] El Pais (2020): see https://elpais.com/sociedad/2020-07-23/el-municipio-de-los-alcazares-aprueba-una-iniciativa-legislativa-para-dar-derechos-propios-al-mar-menor.html (accessed 4 December 2020).

[50] European Economic and Social Committee (2020)

[51] http://rio20.net/propuestas/declaracion-universal-de-los-derechos-de-la-madre-tierra/ (accessed 4 December 2020).

[52] UN Doc. A/RES/63/278.

[53] See https://www.earthlawcenter.org/river-rights (accessed 4 December 2020). And Cyrus R. Vance Center For International Justice, Earth Law Center and Rivers International (2020).

[54] Gonzalez (2015), pp. 411–2.

[55] Williams (1991); Rajagopal (2003); Anghie (2004); *ibid.*; Fukurai, *supra* note 18.

[56] Geisinger (1999); Acosta, *supra* note 43; Gonzalez, *supra* note 54.

[57] Acosta, *supra* note 43.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

Buen Vivir/Good Living debates. Moreover, many studies have demonstrated that indigenous communities across the world are disproportionally affected by large-scale natural resource exploitation projects such as mining, oil extraction, hydroelectric dams, and monocultural agro-industries such as palm oil in their territories, but also by water privatization and climate change.[58] Moreover, the UN and many human rights organizations have denounced the rapid increase in criminalization and killings of indigenous leaders, but also afro-descendants, across the world for defending their territories against the environmental destruction that these extractive development projects are causing.[59] However, so far, this growing RoN debate among European-American-trained scholars has paid little or no attention to the continuation of this political and legal subordination of indigenous peoples, and the role—positive or negative—of RoN in regards to their legal protection.

Further, it is also important to remember that colonization also involved, as stated by the indigenous Maori scholar Tuhiwai Smith, the exclusion, marginalization, and denial of indigenous peoples' knowledge such as that "based on spiritual relations with the universe, with its landscape and with stones, rocks, insects and other visible and invisible things."[60] In fact, drawing on the concept of coloniality of power of the decolonial thinker Aníbal Quijano,[61] the Mexican Chinanteco indigenous legal scholar Pedro Garzón argues that this "positional superiority of Western knowledge"[62] still permeates in the discipline of law through legal coloniality by marginalizing indigenous knowledge to (the status of) "uses and customs," "customary law," or "sub-legal phenomena."[63]

As RoN is often portrayed as an indigenous alternative to Western legal thinking about the environment, the question arises as to whether this emerging legal framework could be seen as putting into practice what many critical Asian, Latin American, and African legal scholars have called for, namely a decolonization of human rights and law in general.[64] These scholars have criticized the liberal Western and Eurocentric roots of human rights, and international law in general, asserting that the decolonization of knowledge is fundamental in order to construct more inclusive and representative human rights.

However, at a deeper level, many questions and concerns arise. For example, as will be discussed below, to what extent have the proponents of RoN considered the fact that by granting rights to rivers and other natural elements, whilst allegedly drawing on indigenous visions, these elements may also have agency that might go against the interest of human beings? Further, there is currently an ongoing legal debate about how these rivers will talk in the courtroom, making legal connections to the legal proxy system of companies, which are also non-humans, that have legal standing and are represented by humans in court.[65] However, when it comes to indigenous voices, namely their knowledge about rivers as represented in court, the same critical question posed by the Indian philosopher Gayatri Spivak in her provocative 1988 essay "Can the Subaltern Speak?" prevails today.[66] Twenty years ago, Spivak argued that the subaltern does speak physically, but that his speech does not acquire a true dialogical status from which s/he can speak or respond or enjoys being heard. The same question should be asked in this RoN context: indigenous knowledge is labelled as a belief, mythology, and superstition, and is therefore disqualified from being objective rationality and scientific proof for many legal practitioners, so to

[58] Wagner (2015); Baghel, Stepan, & Hill (2017); United Nations Human Rights Council (2013); IWGIA 2016; Jiménez, Cortobius, & Kjellén (2014).

[59] Global Witness (2019); United Nations Permanent Forum on Indigenous Issues (2019).

[60] Tuhiwai Smith (1999).

[61] Quijano (2007); however, the original Spanish version was already published in 1992.

[62] *Ibid*., p. 62.

[63] Garzón (2019).

[64] Darian-Smith & Fitzpatrick (1999); Rajagopal, *supra* note 55; Baxi (2002); Mutua (2007).

[65] Fischer-Lescano, *supra* note 32.

[66] Spivak (1988a).

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

what extent can knowledge about the damage to rivers, mountains, or other natural elements produced out of the analysis of dreams, fire ceremonies, consultations of sacred sites, bird songs, or ayahuasca rituals really be heard during litigation processes? What is the impact of indigenous understandings of water, specifically of a river as a living being, on legal understanding of water as an active agent that should be protected equally as human beings' right to life?

As the RoN nirvana snowball grows quickly in size, it is important to question to what extent this RoN is becoming "positively internalized" and quickly seen as a best practice without a critical reading about the impact of legal coloniality that is so deeply entrenched in international law, and the legal field generally, and to what extent RoN might become a new tool for the domination of indigenous peoples.

4. RoN vs. indigenous peoples' rights?

In a personal interview, former UN Special Rapporteur of the Rights of Indigenous Peoples Vicky Tauli-Corpuz expressed a concern that this new legal framework could imply risks for the guarantee and effective protection of the human rights of indigenous peoples, as has been the case with conservation measures that have often violated indigenous peoples' rights. She asked:

> how will these people who are pushing for this new legal framework respect and protect the rights of indigenous peoples to continue to develop, and using their own philosophies and cosmologies and worldviews? ... They have their rights to self-determination of their territories, lands and resources, because their effectiveness in protecting the rivers lies largely in the regime that will also protect their right to be the stewards, to be the guardian or to be the relatives of these waters, rivers, forests .... Will the Rights of Nature be equated with the rights of indigenous peoples?[67]

Indeed, over recent decades, significant international human rights standards have been developed regarding indigenous peoples' rights about, amongst other things, the right to self-determination and to land, territory, and natural resources. In fact, a global package of indigenous people's rights[68] has emerged comprising the International Labour Organization (ILO)'s Convention 169 of the Rights of Indigenous and Tribal People (1989), the UN Declaration on the Rights of Indigenous Peoples (2007), the recommendations of the Special Rapporteur on the Rights of Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples, the ILO supervision mechanism, the American Declaration on the Rights of Indigenous Peoples (2016), and the significant jurisprudence of the Inter-American Court of Human Rights and the African Court of Human and People's Rights.

However, the continued failure of states to promote and protect these collective rights has led indigenous communities and movements around the globe to increasingly use litigation to forge their effective application and to seek remedies for the violations of their rights. Indigenous peoples' turn to legalization, also labelled as the judicialization of their political claims, has served to "amplify their voices"[69]—voices that have been historically and contemporaneously excluded from the political stage. A vast literature already exists that examines from multiple angles why and how indigenous communities adopt a rights-based approach, how litigation contributes to international norm creation about indigenous peoples, but also how this legal turn affects indigenous peoples themselves, which is

[67] Interview by Lieselotte Viaene, 8 November 2019, Madrid (Spain), on file with the author.
[68] Viaene & Fernández-Maldonado (2018).
[69] Sieder & Viaene (2020).

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

beyond the scope of this article.[70] A further issue discussed in the next section is related to the risks and pitfalls of codifying and essentializing indigenous culture.

It is important to reflect on the international RoN snowballing effect and reflect on the extent to which RoN could compete or even jeopardize indigenous claims to their territory and natural resources. The global indigenous peoples' rights package has already recognized their special, collective, and multidimensional relationship to their territories and natural resources, so what different kinds of benefits will be expected by using the RoN framework in their legal battles against extractivism? Currently, Colombia is the international vanguard in granting rights to rivers, with at least eight rivers recognized as legal subjects by local and high courts, many of them located in regions with a high indigenous population.[71] Therefore, it is not surprising that on many platforms these rulings are not only labelled as RoN jurisprudence, but often it is said that they embody indigenous culture. Further, as the indigenous scholar Garzón remarks in general terms, despite these progressive advances in Eurocentric thinking, liberal individualism and Western legal culture continue to dominate the interpretation and application of the rights of indigenous peoples, making it difficult to materialize their substantial self-determination.[72]

In fact, recent legal judgments in Colombia and Guatemala about indigenous peoples go against this growing Colombian legal mainstream of river rights. First, in Colombia, Colombia's peace jurisdiction (*Jurisdicción Especial para la Paz*, SJP) has recently recognized that the Katsa Su and the CxHab Wala Kile, the territories of the indigenous Awá and Nasa peoples, respectively, are victims of the armed conflict.[73] In other words, the territory of indigenous peoples has been transformed into a subject of collective rights—that is, it has become an entity with rights. The SJP is a central component of the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition created as part of the Peace Agreements between the Colombian government and the Revolutionary Armed Forces of Colombia—People's Army (FARC-EP) in 2016.[74] The SJP's Chamber for Recognition of Truth recognizes in both decisions that these territories are victims because as living and integral beings, they have been damaged and violated by the various actions of armed groups. Henceforth, both territories have the same rights granted to all accredited individuals and collectives such as the right to justice, truth, reparation, and guarantees of non-repetition, and can participate in all stages of the judicial process.

These resolutions draw on the 2011 Decree-Law 4633, known as the Law of Victims for Indigenous Communities, which already incorporated the notion of territory as victim but remained a legal novelty on paper. This Decree-Law, a political victory for indigenous peoples' organizations, establishes that indigenous peoples have "special and collective ties" with "Mother Earth" (Article 3) and have the right to "harmonious coexistence in the territories" (Article 29). In addition, it recognizes that the territory is "a living whole and sustenance of identity and harmony" and that it "suffers damage when it is violated or

[70] Povinelli (2002); Engle (2010); Kirsch (2012); Sieder & Vivero, *supra* note 43; Gilbert (2021).

[71] For an overview, see database UN Program Harmony with Nature: http://www.harmonywithnatureun.org/rightsOfNature/ (accessed 4 December 2020).

[72] Garzón, *supra* note 63.

[73] Jurisdicción Especial para la Paz, 2019, 12 de noviembre 2019, Sala de Reconocimiento de Verdad, de Responsabilidad y Determinación de los Hechos y Conductas, Caso No. 2 de 2018, "Acreditar como víctimas en calidad de sujetos colectivos de derechos al 'Katsa Su'," gran territorio Awá y a los 32 Cabildos indígenas Awá, asociados y representados en la Unidad Indígena del Pueblo Awá—Asociación de Autoridades Tradicionales Indígenas Awá—UNIPA en el marco del Caso 02 and Jurisdicción Especial para la Paz, 2020, Sala de Reconocimiento de Verdad, de Responsabilidad y Determinación de los Hechos y Conductas, Caso 005–002 de 17 de enero de 2020.

[74] For more information about the Mandate of Colombia's Special Jurisdiction for Peace, see https://www.jep.gov.co/Paginas/Inicio.aspx (accessed 4 December 2020).

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

desecrated by the internal armed conflict" (Article 45). "Spiritual healing" is part of the integral reparation of the territory (Article 8).

The Awá indigenous authority was the first to petition the Special Jurisdiction for Peace to accredit not only themselves as victims, but also the Katsa Su, the vast Awá territory, because "it has identity and dignity that constitute it as a subject of right." These rulings represent innovative and avant-garde jurisprudence in the international field of transitional justice and human rights broadly, precisely because it seems to break with the hegemonic legal conceptions rooted in a modern colonial system of knowledge.[75] In an interview with the indigenous judge Belkis Izquierdo, who is the proponent of the Katsa Su case, she expressed concerns related to accumulating river judgments in her country: "If everything is interdependent and interrelated why start granting rights only to the river? What will happen if we divide the different elements of nature?"[76]

Meanwhile, in Guatemala, in November 2019, the Constitutional Court exhorted the state to promulgate a Water Bill to regulate the water regime in line with "the social interest" that must take into account the singular perception—material and spiritual—of indigenous peoples regarding water. Several indigenous authorities from different Mayan groups claimed that a normative void currently exists in Guatemala's domestic framework regarding its water regime because, according to Guatemala's Constitution of 1985, this water regime should be regulated to serve the social interest of the country.[77] Specifically, they argue that indigenous peoples, the majority of Guatemala's population, have a spiritual and cultural relationship with water because they "conceive it as a living being, that is: as a sacred and living entity to be respected, as well as a source of life for the human being and other forms of life."[78] Further, these indigenous authorities argue

> that water is represented by the nahual *Imox*, which is the protective spirit that manifests itself in the water, in the rain, in the lakes, in the sea and falls from the sky, resting in the bowels of the earth.[79]

The indigenous claiming parties argued that because of this normative void, there exists

> discrimination against indigenous peoples in their human rights to equality, identity, integrity, to maintain and strengthen their spiritual relationship with the waters in their territories, to life, to property, to live in harmony with nature and to a healthy, safe and sustainable environment.[80]

To date, the Guatemalan Congress has not taken steps to draft a Water Bill and it is unclear whether it will do so. Nevertheless, this ruling is an important precedent in Guatemala's legal landscape, which traditionally has failed to protect indigenous peoples' rights.[81]

[75] Viaene & Izquierdo (2020).

[76] Personal communication, 21 April 2020.

[77] According to Art. 127 of the Guatemalan Constitution of 1985, a specific law should regulate the country's water regime in accordance with "the social interest." Until today, the Guatemalan legislator has failed to comply with this constitutional duty. Moreover, the existing regulations governing the right to water are scattered over different laws that do not faithfully comply with the constitutional mandate to serve the "social interest." For this reason, a constitutional review based on a partial legislative omission was brought by indigenous authorities.

[78] *Corte de Constitucionalidad de Guatemala*, *Expediente* 452–2019, *Inconstitucionalidad General Parcial*, 7 *de noviembre* 2019, p. 4.

[79] *Ibid.*

[80] *Ibid.*, p. 8.

[81] Personal conversation with Jovita Tzul Tzul, one of the indigenous lawyers of *Bufete para los Pueblos Indígenas* who was part of the litigation team, July 2020.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

5. Essentializing and codifying indigenous nature ontologies: but what about angry rivers, mountains, etc.?

A final concern is related to the trend among global RoN networks to use indigenous expressions such as "rivers are the veins of our planet" and "I am the river, the river is me," a Maori saying from New Zealand, as strategic slogans to promote legal frameworks worldwide. At this moment of the RoN international snowball effect, it is important to point out some risks that have already been identified in other contexts related to indigenous peoples. First, this mobilization by the RoN proponents of indigenous cosmologies seems to encourage further romanticizing of the "ecological native"[82] that already exists in certain environmentalist circles.[83] Second, as already signalled by a number of scholars in the context of the above-described judicialization of indigenous political claims, this invocation of indigenous visions contributes to simplifications and strategic essentializing—a term first coined by the Indian scholar Gayatri Spivak,[84] which neglects heterogeneous, temporal, and fluid indigenous local realties.[85] However, Ecuadorian indigenous leaders have also used the RoN framework strategically as "a springboard toward an outside world that otherwise would not listen"[86] in order to struggle against the boom of extractive development projects in their territories.

An intrinsically connected consequence of the broader legal turn of indigenous claims is also the codification of indigenous norms and practices, which also happened within this RoN context. This creates important tensions because generally indigenous norms and practices are codified "only when they correspond to dominant politico-legal codes and languages"[87] and makes them subscribe to an external system that made them marginal and invisible to begin with. In fact, in her last report that focused on indigenous justice systems, the UN Special Rapporteur of the Rights of Indigenous Peoples recommended that any codification of indigenous norms should avoid freezing them as they are based on oral histories, spiritual, and other cultural traditions, and their close relationship with their territories.[88]

As mentioned in the introduction to this article, in the African context, the human rights and transitional justice community has promoted turning traditional justice and reconciliation practices, such as the *mato oput* rituals, part of the Acholi justice system in northern Uganda, reintegration rituals of child soldiers in Mozambique and Angola and the gacaca system in Rwanda, into another tool of the transitional justice toolbox with support from international aid agencies and donors.[89] Further, in several countries, local traditional proverbs were converted into slogans and used in campaigns to promote reconciliation with the aim of being culturally sensitive.[90] However, critical scholars have signalled that these traditional justice mechanisms cannot be incorporated into the transitional justice agenda in a straightforward way.[91] Amongst several considerations are also the facts that discomfort and unfamiliarity among Western-trained legal practitioners and scholars meant that certain rituals and spiritual practices were ignored and even rejected, while the dangers of taking rituals outside their original local contexts were underappreciated.[92]

[82] Ulloa (2005).
[83] Desmet (2011).
[84] Spivak (1988b).
[85] Povinelli, *supra* note 70; Kirsch, *supra* note 70; Zenker (2016); Sieder & Vivero, *supra* note 43.
[86] Tanasescu, *supra* note 43, p. 111.
[87] Sieder & Vivero, *supra* note 43, p. 10.
[88] United Nations Human Rights Council (2019).
[89] Huyse & Salter, *supra* note 19; Allen & Macdonald (2013).
[90] Viaene & Brems, *supra* note 19.
[91] Huyse & Salter, *supra* note 19; *ibid.*; Allen & Macdonald, *supra* note 89.
[92] Viaene & Brems, *supra* note 19; Allen (2008); Igreja (2012).

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

The described interrelated concerns bring us back to qawa Ricardo's reflections on the impact map of the Xalalá hydroelectric dam.[93] According to him and many other indigenous peoples, the Chixoy river is a living being that can get angry and upset. Rivers have agency, but so also do hills, caves, water, houses, plants, and animals.[94] During several ethnolinguistic workshops organized with Q'eqchi' elderly men and women and focus groups with Q'eqchi' youth to learn more about their visions and practice of water and territory, interesting reflections were made about the ongoing drought that the region was facing.[95]

Significant differences were observable in the multiple reasons that Q'eqchi' youth and elders identified for the water crisis their villages were suffering. Both generations agreed upon the negative effects of population growth and contemporary habits, saying that villagers cut down trees close to the springs and had observed pollution "from plastics, soaps, pesticides, and garbage." They also pointed to the boom of monoculture plantations such as sugar cane and palm oil in the region and the many hydroelectric dams on the big rivers. Nevertheless, in general, the Q'eqchi' youth did not mention deeper causes identified by the elders, namely the current disrespect and dishonour of the sacred water (*loqlaj nimha'*) itself.

Q'eqchi' elderly women commented that in the past they were more in communication with water: "We used to greet the water every day when we went to the mountain to collect it ... we were in communication with the water, with the stars." They used to undertake the *mayej*, the ceremony to ask for permission. As one woman elder explained: "We were paying (*tojok*) with *pom* (incense) and candles to the water, to have permission to use it." As Qana Elvira stated:

> the river has a heart; it lives, it has veins. My grandparents used to say, the veins are like the streams that come out of the big rivers. Water is the sweat of the Earth. It does have a heart. If it didn't, it wouldn't be alive.

In general, women elders lamented the effect of the changes: "Now water comes to the houses in pipes, so we no longer greet the water." Moreover, "Young people do not know the sacred sites of the river so they do not ask for permission and they violate the life of the river (*xmux'bal yuam nimla ha*)." For Qawa Flavio, a clear logic underlay the current scarcity of water: "Water is withdrawing because of deforestation. We're killing the water ourselves." Pollution and negligence hurt the water: "That's why the water gets angry; that's why the community stream has dried up." As a living being, "water sends us this sign that it is not happy, that it is sad."

Other ethnographic studies also demonstrate that the so-called "socio-environmental impact" by climate change, extractive projects, and deforestation of indigenous territories makes "rivers retreat because they are angry," "mountains lose their heart and no longer produce animals or corn," "the spirits of the Earth, mountains, and forests leave and everything becomes infertile and dies."[96] These negative reactions and expressions of non-humans such as rivers and mountains are not new phenomena for the Q'eqchi'. In fact, as described elsewhere, the *Tzuultaq'a* and the sacred corn were crying during the internal

[93] For an in-depth critical legal anthropological analysis of human rights at risk by this dam project and a discussion of the reality of plurilegal water realities, see Viaene (2021).

[94] Viaene & Izquierdo (2018).

[95] This ethnographic research was carried out thanks to a Marie Curie Individual Fellowship "GROUNDHR—Challenges of Grounding Universal Human Rights. Indigenous epistemologies of human rights and intercultural dialogue in consultation processes on natural resource exploitation" (Grant Agreement 708096). These workshops and focus groups were organized together with Rachel Sieder (CIESAS, México), who collaborated as GROUNDHR's International Advisory Board's member.

[96] Cruikshank (2005); Bold (2019); Sieder & Viaene, *supra* note 69.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

armed conflict (1960–96) because of the bombing of the mountains and the burning-down of the corn fields by the military and civil defence patrollers.[97] During my research in the mid-2000s in that same region, elders attributed the failed corn harvests and the unhealthy poultry over the years due to the *q'oqonk*, which could be described as the "internal logic of the cosmos" of the destroyed or harmed sacred corn and mountains. Also, the massive wave of violence in the capital by youth gangs (*maras*) and the femicide that the country was facing at that moment were attributed to *q'oq'*: "the consequence of all the blood of people without guilt that coloured the country during the conflict."[98]

When reflecting upon the fact that their youth did not mention water's agency, the elders recognized a problem with intergenerational transmission of their knowledge:

> We are all guilty. We do not tell the children how to take care of the sacred water ... these ideas are hard to speak about and to understand; young people do not believe us. Why should children say good morning to the water if it comes from a pipe? When we were young we had to go to the hill to get water; it was a law to greet the water. Now young people don't respect those ideas; they don't want to listen ... they make fun of us, everything has changed.

As one Q'eqchi' elder explained: "When you go to a sacred place, you are not going to make a mess, to sully it. You have to go there asking permission, respecting it as if it were a person." However, external causes are also recognized: "Now they are cutting the veins of the Earth because of the construction of the hydroelectric plants." Don Zacarías told us: "If they cut the river it will dry up. It's as if the blood in your body dries up; it's similar to what happens with water."

The indigenous narratives presented here show once more "the intrinsic incoherence of indigeneity"[99] and how important it is to ethnographically and conceptually look into the "partial, shifting, and clashing representations"[100] of nature/the environment in order to avoid romanticized and essentialized visions of indigenous visions and practices regarding their natural habitat. At the same time, the much-celebrated and promoted RoN idea that "ecosystems [including trees, oceans, animals, and mountains] have the right to exist, thrive, and evolve"[101] has according to these indigenous narratives a double bond, in the sense that "when humans harm non-humans or nature, an energy imbalance is created which implies changes in physical life. Global warming, water scarcity, disease and land infertility will appear."[102] In fact, my ethnographic collaborative work with the Maya Q'eqchi' about human rights violations during the genocide and the new violence of the extractive industries in their territory does not support the global circulating idea that RoNs have indigenous roots.[103] In fact, the reaction of qawa Roberto resonates strongly with how indigenous activists started designating themselves during the Dakota Access Pipeline protests at the Standing Rock Indian Reservation in the US in 2016, namely as "water protectors"[104]—a concept that is rooted in their indigenous perspectives on the duty of humans to respect and honour water and water bodies such as rivers. Indeed, the scholarly literature about indigenous justice systems shows that its fundamentals

[97] Viaene, *supra* note 19.
[98] *Ibid.*, p. 305.
[99] Bessire & Bond (2014), p. 443.
[100] Warren (2008).
[101] Earth Law Center: https://www.earthlawcenter.org/ (accessed 4 December 2020).
[102] Viaene & Izquierdo, *supra* note 93.
[103] Viaene, *supra* note 93.
[104] Jewett & Garavan (2019).

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

are an ideology of harmony and balance, at the personal, interpersonal, collective, and spiritual levels.[105]

Another pressing question regarding the legal turn to nature about water conflicts in indigenous territories is therefore whether this emerging transnational legal framework of RoN is the most appropriate legal tool for addressing the Anthropocene catastrophe. Will these proponents of RoN accept that besides rights, rivers might also have obligations? How will these RoN advocates deal with angry and sad rivers and other water bodies that cause droughts, bad harvests, and deaths? Or should the legal turn go towards protecting the right of life as enshrined in the Universal Declaration of Human Rights and the International Covenant on Political and Civil Rights? According to Maya Q'eqchi' indigenous ontologies, this could be a valid legal argument as a dam on the Chixoy river would imply *xmux'bal yuam li nim ha*, which means the desecration and violation of the river's life.[106] Or, in the words of a Mayan lawyer: "We must rethink human rights from their origins—water, fire, earth, our elements. If these don't exist, we don't exist. We must rethink the right to life using all the elements."[107]

6. Final reflections

The world can no longer deny that the planet is on the verge of an Anthropocene catastrophe. As scientists from different fields and from around the globe are discussing the causes, impacts, challenges, and solutions to the arrival of this human-induced new geological time, the field of law cannot stay behind. This article has demonstrated how granting legal personhood to rivers, and to nature in general, which means that such water bodies are considered living entities in a court, is gaining fast international traction among legal scholars as a new tool to combat environmental destruction. I have argued that RoN is not only an emerging transnational legal framework, but should be perceived as a nirvana international legal proposal that brings multiple and interrelated philosophical and practical questions, concerns, and risks to the international legal fore.

Grounded in reflections derived from collaborative and long-term ethnographic research among indigenous peoples, this article highlights several interrelated concerns and blind spots at this moment of the RoN snowballing effect around the world related to rhetoric statements that RoN is rooted in indigenous lifestyles and views about nature/the environment. In fact, following the indigenous Maori scholar Tuwai Smith, the international law field should also be recognized as "a significant site of struggle between the interests and ways of knowing of the West and the interests and ways of resisting of the Other,"[108] the Others being indigenous peoples. The Mexican anthropologist Aída Hernández Castillo has called for scholars "to critically analyse our own conceptualizations ... and to learn to listen and understand the experiences' of local protagonists participating in process we are facilitating."[109] At this moment of the RoN snowballing around the globe, it is an auspicious time for Euro-American-trained legal scholars to engage in "critical reflective"[110] RoN international norm production and practice in order to emphasize which critical issues have been left out or are missing so far, such as taking for granted that indigenous communities are taking the lead in these claims of granting rights to nature.

Acknowledgements. A first version of this paper was presented at the Presidential Session "Anthropocene and Law in Asia" of the annual conference of the Asian Law and Society Association, December 2019, Osaka (Japan) and

[105] Nader (1990); Esquit & Ochoa (1995); Roy (2005); Sieder & McNeish (2013).
[106] Viaene, *supra* note 5; Viaene, *supra* note 93.
[107] Sieder & Viaene, *supra* note 69.
[108] Tuhiwai Smith, *supra* note 60, p. 2.
[109] Hernández Castillo (2016), p. 47.
[110] Lykes & van der Merve (2019), p. 415.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

the seminar "Human Rights and the More-than-Human: Legal Anthropological Dialogues" at Queen's University Belfast School of Law, Human Rights Centre, 19 November 2020.
The writing of the article was possible thanks to a Starting Grant of the European Research Council (ERC) entitled "RIVERS—Water/Human Rights beyond the Human? Indigenous Water Ontologies, Plurilegal Encounters and Interlegal Translation (2019–2024)," Grant Agreement 804003, under the European Union's Horizon 2020 research and innovation program and Marie Curie Individual Fellowship (2016–2018) GROUNDHR—Challenges of Grounding Universal Human Rights, "Indigenous Epistemologies of Human Rights and Intercultural Dialogue in Consultation Processes on Natural Resource Exploitation" (Grant Agreement 708096).

References

Acosta, Alberto (2013) "Extractivism and Neoextractivism: Two Sides of the Same Curse," in Permanent Working Group on Alternatives to Development, ed., *Beyond Development. Alternative Visions from Latin America*, Amsterdam: Transnational Institute, 61–86.

Allen, Tim (2008) "Ritual (Ab)use? Problems with Traditional Justice in Northern Uganda," in Waddell Nicholas & Clark Phil, eds., *Courting Conflict? Justice, Peace and the ICC in Africa*, London: Royal African Society, 47–54.

Allen, Tim, & Anna Macdonald (2013) *Post-Conflict Traditional Justice: A Critical Overview*, The Justice and Security Research Programme Paper 3, London: LSE.

Anghie, Antony (2004) *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press.

Baghel, Ravi, Lea Stepan, & Joseph K. W. Hill (2017) *Water, Knowledge and the Environment in Asia: Epistemologies, Practices and Locales*, Oxon and New York: Routledge.

Baxi, Upendra (2002) *The Future of Human Rights*, New York: Oxford University Press.

Berros, Marie Valeria (2019) "Rights of Nature in the Anthropocene: Towards the Democratization of Environmental Law?," in M. Lim, ed., *Charting Environmental Law Futures in the Anthropocene*, Singapore: Springer, 21–31.

Berry, Thomas (1999) *The Great Work: Our Way to the Future*, New York: Bell Tower.

Bessire, Lucas, & David Bond (2014) "Ontological Anthropology and the Deferral of Critique." 41 *American Ethnologist* 440–56.

Burchardt, Hans-Jurgen, & Kritina Dietz (2014) "(Neo-) Extractivism: A New Challenge for Development Theory from Latin America." 35 *Third World Quarterly* 468–86.

Burdon, Peter, ed. (2011) *Exploring Wild Law: The Philosophy of Earth Jurisprudence*, Kent Town: Wakefield Press.

Bold, Rosalyn, ed. (2019) *Indigenous Perceptions of the End of the World: Creating a Cosmopolitics of Change*, London: Palgrave Macmillan.

Boyd, David (2017) *The Rights of Nature: A Legal Revolution that Could Save the World*, Toronto: ECW Press.

Clark, Cristy, et al. (2018) "Can You Hear the Rivers Sing? Legal Personhood, Ontology and the Nitty-Gritty of Governance." 45 *Ecology Law Quarterly* 787–844.

Cruikshank, Julie (2005) *Do Glaciers Listen? Local Knowledge, Colonial Encounters & Social Imagination*, Vancouver: UBC Press.

Cullinan, Cormac (2002) *Wild Law: A Manifesto for Earth Justice*, Claremont: Chelsea Green Publishing.

Cullinan, Cormac (2011) "A History of Wild Law," in P. Burdon, ed., *Exploring Wild Law: The Philosophy of Earth Jurisprudence*, Kent Town: Wakefield Press, 12–23.

Cyrus R. Vance Center For International Justice, Earth Law Center and Rivers International (2020) *Rights of Rivers: A Global Survey of the Rapidly Developing Rights of Nature Jurisprudence Pertaining to Rivers*, Oakland: International Rivers.

Darian-Smith, Eve, & Peter Fitzpatrick, eds. (1999) *Laws of the Postcolonial*, Ann Arbor: University of Michigan Press.

De Lucia, Vito (2015) "Competing Narratives and Complex Genealogies: The Ecosystem Approach in International Environmental Law", 27 *Journal of Environmental Law* 91–117.

Desmet, Ellen (2011) *Indigenous Rights Entwined with Nature Conservation*, Antwerp: Intersentia Publishers.

Engle, Karen (2010) *The Elusive Promise of Indigenous Development: Rights, Culture and Strategy*, Durham, NC: Duke University Press.

Esquit Choy, Edgar, & García Carlos Ochoa, eds. (1995) *Yiqalil q'anej kunimaaj tziij niman tzij, El Respeto a la Palabra, El Orden Jurídico del Pueblo Maya*, Guatemala: Centro de Estudios de la Cultura Maya.

European Economic and Social Committee (2020) *Towards an EU Charter of the Fundamental Rights of Nature*, Brussels: European Union.

Fischer-Lescano, Andreas (2020) "Nature as a Legal Person: Proxy Constellations in Law." 32 *Law & Literature* 237–62.

Fukurai, Hiroshi (2019) "Original Nation Approaches to Inter-National Law (ONAIL): Decoupling of the Nation and the State and the Search for new Orders." 26 *Indiana Journal of Global Legal Studies* 199–262.
Garzón, Pedro (2019) "Pluralismo jurídico, derecho indígena y colonialidad jurídica: repensando el derecho desde la colonialidad del poder." 8 *Ius Inkarri. Revista de la Facultad de Derecho y Ciencia Política* 215–26.
Geisinger, Alex (1999) "Sustainable Development and the Domination of Nature: Spreading the Seed of the Western Ideology of Nature." 27 *Boston College Environmental Affairs Law Review* 52–8.
Gilbert, Jérémie (2021) "Indigenous Peoples and Litigation: Strategies for Legal Empowerment." 12 *Journal of Human Rights Practice* 301–20.
Global Witness (2019) *Enemies of the State? How Governments and Business Silence Land and Environmental Defenders*, Global Witness, https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/ (accessed 11 April 2022).
Gonzalez, Carmen (2015) "Bridging the North-South Divide: International Environmental Law in the Anthropocene." 32 *Pace Environmental Law Review* 407–34.
Gudynas, Eduardo (2011) "Buen Vivir: Today's Tomorrow." 54 *Development* 441–7.
Hernández Castillo, Aída (2016) *Multiple InJustices: Indigenous Women, Law and Political Struggle in Latin America*, Tuscon: University of Arizona Press.
Huyse, Luc, & Mark Salter, eds. (2008) *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, Stockholm: International IDEA.
Igreja, Victor (2012) "Multiple Temporalities in Indigenous Justice and Healing Practices in Mozambique." 6 *International Journal of Transitional Justice* 404–20.
International Work Group for Indigenous Affairs (IWGIA) (2016) *The Indigenous World 2016*, Copenhagen: IWGIA.
Jewett, Chas, & Mark Garavan (2019) "Water is Life—An Indigenous Perspective from Standing Rock Water Protector." 54 *Community and Development Journal* 42–58.
Jiménez, Alejandro, Moa Cortobius, & Marianne Kjellén (2014) "Water, Sanitation, Hygiene and Indigenous Peoples: A Review of the Literature." 39 *Water International* 277–93.
Kauffman, Craig, & Pamela Martin (2014a) "Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail." 92 *World Development* 130–42.
Kauffman, Craig, & Pamela Martin (2014b) "Scaling Up Buen Vivir: Globalizing Local Environmental Governance from Ecuador." 14 *Global Environmental Politics* 40–58.
Kauffman, Craig, & Pamela Martin (2018) "Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand." 18 *Global Environmental Politics* 3–62.
Kirsch, Stuart (2012) "Juridification of Indigenous Politics," in J. Eckert, ed., *Law against the State: Ethnographic Forays into Law's Transformations*, Cambridge: Cambridge University Press, 38–59.
Knauβ, Stefan (2018) "Conceptualizing Human Stewardship in the Anthropocene: The Rights of Nature in Ecuador, New Zealand and India." 31 *Journal of Agricultural and Environmental Ethics* 703–22.
Kotzé, Louis (2014) "Human Rights and the Environment in the Anthropocene." 1 *The Anthropocene Review* 252–75.
Lykes, Brinton, & Hugo van der Merve (2019) "Critical Reflexivity and Transitional Justice Praxis: Solidarity, Accompaniment and Intermediarity." 13 *International Journal of Transitional Justice* 411–16.
Macpherson, Elizabeth, & Felipe Clavijo Ospina (2018) "The Pluralism of River Rights in Aotaroa, New Zealand and Colombia." 25 *Water Law* 283–93.
Margil, Mari (2018) "The Rights of Nature Gaining Ground," *OpenGlobalRights*, https://www.openglobalrights.org/the-rights-of-nature-gaining-ground/ (accessed 20 January 2021).
Martínez, Esperanza, & Alberto y Acosta, ed. (2011) *La Naturaleza con Derechos: De la filosofía a la política*, Quito: Ediciones Abya-Yala.
Molle, François (2008) "Nirvana Concepts, Narratives and Policy Models: Insights from the Water Sector." 1 *Water Alternatives* 131–56.
Mutua, Makau (2007) "Standard Setting in Human Rights: Critiques and Prognosis." 29 *Human Rights Quarterly* 547–630.
Nader, Laura (1990) *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*, Stanford: Stanford University Press.
Natarajan, Usha, & Kishan Khoday (2014) "Locating Nature: Making and Unmaking International Law." 27 *Leiden Journal of International Law* 573–94.
Ogden, Laura, et al. (2013) "Global Assemblages, Resilience, and Earth Stewardship in the Anthropocene." 11 *Frontiers in Ecological Environment* 341–7.
Povinelli, Elizabeth (2002) *The Cunning of Recognition, Indigenous Alterities and the Making of Australian Multiculturalism*, Durham, NC: Duke University Press.
Quijano, Aníbal (2007) "Coloniality and Modernity/Rationality." 21 *Cultural Studies* 168–78.
Radcliff, Sarah (2012) "Development for a Postneoliberal Era? *Sumak kawsay*, Living well and the Limits of Decolonisation in Ecuador." 43 *Geoforum* 240–9.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

Rajagopal, B. (2003) *International Law from Below. Development, Social Movements, and Third World Resistance*, Cambridge: Cambridge University Press.
Rawson, Ariel, & Becky Mansfield (2018) "Producing Juridical Knowledge: 'Rights of Nature' or the Naturalization of Rights?", 1 *Environment and Planning E: Nature and Space* 99–119.
Roy, Raja Devasish (2005) "Traditional Customary Laws and Indigenous Peoples in Asia," Minority Rights Group International, https://minorityrights.org/publications/traditional-customary-laws-and-indigenous-peoples-in-asia-april-2005/ (accessed 11 January 2021).
Sieder, Rachel, & John Andrew McNeish (2013) *Gender Justice and Legal Pluralities: Latin America and African Perspectives*, London: Routledge.
Sieder, Rachel, & Anna Barrera Vivero (2017) "Legalizing Indigenous Self-Determination: Autonomy and *Buen Vivir* in Latin America." 22 *Journal of Latin American and Caribbean Anthropology* 9–26.
Sieder, Rachel, & Lieselotte Viaene (2020) "A Dying River in Alta Verapaz, Guatemala," https://rivers-ercproject.eu/a-dying-river-in-alta-verapaz-guatemala/ (accessed 4 December 2020).
Spivak, Gayatri (1988a) "Can the Subaltern Speak?," in C. Nelson & L. Grossberg, eds., *Marxism and the Interpretation of Culture*, Basingstoke: Macmillan Education, 271–313.
Spivak, Gayatri (1988b) *In Other Worlds: Essays in Cultural Politics*, New York: Methuen.
Stone, Christopher (1972) "Should Trees Have Standing? Towards Legal Rights for Natural Objects." 45 *Southern California Law Review* 450–501.
Svampa, Maristella (2019) *Neo-Extractivism in Latin America: Socio-Environmental Conflicts, the Territorial Turn and New Political Narratives*, Cambridge: Cambridge University Press.
Syngedouw, Erik (2009) "The Political Economy and Political Ecology of the Hydro-Social Cycle." 142 *Journal of Contemporary Water Research & Education* 56–60.
Tanasescu, Minhea (2015) "Nature Advocacy and the Indigenous Symbol." 25 *Environmental Values* 105–22.
Tuhiwai Smith, Linda (1999) *Decolonizing Methodologies: Research and Indigenous Peoples*, London: Zed Books.
Ulloa, Astrid (2005) *The Ecological Native: Indigenous Peoples' Movements and Eco-Governmentality in Colombia*, London: Routledge.
United Nations Human Rights Council (2013) *Extractive Industries and Indigenous Peoples: Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya*, UN Doc. A/HRC/24/41, 11 July.
United Nations Human Rights Council (2019) *Report of the Special Rapporteur on the Right of Indigenous Peoples: Indigenous Peoples and Justice by Victoria Tauli-Corpuz*, UN Doc. A/HRC/42/37, 2 August.
United Nations Permanent Forum on Indigenous Issues (2019) "Indigenous Peoples Increasingly Criminalized, Harassed when Defending Rights, Land, Speakers Tell Permanent Forum, Urging Greater Access to Justice System," https://www.un.org/press/en/2019/hr5433.doc.htm (accessed 4 December 2020).
Uprimmy, Rodrigo (2011) "The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges." 89 *Texas Law Review* 1597–609.
Viaene, Lieselotte (2010) "The Internal Logic of the Cosmos as 'Justice' and 'Reconciliation': Micro-Perceptions in Post-Conflict Guatemala." 30 *Critique of Anthropology* 287–312.
Viaene, Lieselotte (2015) "La hidroeléctrica Xalalá en territorio maya q'eqchi' de Guatemala. ¿Qué pasará con nuestra tierra y agua sagradas? Un análisis antropológico-jurídico de los derechos humanos amenazados." Informe de investigación, Municipalidad Herent (Bélgica) y Centro de Derechos Humanos, Universidad de Gante (Bélgica).
Viaene, Lieselotte (2017) "Ríos: seres vivientes y personalidad jurídica: Nuevos argumentos legales en la defensa de los territorios de los pueblos indígenas, Plaza Pública—Guatemala," https://www.plazapublica.com.gt/content/rios-seres-vivientes-y-personalidad-juridica-nuevos-argumentos-legales-en-la-defensa-de-los (accessed 11 April 2022).
Viaene, Lieselotte (2021) "Indigenous Water Ontologies, Hydro-Development and the Human/More-than-Human Right to Water: A Call for Critical Engagement with Plurilegal Water Realities." 13 *Water* 1660.
Viaene, Lieselotte, & Eva Brems (2010) "Transitional Justice and Cultural Context: Learning form the Universality Debate," 27 *Netherlands Quarterly of Human Rights* 199–224.
Viaene, Lieselotte, & Guillermo Fernández-Maldonado (2018) "Legislating Coordination and Cooperation Mechanisms between Indigenous and Ordinary Jurisdictions: Reflections on Progress and Setbacks in Ecuador," in G. Corradi, K. De Feyter, E. Desmet, et al., eds., *Critical Indigenous Rights Studies: New Directions in Indigenous Rights Research*, London: Routledge, pp. 201–26.
Viaene, Lieselotte, & Belkis Izquierdo (2018) "Decolonizing Transitional Justice from Indigenous Territories, *Peace in Progress*, N 34," Instituto Catalán Internacional para la Paz (ICIP), http://www.icip-perlapau.cat/numero34/articles_centrals/article_central_2/ (accessed 11 January 2021).
Viaene, Lieselotte, & Belkis Izquierdo (2020) "Una (im)posibilidad legal: el territorio—ser viviente, víctima del conflicto armado. ¿Cómo evidenciar lo que jurídicamente no existe?", unpublished working paper on file of authors.

https://doi.org/10.1017/als.2022.2 Published online by Cambridge University Press

Von Benda-Beckman, Franz, Keebet von Benda-Beckman, & Anne Griffiths (2009) "The Power of Law," in F. von Benda-Beckman, K. von Benda-Beckman, & A. Griffiths, eds., *The Power of Law in a Transnational World: Anthropological Enquiries*, New York: Berghan, 1–32.

Wagner, J., ed. (2015) *The Social Life of Water*, New York: Berghahn Books.

Warren, Karen (2008) "Perils and Promises of Engaged Anthropology: Historical Transitions and Ethnographic Dilemas," in V. Sanford & Angel-Ajani, eds., *Engaged Observer: Anthropology, Advocacy, and Activism*, New Brunswick: Rutgers University Press, 213–27.

Williams, Robert (1991) "Columbus's Legacy: Law as an Instrument of Racial Discrimination against Indigenous Peoples' Rights of Self-Determination." 8 *Arizona Journal of International and Comparative Law* 51–76.

Zenker, Olaf (2016) "Anthropology on Trial: Exploring the Laws of Anthropological Expertise." 12 *International Journal of Law in Context* 293–311.

Cite this article: Viaene, Lieselotte (2022). Can Rights of Nature Save Us from the Anthropocene Catastrophe? Some Critical Reflections from the Field. *Asian Journal of Law and Society* **9**, 187–206. https://doi.org/10.1017/als.2022.2