Making Law of/with Nonhumans:
The Ganges River is a Legal Person

Moe NAKAZORA
(Hiroshima University)
nakazora@hiroshima-u.ac.jp

On March 20, 2017, the High Court of Uttarkahand, a state in northwestern India, mandated that the rivers Ganges and Yamuna, as well as all water bodies, are "living entities," that is, "legal persons." What this declaration implies is that these rivers now possess the legal rights, duties, and liabilities of a living person—they can sue someone in the case of illegal waste dumping, and they can be sued if they harm someone through flood or drought. As "the rivers cannot speak for themselves," the justices identified specific positions within the state government[1] to act in *loco parentis*, the legal responsibility taken on by a parent. The chief justice explained:

> The extraordinary situation has arisen since Rivers Ganga and Yamuna are loosing [sic] their very existence. This situation requires extraordinary measures to be taken to preserve and conserve Rivers Ganga and Yamuna. (Indian Courts 2017: 4)

The concept of granting legal rights to nonhuman entities is not new. It has been long discussed in the field of environmental law, represented by Christopher Stone's *Should Trees Have Standing?* (1972), which advocated for the legitimacy of legal personhood of the environment as the processual opening of "human rights" to the poor, women, slaves, and finally to "non-human natures." However, its implementation began only recently. Remarkably in many cases, what is at stake is not only the expansion of "human rights" in civil society but also recognition of indigenous rights and cosmologies by the state.

In 2008, Ecuador changed its constitution to reflect the rights of nature. Bolivia followed suit in 2010. The influence of indigenous people's worldviews was apparent in the central importance that both countries placed on *Pachamama*, "nature" in the languages of the indigenous Quichua and Aimara groups. More recently, the Whanganui River in New Zealand was granted legal personhood status. This was achieved after eight years of negotiation between the Crown (the New Zealand government), which had formally owned the riverbed under legislation, and Whanganui Iwi (a Maori tribe), who contested the legislation on the grounds of Treaty of Waitangi. According to James Morris and Jacinta Ruru, two Maori academics, "the beauty of the concept is that it takes a Western legal precedent and gives life to a river that better aligns with a Maori worldview that has always regarded rivers as containing their own distinct life forces" (Morris & Ruru 2010: 58).

The case of the Ganges and Yamuna Rivers in Uttarakhand is often considered in parallel with these cases—many authors regard it as an infiltration of Hindu cosmology into the Western legal framework, as 'these rivers are holy to Hindus.' This argument

[1] Those state representatives are "the director Namami Gange [the National Mission to Clean the Ganga], the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand."

may sound persuasive, considering the fact that in Indian jurisprudence, Hindu deities or idols have been regarded as legal entities. Also, a prevalent argument among Indian academics is that of the 'saffronization' of environmentalism in contemporary India, which implies that much of the environmentalist/animal rights discourse stems from Hindu nationalism/right wing interests (Rao 2011; Sharma 2017). The present case can be easily contextualized in this line of argument.

However, we should note that the Indian case also differs fundamentally from the two previous actions to grant natural entities rights. While actions in New Zealand and Ecuador came in response to a specific demand by indigenous groups in the context of long history of exploitation, the Ganges-Yamuna case does not represent any interests of particular local groups (Sarkar 2017). Thus, to understand the latter case, we need a different ethnographic approach from exploring how indigenous cosmologies and Western legality are juxtaposed despite their incommensurability in certain points (de la Cadena 2010; Salmond 2014; Simon 2018).

*

What, then, is an alternative way of considering why and how this form of legality was created in contemporary India? Instead of starting from Hinduism, here I argue that it is more straightforward to refer to the ethnography of legality (Latour 2002; Riles 2000, 2006; Takano 2015), which attempts to understand how law as a professional system is made and practiced.

In his pioneering work on the *Conseil d'Etat* Bruno Latour follows the legal process as a concrete practice or network-making ('the path of law') to show how diverse interests of people (not limited to legal specialists), concepts, and files are mobilized to make a single legal case (Latour 2002). Latour concludes that the peculiarity of a legal system lies not in its content but in particular forms and effects in which law mobilizes its totality into individuals, represented by endless references to precedents. (Latour 2002, chap 5) This approach of following 'the making of law' seems to be suitable for analyzing what has happened in contemporary India. Indeed, through conducting pilot fieldwork (including semi-structured interviews with main stakeholders of the legislation as well as participatory observations at the High Court of Uttarakhand) in August 2017 and September 2018, I have been intrigued by how diverse interests are translated to produce the fact that the Ganges and Yamuna Rivers are legal persons.

Mohammad Salim,[2] the plaintiff, is a Congress social worker who has been actively promoting tourism development in his village along the Ganges River called "The river view resort village". After visiting him several times, I came to understand that what he hopes to eliminate is not only 'illegal dumping of industrial waste' but also 'people' along the river, referring to the emergence of slum communities consisting of illegal laborers and their temporary houses and tracks. "Those intruders are coming one after another no matter how hard we try to send them away," Mohammad sighed. "But if we prepare for the *appropriate environment*, the beautiful river," he continued, "they will

[2] In this article, I use real names for my informants, as they have already appeared in a number of the legal documents and newspaper articles.

behave in an appropriate way and eventually leave by themselves!" In addition to this original cause filed by Mohammad, the judgment was also concerned with the issues of federal ownership of rivers, requiring that the central government clarify the division of authority between Uttarakhand and Uttar Pradesh (the state from which Uttarakhand was carved out in 2000). Manoj Pant, the chief advocate, who specializes in labors' rights, is confident that it is he who weaved these different interests together and, "to give this judgment a wider scope," connected them to the global trend of environmental legalism, namely legal personhood for natural entities.

Although it may have been Manoj Pant who first came up with the idea of environmental personhood, the case clearly reflects the philosophy of Rajiv Sharma, the judge. Rajiv Sharma, who specializes in animals' rights and their ritual sacrifice, became the chief justice of the Uttarkahand High Court after this decision, before moving to Punjab and the Haryana High Court. Surprisingly, within this short period (two years), he has issued many rulings granting legal entity status to nature, including the Uttarkahand High Court's declaration that "all members of the animal kingdom, including birds and aquatic life, have similar rights as humans" in July 2018 (Vishwanath 2018), as well as the latest judgment in the Punjab & Haryana High Court regarding Sukhna Lake (Sethi 2020).

It is reasonable to follow how such diverse interests *emerge* and are partially translated in the process of the making of law. In the Ganges-Yamuna case, too, such translation is mediated by the particular formalities and artifacts of law. For instance, as Latour notes, there are endless references to precedents (Latour 2002, chap 5). In the resultant twelve-page judgment of the Ganges-Yamuna case, eight pages are dedicated to referencing precedent cases in Indian jurisprudence in which nonhuman entities, such as, a Hindu deity or an idol, are regarded as legal entities (Indian Courts 2017). However, notably, the document included not only such formalized references to precedents but also concerns about the current condition of the rivers, represented by the well-cited phrase, "Rivers Ganges and Yamuna are loosing [sic] their very *existence*." (Indian Courts 2017: 4) In the course of my fieldwork, I came to realize that we should take this phrase seriously and recognize the '(material) *existence* of water' as an important factor in the 'making of law.' Indeed, as I will show below, I was directed by my informants toward seeing the influence of the visible water materiality and invisible (yet imaginable) infrastructures *in the form of law*.

*

When I was at the Uttarakhand High Court, chatting with many advocates about this Ganges-Yamuna case, they told me one after another statements akin to, "To understand the case, you should compare Gangotri and Kampur to know how much we humans pollute the river. It is so visible." The Gangotri Glacier is one of the primary sources of the River Ganges, located in Uttarakashi, Uttarakhand, and is a traditional Hindu pilgrimage site. It originates from snowfields at 7,100 meters above sea level and descends to a height of 4,000 meters, covering around 143 square kilometers in northern and eastern India. Its estimated volume is 27.75 cubic kilometers (Marwah 2004). Although the area and volume of glaciers are subject to seasonal fluctuations, and are

said to be receding at an alarming rate, it is still the largest glacier in the Himalayas, with abundant, transparent water.

In contrast, Kanpur is a large industrial city in the state of Uttar Pradesh, located on the west bank of the Ganges River. It is famous for its leather industry, with nearly 400 tanneries housed in Jajmau—a famous industrial suburb in Kanpur—alone. The industry has severely contaminated the Ganges with a heavy load of toxic chemicals and metals such as chromium, cadmium, lead, arsenic, and cobalt, all of which have serious implications for public health (Chaudhary 2017). Even a short visit to Jajmau was enough for me to understand the massive pollution of the Ganges: the odor, garbage, and dead fish could be noticed everywhere. According to an article on *The Third Pole* (Chaudhary 2017), Omprakash Yadav, a farmer from the village, described the situation as follows:

> In the upstream, all the original Himalayan water is diverted into various canals. I am not sure if even a few drops of real Ganga water reach Kanpur. We have hardly any water or flow in the river in Kanpur during the dry months. So pollution is much more visible.

As this account shows, in Kanpur, it is difficult to find the very visible 'existence' of the river, especially in the dry season. Instead, what is much more visible there is pollution. Yadav compares the situation in Kanpur with that of the upstream, namely Gangotri, just as advocates at the Uttarkahand High Court did. In fact, it should be noted that in Uttar Pradesh (where Kanpur is located), a number of government initiatives, NGO campaigns, and court orders have been targeting untreated sewage and toxic industrial effluents, that is, pollution rather than the river itself.[3] Considering this, and as advocates at the Uttarakhand High Court suggested, my temporal assumption now is that only in the region where we can find the visible 'existence' of the river in terms of materiality (both quality and quantity) of water was it possible to make such a unique court case to recognize the living status of the river.

Furthermore, my informants taught me that not only the existence of the river but also that of infrastructure should be taken into account. As Anthony Acciavatti's *The Ganges Water Machine* (2015) clearly shows, unlike the Whanganui River, the Ganges is "one of the most engineered rivers in the world"—with large dams, irrigation projects, and millions of tube wells constructed in the last century, half of which are important parts of the contemporary river-scape.

Significantly, at the moment of the litigation, the controversial massive river-linking scheme was renewed by Narendra Modi's government. The India Rivers Inter-link (IRL) is a proposed large-scale project that aspires to manage water resources by linking rivers in a network of reservoirs and canals. It aims to enhance irrigation

[3] From the Ganga Action Plan, launched in 1986, to the latest Namami Gange of the Narendra Modi administration, almost all government initiatives aimed at removing toxic tannery wastewater and sewage. Also, there was a landmark piece of judicially mandated environmental legislation in Kanpur: the 1987 Supreme Court decision in the *M.C. Mehta versus Union of India* case ordered, among other things, tanneries in Kanpur to either clean up or shut down.

and groundwater recharge and to reduce persistent floods in some areas and water shortages in others. The proposal has a long history dating back to British colonial rule. Since then, it has recurrently been discussed and disappeared. It was most recently mooted by former prime minister Atal Bihari Vajpayee almost a decade ago and is now once again being pushed forward by the Narendra Modi administration. Of the thirty interlinking projects across the country, sixteen projects will be undertaken in the peninsular region, and fourteen will be constructed in the Himalayan region, transferring about 170 billion cubic meters of water to deficit areas.

Of course, this renewed boost to the project has come under harsh criticism, especially from left leaning environmentalists, who fear that the project will alter the natural flow of rivers, cause water-logging, hamper the transportation of silt, affect fisheries, and reduce the flow of transboundary rivers into downstream Bangladesh (Chaudhary 2014). Many authors and journalists placed the litigation to grant legal personhood to the Ganges-Yamuna Rivers in this context *against* the IRL. For instance, Omair Ahmad (2017) argues that "with the new legal status given to rivers, India's massive river linking scheme would become impossible. . . . This leaves open the important question that if the government interferes in the river by making these interventions, will the Advocate General of Uttarakhand act?"

However, in the course of my fieldwork, it became more evident that Manoj Pant and other advocates around him at the Uttarakhand High Court were—surprisingly—'supporters' of the IRL project. That puzzled me at first: if you recognize the personhood of the river, is it acceptable to make such massive technological interventions in *her*? However, Manoj Pant suggested a completely different logic:

> All the rivers eventually flow into the sea, so they are basically *one*. Imagining rivers as one is the same as imagining a single personality of the river.

Another advocate supported his idea by saying,

> As you know, one of the virtues of India is 'unity in diversity.' There are many cultures, religions, and castes in India. Still, we are connected with each other while respecting differences. If rivers have the status of 'living entities,' why don't they achieve 'unity in diversity,' just like humans?

Further, his secretary, who was sitting aside and hearing my interview with Manoj Pant curiously added, "Do you know Load Krishna? Do you know Mahabharata? Krishna is an expanded form of Vishnu. The gods appear in diverse forms, but they are actually one."

After thirteen years and two task forces, the IRL project has not yet materialized due to opposition from states with relatively rich water sources and a number of farmer protests. Thus, it is actually an *imagined* project. After hearing the claims by my informant advocates, I started to wonder how such imagined infrastructure has affected

the creation of the legal imagination of (one) personhood of the Ganges River. In other words, to understand this legal case more critically, it now seems crucial for me to explore how the visible materiality of water and invisible infrastructures have shaped particular forms of legality.

*

More-than-Human Worlds in Legality. There is seemingly a rigid understanding among legal professionals that laws are made by humans. However, prompted by recent movements to grant legal personhood to nonhuman entities, several scholars specializing in environmental law (Gordon 2018) have started to cite Bruno Latour, Anna Tsing, and Marilyn Strathern. I hope that this short (preliminary) essay and my future fieldwork-based achievements will contribute to furthering the dialogue between contemporary anthropology and law, and the study of the relation between 'man-made law' and 'the laws of nature.'

References

Acciavatti, Anthony. 2015. *The Ganges Water Machine: Designing New India's Ancient River*. Applied Research & Design.

Ahmad, Omair. 2017. Can Rivers Be Legal Entities? *The Third Pole*. March 27, 2017. [online] https://www.thethirdpole.net/en/2017/03/27/can-rivers-be-legal-entities/

Chaudhary, Juni. 2017. Ganga an Unholy Mess at Kanpur. *The Third Pole*. January 18, 2017. [online] https://www.thethirdpole.net/en/2017/01/18/ganga-an-unholy-mess-at-kanpur/

De la Cadena, Marisol. 2010. Indigenous Cosmopolitics in the Andes: Conceptual Reflections beyond "Politics." *Cultural Anthropology* 25 (2): 334–370.

Gordon, Gwendolyan J. 2018. Environmental Personhood. *Columbia Journal of Environmental Law* 43 (1): 49–91.

Indian Courts. 2017. Ganges and Yamuna Case, *Mohd. Salim v State of Uttarakhand & others*, WPPIL 126/2014, Uttarakhand High Court at Nainital, 2017. Indian Courts, Judgments - High Court of Uttarakhand at Nainital, India. [online] http://lobis.nic.in/ddir/uhc/RS/orders/22-03-2017/RS20032017WPPIL1262014.pdf

Latour, Bruno. 2010. *The Making of Law: An Ethnography of the Conseil d'Etat*. Polity.

Marwah, Gyan. 2004. Ganges: A River of No Return? *The-south-asian.com.* [online] http://www.the-south-asian.com/Aug2004/Gangotri_glacier.htm

Morris, James D.K. & Jacinta Ruru. 2010. Giving Voice to Rivers: Legal Personality as a Vehicle for Recognizing Indigenous Peoples' Relationships to Water? *Australian Indigenous Law Review* 14 (2): 49–62.

Riles, Annelise. 2000. *The Network Inside Out.* University of Michigan Press.

Salmond, Anne. 2014. Tears of Rangi: Water, Power, and People in New Zealand. *HAU: Journal of Ethnographic Theory* 4 (3): 285–309.

Sarkar, Dipankar. 2017. Rights of Rivers, Hard to Enforce. *Livemint*. March 24, 2017. [online] https://www.livemint.com/Opinion/gsttRTScpIuLTXreHqwvkN/Rights-of-rivers-hard-to-enforce.html

Seti, Chitleen K. 2020. HC Judge Who Declared Sukhna Lake Living Entity Also Granted Legal Rights to Ganga, Animals. *ThePrint*. March 5, 2020. [online] https://theprint.in/judiciary/hc-judge-who-declared-sukhna-lake-living-entity-also-granted-legal-rights-to-ganga-animals/375776/

Sharma, Mukul. 2017. *Caste and Nature: Dalits and Indian Environmental Politics*. Oxford University Press.

Simon, Scott. 2018. The Tao of Multispecies Ethnography. *More-than-Human Worlds: A NatureCulture Blog Series.* https://www.natcult.net/wpcontent/uploads/2018/07/natcult_mth2018simon_tao.pdf

Stone, Christopher. 1972. Should Trees Have Standing?—Toward Legal Rights for Natural Objects. *Southern California Law Review* 45: 450–501.

Rao, Smitha. 2011. Saffronization of the Holy Cow: Unearthing Silent Communalism. *Economic and Political Weekly* 46 (15): 80–87.

Takano, Sayaka. 2015. *Law and Society in Post-Suharto era in Indonesia: Ethnography of Making and Unmaking of Judgements*. [Posuto suharuto ki Indonesia no hou to shakai: Sabakukoto to sabakanai koto no minzokushi] Sangensha.

Vishwanath, Apurva. 2018. The Animal Kingdom Can Defend Itself Now, and It's All Thanks to Uttarakhand's Crusader Judge. *ThePrint*. July 22, 2018. [online] https://theprint.in/india/governance/the-animal-kingdom-can-defend-itself-now-and-its-all-thanks-to-uttarakhands-crusader-judge/84710/