



Indigenous legal expertise, sacred rivers, and hydropower development projects in Third Pole country Nepal

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Abstract

While Indigenous expertise, values and knowledge systems have become a buzzword in academic and policy debates about climate change, sustainable development, and the protection of ecosystems, this research note turns the lens to Indigenous legal expertise used by Indigenous lawyers in Nepal in the defence of Indigenous peoples' rights regarding the construction of dams and transmission line projects. Drawing on preliminary insights of legal anthropological research in Nepal, the research note intends to add an additional analytical lens to the emerging concept of cultural expertise of Indigenous knowledge embedded in Indigenous human-water-life ontologies.

Keywords Nepal · Indigenous lawyering · Indigenous water ontologies · Indigenous peoples' rights · Hydro development projects

1 Setting the scene

Indigenous expertise, values, knowledge systems have become buzzwords in international policy and academic debates about climate change, sustainable development, and the protection of ecosystems and biodiversity.¹ Meanwhile, in

¹ Victoria Reyes-García, et al., 'Local Indicators of Climate Change Impacts Described by Indigenous Peoples and Local Communities: Study Protocol' (2023) 18(1) *PLOS ONE*; Victoria Reyes-García, et al., 'The Contributions of Indigenous Peoples and Local Communities to Ecological Restoration' (2019) 27(1) *Restoration Ecology* 3; UN Permanent Forum on Indigenous Issues, *Indigenous Peoples and Climate Change* (Note by the Secretariat, E/C.19/2021/5, 2021); International Work Group for Indigenous Affairs, *Recognising the Contributions of Indigenous Peoples in Global Climate Action? An Analysis of the IPCC Report on Impacts, Adaptation and Vulnerability* (IGWIA Briefing Paper, 2022); Aurélien Bouayad, 'Cultural Expertise and Indigenous Ecologies' in Livia Holden (ed),

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the field of environmental law, proponents of the fast-growing Rights of Nature movement, which recognises legal personhood of non-human entities such as rivers, mountains, and lagoons, often claim that it is rooted in Indigenous lifestyles and views about nature and the environment.² However, in the human rights field, the international recognition of Indigenous peoples' rights combined by the failure of states to promote and protect them has led Indigenous communities and movements around the globe to mobilise human rights to forge their effective application.³ One of their main strategies, besides (inter)national advocacy, has been to take before courts their political and legal claims through legal actions and litigation in domestic and regional courts such as the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights. In this field of strategic human rights litigation in the defence of Indigenous peoples' rights, anthropologists are often invited—either by the judge or as part of the legal strategies of the defended—to give a cultural expert testimony. In fact, in the Latin American context there is a strong tradition of critical scholarship about the role of anthropologists as cultural experts before domestic courts and the Inter-American Human Rights system regarding Indigenous peoples.⁴

This research note turns the lens to the role of Indigenous lawyers using Indigenous expertise in Nepal in the defence of Indigenous peoples' rights, drawing on the broader definition of cultural expertise developed by Holden,⁵ which recognises that lawyers themselves engage with or even contribute to cultural expertise in their legal actions such as developing strategic litigation before courts, participating in constitution making processes and legal training for communities. This research note

Footnote 1 (Continued)

Cultural Expertise, Law and Rights: A Comprehensive Guide (Routledge 2023); Noelle Higgins, 'Cultural Expertise and Indigenous Rights' in Livia Holden (ed), *Cultural Expertise, Law and Rights: A Comprehensive Guide* (Routledge 2023).

² Manuel May, Lieselotte Viaene, and Digno Montalvan, 'Historical Indigenous Diplomacy for Taking Care of Mother Earth and the Rights of Nature' (*Green Diplomacy*, 2023). <https://www.greendiplomacy.org/article/historical-indigenous-diplomacy-for-taking-care-of-mother-earth-and-the-rights-of-nature/>. Accessed 5 November 2023; Tanasescu Minhea, *Understanding the Rights of Nature: A Critical Introduction* (Transcript 2022); Lieselotte Viaene, 'Can Rights of Nature Save Us from the Anthropocene Catastrophe? Critical Reflections from the Field on the Emerging Ecological Jurisprudence' (2022) 9(2) *Asian Journal of Law and Society* 187; Jérémie Gilbert, 'The Rights of Nature, Indigenous Peoples and International Human Rights Law: From Dichotomies to Synergies' (2022) 13(2) *Journal of Human Rights and the Environment* 399.

³ Jérémie Gilbert, 'Indigenous Peoples and Litigation: Strategies for Legal Empowerment' (2020) 12(2) *Journal of Human Rights Practice* 301; Stuart Kirsch, 'Juridification of Indigenous Politics', in Julia Eckert, et al., (eds), *Law Against the State: Ethnographic Forays into Law's Transformations* (Cambridge University Press 2012); Rachel Sieder, 'The Juridification of Politics' in Marie-Claire Foblets, et al., (eds), *The Oxford Handbook of Law and Anthropology* (Oxford University Press 2020).

⁴ Christopher Lopera, Mariana Mora, and Rosalva Aída Hernández Castillo, 'Cultural Expertise? Anthropologists as Witness in Defense of Indigenous and Afro-Descendant Rights' (2020) 122(3) *American Anthropologist* 588; Cristopher Loperena, Rosalva Aída Hernández Castillo and Mariana Mora, 'Los retos del peritaje cultural. El antropólogo como perito en la defensa de los derechos indígenas' (2018) 57 *Desacatos: Revista De Ciencias Sociales* 8–19; Esther Sánchez Botero, *El Peritaje Antropológico Justicia en Clave Cultural* (GTZ 2010).

⁵ Livia Holden, 'Cultural Expertise and Socio-Legal Studies: Introduction' in Austin Sarat and Livia Holden (eds), *Cultural Expertise and Socio-Legal Studies: Special Issue* (Emerald 2019) 3.

is written to share some of the research progress in the Nepali research context of the six-year research project titled *ERC RIVERS-Water/Human Rights, Beyond the Human*.⁶ One of the *ERC RIVERS* research objectives is to discuss the contributions, challenges, and pitfalls of inter-legal translation of differing water natures in pluri-legal encounters at domestic and international levels. One of the actors the project looks at is Indigenous legal practitioners such as lawyers and judges in both in-court and out-of-court conflicts and processes in Guatemala, Colombia, and Nepal. The *ERC RIVERS* project has chosen to focus on these three countries in order to foster an open, mutually reinforcing, and empirically grounded South-South dialogue because: 1) from an international human rights point of view, Colombia and Nepal are perceived as the strongest regional examples of the protection of Indigenous peoples, while Guatemala is seen as a weak example; and 2) at the grassroots level, the Indigenous peoples in all countries have been confronted with successive land dispossession and systematic human rights violations by colonisation, internal armed conflicts, and extractive natural resources projects.⁷ These three countries are facing immense challenges in pushing forward the effective inclusion of Indigenous peoples in their current complex, post-conflict, socio-political, and legal landscapes.

Amidst the global ‘legal hype of Rights of Nature’⁸ on the one hand and the emerging legal debates about ‘interconnections between human and environmental and ecological concerns affecting transitional justice efforts in postconflict settings’⁹ on the other hand, this interdisciplinary project aims to shed light on Indigenous litigators’ efforts in forging an alternative legal path. Our research in Guatemala, Colombia, and Nepal shows that Indigenous legal practitioners are pioneering counter-hegemonic legal practices that transcend prevailing Euro-Western and colonial legal paradigms. In fact, in the three countries they are challenging the neoliberal and racialised legal frameworks that traditionally conceptualise human-water-life relationships. Against this background, it is important to note that critical studies on law and colonialism highlight the persistent influence of legal colonialism.¹⁰ This influence endures through the perpetuation of outdated legal-political frameworks

⁶ ‘RIVERS: Water/Human Rights. Beyond the Human?’ (*RIVERS ERC Project*). www.rivers-ercproject.eu. Accessed 26 October 2023.

⁷ *RIVERS: Water/Human Rights Beyond the Human? Indigenous Water Ontologies, Plurilegal Encounters and Interlegal Translations (European Research Council (ERC)_Staring Grant_2018_B2_RIVERS_Grant Agreement 804003*, 2018).

⁸ Viaene, ‘Can Rights of Nature Save Us from the Anthropocene Catastrophe?’ (n 2) 189.

⁹ Lieselotte Viaene, Peter Doran, and Jonathan Liljeblad, ‘Editorial Special Section: Transitional Justice and Nature: A Curious Silence’ (2023) 17(1) *International Journal of Transitional Justice* 1.

¹⁰ Eve Darian-Smith and Peter Fitzpatrick (eds), *Laws of the Postcolonial* (University of Michigan Press 1999); Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press 2005); Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge University Press 2001); John Comaroff, ‘Colonialism, Culture and the Law: A Foreword’ (2001) 26(2) *Law and Social Inquiry* 305; Renisa Mawani, ‘Law and Colonialism: Legacies and Lineages’ in Austin Sarat and Patricia Ewick (eds), *The Handbook of Law and Society* (Wiley Blackwell 2015)

entrenched in Euro-Western legal traditions.¹¹ Additionally, Indigenous scholarship and ethnographic research in different parts of the world highlight that within Indigenous cultures, the relationship between humans and nature is interwoven, contrasting significantly with the prevalent Euro-Western separation of nature and culture.¹² I have previously emphasised that human rights and environmental scholars trained in the Euro-Western tradition ‘should not be afraid of plurilegal water realities and should start engaging with these ontologically different concepts and practices.’¹³ One of the project premises is that ‘If law is intrinsic to world-making, then having life options entails the possibility of envisioning that existing ordering regimes could be otherwise, and of contributing to another reality’.¹⁴ Therefore the project finds it crucial to acknowledge that law plays a pivotal role in shaping any fundamental understanding of reality.¹⁵ While some research has been done on the role of Indigenous lawyers in common law jurisdictions, such as Canada,¹⁶ the *ERC RIVERS* project wants to fill in the knowledge gap about Indigenous legal action by Indigenous lawyers, judges and legal practitioners who are defending individual and collective Indigenous peoples’ rights in societies that are facing socio-political transitions from recent armed conflicts, and where Indigenous territories are facing the imposition of natural resource development projects.

In Colombia, the project has been collaborating with Indigenous Arhuaca judge Belkis Izquierdo of the Special Jurisdiction of Peace (JEP), the justice component of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition created by the Peace Agreements between the Colombian government and the Revolutionary Armed Forces of Colombia—People’s Army (FARC-EP) in 2016.¹⁷ Since

¹¹ On the colonial foundations of the regulatory framework of corporate mining see, María Ximena González-Serrano, Digno Montalván-Zambrano, and Lieselotte Viaene, ‘Hacia la descolonización del régimen extractivo: patrones y límites de la judicialización en conflictos mineros’ (2022) 72 *Íconos. Revista de Ciencias Sociales* 97.

¹² See Deborah McGregor, ‘Indigenous Environmental Justice: Towards an Ethical and Sustainable Future’ in Brendan Hokowhitu, et al., (eds), *Routledge Handbook of Critical Indigenous Studies* (Routledge 2021); Chas Jewett and Mark Garavan, ‘Water is Life: An Indigenous Perspective from a Standing Rock Water Protector’ (2019) 54(1) *Community Development Journal* 42; Zoe Todd, ‘An Indigenous Feminist’s Take On The Ontological Turn: “Ontology” Is Just Another Word For Colonialism’ (2016) 29(1) *Journal of Historical Sociology* 4; Rosalyn Bold (ed), *Indigenous Perceptions of the End of the World: Creating a Cosmopolitics of Change* (Palgrave Macmillan 2019); Lieselotte Viaene, ‘Indigenous Water Ontologies, Hydro-development and the Human/More-than-Human Right to Water: A Call for Critical Engagement with Plurilegal Water Realities’ (2021) 13(12) *Water* 1660.

¹³ Viaene, ‘Indigenous Water Ontologies, Hydro-development and the Human/More-than-Human Right to Water’ (n 12).

¹⁴ Keebet Von Benda-Beckmann and Bertram Turner ‘Anthropological Roots of Global Legal Pluralism’ in Paul Schiff Berman (ed), *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press 2020) 138.

¹⁵ *ibid.*

¹⁶ Sonia Lawrence and Signa Daum Shanks, ‘Indigenous Lawyers in Canada: Identity, Professionalisation, Law’ (2015) 38(2) *Dalhousie Law Journal* 503.

¹⁷ For more information about the Mandate of Colombia’s Special Jurisdiction for Peace, see ‘Jurisdicción Especial para la Paz’. <https://www.jep.gov.co/Paginas/Inicio.aspx>. Accessed 26 October 2023; For the collaborative work between the RIVERS Project and Judge Belkis Izquierdo see Belkis

2019, she has been producing ground breaking legal decisions in the field of transitional justice as she, as Judge of the JEP's Chamber for Recognition of Truth, recognised for the first time the Indigenous territory as a victim of the armed conflict in the *Macro case 02—Territorial Situation of the Tumaco, Ricaurte and Barbacoas Municipality* in the Nariño province, which centres on investigating human rights violations and violations of International Humanitarian Law perpetrated by former FARC members and members of the Armed Forces.¹⁸ In this judicial decision which also involves *Áwa* Indigenous victims, the Indigenous territory is considered a victim because as a living and integral being it has been violated by the various actions of armed groups. Henceforth, this territory has 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 this judicial process. The *ERC RIVERS* project is currently developing a documentary regarding her spiritual and legal journey of judicial resistance in the Colombian High Court, and in its teaser the judge explains how her legal work is embedded in her Indigenous being and how, for example, her community spiritual leaders (*Mamos*) form part of her team.¹⁹

In Nepal and Guatemala, the project is looking into the role of Indigenous lawyers in strategic litigation particularly in terms of what makes Indigenous lawyering different from cause-militant-engaged lawyering who *from outside* of the causes and processes of Indigenous peoples engage with strategic human rights litigation.²⁰ While in Nepal we examine an out-of-court conflict, namely the Complaints Mechanism of the European Investment Bank (EIB) as discussed below in Guatemala the research was focused on the intergenerational legal-political battle of Indigenous lawyers before the courts.²¹ In American-European socio-legal scholarship, the term

Footnote 17 (Continued)

Izquierdo and Lieselotte Viaene, 'Decolonizing Transitional Justice from Indigenous Territories' (*Instituto Catalán Internacional para la Paz*, 2018). <https://www.icip.cat/perlapau/en/article/decolonizing-transitional-justice-from-indigenous-territories/>. Accessed 27 November 2023; A virtual 'Speech Circle: Reparation of the Territory and Nature as Victims of the Conflict' in August 2020 was organised in the framework of the International Day of Indigenous Peoples by the *ERC RIVERS* project in co-organisation with the Ethno-Racial Commission of the JEP, which Judge Belkis Izquierdo was presiding at that moment, see 'Transitional Justice and Indigenous Peoples: Justice and Reparation for Multiple Life Systems' (*Center for Human Rights and International Justice*, 18 February 2021). <https://www.youtube.com/watch?v=YcCODTjOyaM>. Accessed 28 November 2023.

¹⁸ Jurisdicción Especial para la Paz (JEP), 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.

¹⁹ 'Teaser *ERC RIVERS* Project Documentary Colombia' (*Rivers ERC Project*, 8 November 2023). <https://www.youtube.com/watch?v=XH78n-0K9Ww&t=59s>. Accessed 27 November 2023.

²⁰ Emphasis added.

²¹ For the projects work on Guatemala, see Lieselotte Viaene, and Maria Ximena González-Serrano, 'The Right to Be, to Feel and to Exist: Indigenous Lawyers and Strategic Litigation over Indigenous Territories in Guatemala' (2023) *The International Journal of Human Rights*; Maria Ximena González-Serrano y Lieselotte Viaene, 'La Acción Jurídica Indígena en Guatemala: Voces de Resistencia y

‘cause lawyers’²² is used, which has as its equivalent ‘militant, popular or alternative lawyers’²³ in Latin American scholarship. These contrast conventional lawyers, who see ‘their legal practice as an expression of a broader political, legal, social or moral cause’.²⁴ In the case of Guatemala, we argue that, in contrast to conventional and human rights activist lawyers, the Indigenous Mayan lawyers are occupying and exercising a differentiated role through their Indigenous positionality and their non-conventional practices, as transformative connectors of worlds before the courts or ‘political ontological knowledge brokers’²⁵ without falling into romanticism.

The aim of this research note is to present preliminary insights of the research in Nepal, adding an additional analytical lens to the emerging concept of cultural expertise, that of Indigenous knowledge embedded in ‘Indigenous human-water-life ontologies’.²⁶ The note draws on three moments of fieldwork in Nepal between November 2022 and July 2023. Firstly, I briefly describe the socio-political scene regarding Indigenous peoples in Nepal. Secondly, I share the research methodological journey of the *ERC RIVERS* project in Nepal so far. Then I turn to the legal work of the Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP). Finally, I share some reflections and draw some directions for further exploration in Nepal.

2 Indigenous peoples in Nepal: An eternal struggle to exist, to be recognised and to participate

Nepal is a landlocked country located in the Himalayan mountain region and squeezed between China and India. It is also known as a Third Pole country as it is located in Earth’s Third Pole or Asian fresh water tower, which refers to the region which encompasses the Tibetan Plateau, the Himalayas and other surrounding mountains and is considered as the third largest reservoir of fresh water outside the polar regions of the Arctic and Antarctica.²⁷ In fact, 6000 rivers are flowing in Nepal

Footnote 21 (Continued)

Conexión de Mundos Antes las Cortes’ in Lieselotte Viaene and María Jacinta Xon (eds), *Aguas Turbias: Extractivismo (neo)liberal, acción jurídica indígena y transformación del Estado en Guatemala* (RIVERS ERC Project 2022) 89.

²² Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Michigan University Press 2004); Austin Sarat and Stuart Scheingol (eds), *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press 1998); Kieran McEvoy, Louise Mallinder, and Anna Bryson, *Lawyers in Conflict and Transition* (Cambridge University Press 2022).

²³ Orlando Aragón Andrade, ‘Intercultural Translation and the Ecology of Legal Knowledges in the Experience of Cherán, Mexico: Elements for a New Critical and Militant Legal Practice’ (2020) 15(1) *Latin American and Caribbean Ethnic Studies* 86; Francisco Vértiz, ‘Los Abogados Populares y sus Prácticas Profesionales: Hacia una Aplicación Práctica de la Crítica Jurídica’ (2013) 35 *Crítica Jurídica* 251.

²⁴ McEvoy, Mallinder, and Bryson, *Lawyers in Conflict and Transition* (n 22) 7.

²⁵ Viaene and González-Serrano, ‘The Right to Be, to Feel and to Exist’ (n 21).

²⁶ Viaene, ‘Indigenous Water Ontologies, Hydro-development and the Human/More-than-Human-Right to Water’ (n 12) 3.

²⁷ Tandong Yao, et al., ‘Third Pole Environment (TPE)’ (2012) 3 *Environmental Development* 52.



Fig. 1 Hydropower development in Marshyangdi corridor (©Nabin Baral/ERC RIVERS Project)

which makes it one of the most water-abundant countries in the world providing water for millions of people in the Himalayan region, and of high interest for national and international hydropower development projects and investors. Nepal has been described as a ‘hydropower nation’²⁸ in the making because of the mixture of rich water resources, energy scarcity because of shifting consumption needs, and the possibilities of exporting energy to its neighbouring countries China and India (Fig. 1).

A detailed recount of Nepal’s politics and history is beyond the scope of this research note, but a brief historical perspective helps to understand the broader context in which Indigenous lawyers need to navigate.²⁹ Nepal was never colonised by a foreign country, but emerged as a result of a territorial consolidation process which started in the early 1740s from the small Gorka kingdom. This country, with a population of almost 30 million people, has gone through multiple political transitions which transformed deeply the state-society relationships into the current federal, republic and secular state. Until the mid-19th century the country was under absolute control of the King where a ‘Hindu ritual-based hierarchy and inequality was legally recognised as the basis of the state’.³⁰ Moreover, Hindu religion and Khas Nepali language together formed a strong basis to discriminate against those groups who were not Hindu and who spoke languages different to this Indo-Aryan language, the

²⁸ Austin Lord, ‘Citizen of a Hydropower Nation: Territory and Agency at the Hydropower Development in Nepal’ (2016) 3(1) *Economic Anthropology* 145.

²⁹ This section is based on the work of Indigenous scholars and lawyers, see Pratyoush Onta, ‘The Growth of the Adivasi Janajati Movement in Nepal after 1990: The Non-political Institutional Agents’ (2006) 11(2) *Studies in Nepali History and Society* 303; Mukta S Tamang, ‘Indigenous People’s Struggle for Political Rights and Recognition: Constitution-making and Federal Design’ in Pranab Kharel (ed), *Reading Nepali Transition (2006-2015)* (Martin Chautari 2022) 163; Pranab Kharel, ‘Assessing Nepali Transition’ in Pranab Kharel (ed), *Reading Nepali Transition (2006-2015)* (Martin Chautari 2022); Krishna B Bhattachan, et al., *An Account of Indigenous Peoples’ Movement in Nepal: Compilation of Articles Published in The Indigenous World (2006-2020)* (Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples and International Work Group of Indigenous Affairs 2020).

³⁰ Onta, ‘The Growth of the Adivasi Janajati Movement in Nepal after 1990’ (n 29) 305.

mother tongue of high caste Hindus of hill origin. In fact, in the pre-1990 period, the state-backed Hinduism propagated a national caste hierarchy in which Nepali people were divided into categories according to the level of ritual purity in which the non-Hindu groups, today's Indigenous peoples, fell under the rubric of non-enslavable and enslavable *matwali* or alcohol-drinkers.³¹ As the Nepali language was the official state language in a country with more than 100 languages, language-based discrimination towards the non-Nepali groups was widespread. However, as a result of the overthrow of the three-decade old party-less and King-led Panchayat period, Nepal got a constitution in 1990 which recognised the Hindu kingdom for the first time as multi-ethnic and multi-lingual.³²

Alongside this new political landscape, in the early 1990s the *Adivasi Janajati* or Indigenous nationalities movement arose, one of the most influential social movements in the country, which started a process of identity-based claim-making, seeking to create a secular state free of discrimination against Indigenous Nepalis. This period was marked by an important definitional debate among Indigenous activists, scholars and leaders about which term(s) should be used to refer to non-Hindu ethnic groups in this Himalayan country. In short, *advivasi janajati* is what in English could be translated as Indigenous peoples and nationalities. *Janajati* translated into English means nationalities, while *advivasi* refers to original inhabitants or Indigenous peoples. During the previous Panchayat period, both these terms were not used, yet, they started to circulate in the 1980s to refer to historically disadvantaged groups. In 2002, the National Foundation for Development of Indigenous Nationalities Act (NFDIN), a state-led mechanism, created a working definition of who is and who is not an *advivasi janajati* which become legally binding. It defined Indigenous nationalities as 'a tribe or community as mentioned in the schedule having its own mother tongue and traditional rites and customs, distinct cultural identity, distinct social structure and written or unwritten history'.³³ In the preparatory discussion 61 *janajatis* were proposed, whereas the NFDIN only lists 59 groups as Indigenous Nationalities.³⁴ Furthermore, this 2002 Act has classified Indigenous Nationalities into five distinct categories based on their socio-economic status: ten groups as endangered, 12 groups as highly marginalised, 15 groups as disadvantaged and two groups as advanced. According to the 2011 census, 36 % of Nepali population are Indigenous peoples, however, eleven of the 59 groups of the NFDIN were not listed.³⁵ Therefore, the *janajatis* organisations claim that they are underrepresented in the census and that the actual Indigenous population comprises more than 50 % of the Nepali population.

³¹ *ibid.*

³² Article 4. In 1951 the country started to undergo a first deep political transformation as result of the overthrow of the 100-year ruling Rana dynasty and the instalment of a multi-party system under the Hindu King Tribhuvan monarchy.

³³ National Foundation for Development of Indigenous Nationalities Act 2058 (2002) s 2(a).

³⁴ Onta, 'The Growth of the Adivasi Janajati Movement in Nepal after 1990' (n 29) 312–313.

³⁵ National Planning Commission Secretariat, *National Population and Housing Census 2011: National Report* (Central Bureau of Statistics—Government of Nepal, Vol 1, 2011) 3.

At the end of the 1990s the country faced a new major transition, when the then Communist Party of Nepal-Maoist (CPN-M) started a so-called ‘People’s War’, driven by a legacy of centuries of feudalism in a Hindu Kingdom which was built upon a state-backed social and economic exclusion of the majority of its population: Indigenous peoples, lower castes and women. This civil war lasted ten years during which more than 13,000 people were killed, and other gross human rights violations were committed such as torture and forced disappearances by both armed parties.³⁶ While the Maoists did not originally incorporate ethnic identity-based claims in their policy, in the early 2000s the party proposed the creation of various ethnic autonomous regions.³⁷ A broader political agenda for a secular, federal republic started to get strong shape.

One of the key commitments of the 2006 Comprehensive Peace Accord, signed between the then CPN-M and the Nepal Government to end the armed conflict was the restructuring of the state.³⁸ In this larger political transition Indigenous peoples’ claims for recognition of collective political rights, such as autonomy, self-determination and inclusion stood at the centre of Nepal’s political debate. In the wake of this Peace Accord, Nepal ratified International Labour Convention No 169 of the Rights of Indigenous and Tribal People in 2007, the first and so far only country in Asia to do so, and adopted the United Nations Declaration on the Rights of Indigenous Peoples in the same year.³⁹ In the following years Nepal saw two Constituent Assemblies (CA), the first was elected in 2008 whose term ended in 2012 without a constitution, while the second CA was elected in 2013 and promulgated a new Constitution in 2015. In brief terms, identity and capability were seen as the fundamentals for federating the country and the CA-I made significant advancement in assuring proportional inclusion and meaningful participation of Indigenous peoples, although during the CA-II the proposed measures to accommodate *Janajati* demands such as autonomy, secularism, and inclusion were postponed or denied. In September 2015 a new Constitution was promulgated which recognised Nepal as a secular and federal state with seven provinces but lacked consent and acceptance of the Indigenous population. Today, key agenda points of Nepali politics are identity-based claim-making, unresolved transitional justice issues, and the development of the country’s hydropower capacity.

³⁶ United Nations Office of the High Commissioner for Human Rights, *Nepal Conflict Report: An Analysis of Conflict-related Violations of International Human Rights Laws and International Humanitarian Law between February 1996 and 21 November 2006* (2012) 14. See also Yvette Selim, *Transitional Justice in Nepal: Interests, Victims and Agency* (Routledge 2018).

³⁷ Kharel, ‘Assessing Nepali Transition’ (n 29) 9.

³⁸ *ibid* 7–15.

³⁹ See ‘Ratifications of C 169: Indigenous and Tribal Peoples Convention 1989’ (*NORMLEX: Information System on International Labour Standards*). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314. Accessed 26 October 2023.

3 *ERC RIVERS* project taking off in Nepal in Vajra Book Shop, touristic neighbourhood *Thamel*

When asking for recent academic publications about Indigenous peoples, water, transitional justice, and hydropower, Bidur Dangol, the owner of the renowned and popular Vajra Bookstore, smiled, saying that so far nobody has made this clear connection. As he asked about my interests, I explained that the following year, 2019, I would start a five-year research project in Spain with Nepal, Guatemala, Colombia, and the UN as research contexts. He was intrigued by the topics and countries and suggested to contact Dambar Chemjung, an Indigenous anthropology professor who was recently appointed as head of the Anthropology department in the Tribuvan University, Nepal's oldest public university. After an email introduction, I had a breakfast meeting with Dambar's department colleagues during which it was mentioned that there is an Indigenous lawyers association. In Guatemala I had already collaborated with Indigenous lawyers, so I was pretty curious to learn about their experience in Nepal. Dambar arranged a meeting with the Director, Secretary and Board of the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples, known as LAHURNIP. The Indigenous lawyers of LAHURNIP were very eager to learn more about the protection of Indigenous peoples' rights in Latin America. I shared with them my previous collaborative experiences with the Indigenous Lawyers Association *Nim-AjPu* in Guatemala which started in 2014, when I was invited to conduct a study *Maya Q'eqchi'* authorities about the state-led Xalalá hydroelectric project and its impact on their human rights. The policy report titled *What will happen to our sacred land and water?*,⁴⁰ which echoed new concerns of *Q'eqchi'* war survivors, was presented in March 2015 in different places in the country. The criminalisation of Indigenous leaders who were defending their territories reached a height when at the doorstep of the hotel in the capital where the report was presented, with an Indigenous litigator as one of the commentators, two well-known Indigenous authorities who were opposing a dam project in the Western highlands were captured by the police.⁴¹ Previously I also worked as human rights officer for the OHCHR in Ecuador where I was responsible for the areas of collective Indigenous and Afro-decedent rights and transitional justice. I was involved in the coordination of the creation of training material about collective rights for members and officials of the National Human Rights Institute, the military, the police force and the judiciary. The collective Indigenous rights to Free Prior and Informed Consent (FPIC) was one of the main hot political issues back then. In that first meeting at the LAHURNIP office a mutual interest grew to further collaborate through the RIVERS project, which was finally given follow-up in November 2022,

⁴⁰ Lieselotte Viaene, *La Hidroeléctrica Xalalá en Territorios Maya Q'eqchi' de Guatemala ¿Qué Pasará con nuestra Tierra y Agua Sagradas? Un Análisis Antropológico-Jurídico de los Derechos Humanos Amenazados* (Ghent University 2015).

⁴¹ Nelton Rivera, 'Preso político más: Rigoberto Juárez defensor del territorio' (*Prensa Comunitaria Km 169*, 24 March 2015). <https://comunitariapress.wordpress.com/2015/03/24/un-presos-politico-mas-rigoberto-juarez-defensor-del-territorio-2/>. Accessed 1 November 2023.

four years after our initial meeting, due to the impact of the COVID-19 pandemic which had obliged empirical research projects to postpone fieldwork.

In 2022, I started with interviewing some of LAHURNIP's Board members to learn more from their Indigenous legal actions to defend their individual and collective human rights in a country which is facing a transition from recent mass violence, in full articulation of a new federal state structure, and as mentioned above, is becoming a 'hydropower nation'.⁴² As one of the goals of the *ERC RIVERS* project is to foster a South-North-South dialogue via the different research contexts, and LAHURNIP wanted to learn more from Latin American experiences, we organised what was called a sharing meeting at the end of December in which almost 15 Indigenous lawyers and researchers participated. During that sharing meeting, at the request of the Director and Secretary, I shared the research results of the abovementioned research in Guatemala and Colombia. The three-hour sharing meeting was a huge learning process for both and sparked interesting cross-continental discussions about the challenges and pitfalls of Indigenous legal actions, decolonisation of law and society, rights of nature versus collective Indigenous peoples' rights, the emergence of new legal concepts, and other related themes.

This year, in April 2023, I returned for two weeks together with two of RIVERS team members with the goal to further develop the project in Nepal. Together with a post-doctoral Ecuadorian researcher, who is a lawyer, we conducted additional interviews for the RIVERS Podcast *Weaving Waters*⁴³ which creates a mosaic that brings together the voices of Indigenous and ethnic filmmakers, judges, lawyers, journalists and academics from different parts of the world.⁴⁴ Our podcast navigates the life stories of women and men belonging to historically marginalised peoples who now transition between their language, culture, community and territory, and the dominant culture in their society. One of the episodes is with Indigenous lawyers from Nepal and Guatemala sharing their visions on law, water, and human rights litigation, which are clearly embedded in their Indigenous being.⁴⁵ During those two weeks the RIVERS team also organised a workshop 'the Art of storytelling: sharing visions and practices'⁴⁶ with Nepali video and photojournalists and an Indigenous

⁴² Lord, 'Citizen of a Hydropower Nation' (n 28).

⁴³ 'Weaving Waters Podcast' (Spotify, 11 May 2023). <https://open.spotify.com/show/3er65uvRd5ruX5EMnrsLyU?si=01c63c2e93a84e6e>. Accessed 26 October 2023. The Podcast has been internationally launched during the online event 'Navigating digital streams, podcasting, digital media and Indigenous knowledge', see 'Seminar Weaving Waters / Seminario Hilos del Agua' (*RIVERS ERC Project*, 22 November 2023). <https://www.youtube.com/watch?v=B2nThOrZGE8&t=2s>. Accessed 27 November 2023.

⁴⁴ All the interviews have been recorded and the interviewees give their explicit consent to mention their names in publications.

⁴⁵ 'Weaving Waters Podcast Episode 2: Indigenous Lawyers: Weaving Rights' (Spotify, 19 November 2023). <https://open.spotify.com/episode/2QWtxkIzfgFgg0Th7sgzP?si=c2dc0d26107b4ba9&nd=1&dlsi=0039d1c88b91494b>. Accessed 28 November 2023.

⁴⁶ ERC RIVERS Project Hybrid Workshop, ERC RIVERS Project Hybrid Workshop, *The Art of Storytelling: Sharing Visions and Practices* (Kathmandu, 28 April 2023). RIVERS team members Ana Paula García, Digno Montalvan, Lieselotte Viaene, as well as Austin Lord, RIVERS academic advisor on Nepal, and audio-visual experts Nabin Barral, Prasiit Sthapit and Minket Lepcha participated in this workshop.

Lepcha documentary maker as part of the set-up process of a collaborative documentary filmmaking in the different research contexts of the project.

In July 2023 the project, comprising of the RIVERS research documentary coordinator, myself, and a Nepali Hindu documentary photographer, undertook a ten-day scouting trip along the Marsyangdi river which flows through the Manang and Lamjung districts of the Gandaki province in order to understand and visibilise the delicate balance between human and more-than-human beings enmeshed with hydropower development, and Indigenous legal action to protect humans, sacred water, rivers and land (Figs. 2, 3). The project selected this region as the LAHURNIP supports in the emblematic out-of-court legal action and research activities in coordination with the Free Prior and Informed Consent (FPIC) and Rights Forum from Lamjung district located in the Marsyangdi river basin regarding the 220 kV Marsyangdi Corridor Transmission Line, which is a key component of Nepal Power System Expansion Project (PSEP) and funded by the European Investment Bank (EIB). Along this river there are also several constructed and under-construction hydropower dams.⁴⁷ This explorative trip, during which we had several meetings and interviews with transmission-line-affected and dam-affected Indigenous and non-Indigenous peoples,⁴⁸ served to locate possible research and film sites for the next phases of the project.

4 Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

In the above described post-1990 period, several *Janajati* organisations emerged, of which the now called Nepal *Adivasi Janajati Mahasangh* or National Federation of Indigenous Nationalities (NEFIN)⁴⁹ is the most known one and which has been at the forefront of *janajati* Indigenous movement up to date. In this context LAHURNIP was established in 1995 by several Indigenous lawyers with the mission to advocate for the human rights of Indigenous peoples in Nepal. Their vision is that Indigenous peoples should be free from all forms of colonisation, discrimination, and racism, and should be participating through freely chosen representatives in state decision making processes.⁵⁰ According to Tahal Tami, LAHURNIP's Director, this is the only politically independent organisation working for Indigenous peoples in the sense that they are independent of political parties and particular political leaders.⁵¹ They are a small organisation with six to eight active members in Kathmandu and

⁴⁷ See Nabin Baral, 'Nepal's Marsyangdi Now the Portrait of a Dying River' (*The Third Pole*, 27 March 2020). <https://www.thethirdpole.net/en/energy/portrait-of-a-dying-river/>. Accessed 26 October 2023.

⁴⁸ All interviews were recorded during this July 2023 field trip, but, due to safety reasons, the names of the places and the names of the interviewees are anonymised.

⁴⁹ The original was the *Nepal Janajati Mahasangh* or the National Federation of Nationalities or NEFIN, founded in 1990.

⁵⁰ For LAHURNIP website, see 'We and Our Vision' (*Lawyers' Association for Human Rights of Nepalese Indigenous Peoples*). <https://www.lahurnip.org/we-and-our-vision>. Accessed 26 October 2023.

⁵¹ Lieselotte Viaene and Digno Montalvan, Interview with Tahal Tami, Director, LAHURNIP, (Kathmandu, 23 April 2023).



Fig. 2 Interview with transmission line affected Indigenous Gurung and Hindu Dalit people (©ERC RIVERS Project)



Fig. 3 Marsyangdi river in Tal Indigenous village, Manang District (©Nabin Baral/ERC RIVERS Project)

around thirty active Indigenous human rights defenders in different provinces and districts across the country (Fig. 4).



Fig. 4 Meeting with LAHURNIP, April 2023 (©ERC RIVERS Project)

4.1 Using the law to transform the law and the discriminatory state

Talking about the challenges Indigenous peoples face today, for Shankar Limbu, LAHURNIP's Vice Chairperson, discrimination is the biggest obstacle, and its sources are: 'One is the religion, the Hinduism, and another is the Constitution'.⁵² In fact, he clarifies in the interview that the Indigenous movement 'wanted to dismantle the caste hierarchical system, because, unless we don't dismantle it, we wouldn't have freedom, we wouldn't have equality, we don't have equal dignity in this state'.⁵³ In legal practice though, the judiciary remains mainly in the hands of Hindu high caste people who are not very open to Indigenous peoples' rights claims. Together with other LAHURNIP colleagues, Shankar Limbu analysed the 2015 Constitution from the perspective of Indigenous peoples' rights and found that of its 308 articles, 29 provisions are discriminatory, 49 articles are exclusionary and 11 clauses are against Indigenous peoples.⁵⁴ In fact, according to Dinesh Kumar Ghale, LAHURNIP's chairman and belonging to the *Ghale* Indigenous community which is not listed in the Act, 'the mindset has not changed' regarding Indigenous peoples in comparison with the previous Panchayat regime.⁵⁵

Reflecting upon their legal advocacy and actions, the interviewees recognise both sides of the law—that it is oppressive and transformative at the same time. Shankar Limbu explains that 'if the state is very racist and if the state is very undemocratic,

⁵² Lieselotte Viaene, Interview with Shankar Limbu, Vice Chairperson, LAHURNIP, (Kathmandu, 19 November 2022).

⁵³ *ibid.*

⁵⁴ Lawyers' Association for Human Rights of Nepalese Indigenous Peoples, *Annual Report*, (LAHURNIP 2016) 19.

⁵⁵ Lieselotte Viaene and Digno Montalvan, Collective interview with Dinesh Kumar Ghale, Chairman LAHURNIP, Bhim Rai, Secretary, LAHURNIP, and Manoj Rai, Communication and Advocacy Officer, LAHURNIP (Kathmandu, 26 April 2023).

then the state always creates injustice’, therefore ‘we aim to reform the law (...) because obeying the law is not enough to ensure justice’.⁵⁶ In a similar line, Tahal recognises that the law is very important for Indigenous peoples ‘because it is a tool, a weapon to fight against the state, because the state systematically marginalised Indigenous peoples’.⁵⁷ Interestingly, Guatemalan Indigenous lawyer Amílcar Pop, co-founder of the Association of Mayan Lawyers and Notaries,⁵⁸ shares a similar reflection: ‘in the context of the aspiration to transform the institutionality of power, the state must be penetrated’.⁵⁹ This resonates with a recent study about Indigenous lawyers in Canada which states that the law for Indigenous peoples is ‘a mechanism of assimilation, colonial governance and dispassion, a basis of the assertion of rights, and a method of resistance’.⁶⁰ Reflecting upon the concept of cultural expertise, I argue that Indigenous lawyers are using their legal and cultural expertise as a counter-hegemonic legal tool rooted in their Indigenous being to push for transformative and decolonising change of the Nepalese legal system.

Tahal explains that LAHURNIP works at different levels, from the community level to the international level. At the local level they support communities with pro bono legal support, they conduct research, and empower them through training, seminars, and workshops.⁶¹ For example, LAHURNIP published a study in 2022 about the impact of Dhorpatan Hunting Reserve and Chitwan National Park on Indigenous Peoples,⁶² and a study about Indigenous Peoples Community-Based Justice System in Nepal (Limbu and Santhal) in 2017.⁶³ In April 2023 I was invited to deliver a presentation during the three-day LAHURNIP training in collaboration with Indigenous scholars and activists, for Indigenous *Rai*, *Tamang*, *Limbu*, *Sunuwar*, and *Tharu* human rights defenders about topics such as the ILO Convention, NFDIN Act, climate and environment justice, accountability mechanism of international financial institutions such as the World Bank, Asian and European Investment Banks. As part of their litigation strategy, LAHURNIP mobilises communities to protest outside the court when there is a public hearing about their case, because very often the judges are not in favour of Indigenous peoples. Shankar Limbu sees Indigenous lawyers as ‘social engineers’ when it comes

⁵⁶ Digno Montalvan, Interview with Shankar Limbu, Vice Chairperson, LAHURNIP (Kathmandu, 28 April 2023).

⁵⁷ Viaene and Montalvan, Interview with Tahal Tami (n 51).

⁵⁸ Amílcar Pop is also founder of the first Mayan Student Association at the Public Universidad de San Carlos in the early eighties, he has been the main litigator in several emblematic cases regarding FPIC. He was a deputy in Congress for the WINAQ political movement.

⁵⁹ Lieselotte Viaene and Maria Ximena González-Serrano, Online Interview with Amílcar Pop, Co-Founder, Association of Mayan Lawyers and Notaries (21 September 2021).

⁶⁰ Lawrence and Shanks, ‘Indigenous Lawyers in Canada’ (n 16).

⁶¹ Viaene and Montalvan, Interview with Tahal Tami (n 51).

⁶² ‘Impact of Dhorpatan Hunting Reserve and Chitwan National Park on Indigenous Peoples in Nepal’ (Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples, 2022). <https://www.lahurnip.org/uploads/publication/file/impact-of-dhorpatan-hunting-reserve-and-chitwan-national-park-on-Indigenous-peoples-in-nepal.pdf>. Accessed 26 October 2023.

⁶³ Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples, *Indigenous Peoples Community-Based Justice System in Nepal* (2017).

to their work with Indigenous communities.⁶⁴ He explains that ‘everyone needs to know the law, the presumption is that everyone is capable to learn the law. But that is not possible, so my duty is to make everyone a lawyer. That’s the strategy, so the community can defend their rights themselves’.⁶⁵ He strongly believes that ‘It’s the people who give life to the dead letter of law and the decision of the Court’.⁶⁶

At the national level, LAHURNIP does advocacy with policy makers in order to reform laws and public policies to ensure the protection of Indigenous peoples’ rights. However, this legal advocacy work is not easy as Tahal explains, ‘It’s very difficult to deal with political parties. All political parties are captured by the ruling caste group. They are very much negative to Indigenous peoples’ issues and rights’.⁶⁷ At the international level, LAHURNIP has been actively involved in several UN mechanisms and processes such as the UN Permanent Forum of Indigenous Issues and the Expert Mechanism of Indigenous Peoples Rights. It is also an active member of the Asian Indigenous Peoples Pact (AIPP) and has contributed since 2006 to the yearly Indigenous World publication of IWGIA, a non-governmental organisation (NGO).

4.2 Using Indigenous expertise in out-of-court conflicts: Nepali hydropower nation versus Indigenous peoples’ rights

Asking about the current hot issues for Indigenous peoples, Tahal explains that ‘the most contentious issue at recent time is due to water, basically, hydropower projects and transmission line projects which are mostly operated and constructed in the land of Indigenous peoples’.⁶⁸ According to the Hydro Map Project, supported by the Asia Foundation, UK Aid and Development Initiatives, and implemented by Niti Foundation, there are 81 hydropower projects in operation, 180 under construction and 311 under licences survey.⁶⁹ In May 2023, a press note was published, based on the latest statistics of the Nepal Electricity Authority, the Alternative Energy Promotion Centre and private sector power producers, indicating that the country is close to be transformed into an electricity self-reliant economy.⁷⁰ However, Nepal’s hydropower development shows the strong colliding of hydropower policy with a strong focus on financial distributive concerns on the one hand and ethnic

⁶⁴ Viaene, Interview with Shankar Limbu (n 52).

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ Viaene and Moltalvan, Interview with Tahal Tami (n 51).

⁶⁸ *ibid.*

⁶⁹ ‘Map of Hydropower Distribution, Status and Capacity’ (*Nepal Hydropower Portal*). <https://hydro.naxa.com.np/>. Accessed 26 October 2023.

⁷⁰ Rajesh Khanlal, ‘Nepal within an Inch of Transforming into Electricity Self-Reliant Economy’ (*My Republica*, 16 May 2023). <https://myrepublica.nagariknetwork.com/news/nepal-within-an-inch-of-transforming-into-energy-self-reliant-economy/>. Accessed 26 October 2023.



Fig 5 Transmission line project in Besisahar, Lamjung district (©Nabin Baral/ERC RIVERS Project)

mobilisations demanding self-determination regarding development and control over natural resources on the other hand.⁷¹

Tahal shares further that the government is always very aggressive in the regions where the projects are executed, deploying police force, even military force to assure the operation of these projects and to suppress the voices of affected Indigenous peoples (Fig. 5). One of the main claims is the lack of FPIC regarding the planning and implementation of these hydropower projects and the associated transmission lines projects in Indigenous lands. LAHURNIP has been advocating for the compliance of Indigenous peoples' rights in several big projects. As mentioned above, the *ERC RIVERS* project will further study a successful joint complaint together with FPIC and Rights Forum from Lamjung to the Complaint Mechanism regarding the European Investment Bank funded 220 kV Marsyangdi Corridor High voltage transmission line and associated hydropower sector development in that region. The FPIC and Rights Forum is an umbrella organisation for local-level Struggle Committees of Indigenous and non-Indigenous people affected by various power sector projects in the Lamjung district of Nepal, including the 220 kV Marsyangdi Corridor, which is slated to pass over their homes, lands, forests, and community spaces (Fig. 6).

LAHURNIP, together with the Accountability Council, a United States-based NGO, supported the FPIC and Rights Forum in submitting in October 2018 a 44-page document to the Complaints Mechanism of the European Investment Bank with a long list of complaints based on communities' perspectives about the impact of the Nepal PSEP and especially the 220 kV Marsyangdi Corridor, and a request for a multi-party dialogue between the affected communities and funders, Nepali

⁷¹ Thomas Sikor, et al., 'Brokering Justice: Global Indigenous Rights and Struggles over Hydropower in Nepal' (2019) 40(3) *Canadian Journal of Development Studies/Revue canadienne d'études du développement* 311.



Fig. 6 From left to right: Chandra Misra (Secretary) and Kemjung Gurung (Chairperson) FPIC and Rights Forum Committee (based in Besisahar, Lamjung district) and Balkrishna Baral, social geographer (Besisahar) (©Nabin Baral/ERC RIVERS Project)

authorities and promoters.⁷² The section about community perspectives asks for the need for a holistic assessment of the associated hydropower sector development in the region and describes the communities' concerns about the project's failures to follow international and domestic law. Between July 2018 and September 2019, the FPIC and Rights Forum, with the support of both legal counterparts, conducted a community-led survey in the Lamjung district with results translated into a visual infographic.⁷³ In May 2021, three years after the complaint was submitted, an investigation, considered as a landmark report, found that the EIB must take urgent steps to uphold Indigenous peoples' right to FPIC in its funding of the hydropower sector. The report found that the EIB overlooked the project's impact on Indigenous peoples, including that a mandatory FPIC process was not conducted. The EIB Complaints Mechanism has recommended that 'major lenders and development partners in the energy sector coordinate efforts and -with the help of experts- work closely [...] to develop a tailor-made approach for meeting FPIC requirements in energy projects in Nepal'.⁷⁴

During our scouting trip following the 220 kV Marsyangdi Corridor Transmission Line, collaborators of the FPIC and Rights Forum in different villages stressed the importance of LAHURNIP's legal and research support and highlighted that

⁷² 'Complaint Submitted by FPIC and Rights Forum from Lamjung to Complaints Mechanism of the EIB' (*Lawyers' Association for Human Rights of Nepalese Indigenous Peoples*, 8 October 2018). <https://www.lahurnip.org/complaint-submitted-by-fpic-and-rights-forum-from-lamjung-to-complaints-mechanism-of-the-eib>. Accessed 26 October 2023.

⁷³ 'Community Perspectives of the 220 kV Marsyangdi Corridor' (*Lawyers' Association for Human Rights of Nepalese Indigenous Peoples and the Accountability Counsel*, May 2019). <https://www.lahurnip.org/uploads/publication/file/5-16-19-lamjung-survey-infographic.pdf>. Accessed 26 October 2023.

⁷⁴ 'Nepal Power System Expansion' (*European Investment Bank*). <https://www.eib.org/en/about/accountability/complaints/cases/nepal-power-system-expansion1-sg-e-2018-39>. Accessed 26 October 2023.

they are a non-political organisation while the nature of their work and its impact is highly political. In fact, thanks to the support work of LAHURNIP they finally received information about the Transmission Line project and became aware of their rights. According to the interviewees, they have now been finally invited to what is called table talks to be informed about the impacts and negotiate about the project in their lands. According to the affected villagers, that occurred thanks to the positive outcome of the Complaints Mechanism, and the fact that the European Investment Bank put the loan on hold until the Nepali Electricity Authority complies with its obligations.

5 Directions for further explorations: The nexus between Indigenous water and land ontologies and the politics of transmission lines and hydropower

When asking LAHURNIP's Director Tahal, what water means for him, he explains:

For Indigenous people it's very crucial water. We worship water, we respect water, we protect water, we compare water to our life. In our Indigenous culture, for instance, in this river there is a bridge, if you cross the bridge you should show respect to the water, the river. [...] Now it is a little bit different, but we offer wine to the river. We just do like it to show our respect, and sometimes we also offer rice for respect and worshiping butter, with what we call the source of the water. [...] In our concept, if you pollute the source of water, you'll get sick, you'll have problem, health problem, if you pollute the water.⁷⁵

Also, during our scouting trip, we heard and witnessed the negative impact of the transmission lines and hydropower projects on sacred places along the river, such as cremation places for Indigenous peoples and Hindu people. As discussed elsewhere,⁷⁶ this Indigenous expertise which stresses the duty of humans to respect and honour water bodies and land, such as rivers, and which recognises the agency of these water bodies—rivers can become angry when polluted or dammed—is not yet taken seriously by conventional human rights advocates. The *ERC RIVERS* project will further develop the research in Nepal in order to grasp more fully the different cultural/ontological, socio-political and power issues at stake when the continuous flow of the Marsyangdi river is blocked and transmission lines are constructed on the surrounding fertile lands.

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⁷⁵ Viaene and Montalvan, Interview with Tahal Tami (n 51).

⁷⁶ Viaene, 'Can Rights of Nature Save Us from the Anthropocene Catastrophe?' (n 2).

Declarations

Competing interests The author has no competing interests to declare that are relevant to the content of this research note.

Ethics approval The Research project received ethical review and approval from the Ethics Committee of the European Research Council (ERC) in 2018. Informed consent was obtained from all subjects involved in the study.

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