



Rights of Rivers South Asia (Alliance)

Genesis

In March 2020, a dialogue focusing on Rights of Rivers in South Asia was hosted in New Delhi, India co-organised by Kalpavriksh, International Rivers and LIFE. The participants included activists, lawyers, academics, researchers, and community members. A primary goal was to unpack and support the emerging Rights of Nature movement with a focus on rivers in South Asia. (The full report of the dialogue can be accessed [here](#)).

Recognising the need for transboundary collaboration, an alliance called ‘Rights of Rivers South Asia’ (RoRSA) emerged as a follow-up to the dialogue. RoRSA is committed to representing the interests of free-flowing and healthy rivers, and their dependent communities, in South Asia. Evolving as a network of organisations, individuals, and other networks from South Asia and across the world, RoRSA is non-hierarchical, horizontal, democratic, inclusive and non-centralized.

RoRSA aims to foster dialogue and collaboration around the concept of Rights of Rivers, and to enable community empowerment, regeneration, conservation and responsible policymaking. Inspired by the worldviews of local and indigenous communities across South Asia and the world, we recognise that systemic changes that honour the deep interconnections between humans and nature are essential in order to transform destructive current paradigms of development.

Background

South Asia is home to millions of vulnerable people who are majorly dependent on nature for their basic needs. Extractive practices, the commodification of nature, large-scale encroachments, and ineffective governance mechanisms have devastated ecosystems, imperiled communities, and resulted in extensive loss of livelihoods and cultural heritage. Climate change-induced impacts, including extreme rainfall, altered crop growth patterns, changes in biodiversity, increased incidence of diseases, sea-level rise, glacier melt, heat waves, droughts and floods, etc. pose significant new challenges.

Effective and enforceable law and policy paradigms that can address the planetary crisis and reimagine ways of peaceful co-existence amongst all living beings are urgently needed. Rights of rivers offer a compelling approach towards these complex, inter-related, and transboundary problems, both in South Asia and globally.

Legal Status in South Asia – The Rights of Nature and Rivers

South Asia is amongst the global hotspots of the Rights of Nature movement. While the diverse countries in the region have seen distinctive trajectories in the development of environmental law and policy, there have been promising developments in several countries towards recognizing the Rights of Nature. In Bangladesh, Bhutan, and India, the courts have recognized the Rights of Nature and other eco-centric legal principles. In other countries, such as Nepal and Pakistan, the movement is advancing through community and civil society-led initiatives that call upon the government to recognize the Rights of Nature. Legislative bodies have lagged behind the court in recognizing the Rights of Nature. While South Asian legislatures have passed a large body of rules and regulations safeguarding the environment, they have not yet defined the rights of the environment or rivers in specific.

South Asia received global attention when courts in India made a series of rulings recognizing the Rights of Nature. Starting in 2012, the Supreme Court of India explicitly recognised the need for an ‘eco-centric’ (non-anthropocentric) approach that included consideration of the best interests of species, specific rights for animals, etc. In 2017, the High Court of Uttarakhand ruled that the Indian rivers Ganga and Yamuna, the Gangotri and Yamunotri glaciers, as well as other related parts of nature, are “legal and living entities having the status of a legal person, with all corresponding rights, duties and liabilities”. The Supreme Court of India subsequently stayed the implementation of these orders. Despite the Supreme Court’s decision to stay this case, in 2018, the High Court of Uttarakhand recognized the entire animal kingdom as legal entities with rights, and in 2020, the Punjab and Haryana High Court recognized Sukhna Lake as a living entity with rights.

Bangladesh has also established bold Rights of Nature precedent. A 2019 judgement from Bangladesh’s High Court recognised the river Turag as a living entity with legal

rights and held that the same would apply to all rivers in Bangladesh. Further, in another case, the High Court formed a committee headed by the Deputy Commissioner (DC) of Chattogram in order to protect biodiversity, the environment, fish and dolphins of the Halda river. The Bangladeshi judiciary is continuing supervision of Rights of Nature and has ordered closure of 231 unauthorized factories on the Buriganga River in enforcement of its rights.

These substantive developments have been accompanied by procedural Rights of Nature developments in Bhutan. In 2018, the Royal Court of Justice of Bhutan created a “Green Bench”, which has jurisdiction over environmental cases. The creation of the Bench was accompanied by the development of a “Bench Book” issued by Bhutan’s Chief Justice. The Bench Book allows for environmental cases to be brought by any person as a “trustee” of nature, and provides that the usual rules of evidence need not apply in such cases. The Bench Book was motivated in part by a recognition of human obligations to the environment, and in particular (reflecting Article 5 of the Bhutanese Constitution), that “every person would have a duty to protect the environment.”

Similarly, in Nepal, there is a new effort to recognize the Rights of Nature that builds from its longstanding recognition of the public trust doctrine. Already, the Constitution of Nepal upholds the public trust doctrine and includes a statement requiring the wise use of natural resources, including water. Other laws, such as the Water Resources Act 1992 and Civil Code 2017, entrust public trust responsibilities to the Government of Nepal. The Supreme Court of Nepal has also affirmed that natural resources, including rivers, fall under the public trust doctrine and ruled that the state must ensure intergenerational justice and equity when utilizing such resources. Now, the ‘rights of rivers’ are being considered by members of the federal parliament in a proposed Water and Sanitation Bill and Water Resources Bill, which would be a breakthrough for the movement.

In Pakistan, there has been a rising and emergent movement against dams and diversions of river flows by local people, including members of political parties and trade unions, students, and activists citing reasons of obstruction of ecological flow, increasing impacts of climate change (due to water storage increasing greenhouse gases), and impact on livelihoods in the dying Indus River Delta. There is also a movement to recognize the rights of the Indus River.

Several of the above developments are related to granting rivers rights in various forms. However, there is a dire need for clarity on what granting rights for rivers would mean and imply. What do rights mean for rivers and river-dependent communities? How can these rights be implemented in practice? What standards of river protection would uphold the rights of rivers if fully enforced? How do humans most effectively speak on behalf of the rights of rivers? How can we ensure a bioregional approach for the equitable and transboundary stewardship of nature amongst communities and wildlife, particularly in the time of climate change? Who

should serve as legal guardians of rivers, such as members of local communities, and how do we ensure they act in the best interest of nature? Or should anybody be entitled to defend the Rights of Nature? Once a river's rights are recognized in one country, can those rights "flow" with it into another country, or will multinational agreements become necessary? If the rights of a river are recognized in one country, can those rights extend into another country in which the same river flows? RoRSA strives to help answer many of these challenging questions.

Rights of Rivers - What do we mean?

At a dialogue focusing on Rights of Rivers in South Asia in March 2020, participants responded to the prompt of "What do we mean by the rights of rivers?" with the following inputs:

- Rivers have a right to be healthy and flow unhindered.
- A river must be able to maintain three types of continuity - linear (along the direction of its flow), vertical (with the ground) and horizontal (over its floodplains).
- Our definition of a river is at ecosystem level which includes the entire watershed and its residents. We also acknowledge human dependence on this ecosystem.
- Accommodating traditional/local/subsistence uses must be considered within any definition of the rights of rivers. There should also be a priority/hierarchy of uses with regulation or prohibition on large-scale/commercial uses.
- In South Asia, an essential addition to the Declaration is the 'right to its own spirit' since rivers and the water contained in them have spirits, too.

The [Universal Declaration of Rights of Rivers](#) is a useful starting point for this inquiry into what is included within the ambit of the expression "rights of rivers", and it is important to refer to the main provisions in brief here. This document declares that "ALL RIVERS ARE ENTITLED TO THE FUNDAMENTAL RIGHTS set forth in this Declaration", further declares that "all rivers are LIVING ENTITIES that possess legal standing in a court of law", and establishes that all rivers shall possess, at minimum, the following fundamental rights:

- “(1) The right to flow;
- (2) The right to perform essential functions within its ecosystem;
- (3) The right to be free from pollution;
- (4) The right to feed and be fed by sustainable aquifers;
- (5) The right to native biodiversity; and

(6) The right to regeneration and restoration.”

The Declaration further establishes that these rights are intended “not only to ensure the health of rivers, but also the HEALTH OF WATERSHEDS AND RIVER BASINS of which rivers are a part, as well as the health of all ecosystems and natural beings therein, all of which possess, at minimum, the fundamental rights to exist, thrive, and evolve”. The Declaration maintains that “each river shall be entitled to the independent appointment of one or more legal guardians that act solely ON BEHALF OF THE RIVER’S RIGHTS and who may represent the river in any legal proceeding...with at least one legal guardian being an INDIGENOUS REPRESENTATIVE for those rivers upon which indigenous communities traditionally depend.” The Declaration further determines that “rivers shall have THEIR BEST INTERESTS, as determined by their legal guardians, assessed and taken into account by both government and private entities in all actions or decisions that concern such rivers”. The Declaration resolves that “all states shall implement these rights in full within a reasonable amount of time, including by developing and acting upon AN INTEGRATED ASSESSMENT of watershed health according to the most recent understandings and in partnership with all stakeholders”, and strongly “urges all governments to ensure prompt and adequate financial mechanisms to realise these FUNDAMENTAL RIVER RIGHTS, including the right of all rivers to restoration”. Finally, the Declaration asserts that “governments shall consider for decommission all dams that lack a compelling social and ecological purpose, and that new dam construction shall only occur when necessary to achieve a compelling social and ecological purpose that cannot be met by other reasonable means, with the FULL FREE, PRIOR, AND INFORMED CONSENT OF IMPACTED INDIGENOUS PEOPLES AND COMMUNITIES...In the longer term, society shall find dam alternatives that allow for free-flowing watershed corridors and incrementally progress towards a dam-free world in a manner that is respectful of the rights of those human and nonhuman communities that have adapted to the status quo.”

Philosophy of the RoRSA Alliance

As members of RoRSA, we believe:

1. That the rest of nature (like humans) has the intrinsic right to live, thrive and perform their ecological functions.
2. That humans are an intrinsic part of the larger web of life, and are interrelated and interconnected to other beings. Being primary drivers of change, humans have the responsibility to work towards harmonious relations between all inhabitants on earth as well as of future generations.
3. That there be equity and principles of justice amongst humans and their interactions with the “more-than-human world”. We focus on environmental and social justice issues of access and participation of vulnerable groups in

decision making, community ownership, gender considerations and caste dynamics as we believe it informs environmental justice.

4. That indigenous and local subsistence based communities (both rural and urban) be recognized as primary custodians of their immediate natural ecosystems and have the right and freedom to manage their own lives which ensures the health and wellbeing of rivers.
 5. That creating transboundary solidarities, new borderless bioregional configurations be based on ecological grounds that will lead to enduring peaceful relationships in the South Asian region.
 6. That there is immense value and importance of democratic decision-making at the level closest to the natural ecosystems under consideration or that are being impacted.
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