

BENELEX Working Paper No 20

Reflections on methods from an interdisciplinary research project in global environmental law

**Louisa Parks
Elisa Morgera**

This paper is part of the project “BENELEX: Benefit-sharing for an equitable transition to the green economy - the role of law,” which is funded by the European Research Council Starting Grant (November 2013-October 2018) - Grant Number: 335592:

<http://www.strath.ac.uk/research/strathclydecentreenvironmentallawgovernance/ourwork/research/benelexproject/>.



1. Introduction

This research note presents brief reflections on experiences and challenges experienced during a 5-year, interdisciplinary and multi-site research project investigating fair and equitable benefit-sharing as a concept in global environmental law.¹ We understand global environmental law as a sub-set of transnational environmental law, namely as law that not only transcends national frontiers but also has a global justification (a ‘commitment to a shared purpose’)² and in particular law based on an international environmental treaty objective (benefit-sharing) that travels across different legal orders.³ The note focuses specifically on the methods used to study fair and equitable benefit-sharing across five local-community case studies, and on the experience of the intricate links between research methods and questions of research ethics. It provides a brief overview of the steps we took in designing our research project from ontology to methodology and the choice of methods – common in the social sciences – to be applied to the study of international environmental law at different levels and in different sites. In our research experience, local community-based research, research methods, and questions of ethics intertwined to indicate new avenues for investigation of international environmental law and international environmental treaty bodies.

Although our focus is on methods and ethics, some background on our research project including its methodology is necessary. Indeed, a feature of the debate on methods and the study of international environmental law is that it has, on occasion, fudged the definition of methodology in such a way as to suggest it is synonymous with method.⁴ Following the established and voluminous literature on political and social research design, we follow the common definition of methodology as a ‘toolbox’⁵, and as (at least ideally) consciously and carefully derived from ontological and epistemological decisions deriving from research interests. Methods, in this view, are not necessarily tied to any one particular methodology, as the mixture of traditional legal, quantitative and qualitative social scientific methods used in our project illustrates.⁶ As the tools we use to carry out research, they do however have a close and immediate connection to questions of ethics arising in the course of doing research. Methodology (and preceding questions of ontology and epistemology) also carry ethical considerations – yet our focus here is on moving away from this well-

¹ BeneLex, Benefit-sharing for an equitable transition to the green economy – the role of law, funded by the European Research Council (grant 335592).

<https://www.strath.ac.uk/research/strathclydecentreenvironmentallawgovernance/benelex/>

² E Morgera, ‘Global Environmental Law and the Comparative Legal Method(s)’ (2015) 24 *Review of European Community and International Environmental Law* 254, drawing on N. Walker, *Intimations of Global Law* (Cambridge University Press, 2015), 15-18.

³ E Morgera, ‘Bilateralism at the Service of Community Interests? Non-judicial Enforcement of Global Public Goods in the Context of Global Environmental Law’ (2012) 23 *European Journal of International Law* 74.

⁴ E Fisher, B Lange, E Scotford and C Carlane, ‘Maturity and Methodology: Starting a debate about Environmental Law Scholarship’ (2009) 21 *Journal of International Law* 213.

⁵ J W Moses and T L Knutsen, *Ways of Knowing: Competing Methodologies in Social and Political Research* (Second edition, Palgrave Macmillan, Basingstoke 2012).

⁶ L Parks and E Morgera, ‘The Need for an Interdisciplinary Approach to Norm Diffusion: The Case of Fair and Equitable Benefit-sharing’ (2015) 24 *Review of European Community & International Environmental Law* 353.

trodden area and into the less discussed area of ethical decision-making on the ground as research unfolds. Our iterative view of methods and ethics illustrates how methods may feed back into methodological considerations and produce new research questions.

In the remainder of these brief reflections, we will first give an overview of the project methodology. We will then discuss our methods in more detail, underlining how they can be useful tools for approaching the study of new objects in global environmental law. A deeper discussion linking methods and ethical questions follows, where we focus on how taking ethics seriously can itself produce new and fruitful paths for research in global environmental law in an interdisciplinary perspective.

2. Benefit-sharing as an emerging norm in global environmental law – a research methodology

The starting point for our project is constructivist. Ontologically speaking, we see meaning as socially constructed in interactions between different actors. This applies to international environmental law both in the arenas where the law is made and in its successive interpretation, and in the local communities where international environmental legal norms are eventually applied. This starting point is in our opinion a suitable one for the subject matter of our research – the still unsettled legal concept of fair and equitable benefit-sharing. Specifically, we were interested in the progressive development, at both international and local levels, of international law on fair and equitable benefit-sharing – a concept arguably supporting equitable partnership-building among State and non-State actors in international environmental and human rights law with regard to bio-prospecting, conservation, natural resource use and production of knowledge.⁷

As our interest was in a specific concept of international environmental law as well as its development at multiple levels, we saw reason to design our research in a way that would allow us to pay attention to the negotiation of meaning. A constructivist departure point in line with this ambition led us in turn to an interpretivist epistemology. In this vein, we understand relevant knowledge about fair and equitable benefit-sharing to exist not only in legal artefacts such as legislation or treaties, but also in real-life applications and points of view. In other words, knowledge about the meaning of fair and equitable benefit-sharing, as constructed by various actors, lies in the social realm as well as in the codified universe of formal legal sources. Our methodology, as distinct from our methods, flows from these considerations. We reasoned that an interdisciplinary methodology would be best suited to house an interpretivist consideration of both law and the social and political worlds associated with fair and equitable benefit-sharing and its application or discussion at different levels.

A brief word on our theoretical approach serves to illustrate the methodology.

⁷ E Morgera, 'The Need for an International Legal Concept of Fair and Equitable Benefit-sharing' (2016) 27 *European Journal of International Law* 353. See also Parks and Morgera (n 6).

We drew on theories of norm diffusion from law, international relations and political sociology to consider how each approaches the construction of meaning at different sites and build an interdisciplinary basis for our work. In a nutshell, the existing literature across the three disciplines underlines how politics and law play crucial roles in both how norms travel or diffuse and in how they are framed or adjusted to fit different social and cultural contexts. This fits with our ontological and epistemological considerations to form a methodological approach that aims to capture the ways that the meaning of fair and equitable benefit-sharing shifts and is renegotiated at different sites – that is how the law lives and evolves over time. An interdisciplinary methodology housing legal and political sociological analyses was thus built with the intention of investigating the construction of meaning at the international and local levels.⁸

This note focuses on our research exploring meanings and issues constructed around benefit-sharing at the local level. We thus zoom in on that part of our chosen methodological approach designed with this part of the research in mind. Our methodology for researching global environmental law in local communities, which we then populated with both legal and political sociological methods, was a ‘most different systems’ comparative case-study design. These comparative local community case studies complemented research on various areas of international environmental law.⁹ In a less expected turn, as discussed later, the local-level case studies also generated new avenues for international environmental law research. Finally, for the political sociological work, the comparative case studies revealed a number of common areas of concern in local discussions of benefit-sharing that drove a political sociological analysis of international environmental law.¹⁰ In this sense, the present research note aims to illustrate methods used for local-level research, but designed with the aim of slotting into multi-level research on conceiving of environmental law in a global sense.

In more detail, our methodological choice for comparative case studies was driven by our constructivist viewpoint. To unravel how benefit-sharing was framed, that is how its meaning was constructed, in different local settings, case studies were a clear choice. The limited amount of information available about benefit-sharing in a comparative perspective (the bulk of the literature focuses on single local-level cases or sectors, or the norm’s negotiation and application via international instruments) drove the choice for a comparative case-study approach with a most different cases design. By seeking as much variation on points of interest as possible, we reasoned, any common traits arising from the case comparison would be more robust albeit not generalizable. We decided on a total of five case studies to allow both comparison and the type of in-depth knowledge generation provided by small-N case study research.¹¹ A total of five case studies was also considered feasible given the length of the project (five years).

⁸ Parks and Morgera (n 6).

⁹ Ibid.

¹⁰ L Parks, ‘Spaces for local voices? A discourse analysis of the decisions of the Convention on Biological Diversity’ (2018) 9 *Journal of Human Rights and the Environment* 141.

¹¹ D Della Porta, ‘Comparative analysis: case-oriented versus variable-oriented research’, in D Della Porta and M Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (Cambridge University Press, Cambridge 2008).

This methodological choice necessarily involved some trade-offs. In particular, the number of cases we hoped to study and the length available for the project drove further practical choices about case selection that had knock-on effects on the methods we could feasibly apply. Most importantly, we decided to work with NGOs that were in turn working closely with local communities. Our reasoning was that five we did not dispose of the lengths of time needed to build relationships and a deeper level of understanding of five different local communities, not to mention the time needed to locate communities discussing issues around benefit-sharing. By working with NGOs that were active on benefit-sharing issues both internationally and locally, we were able to learn from their work prior to research visits, as well as rely on their advice about the best ways to approach research visits, not least on questions of ethics and appropriate methods. Most importantly for the methodology, we selected our cases by drawing on the knowledge of NGO partners about local communities discussing issues around benefit sharing. This allowed us to guarantee our most different systems design by selecting cases where communities were: 1) at different stages of discussion around benefit-sharing; 2) discussing benefit-sharing in relation to different natural resources; and 3) in different countries with varying governmental and legal backdrops. In particular, we operationalized the idea of discussions around benefit-sharing through community protocols. In other words, if a community was at some stage of a discussion about community protocols, this was taken as an indication of a discussion about aspects of benefit-sharing.¹²

The decision to work with NGOs was nevertheless taken with the awareness of potential baggage. A substantial body of literature on civil society notes that NGOs may become (albeit unwittingly) actors in the expansion of neoliberal systems seen as damaging to many communities, for example by allowing states to avoid providing vital services, or by creating dependencies.¹³ Inspired by the literature on participatory action research, we thus sought to build working relationships with NGOs involved closely with communities in long-term projects and relationships, as we considered them to be best placed not only to advise us about appropriate methods but also to allow our research to feed into ongoing community support (as discussed in more depth later).¹⁴ We also decided to include two visits to each local community in order to build in a feedback loop.

Following these methodological considerations, we chose five local case studies with our NGO partners, paying particular attention to the likelihood these communities would consent to participating in the research (our NGO partners made preliminary investigations on our behalf to determine this). The communities were located in South Africa, Namibia and Malaysia, where we worked with the NGO Natural Justice¹⁵, in Greece, where we worked with the Documentation, Research and Action

¹² L Parks 'Challenging power from the bottom up? Community protocols, benefit sharing, and the challenge of dominant discourses' (2018) 88 *Geoforum* 87; L Parks and E Morgera (n 6).

¹³ M Kaldor, *Global Civil Society: An Answer to War* (Polity Press, Cambridge 2003); AA Choudry and D Kapoor, *NGOization: Complicity, Contradictions and Prospects* (Zed Books, London 2013).

¹⁴ E Pittaway, L Bartolomei and R Hugman, 'Stop Stealing Our Stories: The Ethics of Research with Vulnerable Groups' (2010) 2 *Journal of Human Rights Practice* 229.

¹⁵ <https://naturaljustice.org/>, accessed 17 January 2019.

Center of Ikaria¹⁶, and Argentina, where we worked with the Foundation for the Environment and Natural Resources.¹⁷

In Greece we visited Ikaria, where traditional goat pastoralists and other groups of citizens were discussing issues around access to land for grazing¹⁸. Pastoralists have long fulfilled key economic and cultural roles in Ikaria. Their access to land is customary – all types of land in Ikaria, both private and public, have generally been considered as commons where officially so or not. In recent years access to land for grazing has however become more complex. Issues have arisen against a backdrop of European Union rules on agricultural subsidies, food safety and animal welfare as well as the response to the financial crisis in Greece which, together, have contributed both to a rise in the goat population, threatening the island's delicate ecosystem, and placed various political issues about land use in relief. The South African case focuses on a formally organised group: the Kukula traditional health practitioners' Association. This group produced a community protocol in 2009¹⁹ to highlight their work in communities and threats to biodiversity in the area they reside in which is adjacent to Kruger national park. At the time of our first visit, the group were discussing how to improve their access to medicinal plants in protected areas, as well as the preservation of their cultural heritage that relieve on this access²⁰. On our second visit, the Kukula Association was discussing how to renew their original community protocol to reflect these issues and had made significant progress in terms of formal recognition from a range of actors. The Namibian case also touches on issues of cultural reproduction, this time in connection with wildlife management and traditional knowledge held among Khwe residents of Bwabwata national park. Historically, this group hunted and gathered food in what is now a core area of the park. Due to a range of issues, the communities fear that their traditional knowledge is in danger, and is crucial for their livelihoods. They began to draft a community protocol with a view to elaborating their ideas about how to support their traditional knowledge reproduction.

The Argentina case focuses on extractives – specifically lithium mining in the north of the country. 33 indigenous communities resident around the salt planes of Salinas Grandes and Laguna de Guallatayoc in the Andes were concerned about how environmental impact assessments were unfolding when mining companies began to secure exploration licences on their lands. Among other actions, the communities worked to draft a community protocol detailing consultation and consent procedures, linking these to understandings of the world through Buen Vivir and the natural salt cycle, as well as international law. Their community protocol has been recognized and contributed to the suspension of licences, though these have now been resumed.

¹⁶ <https://ikariandocs.wordpress.com/about-ikarian-documentationresearch-and-action-center/>, accessed 23 July 2018.

¹⁷ Fundacion Ambiente y Recursos Naturales, <https://farn.org.ar/>, accessed 23 July 2018.

¹⁸ See Parks (n 12).

¹⁹ Biocultural Community Protocol of the Traditional Health Practitioners of Bushbuckridge, available at http://communityprotocols.org/wp-content/uploads/documents/South_Africa-Bushbuckridge_Biocultural_Protocol.pdf, accessed 17 January 2019.

²⁰ R Sibuye, M-T Uys, G Cocchiario & J Lorenzen, 'The Bushbuckridge BCP: Traditional healers organise for ABS in South Africa in Participatory learning and action, biodiversity and culture: exploring community protocols, rights and consent' (2012) International Institute for Environment and Development, 101. <http://pubs.iied.org/pdfs/G03403.pdf>, accessed 17 January 2019.

Finally, the Malaysian case explores the work of the Kelabit community of Bario, Sarawak, to secure the survival of Bario rice, a unique variety. Here, an aging population, increased social mobility and labour shortages meant that rice cultivation had fallen rather dramatically. Community members, often resident elsewhere yet extremely active on a range of issues on behalf of their community, secured state government subsidies for a tri-partite management deal to ensure that more rice would be grown. The scheme brought up a range of questions, mostly amongst residents in Bario, around traditional and industrial farming techniques. Though at very initial stages, the possibility of a future community protocol has been raised.

Reflections on methods for studying global environmental law

In this section we discuss the actual methods we employed to study global environmental law within local community discussions around benefit-sharing. The methods – that is the tools in our methodological toolbox – are commonly used across social science disciplines. Nevertheless, we have seen little literature in the legal field discussing methodological points linked to these methods²¹, and were unable to locate any literature on practical and ethical aspects linked to these methods when applied in empirical, exploratory research on international law at the local level. In this section we will discuss our decision to use these well-known methods and reflect on how we used them to study questions of global environmental law before turning to discuss practical issues and ethics in a following section.

Doing empirical research is always a balancing act to some extent. We try to juggle practical concerns, faithfulness to our original research design and the on-the-spot-decisions that empirical research presents us with. These common issues were magnified in our comparative case-study approach, rooted as discussed in a most different systems design. This meant that each context in which we carried out research presented a range of context-specific opportunities and challenges. We were aware that these practical difficulties would likely arise, and took the decision to remain flexible in choice of methods at the research design stage.²² This allowed us, as already mentioned, to link our choices of method with discussions with partner NGOs.

We considered a range of qualitative methods as feasible for gathering data about the meanings attributed to benefit-sharing in our initial research design: focus groups, participant observation, and semi- or unstructured interviews.²³ In particular, we reasoned that qualitative methods were the best suited to our research interests since used ‘to make sense of, or to interpret, phenomena in terms of the meanings people bring to them’²⁴. After discussing these possibilities with NGO partners, the idea of conducting focus groups was discarded, despite its many advantages for

²¹ But see GA Sarfaty, ‘International Norm Diffusion in the Pimicikamak Cree Nation: A Model of Legal Mediation’ (2007) 48 *Harvard International Law Journal* 443.

²² L Parks and E Morgera, ‘An Inter-disciplinary Methodology for Researching Benefit-sharing as a Norm Diffusing in Global Environmental Law’ (SSRN, 2014) BENELEX Working Paper No 2, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524333, accessed 18 January 2019.

²³ Ibid.

²⁴ D Della Porta, ‘How many approaches in the social sciences? An epistemological introduction’, in D Della Porta and M Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (Cambridge University Press, Cambridge 2008), 28.

understanding meaning construction in a dynamic setting. This was due to the difficulties of contacting often remote communities to organize and explain the purpose of the groups. We thus relied on common methods – participant observation and interviews – in our case studies. More specifically, we used individual and group interviews with pastoralists in Ikaria and indigenous communities campaigning against lithium mining in Argentina, participant observation of community meetings and workshops and informal conversations with traditional health practitioners in South Africa and residents of Bwabwata National Park in Namibia, and informal conversations and participant observation at a festival with community members in Malaysia. Whenever we met with officials in various capacities, we used semi-structured interviews.

Participant observation was our preferred method for gathering information about how communities discuss and assign meaning to benefit-sharing. This was for several reasons, both practical and epistemological. In terms of the kind of knowledge we wished to gather, participant observation was attractive for two reasons: it allowed us to observe interactions and conversations over longer timeframes than possible in interviews; and it allowed us to see exchanges between community members that bore a closer resemblance to natural and spontaneous exchange²⁵. Although the researcher's presence inevitably has some distorting effect on exchanges among community members and between community members and supporting NGOs, these are arguably less prominent compared to interview scenarios. In our research in particular, this lower level of researcher distortion is highlighted by the fact that this method allowed us a more passive role, without imposing the term 'benefit-sharing' on community discussions on this theme. international environmental law concept is not well known outside the context of bio-based innovation, and extensive explanations of it may have followed from a more active role in these meetings that would certainly have distorted the exchanges to a greater extent. Our presentations of our research and of the idea of benefit-sharing were more limited where we used the participant observation method, confined to initial contacts made through the partner NGO and to brief oral presentations of our research interests made before requesting communities' permission to observe meetings.

Overall then, we considered that participant observation at meetings or gatherings where community members had already decided to discuss issues linked to benefit-sharing would allow us to gain an understanding of how meanings were assigned to this idea in international environmental law, as well as the kinds of issues that were raised around it. This we consider crucial to understanding both the local framing or extent of diffusion of the concept, and the issues perceived to be linked to it, all of which tied into our research interest rooted in a constructivist view of law and social interaction. In a practical view, we thus worked with our partner NGOs to schedule our research visits to coincide with such meetings wherever these were taking place.

Participant observation was not always possible however, since not all of the communities involved in our research project were organised in more formal ways or held collective meetings. Participant observation is thus more feasible for research at the local level where groups or communities have decided to organize more formally and to debates the area of interest to the researcher, or in communities with more

²⁵ See e.g. U Flick *An introduction to qualitative research* (London, Sage 2014), 317.

formally organized and scheduled moments for debate such as town meetings. Where these conditions are not in place, focus groups may provide a proxy, allowing the researcher to build a moment of guided debate to serve their interests. This was not feasible in our research for the reasons given earlier. Instead, we used more informal, unstructured interviews with community members in these situations, and more formal semi-structured interviews with community members holding official positions.

We opted for more unstructured interviews with community members, guided by our general research interest but disposing with any checklist of areas to be covered, for both practical and methodological reasons. As discussed, distortion of the discussion was something we wished to reduce wherever possible in order to gain a realistic impression of perceptions and framings of benefit-sharing and related issues within communities. By holding informal interviews more akin to everyday conversations, we hoped to minimize any boundaries placed on the conversation and allow interview partners to tell their own stories. This form of interview allows as much minimization of the ‘voice of the researcher’ as possible in order to bring to the fore the aspects of human agency central to our understanding of the law’s meaning as built in social interaction.²⁶ In a practical sense, informal and unstructured interviews allowed us to carry out our research in more spontaneous ways, speaking with local community members as the opportunities arose. This was simply common sense in areas where research participants were not easily contactable and whose work did not allow predictable availability.

Unstructured interviews were less practical for individuals we interviewed because of the position they held – whether in local and national authorities or other organisations with supporting roles in communities or other connections to our research interest. Here we used semi-structured interviews, since the prior knowledge of benefit-sharing among most of the partners allowed us more margin in terms of balancing the distortion of the conversation, setting boundaries linked to our research interest whilst still leaving space to probe interviewees on unexpected answers, and the need to use time wisely since these interviews were often pre-arranged and limited to about one hour.²⁷

These are the common social scientific qualitative methods that we used to broach a study of the framing of an international norm in environmental law at the local level. We supplemented the data gathered through these methods with studies of available literature, yet other unexpected sources also proved valuable even where they appeared to damage our efforts at the time. On some occasions, we were asked not to observe meetings or were denied interviews – these denials were informative about sensitivities around certain issues in some of our cases and ultimately helped us to get a feeling for the issues of interested in different communities or groups within communities. On many more occasions, meetings fell through, which led us to gain a more practical understanding of transport and communication challenges in many of the communities we visited – barriers that are highly relevant to our research interests

²⁶ See e.g. K M Blee and V Taylor ‘Semi-Structured Interviewing in Social Movement Research’, in B Klandermans and S Staggenborg (eds.) *Methods of Social Movement Research* (Minneapolis, University of Minnesota Press, 2002).

²⁷ See e.g. C Frankfort-Nachmias and D Nachmias *Research Methods in the Social Sciences* (New York, St. Martin’s Press, 1992).

since access to information and community self-organization are central to the implementation of fair and equitable benefit-sharing. Our expectations about cultural and language challenges were also sometimes proved wrong: these were steeper than we imagined in our only European case study in Greece, and much less so in others.

These reflections serve to highlight that as we carried out our research, unexpected elements we encountered resulted in tweaks, adjustments and occasionally changes in the methods we had intended to use. The relative neatness of our research design turned out to be messier in its application, as we felt that adapting our methods to be as undistruptive, respectful and ultimately useful to research partners was more important than forcing a neat and uniform approach for each case in order to facilitate comparison. What this means for researchers engaging with themes of global environmental law ‘on the ground’ is spending time generating thick descriptions from different types of data – even if the resulting descriptions do not directly appear in outputs. The research process is an iterative one, negotiated with research partners in the moment rather than neatly laid out in prior laid plans.²⁸

In the next section we discuss the ethical questions that were raised in our research approach. This also serves to illustrate how our local-level case comparison was later used to drive both legal and political sociological research on global environmental law.

Power, ethics, consent

Questions of ethics, which we consider as comprising questions of power and consent, are immanent to methods in local community-based research, and particularly pertinent to research on fair and equitable benefit-sharing and related issues of participation and free, prior informed consent. Little attention had been paid prior to our research to benefit sharing from non-commercial research in international law.²⁹ Research ethics standards (including those of the European Research Council which funded our research), on the other hand, require free, prior informed consent and benefit-sharing. Our research on the evolving understanding of these concepts in international law and the concrete demands and expectations on the ground thus

²⁸ S Vermeulen and G Clark, ‘An Alternative Ethics for Research: Levinas and the Unheard Voices and Unseen Faces’ (2017) 20 *International Journal of Social Research Methodology* 499.

²⁹ Morgera (n 3); CBD, Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, CBD Decision X/42 [2010] paras 1, 14; Mo’otz Kuxtal Voluntary Guidelines for the Development of Mechanisms, Legislation, or Other Appropriate Initiatives to Ensure the ‘Prior Informed Consent’, ‘Free Prior Informed Consent’ or ‘Approval and Involvement’, Depending on National Circumstances, of Indigenous People and Local Communities for Accessing Their Knowledge, Innovations and Practices, the Fair and Equitable Sharing of Benefits Arising from the Use and Application of Such Knowledge, Innovations and Practices for Reporting and Preventing Unauthorized Access to Such Knowledge, Innovations and Practices, CBD Decision XIII/18 [2016]. Note that our project was not intended to draw on the traditional knowledge of indigenous peoples and local communities, and we made an express commitment not to include references to any such knowledge inadvertently revealed to us in our notes. We were interested in understanding the practical constraints and legal demands of these communities, and thier understanding and experience of the role of international law, if any, in protecting their traditional knowledge and traditionally owned/used resources.

allowed us to reflect on interlinkages between research ‘object’ (benefit-sharing, free prior informed consent) and ‘subject’ (communities engaging with the subject but also with researchers seeking consent and discussions of benefit) around these project-related requirements.

In this section, we reflect further on how we sought to bring the spirit of participatory action research, our framework for paying attention to power as set out in the original methodology, to the research. We then discuss power in more practical aspects of the research, through relationships with research participants and partner NGOs. Finally, we focus on questions of consent and the intertwining between the research process and questions raised in discussions of benefit-sharing.

Although a participatory action research (PAR) approach inspires our attention to power, we do not claim to have carried out PAR as a result of our decisions about the number of case studies and resulting time constraints. PAR and its attention to power instead provided us a template for our considerations of power in the researcher-participant relationship that allowed us to move beyond the mere tweaking of research methods to allow us to be open to the views of research partners in an iterative evolution of the aims of the project. Our work on benefit-sharing thus draws on PAR suggestions about defining research aims in dialogue with research partners³⁰, albeit at a later stage after the initial research design. More specifically, we allowed our research to be self-reflexive, drawing on our findings about the importance of the definition of benefits in dialogue with communities as the basis for building in similar reflexivity in our own research paths.

We can illustrate this with some examples. In Argentina, communities’ focus on environmental impact assessments led our legal research towards the interface between prior impact assessments, consent and benefit-sharing.³¹ This and other new directions in our research have contributed to the planned benefit-sharing in the original research design, such as the production of policy briefs and training modules. This also helped to bring our work more closely in sync with our legal findings about sharing benefits as a process of understanding communities’ definition of benefits, as well as with the principle of reciprocity.³² The development of research directions in dialogue with participants thus became an integral part of a robust and dynamic approach to research ethics. In terms of the political sociological research on the production of meaning around fair and equitable benefit-sharing, the comparative case studies more generally guided and drove a research agenda on discursive spaces for local issues in the Convention on Biological Diversity, as well as reflections on the potential role of community protocols in local empowerment.³³ Nevertheless, the co-

³⁰ P Reason and H Bradbury, *The Sage Handbook of Action Research* (Sage, Thousand Oaks 2008).

³¹ E Morgera, ‘Under the Radar: Fair and Equitable Benefit-sharing and the Human Rights of Indigenous Peoples and Local Communities related to Natural Resources’ BENELEX Working Paper No 10 Rev (SSRN, 2016) at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2887803. See also P Marchegiani, E Morgera and L Parks, ‘Indigenous peoples’ rights to natural resources in Argentina: the challenges of impact assessment, consent and fair and equitable benefit-sharing in cases of lithium mining’ BENELEX Working Paper No 19 (SSRN, 2019) at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3317375.

³² Pittaway, Bartolomei and Hugman (n 14).

³³ Parks (n 12); Parks (n 10); L Parks and M Schröder, ‘What we talk about when we talk about ‘local’ participation: Indigenous Peoples and local communities’ participation under the Convention on Biological Diversity’ BENELEX Working Paper No 18 (SSRN, 2018) at

production of research aims prior to beginning the project would have been a more robust approach.

In a practical view, we also followed ideas originating in the literature on PAR before our research visits began in an effort to ensure our sensitivity to the presence of power imbalances between researchers and participants. During our local-level research, however, the variety of constellations of power we needed to consider proved to be larger and more complex than we had imagined. When reasoning about our methods we had focused on power relations between researchers and participants, opting for those methods that would be least disruptive. Though we saw this as embedded in turn in local, regional, national and international relationships of power, carrying out research showed that everyday expressions of these complex webs of power were more common than we had anticipated.

In South Africa, for example, we found that traditional health practitioners had to deal with traditional authorities and municipal authorities, as well as the ministry of health, to gain recognition. They were also engaged with provincial parks authorities and private landowners around access issues, complicated in turn by ongoing land claims and serious security problems linked to a global spike in rhino poaching. Added to this, the national legislative backdrop was shifting with the implementation of international law. In this context, while the researcher-participant power relationship remained important, it was one among many. Our research approaches and in particular our ethics commitments thus needed to be iterative to a range of different contexts within each case study – our methods choices were thus tailored not only to levels of organization in local communities, but to sensitivities linked to power constellations. For example, we did not observe entire community meetings in some cases, and held group interviews in others in an effort to ensure that no community member felt their views were excluded.

This brings our discussion to the next important power relationship that may be interesting to reflect upon and useful to others – that with NGO partners. As noted earlier, the decision to work with partner NGOs comprises the possibility that working with and through these actors could shape our research findings since they too are part of complex contexts of power around communities. NGOs have thus been thought of as ‘gatekeepers’ in social scientific research, and as another source of distortion in research. We did rely on the relationships NGOs had already formed with communities rather than build our own, and these relationships doubtless shape our research findings. Although not intentionally designed with this in mind, our decision to operationalize interest in benefit-sharing via discussions of community protocols went some way to mitigate this. As we learned more about community protocols, we also learned about the importance of open and participatory practices in their elaboration, and the effort and thought dedicated by our NGO partners to facilitating community-owned processes. Though this is a difficult balancing act,³⁴ it meant that the NGO partners we worked with were aware of their power and sought to take measures to address inequalities, not least through their aim of community empowerment.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274844, accessed 17 January 2019.

³⁴ Parks (n 12).

Neither researchers nor NGO actors can entirely resolve the intractable problem of power. However, working with actors that dedicate time and thought to these issues may mitigate some aspects of an unequal relationship, and contribute to conversations about appropriate new research directions and methods. Recent literature highlights that power needs to be tackled in reflexive ways in each research encounter.³⁵ This view is echoed in literature discussing ‘gatekeepers’ as more than actors who simply facilitate access, but as part and parcel of the research experience, shaping and contributing to relationships of power and more, and integral to the whole research process.³⁶ Thinking of research partners in this way brings this power relationship into the research ethics domain along with communities. Thus, when reflecting on how to shape our research in ways that would respond to communities’ interests we not only consulted NGO partners, but asked if and how we could contribute to their work in supporting and empowering communities including those beyond the scope of our research. While we were not always able to satisfy all requests, for example on specific points of Greek law for the Ikaria case which were beyond our expertise, we were able to find some ways forward in dialogue (for instance, by identifying how international law could be used in the local context to question and challenge national approaches that did not respond to community views and needs).

In addition, we reflected on and discussed how to safeguard the relationships between NGOs and communities. Where some themes or approaches were deemed risky to the relationship that our partner NGOs had built with communities, we did not touch on these. On some occasions after discussions with partners we also contacted some representatives of authorities independently for this same reason. Our complex relationships with NGOs and communities helped us focus the selection and communication of research findings in a way that would be hopefully immediately actionable by research partners, even where only addressing some rather than all of their concerns. In some cases, research partners remain skeptical that reliance on international law and relevant research findings will be helpful in their particular case. This too is an important finding which, without this kind of cooperation, might not have been discovered – awareness and acknowledgement of the limits of international environmental law is crucial³⁷. Overall, the complexity of power relationships that may affect and shape research in different ways remains difficult to foresee at the research planning or bidding stage, even where due attention is paid to risk and contingency plans.³⁸

A final concrete and practical issue in dealing with power in our research stemmed from funders’ requirements on written consent. We did obtain written consent from all our research participants and strongly believe that providing proper information and allowing research participants meaningful consent over their contributions is crucial for ethical research. But the suitability of a ‘one size fits all’ approach of information pamphlets and consent forms that have obtained prior approval from ethics committees deserves some discussion in light of the iterative ethics considerations we experience in our research. Once again, flexibility and an ongoing

³⁵ Vermeylen and Clark (n 28).

³⁶ I Crowhurst and M Kennedy-Macfoy, ‘Editorial. Troubling Gatekeepers: Methodological Considerations for Social Research’ (2013) *International Journal of Social Research* 457.

³⁷ Fisher et al (n 4); E Tsioumani, ‘Beyond access and benefit-sharing: Lessons from the law and governance of agricultural biodiversity’ (2018) 21 *The Journal of World Intellectual Property* 106.

³⁸ Vermeylen and Clark (n 28).

dialogue with all research partners, which should include ethics committees, is key to our observation. We have already set out the importance of contextual dialogue about the most appropriate ways to begin conversations with communities, about the most appropriate methods to use, and how to shape our research in ways that might be useful to all our research partners. Meaningful consent should be a central part of that conversation, where all of those involved in the research negotiate directions as benefits, methods, and matters around consent including anonymity.³⁹ While pre-approved forms and information on our research, in line with funders' ethical guidance and specific advice, were perfectly suited to some participants – usually representatives of various authorities – this was not always the case in community settings. Where our method was participant observation, we thus supplemented this pre-approved approach with oral presentations of our project, followed by time for the community to discuss and decide whether to allow us to observe their meetings as a group. Where we were engaged in interviews with individuals, the consent forms and pamphlets often proved off-putting for participants and we again supplemented with dialogue. In some cases, we added new information pamphlets when research partners and other advisors found the language we used to be inaccessible – our comparative approach was the origin of this challenge, since this limited our opportunities to co-develop forms with local groups.⁴⁰

Our experiences with consent forms and the need to involve these in a more holistic approach to ethical and responsible research also overlapped with the findings of our project on global environmental law. Here too, commentators and international guidance stress the iterative nature of seeking consent and its intertwining with benefit-sharing.⁴¹ For our research, then, consent also extended to attention to the joint agreement about methods and the directions of research. In that vein, the second trip to each research site offered important opportunities, for those communities that asked, to share the interim results of our research and seek guidance on preferred outputs that would be useful in the case-study context. We received some positive feedback in this connection – communities stressed that it was rare for researchers to come back to talk about what they had found. Nevertheless, it was difficult for us to remain in touch in an effective manner with communities in between trips, which was again rendered more complicated by the multiplicity of actors involved in the five case studies. We mainly relied on partner NGOs both as a channel for ongoing communications with communities in the context of their pre-existing dialogue with them, and as guarantor that communities could always get hold of us if needed, thus giving more meaning to the right to withdraw from the research project. It remains to be seen if this is a viable way to continue a research relationship beyond the life of the project.

Our main finding in attempting to apply the spirit of PAR in a research project involving many different research partners in five different cases is thus that ethical considerations cannot, in practice, be separated from questions of method, consent, or the direction of research – and that ethical considerations made during the research design stage are unlikely to cover all questions raised during actual research

³⁹ Pittaway, Bartolomei and Hugman (n 14).

⁴⁰ Massey University, A Brief Introduction to Te Ara Tika (undated), available at <https://www.massey.ac.nz/massey/fms/Human%20Ethics/Documents/Te%20Ara%20Tika%20summary.pdf?91A1B6C1CCBE36D7116F20C62124D4EB>.

⁴¹ E.g. Mo'otz Kuxtal Voluntary Guidelines (n 29).

processes. A more holistic approach to these issues, that allows researchers to negotiate paths for research with the input of all research partners, may better accommodate this fact. Ethics committees, research funders, actors taking part in the research – all should be involved or aware of the need for iterative processes, and their processes should reflect this need.

A summary of experiences and reflections

Each research project is unique and will necessarily come up against different obstacles, issues, and opportunities. Our reflections, however, may be of use to other researchers that are considering comparative interdisciplinary approaches for the study of global environmental law. In addition, as our research progressed, we realized that our neat approach to methods, partners, ethics and consent as relatively separate issues was not reflected in reality. While we focused on the researcher-participant relationship in our design, we found equally important relationships between the researchers and the partner NGOs, and the partner NGOs and the communities. Thus, all these actors were involved in an iterative research process, with NGOs acting as much more than mere ‘gatekeepers’.⁴²

We would thus like to draw attention to what might be termed the living research process. In the literature on participatory action research, this process forms part and parcel of the research project.⁴³ However, this may not be possible in comparative research, given necessary trade-offs between the amounts of time that can be devoted to actors in each case and the need for the researchers to be personally involved in every case. In our experience, more robust research emerged from adapting initial approaches in an ongoing dialogue with a range of participants and partners. We believe that such ongoing dialogues should also involve funders and research ethics advisors to provide input and receive feedback as research develops.

⁴² Crowhurst and Kennedy-Macfoy (n 36).

⁴³ Reason and Bradbury (n 30).