

# The Management of Natural Resource Conflict: Case studies from Nepal

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## 1 Introduction

Population pressure and poverty are said to be the main causes of natural resource degradation (NPC 1998) and the main accelerators of competition and conflict in Nepal (Upreti 2002). Natural resource management practices in Nepal are rapidly changing, alongside social and political changes, advances in technology, increased information flow, and market liberalization. These changes are posing new challenges to existing policies, plans, institutional arrangements, and legal provisions related to natural resources, and are becoming a source of conflict (Kaplan 1995). In addition, natural resource conflicts are exacerbated by contradictions and inconsistencies in the application of formal legal procedures and customary practices, by diversities in local norms and beliefs, and by management differences (Oli 1998). Despite the fact that the government and donors invest much effort, time and money in natural resource management, and despite the fact that natural resources-related offices are instituted in all districts, conflict is increasing (Khadka 1997). Land, water, and forests are the three most important resources for the survival of the vast majority of the Nepalese population (NPC 1998). The recent vehement opposition to, as well as strong support for, the government's land reform initiatives clearly indicate the importance of land reform in Nepal. Therefore, conflict over these three resources is the main focus of this paper.

'Conflict' in this paper covers clashes of interest, disagreements, public protests, physical assaults, and the filing of cases in courts. Conflict occurs at different levels (between individuals, between individuals and a group, and between groups) for different reasons. Feelings of suspicion, injustice, anger, and mistrust help to inflame conflict (Martinelli and Almeida 1998). This paper explores natural resource conflicts caused by these factors and attempts to explain how such conflicts are managed in daily practice in rural Nepal. While analysing conflict, I will consider discrepancies between

rules and behaviour, social relations, and the incompatibility of goals, actions and interactions framed in their specific context and time. Two key concepts, negotiation<sup>1</sup> and mediation,<sup>2</sup> are employed in an analysis of conflict management practices.

## 2 Setting the scene: background and context

Nepal's economy depends largely on the use of the natural resources base (NPC 1998). The historical context is a strong determining factor in the present governance of natural resources and management of associated conflicts. Prior to 1734, when present-day Nepal was a fragmented group of petty states, people were encouraged to cultivate as much forest and pasture land as possible. In turn, they had to pay a certain portion of the returns to the state (Malla 1997, Regmi 1978). In this way, the state had begun to regulate the available natural resources. This led to the establishment of control mechanisms: various departments and regional offices, policies, acts, rules and regulations were established to systematically control the use of available natural resources.

Up until 1950 the state granted tax-free land to officials, religious organizations, and individual favourites of the kings or rulers (Malla 1997). Traditionally, land was considered as the property of the state and this land is called *raikar*.<sup>3</sup> Only the state had the right to alienate land through sale, mortgage, or bequest. Thus the state granted state-owned *raikar* lands to individuals in various forms.<sup>4</sup> Almost one third of Nepal's agricultural and

<sup>1</sup> 'Negotiation' is a voluntary process, which includes any instance in which two or more people meet face to face and communicate in order to reach a mutually acceptable solution of the conflict issue (Kaplan 1995). Negotiation helps to discover mutually acceptable outcomes through interaction, persuasion, or inducement. In the case of resource-use conflict, negotiation produces distributive and integrative solutions (Buckles 1999).

<sup>2</sup> 'Mediation' is an intervention by an acceptable, impartial, and neutral third party. The third party has no decision-making authority but assists contending parties to negotiate an acceptable settlement (Bush and Folger 1994). The mediator's neutral role as facilitator involves assisting parties, privately or collectively, to identify the issues in conflict and develop proposals to resolve disputes.

<sup>3</sup> See Regmi (1978). The meaning of *raikar* land has changed since 1951, from crown-land to land owned by individuals. *Raikar* land ownership denotes ultimate state ownership of lands which were actually cultivated by individuals as direct tenants of the state. The usufructory assignment of *raikar* land to individuals and institutions was a deliberate means of rewarding and ensuring their loyalty, paying them for services rendered, and promoting social and religious activities.

<sup>4</sup> These were *birtā*, *jāgir*, *serā*, *rakam*, *rājya*, *guthi*, and *kīpat*. A *birtā* grant was given to a noble as a reward for a service rendered to the state. It had no time limits and it could be rented out or inherited until confiscated or recalled by the state. *Birtā* owners

forest lands had been granted to individuals by 1950, and the remainder belonged to the Ranas themselves (Malla 1997). Local functionaries, all favourites of the Ranas, implemented the land-grant policy in the villages and were able to ensure the greatest benefit for themselves. They obtained a great deal of land from the state through *jāgir* and *birtā* grants, and rented these lands to peasant farmers under tenancy arrangements. In this way, local functionaries turned into landlords. Gradually, to ensure their rent, landlords introduced the *kut* (contract) system in which only those tenants who were able to pay high rents could get a contract (Ghimire 1992). After 1951 the government nationalized all the forest in Nepal to release land from *birtā* holders, especially from Rana familiars (Regmi 1978).

The history of land-tenure systems in Nepal shows that the mode of production and distribution of natural resources was very feudalistic in nature. Therefore, conflict was ubiquitous, not only between landlords and the landless but also between the state and the poor, and between the state and landlords (Ghimire 1992). Government-initiated land reform measures had only negligible success (*ibid.*). Nepal has a highly unequal society in terms of land distribution, mainly due to its feudalistic socio-political structure. The execution of stable land rights granted by the Land Act is weak, and customary land rights are heavily slanted in favour of the elite and restricted to maintaining patron-client relationships. The private appropriation and sale of lands which were traditionally under communal control by powerful politicians and privileged local landlords only exacerbates conflict (Upreti 2001). The strong opposition of the landlords to the

usually had full rights to possess, occupy, sell, lease, subdivide, and bequeath their lands. Most *birtā* lands were not taxable. *Birtā* has become the foundation of the modern, private, land-tenure arrangement. *Jāgir* landholding was more conditional and subtle and often granted to government servants rather than to members of the ruling elite. A *jāgir* assessment was usually an assignment of the income from *raikar* lands in lieu of a salary, and it could not be sold. *Jāgir* rights lapsed together with the termination of employment, or at the discretion of the government. *Serā* was a form of land tenure explicitly used by the royal palace to meet food-grain and other land-related requirements. *Rakam* is a form of land tenure where cultivators have compulsorily to provide unpaid labourers to the government as carpenters, masons, and postmen. *Rājya* was a modified form of land tenure granted to members and relatives of royal families. This land-granting practice was common up until the end of the Rana regime. These forms of land were abolished in 1959, with the enacting of the *Birtā* Abolition Act, and converted to *raikar* land (New Era 1988: 28-31). *Kīpat* was an ancient type of communal land tenure in which an ethnic community was granted land by its king in recognition of traditional communal tenure. Headmen had the authority to grant individuals the right to cultivate certain areas and collect forest products from other areas. In the *guthi* land tenure system, land is granted to charitable or religious organizations. The *guthi* land tenure system also included the endowment of private lands (obtained from the state) by individual landlords for religious purposes (Regmi 1978).

government's recently initiated land reform programme is a clear indication of deep-seated landlordism in Nepal.

### 2.1 The study area: Dolakha district

Dolakha District is situated in the central mountain region, 133 km north-east of Kathmandu. The total population of the district was 191,073 in 1998, with 39,554 households and a population density of 87.2 persons per square km (Dolakha District Development Committee 1999). The population is made up of Chetri, Brahmin, Damai, Kami, Sarki, Tamang, Sherpa, Jirel, Surel, Newar, etc. The majority of the population is Chetri (34.2%) followed by Tamang (16%), Brahmin (11.4%), and others (38.4%). The Brahmin, Chetri, Newar, and Tamang are socio-economically and politically dominant in the study district.

### 2.2 The case study sites

The case study sites were situated in the Pawoti and Sailungeshwor VDCs. First, all conflicts were recorded in a reconnaissance survey in order to select specific cases for in-depth study. Before 1982, Pawoti and Sailungeshwor were both under one village panchayat, but then, for political reasons, they became two village panchayats. The demographic setting and socio-cultural characteristics of both VDCs are similar. The total population of the study site is 8,825, with 1,738 households and an average family size of 5.08. The major caste and ethnic groups are Brahmin, Chetri, Tamang, Damai, Kami, Sarki, and Newar. Although the Brahmin caste is not a majority of the population, it dominates almost all social and developmental activity.

The socio-political history of this area over the past 300 years has had a great effect on the present management of natural resources (especially land and forests). Three hundred years ago, a Brahmin family came from the Kumaon area of India via western Nepal and settled in the study site. Gradually this family enlarged and expanded to a larger area (currently 400 households). Later, during the Rana regime, one member of this family was employed in the post of *subbā* to work in the Rana administration. He received many favours from the Rana regime and emerged as a local functionary to rule the region. He also received a lot of *birtā* land. In this way his extended family became very powerful. The sons and grandsons continued to serve the Rana regime until 1951. Even after 1951, these families maintained a stronghold on the village because they were the *mukhiyās* and feudal landlords. Likewise, another Brahmin family (called Koirala) came from Dumja (Sindhuli district) to settle in this area. It has since grown to 50 households and expanded its influence. The Koirala family became powerful when the *subbā* nominated the head of this family as the *Mukhiyā* of the village. He also received some *birtā* lands from the

Rana family. These two families emerged as a strong power centre in the study area. They were rich local landlords with good access to higher authorities. They were educated and resourceful, compared to the general public. They accumulated a large proportion of the land and controlled most of the forests. In short, the descendants of the two immigrant families dominate the study sites. Now the size of the landholdings, wealth, and education are major factors explaining social variation in the study area. Land is the single most important resource for survival, and a symbol of social prestige. The land distribution patterns in the study site show that less than 10% of people own more than 60% of the cultivated land. About 40% of 'middle-level' people own 30% of land and the remaining 50% of the population own less than 10% (Upreti 2001).

Power relations and social organization at the research site changed dramatically after 1990. The powerful elite and landlords were marginalized, and the earlier respect and obedience disappeared. With the collapse of the traditional power structure there was a drastic shift from a rigid feudal social organization to a more fluid power relationship based on political ideology (Upreti 2001).

### 3 Methodology

A good conflict research methodology has to facilitate an analysis of the behavioural patterns, interactions, strategies, manoeuvres, discourses, and struggles of the conflicting parties. To collect such information qualitative research methods are more suitable (Denzin and Lincoln 1998) and therefore they were used in this study. First, all common conflicts over Nepalese natural resources were traced out. Then, based on information collected at national level, the Dolakha district was selected for the study of natural resources conflict. The most common natural resources conflicts occurring in the Dolakha district were documented, and the five most prevalent issues were identified. These were related to irrigation, drinking water, community forests, land ownership, and development intervention. These five categories of conflict were all found in the Pawoti and Sailungeshwor VDCs, and therefore the case studies were conducted there. The in-depth study was conducted through key informant interviews, focus group discussions, life histories, informal discussions, archival study, and observation. Semi-structured interviews with politicians, bureaucrats, and key people involved in conflict were conducted. Secondary data were collected from various documents and reports. A total of 56 focus group discussions (6-10 people per group), 55 key informant interviews, 15 life histories, 150 general informal discussions, and 200 semi-structured interviews were conducted during the 25 months of fieldwork. Most of our

informants and respondents were local villagers. The other respondents included staff from the District Administration Office, the court, and offices related to land, forest and water; political leaders; lawyers, police personnel, workers of NGOs and trade unions, researchers, INGO staff, senior bureaucrats, social workers, and members of users committees, Village Development Committees (VDC), and the District Development Committee (DDC). The findings of the in-depth study were compared with eleven reference groups from other districts of Nepal.<sup>5</sup>

#### 4 Synopsis of main social conflicts in the study area

Several social conflicts were observed in the study area. These included transaction-related conflicts over issues such as lending and borrowing,<sup>6</sup> the forging of documents, wage payments, and the sharing of livestock and crops, etc. Transaction-related conflicts were also connected with land mortgages, or the terms of access to water sources during periods of water shortage, etc. Protests against caste-based injustices, such as untouchability and prohibitions on entering temples and other religious or public places, also led to conflict. These conflicts were also linked to restrictions on access by certain groups to forests or bodies of water around religious places. Polygamy, child marriage, inter-caste marriage, fraudulent marriage, separation, alimony, divorce, and the partition of parental properties were other major issues leading to conflict. Marriage-related conflict has a direct link with natural resources conflict. For example, landlords used to marry several wives in order to maintain their farms, but later their sons would quarrel over the best land. Elite men also see a woman with land resources (e.g. in cases where there is no other heir to her father's or her husband's land) as a potential second wife. Therefore, land is often the cause of family conflict. Theft, looting, physical assault, damage of property, character defamation, drug and girl trafficking, prostitution, sexual abuse (harassment, rape, and molestation), religious

<sup>5</sup> These are groups organized in villages by community members to accomplish functions such as management of forests, irrigation, pasture land, trails and bridges, seed production, etc. About 15-25 households are organized into each group. NGOs, donor-funded projects, and government agencies support many such groups. Among the 11 groups consulted, two were from Kanchanpur district (Mahendranagar Municipality and Jhalari VDC), two from Banke district (Kohalpur and Bageshwori VDCs), two from Chitwan district (Bhandara and Piple VDCs), two from Kaski district (Arbavijaya and Bharatpokhari VDCs), one from Ramechhap district (Ramechhap VDC) and two from Dolakha district (Bhimeshwor Municipality and Kavre VDC).

<sup>6</sup> Village moneylenders charge up to 60% interest rate (5% per month). If borrowers fail to pay the principal amount and/or the interest within the agreed time frame, they confiscate property (land, goats, animals, or other valuable materials) from the house of the borrower, which leads to severe conflict.

tension (between Christians and Hindus), and witch-hunts were other sources of conflict reported in the study area. Similarly, development interventions had introduced numerous conflicts, which were later linked with natural resources. Crop failures and damage to fruits caused by insects or hailstorms were often linked with witch-hunts. Conflicts created by development interventions were not only obstructing the successful implementation of natural resource management projects, but also creating misunderstanding and tension in society (Pradhan *et al.* 2000).

#### 5 Overview of the most common natural resource conflicts in the study area

##### 5.1 Land-related conflicts

Land-related conflicts were the most serious in terms of their intensity and social effects. The main land-related conflicts documented in the study area were related to boundary demarcation, changes of ownership, looting of and damage to crops, tenancy rights and evictions, the alignment of new canals, roads, paths, or drinking-water systems on particular lands, obstruction of existing paths, land encroachment, mortgages, the use and control of *guthi* land and its revenues, determining land quality, and the sale, reclamation, inheriting, partition, and gifting of land. As a part of the land reform programme the government carried out a land measurement programme (*nāpī*). However, this single project created more than 5,000 conflicts in the study district.

To begin *nāpī*, the Survey Office requested the relevant documents from the Land Reform Office (LRO or *Mālpot Addā*). The LRO provided the documents and instructed the Mukhiyās of the research sites to make their records available to the surveyors. The land measurement started with the establishment of a benchmark in the field. The landowner was meant to receive compensation for this, but this did not happen. Notice of the impending survey had to be given to both VDCs. Notice had also to be posted in designated public places to inform all those concerned. The aim of such notices was to ensure that land owners and tenants who claimed ownership of or some other rights on particular lands (e.g. communal grazing) had a chance to make their claims known to the surveyors within the period stated in the notice. The posting of such a notice and the presentation of claims are extremely important, because the survey regulation states that if claims are not presented within the given time, unclaimed land will be recognized as *ailānī jaggā* (land owned by the government). But it was reported that the general public did not see such notices, and they were not able to make claims to their own lands, or public ownership of pasture and forest lands, in time. Consequently, those people

who were clever and aware of these rules claimed public lands and the lands of weak people by offering bribes to the surveyors. The surveyors had deliberately omitted parts of more than 50 people's lands in order to bargain for bribes. Even when people noticed that their land was omitted, or recorded under someone else's name, a simple objection and counter claim were not sufficient. Claimants had to present evidence such as the testimony of neighbours, tax payment receipts obtained from Mukhiyās, and the traditional record kept by Mukhiyās, in support of their claims. Here again manipulation could occur, because party politics could influence neighbours' testimony and the Mukhiyās manipulated/falsified many records and receipts. The survey teams, who were supposed to investigate the validity of various claims and conflicts, were intimately involved in bribery. The surveyors, authorized to grant land ownership rights to people on behalf of the government, enforced their authority over the disputed lands to meet their personal interests.<sup>7</sup> After completion of the survey, the Survey Office distributed ownership certificates popularly known as *lāl purjā* (red seals). A *lāl purjā* contains information on the identity and residence of the owner, the plot number, location and size, and the identity of its tenants, if any (New Era 1988). The respondents explained that several of them paid bribes to receive *lāl purjā* and tenancy certificates. Otherwise, it would take weeks and months to receive these certificates. Paying a bribe was cheaper for the villagers than travelling to the expensive district headquarters and waiting to obtain a *lāl purjā* without paying a bribe.

### 5.2 Forest-related conflicts

The most common forest-related conflicts documented in the study area were concerned with ownership, identification of users, access to forest products, royalty payments, illegal use of non-timber forest products, and the hunting and poaching of wild animals and animal products from forests. Other conflicts were related to encroachment, collection of firewood, use of forest trees to build bridges, use of wood for cremations, and leadership (people interested in active politics used forest user group (FUG) leadership as a stepping stone). Poor and especially low-caste people were excluded from community FUGs. Conflict was frequently observed when licensed traders from outside the community collected medicinal plants in higher altitude forests that were managed and used by villagers. Recently, a conflict erupted between the Federation of Forest Users and the government's forest department, due to the government's decision to

<sup>7</sup> There is a provision which allows a case to be brought to court within 35 days if one of the parties is not satisfied with the decision of the surveyors. However, the decision of the court is based on legal evidence, which is mainly the available documents, prepared by the district LRO, Mukhiyās, and surveyors, and obviously favouring the surveyors.

change the provisions of the Forest Act on the rights and responsibilities of community forest users.

### 5.3 Water-related conflicts

Major conflicts over water reported in the study area included source disputes, conflicts around the sharing of water for different purposes (drinking water, irrigation, power generation), and conflict over the payment of compensation for damage caused by the construction of water-related projects. Other conflicts were related to contributions to the maintenance of irrigation and drinking water systems, the ambiguous roles and responsibilities of water user associations, government technicians and officials, and the payment of watchmen.

### 5.4 Case studies

Based on the documentation of common conflicts in the study area, the following five cases were studied to examine the causes of conflict and the measures taken to resolve them.

#### *Case one: Conflict between head-end and tail-end farmers in an irrigation system*

A deep conflict arose from the extension of a 1.5 km farmer-managed irrigation system built 67 years ago. The canal was extended in 1984 with a financial grant from the Dolakha District Panchayat. Originally, 150 households of mixed caste and ethnic composition were using this canal with the following rules and regulations:

- When water scarcity occurred farmers had to share the water on a rotational basis.
- Before every rice transplanting season, it was compulsory for all users to repair the canal.
- The *Kulo Rekhdekh Samiti* (Canal Maintenance Committee) had to monitor the canal on a regular basis.
- A *sāncho* (wooden water gate) was used to distribute water in periods of scarcity.
- Users paid four *pāthī* (approximately 14kg) of rice per hectare of ricefield to pay for the caretaker.
- If conflict arose among the users, it was reported first to the *Kulo Rekhdekh Samiti*. It would be referred to a formal authority only if the *Kulo Rekhdekh Samiti* failed to resolve the conflict.
- If someone violated these rules for the first time (s)he had to pay a fine decided by the *Kulo Rekhdekh Samiti*. In case of repeated violation of the rules, (s)he would not be allowed to take water from the canal.

These rules and regulations were ignored after the canal had been extended (2 km were added to serve an additional 100 hectares of lands). Local political leaders (the descendants of the Subba and Koirala families) extended the canal mainly to secure votes in the local election, and for financial gain. As a result, there was not only a scarcity of water during the peak agricultural season but also increased tension between the farmers of the head-end and the extended section of the canal. Before this political intervention the Kulo Rekhdekh Samiti had resolved all irrigation conflicts. Water sharing and maintenance of the canal had also been very effective. After the intervention, people were unhappy with the misuse of money received from the government. Particularly, farmers from the head section felt ignored, because the canal had been extended without consulting them. So they stopped sharing water with the tail-end farmers, and the conflict became very serious. The tail-end farmers approached the local authority and the district administration to settle the conflict. This was unsuccessful and eventually the canal was almost ruined after the extension. The government apparatus was unable to resolve the conflict.

*Case two: Conflict between village elites and local people over forest and grazing land*

The control of a community-managed forest and pastureland was the main cause of this conflict. In 1970, the local elite and powerbrokers started to terrace the forest and pastureland, which had been under communal use and management for centuries. The land invaders were powerful local politicians of high socio-economic status (the descendants of the Subba and Koirala families discussed above) with strong links to the bureaucracy. They encroached on the forest and pasture land, undermining the symbolic and economic value the local community had traditionally attached to it. Though the local people respected the status of the invaders, they strongly opposed this invasion, and had made every effort for four years to reclaim the invaded land. However, the invaders were not ready to compromise, and the conflict became more intense. Eventually, the protesters filed a case with the government's Mobile Officer (*sarbasampanna daudāhā*<sup>8</sup>), who ruled in favour of the community. However, the invaders did not leave the land. Again, the community members made an appeal to implement the decision. But the appeal turned into a negotiation. It was decided that the invaders would not encroach further on the forest and pasture land, but the invaded parts of the land would not be returned to the community. The legal procedures were too complicated and expensive for the community members to proceed, and

<sup>8</sup> This was a very powerful post created by the government to make field visits, inspect cases on the spot, and decide immediately.

they sought no further legal remedy. Thus they had to sacrifice a part of the land which they had been using for centuries.

*Case three: Conflict between two villages over a spring water source*

The sharing of a source of drinking water lay at the core of a conflict between two villages. The households of both villages were of similar socio-economic condition and the same Brahmin/Chetri caste group. The existing users were not ready to share the water source with the people of the next village (the potential users), arguing that there would not be enough water left for them to irrigate their fields. The potential users wanted to share the water source, because they suffered from a severe lack of drinking water. Several protests, oppositions, and complaints were filed with the local administration, but these authorities were not eager to resolve the conflict. They avoided taking sides and therefore the conflict continued. However, this 8-year active conflict between the two villages was settled in a mutually beneficial way due to the constant efforts of community members, a local NGO, a local priest, and a woman leader. Eventually, the following conditions were worked out to negotiate the conflict:

1. The existing users would either sell the source to the potential users, on the condition that the source would be accessible for both groups of users, or
2. The existing users would allow water appropriation on the following conditions:
  - The potential users would construct a reservoir tank close to the source to collect water.
  - Water would be collected in the reservoir tank, mainly at night time.
  - If a case of water shortage arose during rice-transplanting, water would not be collected in the reservoir tank during that time.
  - The potential users would take responsibility for the conservation of the source.
  - The existing users would inform the potential users and the Mediation Group before releasing water for rice transplanting.
  - Both groups would apologise for the past conflict.
  - If misunderstandings emerged, both groups would discuss and seek to resolve them locally, and seek other options only if they were unable to resolve them at local level.

This proposal was thoroughly discussed in a succession of meetings between the existing users, staff of the NGO, other villagers, and the potential users. In the end, both groups of users accepted the second option. In this way, a serious conflict was solved at local level.

*Case four: Conflict between developers and local people in a donor-funded irrigation development project*

A severe and long lasting conflict erupted when the District Irrigation Office constructed an Asian Development Bank loan-funded irrigation project in the Sailungeshwor and Pawoti VDCs in 1991, without any consultation with local people. A handful of political workers from the ruling party and irrigation technicians decided on the alignment, source, and coverage of the canal and started to construct it. Later, when the Heads of these two VDCs came to know about the large amount of money associated with this project they became very eager to become involved, but the proponents were not interested in including them. Thereafter, villagers found out about this project and they asked for details and raised several questions. However, the proponents were not ready to answer these questions, or address the concerns raised by the general public. As a consequence, the villagers became suspicious of the proponents' intentions and started to oppose the project. The two VDC heads backed the opposition. The disgruntled villagers went as a delegation to the District Administration Office to oppose the development, and filed a case. The Chief District Officer called a meeting, inviting all concerned people, and finally gave his verdict, which included some compromises and adjustments. Accordingly, the user committee formed by the proponents was reorganized and the heads of both VDCs and other political leaders (even non-users) were included in the committee. Nevertheless, local people were not satisfied with the decision. As a consequence, two groups (i.e. supporters and opponents of the project) emerged. The former included government officials (irrigation office, CDO), VDC heads and local elites involved in the project, and the latter included disgruntled local people and the political opponents of the VDC heads. Local people were unhappy mainly because their fundamental concern about the 'inappropriate place for the intake in the source and the alignment of the canal' had not been taken into account. They were also excluded from the user committee and the project management system. Furthermore, the newly reorganized user committee divided the construction work and the total amount of money available for the project between its members, which led to more serious conflict because of the misuse of money and materials. Villagers registered a corruption complaint with the 'Special Police', who rejected it, ruling that the work done by the user committee had been legal. None the less, opponents did not agree with the verdict and continued their protests. The District Irrigation Office, which was responsible for the effective implementation of the project, supported the user committee. So the conflict remained unresolved, and local society remained quite divided on this issue. The legal process was expensive, complicated, influence-driven, and opaque to local people.

*Case five: Conflict between landlords and tenants on Guthi land*

A deep-seated conflict was resolved after 39 years when tenants strongly organised to defend their rights over *guthi* land. Fifty landowners (from the Koirala family discussed above) had constituted the ruling elite in the village for several generations. They kept part of their land as private *guthi* (religious land trust) for the maintenance of a temple, and they gave their *guthi* lands to tenants for cultivation. However, they were not ready to grant the tenancy rights claimed by 120 tenant farmers, who had mobilized local priests and relatives of the landlords, and approached the landowners. Finally they decided to buy the rented land and they paid a nominal price to the landowners twice, but still the landlords did not transfer the land. The tenants discussed this problem several times and consulted knowledgeable people on their legal options. But, due to the complicated nature of legal procedures, expensive fees, and their fear of the legal decision going against them due to the influence of power and money, they did not take this further. Instead, they stopped paying the rent. Then the landlords opted for a legal solution and filed the case in the Guthi Sansthān (the governmental organization dealing with *guthi* matters) and the Land Reform Office. Both offices ruled in favour of the landlords. Nevertheless, the tenants did not accept the decision and continued their demand to transfer ownership rights. The tenants were strongly organized, they had learnt from past mistakes while dealing with landowners, they had discussed their problems with other people in the village, and they were able to win the support of all villagers. Their determination to establish ownership rights to the *guthi* land finally won over the biased legal verdict. The legal solution could not evict them from the tenanted land. If they were evicted they would be landless and could create a severe problem for the Pawoti VDC, politicians, and the government. Realising this complexity, the landowners finally transferred the ownership rights to 120 tenants and the tenants paid Rs 100,000 in return.

## 6 Major factors affecting conflict over natural resources

The issues discussed in section 5 indicate that legislation, policies, and strategies, as well as changing power structures and social relations together with political changes, have provided fertile ground for natural resource conflict. Competition over access and control, the ineffective jurisdictional roles of the government agencies, and political and commercial interests have encouraged the growth of conflict. The major portion of the natural resources-related conflict cases were, in one way or another, related to the appropriation, use, and control of natural resources. Numerous land- and forest-related conflicts were created, due mainly to the unsystematic and incomplete land registration and record-keeping process.

The major factors in natural resource conflict are discussed under three sub-headings.

### 6.1 Power structures, social relations, and conflict

The power relationships in a community are one of the main determinants of natural resource conflict. The outcome of a conflict situation can be determined by the efforts of a few actors, contrary to the interests of the majority (Ghimire 1992). When power is mobilised in conflict resolution the result is mostly win-lose (Khadka 1997). The case studies clearly indicate that the use of power has often created an unfavourable situation, full of resentment and fear. The social and legal confrontation over the control of natural resources is determined by the relative strengths of the parties involved. Nevertheless, interdependence between conflicting parties is common in community-level natural resource conflicts. In the case of the landlord-tenant conflict described above, a variety of economic and political changes over a 39-year period had led to a fundamental transformation in power relationships. Local landlords would be less likely to negotiate with ordinary villagers if social relations remained unaltered.

The protesters' struggle for the forest and pasture land undoubtedly changed group relationships. All of these cases also indicate the 'accommodative', 'interdependent', and 'tolerant' behaviour of the disputants. Although the disputants were entangled in conflict, their social relationships were not brought to an end: working relations were maintained. Such interdependence helped to bring them to a negotiated settlement. Despite widespread conflict, a certain sense of accommodation and social harmony was still prevalent in the village. However, the generally tolerant and accommodative behaviour of community members gave the powerful elite room to exploit them (Upreti 2001).

Corruption is becoming an increasingly important factor in the resolution of conflict in Nepal (cf. Kaplan 1995). The use of bribes and the mobilization of *āphno mānche* networks to win conflict cases is clearly indicated in four of the five cases discussed above. Some exclusionary social institutions in the study area were fostering unequal social relationships and the partitioning of specific cultural, economic, and political processes in relation to particular social groups. The empirical evidence indicates a strong connection between government staff and powerful people, and between the local elite and politicians. The farmer-managed irrigation system, forest-pasture land, the ADB-funded irrigation development project, and the *guthi* land conflict cases indicate that such relations strongly influence the nature of negotiated outcomes. Poor people have less access to government bureaucracy, and power brokers are advantaged in that situation. Some groups benefit in a conflict situation from using

political relations, *āphno mānche* networks, economic power (bribery), geographical proximity, and knowledge networks.

### 6.2 Contradictions between formal laws and local practices

Laws and regulations govern the management of natural resources. The presence or absence of rules and their effective execution are major issues in natural resources conflict (Oli 1998). The natural resources traditionally used for one particular purpose are now allocated to different purposes according to new regulations (Khadka 1997). The state is inducing changes in traditional use patterns through various acts. For example, the Water Resources Act 1992, the Forest Act 1993, the Land Reform Act 1964, and the Local Self Governance Act 1999 contradict several traditional resource management practices. As indicated in the case studies, these changes affect or alter access and control patterns, as well as ownership rights.

### 6.3 External development interventions and conflicts

External natural-resource management interventions have introduced several conflicts in the study area. Several erupted simply because of technocratic, top-down development interventions (cf. Kaplan 1995). Most of these were designed to fulfil the vested interests of a circle of technocrats, bureaucrats, and politicians (Upreti 2001, 2002). As observed in the ADB-funded irrigation case, the most commonly reported conflicts arising from development interventions in the study area were related to the misuse of money and materials, and abuses of authority. External development projects funded by donors and government departments had created several conflicts, mainly due to their ignorance of local dynamics. Citing the land measurement and registration programme of the government, Kaplan (1995) argues that when outsider organizations enter a village setting, the incidence of conflict increases enormously. Various research findings have also independently demonstrated that conflict increases as a consequence of interventions by external development organizations which lack a proper understanding of local systems (Upreti 2001, Pradhan *et al.* 2000). The first and fourth cases represent examples of such conflicts.

## 7 Common conflict management practices

The following section will discuss the conflict management practices that prevailed in the study area. They are categorized into practices adopted by formal organizations and informal practices. Formal practices are those which involve official procedures, guided by the government's rules, regulations, and laws. Informal practices are those which are adopted by the local community. Informal practices do not usually work within the government's legal framework. Disputants' choice of a particular category



of practice to resolve conflict depends mainly upon their knowledge and interests and the resources at their disposal, as well as the availability of such forums in the specific context. However, sometimes the formal and informal methods are combined.

### 7.1 Informal conflict management practices

In the study area most conflicts were resolved locally in informal ways. It was observed that elderly people often worked as mediators. Though they lacked any legal status, villagers commonly accepted their judgements (Upreti 1999). Such informal conflict management practices are a blend of local customs, a sense of justice, and religious feeling, rather than official procedures. Written record keeping is not common in informal conflict management practices. Elderly and socially respected people, traditional landlords, teachers, *jhānkri* (shamans), priests (*purohit*), and *mukhiyās* are principal players in the resolution of a wide range of local conflicts. These people do not only mediate conflict as neutral third parties but also generally decide on the terms and conditions for the negotiation (Khadka 1997). The majority of local negotiators did not charge a fee for their services, but they often expected some contribution of physical labour from the negotiating parties in return. Some negotiating parties also voluntarily gave them payments in kind, such as ghee, chickens, vegetables, fruit, etc. In all the above cases, informal conflict management practices were used to settle conflict. However, these were mixed with formal practices too. Local people reported that an enormous number of conflicts were resolved through local practices.

It was found that people involved in community conflict management had acquired negotiation skills through practice. They had the time, credibility, temperament, willingness, and interest to become involved in community-level conflict management. Generally they listened carefully to both parties. They also inspected the place of conflict (if relevant), assessed the past track records of the conflicting parties, and consulted neighbours if appropriate. They called meetings in public places if necessary to get the opinion of neighbours. Then, on the basis of their assessment, they made their decision (cf. Khadka 1997). The conflicting parties in most instances accepted such decisions. They used many cultural, religious, and political proverbs (which highlight the importance of resolving conflict locally rather than resorting to formal processes) to convince conflicting parties. According to the context and situation, they also threatened, harassed, and sometimes even beat offenders to reveal the truth or to force them to accept the prescribed settlement. Occasionally, they also integrated their resolution measures with a formal process (for example, sometimes the police were invited to execute the decision if the proven offender did not abide by it).

The main reasons people gave for their preference for informal mechanisms were their trust of local mediators, the maintenance of social harmony, and a lack of the resources (money, knowledge, and time) they would need if they were to opt for a formal conflict resolution process. Nevertheless, the credibility of such informal conflict management mechanisms is being eroded by social and political changes (Khadka 1997), particularly after 1990. Now, many people affiliated to political parties do not trust these local negotiators/mediators/arbitrators. They question their fairness, due to their potential bias towards supporters of one particular political party or another.

In informal conflict management practices, although men are the dominant decision-makers, women play an important role at household level. The role of women was crucial to the successful resolution of the springwater source conflict. Women exert pressure on male members of their family to reach a compromise (Upreti 2001). In some cases, women acted as mediators between husbands or other family members who fell into a conflict with neighbours. It was also found that men used women as a means of getting the sympathy and favour of villagers. Women were sent to the elderly people or local leaders to report the case in the hope that this would make their case stronger.<sup>9</sup> When people get into conflict, each party tries to win the support of neighbouring villagers. In several cases, husbands were in deep-seated conflict, while their wives had maintained normal relationships. It was also observed that men brought conflict cases to the formal process of resolution more frequently than women. The reasons expressed were socio-cultural restrictions, fear of defamation, and a lack of decision-making authority and resources among women. Several conflict management activities carried out at local level are based on traditional values and customs (*rīti-thiti*). Nevertheless, not all customs were effective in terms of equity and justice, and some promoted unequal power relations in the community.

### 7.2 Some examples of local systems of conflict resolution in Nepal

#### *Dharma bhakāune (sacred test)*

This method is based on the principle of an 'oath of innocence'. It is commonly used when there is a lack of other evidence. During the process of conflict resolution the negotiators perform activities such as taking contending parties to the local temples and asking them to undergo a test, and asking conflicting parties to take an oath of innocence while touching sacred materials such as *shāligrām* (a sacred stone), copper, sacred plants such as peepal, basil, and *dub* grass, or sacred books. Sometimes

<sup>9</sup> It is commonly believed in the study area that women do not come out to report a problem unless they are seriously victimized.

conflicting parties are asked to hold their children while performing such vows (Khadka 1997). These tests are undergone in the presence of villagers, negotiators, and the conflicting parties. A sense that it would be sinful if the matter were falsified plays a strong role in this method. This method is also sometimes used in formal conflict management practices.

*Jhānkrī rākhne (exploration by shamans)*

This method is based on the belief that shamans have received supernatural powers from a god to control particular problems, and is applied most commonly to cases of witch allegation. In this method the shaman treats culprits mostly inhumanly (setting fire to hair, pouring hot water onto the body, severely beating, etc.). It is generally women who are accused of being witches, whereas shamans are always men. This was the crudest method of conflict resolution in the study area. The *jhānkrī* also acts as a local doctor to treat several diseases and problems related to villagers in general and children in particular. In natural resource management *jhānkrīs* are used to forecast rainfall, to control or prevent forest fires and landslides, to cure crops affected by different diseases and insects, etc.

*Pānī kātne (ostracism)*

This is a traditional conflict resolution method grounded in the orthodox Hindu caste system. Though this is not applied in natural resource conflict, it is still a common village way of dealing with sexual conflicts. In this practice, the offender and his/her family are declared as outcasts and no one maintains social interactions or any relationship with them. People stop visiting and eating in their houses and refuse to invite them to their homes. This is a strong public sanction and it is common in cases of molestation and illegal and immoral sexual relationships between unilateral kin groups, based on either matrilineal or patrilineal descent. Nepalese law prohibits such punishments but in reality they are still common practice in rural areas. Local people say that the threat of ostracism maintains social harmony and prevents sexual offences.

*Sagun garne (reconciliation)*

In this very common method, a gift is exchanged between disputants in the presence of villagers. This exchange function is performed after discussing the matter in a meeting attended by villagers, negotiators and the conflicting parties. When a settlement is reached they start *sagun garne* (reconciliation). The conflict is declared to have been settled when a gift has been accepted by both parties, and this is followed by a small celebration where all people drink *jād* (a type of fermented liquor). However, there are no written documents of such settlements: the evidence is the witness of villagers present at the *sagun garne* ceremony. This practice is most common among Matwalis and Tibeto-Burman ethnic

groups. The gifts are usually liquor, eggs, meat, etc. (Khadka 1997, Upreti 2001).

*Jarimānā and kshatipūrti bharāune (fine and payment of compensation)*

In this method, negotiators call both parties and villagers to a public place to discuss the issue. The negotiators hear the opinions of both parties and also seek the opinions of villagers. Based on the hearing, they decide the level of *jarimānā* and *kshatipūrti*. This practice involves a reimbursement of loss (usually in cash, sometimes in kind) by those deemed guilty, and some extra punishment in the form of a fine. This is very common in cases of conflict related to damage to crops, canals, drinking water lines, and public paths, etc. If the community realizes that one party has borne a considerable loss in property or sustained an injury, the wrongdoer has to bear the cost of the losses, other associated costs, and the cost of medical treatment, if needed. The fine is generally paid to a temple, school, or *guthi*, or to repair a public facility.

*Māphī māgne (public apology)*

As in other local methods, negotiators invite villagers and disputants to discuss the conflict issue and decide to make a public apology. Public apology by a guilty party was a common method in the study area. The guilty party, in the presence of villagers and the local elite, begs for pardon and swears not to repeat such offences. This is sometimes also combined with an additional fine or other punishment. This method is also widely used in formal conflict resolution processes.

*Mit lāune (tie of special friendship)*

*Mit lāune* is a unique mode of development of a special relationship between two people. In most cases *mit lāune* happens for one of two reasons. First, due to certain interests, beliefs, and traditions, someone wants to develop a special relation with particular person. Second, it is a form of reconciliation or a means of negotiation if and when two individuals/groups are in low intensity conflict. In the *mit lāune* process, the two individuals exchange money, flowers, clothes, or some other special gift in the presence of an audience, with or sometimes without a simple religious process. Some people hang curtains between the *mit* candidates for the exchange of gifts. Some even join hands and exchange *namaste*. *Mit lāune* symbolizes an accommodative way of negotiation, and results in a win-win situation.

## 7.2 Formal conflict management practices

Organizations that adopt formal conflict management practices fall into two main categories. The first includes the court system and the second includes the VDC, the government's natural resources-related offices, the police,

and the District Administration Office. These all work within the government's regulatory framework. The District Administration Office and the police have a mandatory responsibility to address all types of conflict issue. Large numbers of conflicts were settled by the second category of organization: only those conflict cases which could not be solved there went to court.

The Nepalese organizations dealing with formal conflict management practices are ineffective and heavily clogged with unsettled litigation. The respondents pointed out that some of them had waited for up to seven years to settle simple disputes in court (cf. Oli 1998). It was also observed that lawyers and solicitors deliberately worked at an unhurried pace in order to maintain a continuous income. There is no evidence of the persons responsible for delaying court proceedings being punished or made to pay compensation to their clients. It was found that wealthy and educated people more easily obtained justice from the formal system. A frequent and widening gap between rhetoric (rules, laws, policies) and real practice, along with the effects of differential legal knowledge, the high cost of obtaining justice, and the suspicion of unfairness were common problems in the formal legal system (cf. Oli 1998, Khadka 1997, Kaplan 1995). Therefore, the legal service was not easily available to poor people.

Several formalities and technicalities in judicial administration have to be fulfilled in government organizations. Furthermore, personnel working in these organizations lacked the required (technical) knowledge and information related to natural resource conflicts, which undermined the credibility of their verdicts. To obtain *tok-ādesh* (order-directive) to get things done it was necessary to mobilize 'source force' and *āphno mānche*. It was also observed that a person who is in authority knows that there is no way to move things forward other than extracting an order (*ādesh*) from them or paying them a bribe. I was standing in the District Land Revenue Office, close to a *subbā* (a non-gazetted administrative staff member). He was shouting at one customer (a rural man of about 55): *ādesh khoi? māthiko tok ādesh chāhincha, hākim sāb-le tok lāumu parcha, aile hundaina, bholi āunū* ("Where is the order? We need an order and directive from the boss, it is not possible to do it today, come tomorrow"). This was the starting point to bargain for the bribe. There was some facial symbolic gesture between the customer and the *subbā*, and the *subbā* accomplished everything within 20 minutes. But if there had not been a bribe he would have lingered over the task for several days (as he did for several others who were not able to pay a bribe). It was observed that the disputants often used illegal means to win conflict cases. The most common was the combination of bribe and the mobilization of political power and *āphno*

*mānche*, especially in complicated cases. The respondents expressed the following reasons for the poor performance of the formal system:

- Excessive influence of money (bribes and kickbacks)
- The exercise of power and 'source-force'
- Elite domination
- High fees of attorney
- Low levels of legal knowledge
- Complexity of judicial administration
- Faulty policies and procedures of government
- Lack of transparency in the litigation process
- Ambiguous and contradictory laws, regulations and tasks of government officials/ politicization

## 8 Conclusion

In general it can be concluded that fairness, ethics, and the rule of law play only a minor role in the resolution of natural resources conflicts in Nepal. It may indeed be suggested that the existing socio-political system, more than anything else, determines the outcome of conflict resolution. There is no assurance whatsoever that the legal system will produce fair resolutions of natural resources conflict. The broader socio-political system, power dynamics, and local politics affect conflict over natural resources tremendously. All in all, there appears to be little evidence of effectiveness in the existing linear top-down approach of government-instituted organizations to resolve natural resources conflicts. In the current system, only powerful people and the elite are benefiting. The existing conflict management system in Nepal is not responsive enough to address growing conflict, and deserves prompt action aimed at reformation.

Specifically, women play a crucial role in local-level conflict resolution but their ability or potential is constrained by socio-cultural factors. Some effective indigenous conflict management practices are either sidelined or politicized, while formal systems remain inaccessible. This creates a vacuum in the community and fuels the further escalation of conflict.

In reality, social relations play a vital role in the emergence, escalation, and resolution of conflict at local level. The accommodative and tolerant behaviour of the weaker groups in society are often used by strong groups as an opportunity to resolve conflict in their favour or to maintain the exploitative relations which have existed in the community for generations. A certain degree of accommodative behaviour, influenced by the need for

social harmony, maintains unequal social relations within communities irrespective of the power structure, which most often helps to negotiate conflict, but only by indirectly exploiting weaker sections of society. This is one of the main weaknesses of local conflict resolution practice.

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