Struggle for Water Rights in Thulotar Kulo: A Historical Analysis[1]

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Introduction

Some of the small-scale run-of-the-gravity irrigation systems built and managed by farmers (FMIS) in the hills of Nepal are among the world's oldest irrigation systems (see Poudel et al. 1994, IIMI 1991, Pradhan 1989, Martin and Yoder 1987). They are of great significance for Nepal because about 70 percent of the total irrigated area in the Southern plains (Terai) and 90 percent in the hills are irrigated by them. A recent study indicates that there are 17,700 units of FMIS in the country that account for roughly 75 percent of the total irrigation development (Shukla and Sharma 1994).

In this paper, I shall focus on the Thulotar Irrigation System (TIS)[2] in Rupakot village in the district of Tanahun. The centrepiece of my paper is the history of a dispute between people in two adjacent irrigation systems, Thulotar and Ghartiswara. I shall explain why an event which occurred in 1935 - the construction of the Ghartiswara system - was to become a major dispute and why it was raised by the Rupakot farmers only after a long period of 25 years in 1960. My account also involves the story of how a young man in 1960 became a successful chairman of the TIS water users association (WUA) and replaced the traditional leadership; why he got a direct intake to his *chuhan khet*[3] at the very tailend of TIS after his active involvement in the dispute between the systems; and what made negotiation the most successful and effective form of dispute settlement. More generally, I shall show how the socio-political position and relationships of local leaders in Thulotar and Ghartiswara have influenced the kind of disputing or non-disputing strategies and what circumstances

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[2] The old river terraces in the hills of Nepal are called *tar*. The term '*tar*' is usually suffixed to the names of the locality, thus Thulotar.

[3] *Khet* is a Nepali term for rice field. A *chuhan khet* is a field within the irrigation system that has no direct intake to one of the channels. Such fields get water only after the upland field(s) have been fully irrigated. Apart from this, the rights to such fields are the same as pertaining to other fields (cf. van der Schaaf, this volume).

inspired the disputing parties to choose negotiation as a tool to resolve their dispute. At the same time, this paper shows how successful negotiations are important for local leaders to acquire and maintain their reputation and status. It also shows the negotiability of water rights, and how the concretisation of water rights changes with the changing sets of social relationships between the disputing parties, and of the relationships of the disputing parties with the outside world. But before dealing with the inter-system dispute between the two FMISs, I shall provide some background information on the status, importance and performance of farmer constructed and managed irrigation systems in Nepal. In order to understand my case study, it is also necessary to give some historical information on how irrigation dispute cases in the rural hills of Nepal were managed in the past. Then, I will describe and analyse the history of the dispute between Thulotar Kulo and Ghartiswara Kulo.

The management of irrigation and irrigation disputes in rural Nepal in historical perspective

Farmer managed irrigation systems

FMIS in Nepal have been managed by many different kinds of formal and informal officials and institutions for several centuries (Poudel et al. 1994).[4] Their position depended on socio-economic factors such as the type of the national governing institutions, the educational, economic and social status of the farmers and their organizational affiliations. Caste, religion, age and occupation were and still are the major factors affecting farmers' social status. In these institutions, some leading farmers, often landlords, usually are more active and prominent than the rest. Historically, *parganna choudharies*, big farmers and under the Rana regime government representatives who collected taxes of all types of lands in the Terai, were among the leading personalities to build and manage irrigation systems in the Terai (Shukla et al. 1993, see also R. Pradhan and F. and K. von Benda-Beckmann in this volume).[5] In the Hills, the *jimmawal* or *talukdars* (farmers leaders and the then

[4] There was quite a gliding scale of formalities. Some officials or institutions were appointed by the government. Some informal institutions are established and maintained by farmers themselves, but they are not necessarily registered or taken into account by any governmental or quasi-governmental agencies. Other locally established institutions such as water users associations may or may not be registered by the government.

[5] *Praganna choudharies* in the Terai, and *jimmawals* in the hills, were representatives of the Rana rulers at the village level until 1950. "Rana" is the name of the family which ruled Nepal for 104 years until they were overthrown by a popular revolution in 1950. Ranas were prime ministers and occupied most of the top positions in the government. These posts were distributed and rotated among the brothers and/or sons of the prime minister. In this era, Nepal was a feudal state. Rana prime ministers pleased the big landlords in the countryside in order to maintain their rule. They were the most unpopular regime Nepal ever had. Most people could not put forward their grievances in this period, but the local representatives of the Rana could almost do whatever they wanted to please their masters in Kathmandu. In this period the kings of the Shah dynasty, although regarded as the supreme ruler, had no ruling power and few opportunities to interact with their subjects.

government representatives in the Hills of Nepal to collect the land tax from irrigated rice land) were among the major figures who constructed and managed irrigation systems. Mostly, irrigation management were "one-man shows" before the trend of forming Water Users Association (*kulo samiti*) was institutionalised.

The development of organizing farmers in associations or other institutions started during the 1950s when the then dictatorial ruling system of the Ranas was replaced by the democratic institutions in the new national political organization of the Kingdom of Nepal. In this period, many FMIS activities both in the Hills and the Plains of Nepal established their water users associations to take care of the management. Although organized in different forms, most irrigation institutions were actually involved in water acquisition, allocation and distribution, resource mobilization, rules making and dispute management. The systems are increasingly converted into "community-managed irrigation systems" due to these political developments, but also because of the entry of new farmers as users of the system or due to the increase of households among the children and grandchildren of the *parganna choudharies*. In these institutions, some leading farmers, often landlords, usually are more active and prominent than the rest. But although the old influential families may no longer occupy their formal governmental positions, they and their descendants still play an important role in the contemporary systems.

Farmer managed irrigation systems in Nepal have been recognized as potential and cost-effective alternative to government managed systems through which to expand and intensify irrigation development in the country and improve the performance of irrigated agriculture (Poudel et al. 1994). A number of studies on FMIS during the 1980s have reported a relatively better performance of FMIS over government run irrigation schemes.[6] There are quite convincing reasons why the performance of FMIS is better than that of the agency or government managed irrigation systems (AMIS). Panta and Lohani (1983) have identified a number of such strengths of FMIS (see Shukla and Sharma 1994: 4):

- They are management intensive and technical deficiencies are largely compensated by intensive management inputs backed by flexible but strong organizations.
- They are low cost systems, based on mobilization of local resources.
- Water users in FMISs usually base membership on some forms of property rights.
- In many FMISs, there are effective and functional irrigation organizations, and the initiative for such organization mostly comes from the users themselves.
- The leadership of the system is accountable to the users.
- Rules and roles for water allocation, distribution, resource mobilization, system maintenance and conflict resolution are made to fit local needs, usually governed by social and economic forces.

[6] Pradhan 1990, Martin 1986, Yoder 1986, Panta and Lohani 1983, Laitos et al. 1980, see further references in Shukla and Sharma (1994).

Farmers water users associations (*kulo samities*, WUA) have good performance records in terms of water allocation, system organization, management of resources for system repair and maintenance, and dispute management (Khatri-Chhetri et al. 1988).[7] The WUAs are dominated and managed mostly by the local leaders and the richer and high caste farmers with a strong commitment to work in irrigation management. Generally, the WUA is kept away from the politics. However, as Maskey et al. (1994) have questioned, the frequent greater efficiency of farmer managed systems notwithstanding, it is less clear whether they are necessarily equitable in their functioning, for instance by actually allocating and protecting water rights in proportion to the size of landholding and/or to the labour or cash invested into the construction and maintenance of the system.

Disputes and dispute management

Irrigation disputes

Although farmers manage their irrigation systems relatively well and frequently better than governmental agencies (see Pradhan 1994, Acharya et al. 1994, IMC 1989), there are hardly any irrigation systems without conflicts and disputes.[8] Generally, the emergence and magnitude of disputes depend on the distribution and use of power and resources in a society. Disputes tend to become more intense the more power or resources become scarcer. Irrigation water frequently is a scarce resource, especially when a large area of land is to be irrigated by a small amount of water. Inter-system disputes are almost inevitable when more than one system must share the same source of - limited - water. The major issues in water disputes are the volume of water and the time and duration of the flow (see Malla and Khadka 1996, Bumalag and Bhuyan 1986). Disputes on irrigation management emerge due to changes in the ecology; through development policies and their implementation by the government or its agencies, particularly the rehabilitation or extension of the existing systems; and through the introduction of new regulations about access, distribution, operation and management of irrigation water. Especially the construction of new canals, introduction of new crops or new crop varieties or new farming systems with new water requirements are likely to trigger off disputes about the ways the changes in irrigation infrastructure should be given form and how water should be distributed (see F. and K. von Benda-Beckmann and Spiertz 1997, Poudel 1995, Shukla et al. 1993).

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[7] Khatri-Chhetri et al. (1988) do not talk about the performance of systems as such but are primarily concerned with the farmers' water users associations.

[8] "Conflict" here denotes any difference in ideas, values or interests between two or more persons. "Dispute" is a process in which a conflicting and contradictory claims are made public and brought to the notice of a third party. It then may be processed through various modes of dispute management. For information about the reasons behind irrigation disputes, see Malla and Khadka 1996, Poudel 1995a, Shukla et al. 1993, Maas and Anderson 1986 in Tang 1992, Wiber 1992, and Coward 1990.

Traditional rural institutions of dispute management

Traditionally in rural Nepal, local officials such as the *jimmawals, talukdars*, or *mukhiyas*, the tax collectors for uplands (*pakho*), the *parganna choudhari*, the *jamindar*, the landlords[9], the *baidhya*, the traditional herbal doctor in the rural areas, and the *budha-paka*, the aged members of the society, were important persons and institutions to handle disputes in small meetings or mass meetings of the local people called for special purposes (*sabha* or *kachahari*).

Among the institutions taking care of social problems in rural life including irrigation disputes, the *pancha-bhaladmi* is historically the most dominant one. Literally, it is a group of five members among the villagers. In practice, it is a voluntarily constituted arena by a collection of village leaders, and the exact number of its members is not important. The leadership of such members has been established either by age, belonging to the oldest members of the society means long experience which is highly respected by the members of the society; by being educated or literate such as the *pandit* (priest); or by having gained much confidence among the farmers by successfully handling dispute cases previously. Generally and relatively speaking, those who are better educated, have been more exposed to different societies and experiences, and have shown leadership qualities in earlier cases are the most dominant leaders among the members of *pancha-bhaladmi*. Active or retired government officials like *dittha, bichari, baidar, subba, mukhiya, writer* and military or police officers and teachers are also regarded as members of the *pancha-bhaladmi*. For them, age is not the important status element. High caste and high socio-economic status, of one's ancestors and oneself, are also important if a person is to be considered as a member of the *pancha-bhaladmi*. Women are only very rarely members of the *pancha-bhaladmi*. Though there is no absolute exclusion of females, women only exceptionally can attain the status criteria required for being regarded as a member of *pancha-bhaladmi*. They are usually less literate than men, and, although the rate of social change even in the rural areas is very fast today, traditional culture in Hindu society mainly recognizes women as important actors only for household chores and family activities inside the home. Public social activities in the village or neighbourhood were seen as the task of men.

The concept of *pancha-bhaladmi* and their practical involvement in irrigation management in Nepal has been important since the era of Ram Shah, the King of Gorkha, when he established "*panchayats*"[10] for irrigation canal management. *pancha-bhaladmi* has been popular throughout the rural Nepali society independent of the institutional changes in the public organization of the kingdom. The role of *pancha-bhaladmi* was played by the same members of rural society even when they had other official functions or worked in other organizations.

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[9] The author has used the term '*jamindar*' instead of '*jimidar*'. The term '*jamindar*', alternate spelling of '*zamindar*' is currently used to refer to big landowners. The correct term in our opinion should be '*jimidar*', a revenue collector in the Terai. See Glossary [Editors' note].

[10] Literally, "*panchayat*" is a group of five members. The concept was used as the name of an institution that functioned as the government institution at village level until 1950.

Traditional government institutions of dispute management

If local dispute management institutions could not solve a dispute, the farmers in Nepal had the opportunity to report their case to one of several government agencies. Before 1950, the Police, the *badahakim* (during the Rana period "judicial legates of the central government") and courts were the most common government agencies to handle disputes. Sometimes, a special group of government officials from Kathmandu was also delegated in order to study trouble cases and either to settle the cases in the field or to present a brief report to the government. Such delegations were commonly known as "*daudaha*". After 1950, the Chief District Officer (CDO), the Police and the state courts are the dominant agencies to handle the dispute cases among the farmers (see Khadka 1997).

Disputes emerge when an aggrieved person or community feels that they have undergone some injustice by the action of others communities (see also Felstiner et al. 1981).[11] However, the definition of injustice differs in many cultural, economic, political, and social contexts. The distribution of wealth among the water users and their locational differences (Tang 1992, Poudel 1990, Bumalag and Bhuyan 1986), local political relationships and other socio-economic factors (Poudel et al. 1994, Poudel 1990, Pormento and Poudel 1989) are also responsible for the involvement of irrigators in irrigation disputes. Sometimes, water users are exposed to educational media about irrigation management and particularly about water rights, access to land and water, water laws, etc. Through this exposure, farmers become increasingly aware of their rights. Borrowing the concepts of Felstiner et al. (1981), "unperceived injurious experiences" (unPIE) then can be transformed into "perceived injurious experiences" (PIE), and induce those with a perceived injurious experience to claim their rights. In this sense, education (and legal literacy projects) may also be one of the catalysts for irrigation disputes in farmer managed irrigation systems. Simple conflicts, if not handled properly in proper time, may lead to an expansion of disputes. In other cases, one dispute may invite further and more intensive disputes even after the so-called formal process of resolution by outside agencies has been concluded (see K. von Benda-Beckmann 1985).

Conflicts or disputes in irrigation management do not necessarily always mean that there are great problems for the management of irrigation systems. Although there is always some negative consequence to one or all disputing parties, the dispute resolution itself may also have positive outcomes. But no disputing party really benefits when disputes continue for too long and most people therefore have a preference for getting the problem out of the world. Farmers usually want to resolve their irrigation disputes by their own choice among the available means. Mostly they prefer negotiation for dispute resolution (see also

[11] In this paper I shall use the ideas which Felstiner et al. (1981) have developed for understanding and analysing the genesis and transformations of disputes. I shall also rely on the contributions in Nader and Todd (1978) and K. von Benda-Beckmann (1984).

Nader and Todd 1978, Gulliver 1969). That is, disputing parties themselves (or their representatives) get involved in a dialogue of bargaining seeking a solution acceptable to both parties. Such process may involve frequent offers and counter-offers until a compromise solution is reached. In such compromises, people may also develop new rules and principles concerning the disputed issue of water allocation and distribution, etc. and thus generate their own local law. Such new rules do also work as dispute prevention for the future. disputants. If compared with court procedures, negotiation is an effective and efficient practice for the resolution of water disputes for the rural people. The understandings or agreements adopted during negotiation are usually long lasting (see Gulliver 1979). In case negotiation is not possible, the disputing parties choose one of the available forums that they perceive to be more appropriate for reaching their objectives (see K. von Benda-Beckmann 1984). Almost all rural societies are pluralistic in nature (see F. von Benda-Beckmann 1997). Therefore, the disputing parties have many alternatives for resolving disputes.

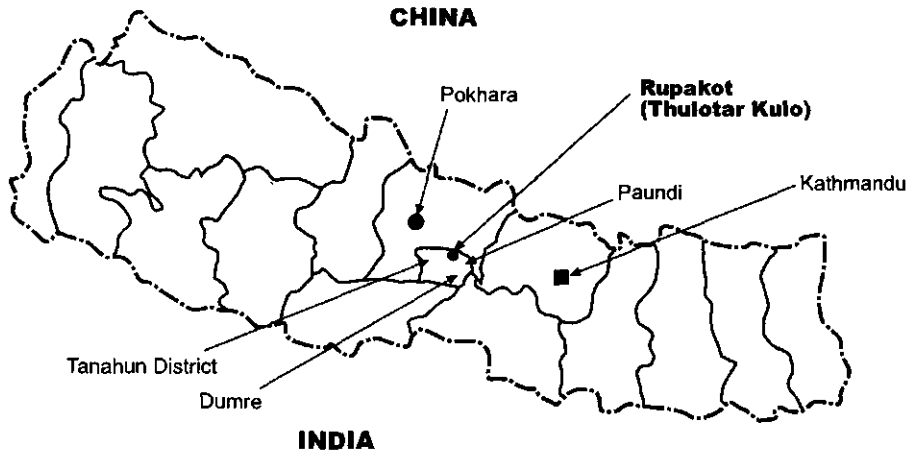
As much research on dispute management has shown, disputants generally rely on negotiation or mediation leading to compromise solutions when they have continuing multiplex social relationships. But an important role is also played by the relationships between local leaders and their followers, as well as by the relationship between the leaders themselves (Nader and Todd 1978, K. von Benda-Beckmann 1984, Reyes and Jopillo 1986). The leaders' power over disputing parties is high if their position is also based upon strong social ties with their followers, for instance based on common descent or other social relationships, characterized by power differentials and economic dependence. The will of leaders to resolve disputes is likely to be stronger when they are convinced that the outcome of the dispute resolution has some positive consequences for them personally, their family members, their relatives, neighbours or friends. Such positive outcomes do not have to consist of economic material gains. Leaders can also gain much social capital from their active role in dispute management. There is a high probability for successful dispute resolution through negotiation if the leaders and representatives of both or all disputing parties are almost equally influential over their followers, and if the leaders have more or less the same socio-economic status within the locality where the disputants live. Negotiation becomes easier when the leaders of the disputing parties have strong mutual relationships such as common descent, ritual kinship (*mitra saino*[12]), friendship, common peer group relationships or common organizational affiliation.

[12] *Mitra-saino* is established between families that are distantly related through patrilineal descent. A member of one family offers "*mit*", a special sort of friendship bond with a high affective content, to a member of the other family. It is usually practiced between members of the same sex, especially when they look alike and have the same facial and bone structures. *Mitra-saino* is usually arranged by the guardians of both persons. They then address each other as *mit*, and also other family members of their *mit* are called *mit*-sister, -brother, -father, etc. Marriage is not allowed between families having *mitra- saino*. Both families act as if they were descendants of a common ancestor.

The setting of the disputing irrigation systems

Both Thulotar and Ghartiswara irrigation systems are located in Tanahun, one of the Mid-Hill districts in the Western Development Region of Nepal. The Kathmandu-Pokhara highway (Prithvi Rajmarga) divides Tanahun district almost half to the north and south, starting from Trisuli river at Mugling to Kotre Khola towards Pokhara. These systems are situated towards the Northeast boundary of Tanahun about two hours walking distance to the west from Paundi Bazaar along the Dumre-Besishahar road (see Map 1). These two systems are a part of more than a dozen of farmer managed irrigation systems that are fed by Sabadi Khola in Rupakot. Sabadi Khola[13] is a small perennial stream at the boundary of ward number three and ward number four of Rupakot Village Development Committee (VDC) in Tanahun.[14] It is one of the tributaries of Naudi Khola. Marshyandi River is the ultimate drainage system of Naudi Khola. The village of Rupakot is located in ward number 4 of Rupakot VDC, about three kilometres southwest of Sundar bazaar, Lamjung. The village of Khalte lies in ward number 3 of Rupakot VDC. The boundary between the wards is formed by Sabadi Khola, the water of which was to become the object of the dispute.

Map 1
Location of Rupakot



[13] *Khola* is Nepali for small creeks.
[14] It has an average discharge rate of about 300 litres per second (LPs, DIO Tanahun 1996).

The history of Thulotar Kulo and its management

Thulotar Kulo[15] is the earlier name of the present Thulotar Irrigation Project (TIP) in Rupakot Phedi of Ward number four of Rupakot VDC, Tanahun.[16] At present, the canal system of TIP consists of a permanent headwork and a 1430 meters long main canal. The upper 740 meters of the main canal are lined with concrete; the remaining 690 meters of the canal consist of earth-work. The total length of the ten earth-worked irrigation branch canals is around 1255 meter[17] (see Map 2). The system irrigates about 20 hectares of lowland (*khet*) belonging to 67 farm households from Rupakot village. Rice is the main crop grown in the irrigated area during the rainy (monsoon) season.

Only a small area is used for growing wheat, potatoes and mustard in winter; the rest of the land is fallow. Maize is the main crop during summer.

The ethnic/caste composition of the farmers having fields in the system consists of 51 Brahmin and Chhetri households, eight Nepali (also called Sarki, Shoe-makers), seven Bishwokarma (also called Kami, Blacksmiths) and one Bhujel (also called Gharti). In the caste hierarchy, the Brahmin and Chhetri castes occupy the highest position, followed by the Bhujel. The Sarki and Kami are lowest in rank. In conservative Hindu thought, Sarki and Kami (and Damai or Pariyar, the tailors) are called untouchable castes.

Egharhasayatar was the previous name of the present Thulotar lowland rice area. Similarly, Thulotar Kulo was called Egharhasayatar Kulo. Little is known about the original construction, operation and management of Egharhasayatar Kulo. However, some old farmers of Rupakot believe that Egharhasayatar was settled hundreds of years ago. Although it is not remembered when and by whom it was made, farmers constructed an irrigation canal for Egharhasayatar hundreds of years ago. The total area of Egharhasayatar at that time was only about 14 hectares (1100 *mato muri*).[18] At the beginning, Egharhasayatar Kulo irrigated only Egharhasayatar. Later, the settlers of Thulotar moved to Rupakot Gaun. When the villagers of Rupakot felt that a large and wide stretch of land was not properly used for several decades, they started to think about the use of the Egharhasayatar irrigation canal for a more productive use. Irrigated farming was more beneficial than upland farming, and there was upland that could easily be converted into rice terraces. Most of the head parts of the present service area of Thulotar Kulo, a forest area, were converted into *khet* land after several decades of the history of Thulotar Kulo early sometime in the 19th century. Thulotar Kulo was one of the early constructions from Sabadi Khola. At the time it was constructed, there were only a few irrigation systems getting their water from Sabadi

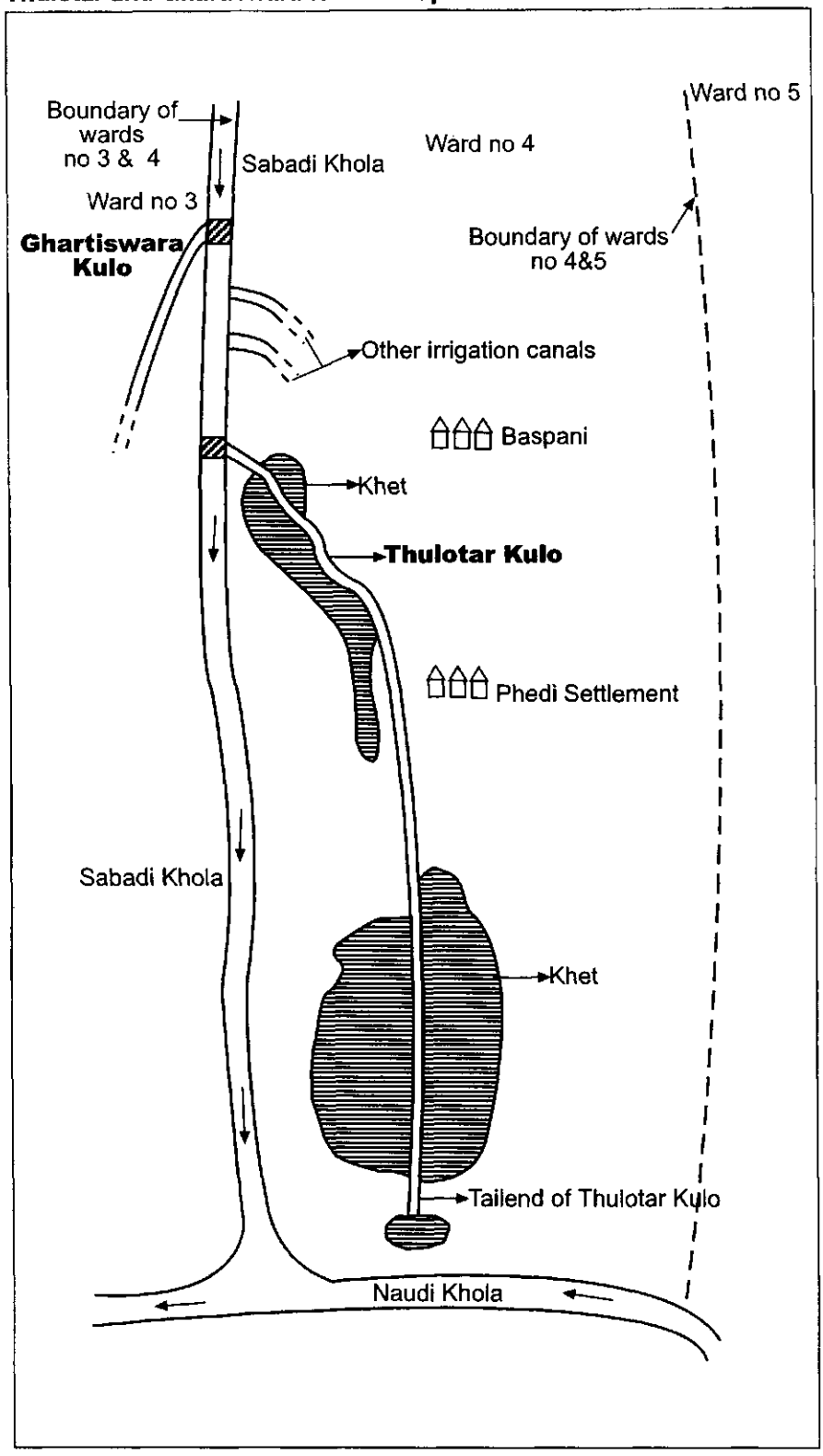
[15] *Kulo* is Nepali for irrigation canal.

[16] On the history of the Thulotar Irrigation System, see also van der Schaaf in this volume.

[17] Its average discharge rate at the main canal is 200 LPs (DIO Tanahun 1996).

[18] Before the proclamation of the Land Related Act of 1964, all cultivated lands in Nepal were measured in terms of soil (*mato*). *Muri* is a volumetric measure for some farm products and soil. The *mato muri* was estimated but not exactly measured in terms of the soil covering the plough-layer of the land surface. 4 *mato muri* is approximately 1 *ropani*, and 20 *ropani* is equivalent to 1 hectare.

Map 2
Thulotar and Ghartiswara Kulo in Rupakot



Khola. Therefore, there was no competition with other systems for sharing water from the same source. It only had to irrigate a small area in Thulotar. At that time, water distribution was not a problem because there was no tradition of growing other crops than rice in the *khet* lands. All farmers could flood their lands simultaneously during the same periods as and when they needed. As time advanced, the people of Rupakot realized the importance of rice crops to support the growing population.

The owners of the forest lands in the lower riparian area close to the head parts of the main canal gradually started to convert their land into rice terraces. They added about six hectares of newly irrigated service area to the initial 14 hectares in Thulotar Kulo. These new members of the irrigation system were no strangers. Some of them were related by patrilineal descent to the old water users; some of the old water users had also extended their farms within the Thulotar command area into the new area. Apparently there were no clear rules about the way in which the new farmers got access to Thulotar Kulo. In the beginning they seem not to have been recognized as full members of the irrigation system. But oral history has interesting stories about the ways in which these farmers used water from the canal during the early days for their rice fields. The main canal used to very wide, in some sections wider than two meters. Because the new farmers were not restricted from allowing their buffaloes from wallowing in the canal, the clever farmers used to get their buffaloes to wallow close to their rice fields so that the flow of water in the canal would be blocked and enter their fields. Since there was sufficient irrigation water in the canal, the downstream farmers had no reason to complain and made no trouble with the new "free riders". As the tradition of growing rice became more and more important, the new farmers were gradually accepted and welcomed as members of Thulotar Kulo in later years.

The management of the system until 1960

Very little is known about the early history of the management of Thulotar Kulo, but it is probable that like in most farmer-built irrigation systems in North-East Tanahun they had some form of organization and institutions to manage irrigation water and irrigation structures for several centuries (Poudel et al. 1994). However, the farmers are able to describe how Thulotar Kulo was managed for the last 150 years. During the Rana period, there was no problem of water supply for the rainy (monsoon) season. Winter and summer farming was not practiced in Thulotar. During this period, the dominant positions were occupied by tax collectors. A *mukhiya* or *thari* was responsible to collect land tax (*malpot*) for upland (*pakho* land). Similarly, a *talukdar* or *jimmawal* was responsible for collecting the tax for irrigated land. Towards the end of the 19th century, one of the farmers using water of Thulotar and a popular *pandit* (priest) in the Rupakot area was the *jimmawal* in northeastern part of Tanahun. In exchange for collecting land tax from the farmers, he got a certain percentage of cash as his remuneration. His father also had been one of the influential residents of Rupakot. Now, one of his sons is the member of Thulotar Water Users Association (WUA). Mr. Pandit was the acknowledged leader of the farmers of Rupakot, and, as such, managing

Thulotar Kulo was one of his responsibilities. During his tenure, all farmers of Thulotar were obliged to pay land tax in *Chaitra*[19] (February-March) or before the end of every year. If farmers were not able to pay land tax before the beginning of the next year, they risked loosing their land rights. Therefore no farmer wanted to miss this crucial date to pay land tax. Mr. Pandit was clever enough to use this opportunity to get the canal cleaned. Usually, he fixed the date to clean the Thulotar canal and pay land tax during the last week of *Chaitra*. Everybody was called to attend the meeting and to clean his or her part of the canal. The *kattuwal*[20] ("village herald") was asked to announce it one day before the meeting. Mr. Pandit never accepted tax before this day so that every farmer was pressed to attend. Every household had to send one man of working age. Households which did not participate were fined in cash. Cash was very rare during that period. Barter and exchange labour were the dominant forms of economic exchange in rural Nepal. Farmers therefore rarely missed the date fixed to pay cash or clean the canal.

After the overthrow of the Rana regime and the beginning of democracy in 1950, several local leaders became aware of people's democratic rights to participate in development and some showed their interest to join Mr. Pandit in the management of the irrigation system. They were mostly older farmers with a high social status, among them a *mukhiya* and a "writer" (clerk) among them. They had demanded government assistance to renovate Thulotar Kulo from one of the most popular national democratic leaders when he visited Rupakot in 1951. He had been the most popular leader in the 1950 revolution. Although various leaders showed their interest to participate in the management of Thulotar, Mr. Pandit remained the unopposed leader until 1960. Before 1958, there was no village level government organization in Nepal. The first multi-party system ever, adopted in 1958, tried to institutionalise villages and municipalities. This system was replaced by the Panchayat System as the national political-administrative system in 1960. Village Panchayats and Wards systems were formed as local political units. In 1960 the old Talukdar system was replaced by the Land Revenue Office (*malpot adda*). However, the tax collector (*talukdar*) Mr. Pandit continued to work as *jimmawal*, the official representative of the Land Revenue Office. Being the *jimmawal* and having no competition from other older village leaders, Mr. Pandit continued his leadership for the management of Thulotar irrigation system until 1960.

The formation of water users association in Thulotar

At that time, Mr. Pandit made it known to the farmers in Thulotar that due to his old age he could no longer lead irrigation management affairs and looked for an appropriate

[19] *Chaitra* is the last month of the year according to the Nepalese calendar.

[20] The *kattuwal* was and still is a kind of rural official in many villages in the Hills of Nepal to communicate the public messages to the villagers. Generally, a man from the Pariyar caste is appointed as *kattuwal*. He is paid either in cash or kind by every household in the village equally. In addition to cash, he also benefits by getting a share of the food during the major festivals like *Dashain*. Nowadays, VDCs appoint and pay *kattuwals*. However, some villages (or wards) still maintain their own heralds.

person to replace him. Mr. Writer became the new leader. The first Water Users Association (WUA) in Thulotar Kulo was formed in 1960 under his chairmanship. He was joined by other popular leaders, among them the oldest farmers of Thulotar Kulo, a *mukhiya*, a political leader of the village, and by the son of Mr. Pandit. Only 36 years old when he became the first chairman of the irrigation system, Mr. Writer was relatively younger than other village leaders in Rupakot. He was an official in the Land Revenue Office that was at a distance of about five kilometres from his home. He was literate in Nepali and Sanskrit and quite knowledgeable about water and land rights and the laws of His Majesty's Government of Nepal (HMG/N). Like the previous leader, he also belonged to a high class Brahmin family. He belongs to the Adhikari family which constitutes about 70% of the water users in TIS. The new leader was also relatively richer than the other farmers of Thulotar. He was also one of the active democratic leaders in the village and his initiative and desire to engage in social activities had been boosted by the rule of the first elected government in Nepal, at least for the two years of the 1958-1960 period, when he was one of the active leaders of the ruling political party.

The construction of Ghartiswara Kulo in 1935 and the "silent" conflict between Khalte and Rupakot

Ghartiswara Kulo is located about 300 meters above the headwork of Thulotar Kulo, in Ghartiswara. Ghartiswara is part of ward number three of Rupakot VDC. Before 1935, Ghartiswara was an upland (*pakho*) belonging to the farmers from Khalte village.[21] It was relatively flat and easy to convert to rice farming. Six farmers of Ghartiswara decided to convert part of their *pakho* land at Ghartiswara into rice fields. Ghartiswara Kulo was constructed in the same year from the right bank of Sabadi Khola to irrigate these fields (see Map 2). The canal system currently consists of a temporary headwork made of brushwood and an earth worked main canal 2500 meters long. It has no branch canals.[22] It irrigates about six hectares of *khet* land owned by nine Brahmin and two Gurung households. All the 11 households come from Khalte village in ward number three of Rupakot VDC. Similar to Thulotar, rice is the main crop grown in the irrigated area during rainy season. In winter, a very small area is allotted for wheat, potato and mustard; the rest of the land remains fallow. Maize is the main crop during summer.

The Rupakot farmers did nothing to oppose the construction of Ghartiswara Kulo. The case only emerged as a major dispute between the same parties after 25 years of the construction of the *kulo*. They knew that any new irrigation system to be built above Thulotar Kulo (their own) their prior permission, according to the regulations of prior rights to irrigation water of first users laid down in the first national legal

[21] *Pakho* land is upland used for unirrigated agriculture. In most cases, the names of land ending with "*swara*" are *pakho* lands.

[22] Its average discharge rate at the main canal is 62 LPs (Poudel et al. 1994).

code of Nepal, the Muluki Ain of 1853 AD (see Pradhan 1994, WECS 1987).[23] One of the reasons why they did not oppose the construction probably was that sufficient water was available to irrigate the service area of Thulotar Kulo, even after the construction of Ghartiswara Kulo. The other reason was the dominant social position of the water users of Ghartiswara Kulo and their supporters during its construction period. Most of the inhabitants of Khalte village were and still are Brahmans. All water users of the newly built Ghartiswara Kulo were Kumai Brahmans, generally regarded as the highest and socially most important category of Brahmins in Nepal.[24] Although there were only six farmers using water from this canal in the beginning, there were many other households of Kumai Brahmans in Khalte village all of whom supported the construction of Ghartiswara Kulo. Moreover, one of the Khalte villagers was an official in the district court (*bichari*). His social and economic status was very high compared to the other farmers in the Rupakot region, including Rupakot village. His influence reached beyond the district to the institutions of the government. His son was a strong village leader. The water users of Ghartiswara were connected to these households by common patrilineal descent, neighbourhood and friendship relations. Although about three fourth of the farmers in Thulotar Kulo were also Brahmins and many of them were literate and working as priests in the region, their influence outside the village and their relations to dispute managing institutions was less than that of the residents of Khalte.

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[23] There were no separate codes for irrigation or water management. It was only in 1963 that the National Code of 1853 was amended for the first time. However, the provisions of the National Code 1853 referred to in the charter still exist under the new National Code of 1963 (see Khadka 1997). According to the section on "*Jagga Abad Garneko Mahal*" (On Land Reclamation) of the National Code 1963, the construction of any irrigation canals above the existing one may only be undertaken if it does not reduce the amount of the water flow in the existing canal. At the same time, the traditional customary laws also guarantee the rights of prior users by restricting the possibilities to construct new upstream irrigation canals without the consent of the prior users. The National Code 1963 thus has also recognized the existing customary norms for water distribution patterns which have been followed for the past centuries (see also Pradhan in this volume).

[24] In Nepal, there are different categories of Brahmin families, based on their place of origin from which they migrated to Nepal and to the type of marriage systems. Most Brahmin families in the Hills of Nepal immigrated into Nepal in the pre-historical time from the Western and Eastern borders of Nepal. Immigrants who settled in the East are known as Poorbia, and those who settled in the Western Kumaun region are called Kumai. Kumai Brahmans perceive themselves as the most superior families among all Brahmins. Other people of Nepal have a general opinion that the Kumai Brahmans are very clever and that they can dominate all other families, castes and races of people in Nepal. There are also two classes among Poorbias according to the marriage system they follow. The Brahmins following the traditionally prescribed cultural practices for marrying Brahmin girls are called Upadhyaya Brahmans. Those who marry Brahman girls but without the prescribed practices are called Jaisi Brahmans. Traditionally, in the status hierarchy, Jaisi Brahmans are below Upadhyaya Brahmans. Only Upadhyaya Brahmins can work as *pandit* (priest). Jaisi Brahmans are not allowed to do so. In general, Kumai Brahmins are regarded as being socially more influential than the Poorbia. However, Poorbia Brahmins also regard themselves as superior to Kumai Brahmans. All categories of Brahmins who marry girls of other castes are demoted to a lower caste, depending upon the girl's caste. If the girls come from so-called untouchable schedule castes, all progeny of such unions follow their mother's caste. The children of the girls from any other touchable caste are called Chhetri.

Here we see that the event of the canal construction may just have entered the phase of "naming". Although it was difficult to fully understand from the interviews how the Rupakot farmers exactly experienced the construction of Ghartiswara Kulo in and after 1935, one gets the impression that they realized that in some way their prior rights to the water of Sabadi Kola had been violated, but they did not make a point of that because they suffered no material consequences in terms of water supply – and because they could not do anything anyway against the more influential people of Khalte. In the terms used by Felstiner et al. (1981), there may have been "naming", but no "blaming" or "claiming". The potential dispute was, as it were, in a state of "incubation" until the dispute fully emerged and water rights were claimed by Rupakot farmers in 1960. As I shall show in the following part of the paper, this was mainly due to the initiative and ambition of the new young leader of Rupakot, Mr. Writer, his close ties with the Khalte leader, and the changed social relationships between the villages in general.

The 1960 dispute over water rights to Sabadi Khola

The beginning of the 1960 dispute: An unPIE becomes a PIE

In 1960, irrigation water was not sufficient for the *khet* fields in Thulotar due both to the reduction of the volume of water in Sabadi Khola and as a consequence of the extension of the irrigated area under the Thulotar Irrigation System. As already mentioned, by that time the traditional leadership by the tax collectors in Rupakot had already been replaced by Mr. Writer. One day, when Mr. Writer was walking along Sabadi Khola he saw how the water flowed into the service area of Ghartiswara Kulo, actually more than the land in Ghartiswara needed, and that at the same time and for that reason, Thulotar was left without sufficient water to irrigate the fields in Rupakot. As the chairman of the water users association of Thulotar, he was concerned about the lack of water in the Thulotar system. He started planning how more water from Sabadi Khola could be diverted to Thulotar Kulo. Coming back to Rupakot, he put the matter to the other leading farmers and asked them to support his plan to reduce the volume of water flowing into Ghartiswara Kulo. This idea was supported by all other leader farmers. They stated that Thulotar Kulo was hundreds of years older than Ghartiswara Kulo. The construction of any new irrigation systems above the intake of Thulotar Kulo, including Ghartiswara Kulo, therefore required permission from Thulotar Kulo. What until then had been a largely "unperceived injurious experience" now was clearly regarded as "injurious" and had become a "grievance". To use Felstiner et al.'s words, the UNPIE had become a PIE.

The next phase: from grievance to dispute

After gaining the support of the other leading farmers in Thulotar, Mr. Writer made up his mind to talk with the leading farmers of Ghartiswara Kulo in order to get more

water into the Thulotar system and reduce the volume of water to Ghartiswara, on the basis of the argument that Thulotar had prior rights to the water in Sabadi Khola. In July 1960, he went to Khalte and tried to convince Ghartiswara farmers personally to reduce the amount of water in Ghartiswara Kulo. The Ghartiswara farmers, however, flatly rejected this demand. This did not discourage Mr. Writer, and he did not withdraw his claim. At this point the Rupakot farmers' grievance had become a public inter-system dispute between Rupakot and Khalte. At the same time, the first attempt to settle the dispute had failed. Looking at the process of dispute management during the following weeks, we see several different modalities and styles of attempted, and finally successful, dispute resolution.

The second unsuccessful attempt to negotiate and resort to self-help

Some days after his unsuccessful meeting with Ghartiswara farmers about sharing water from Sabadi Khola, Mr. Writer invited the Ghartiswara farmers to a meeting at the intake of Ghartiswara Kulo for another attempt to end the dispute. But at that stage, the social atmosphere between Rupakot and Khalte had become so bad that no party was willing to take a step back from their own claims to the water. The people from Khalte had a problem with saving their face. They wanted to maintain their social superiority in the region and felt that they could not submit to the demands of "those Rupakot people". The leader of Rupakot, on the other hand, also could not back down from his claim to water based on the prior rights of Rupakot, because he had a strong and ambitious ego. He wanted to demonstrate his ability to lead and maintain his reputation and leadership position. Therefore, it was almost impossible to avoid a potentially intensive dispute between the two parties. Mr. Writer received strong support from the people of Rupakot, including from many Rupakot villagers who did not use water from Thulotar. About 70 persons, at least one from each household in Rupakot village, followed him to the intake, fully prepared to face any challenge from the Khalte people. A large number of women and children from Rupakot had also gone to the nearby forest to watch the event.

Some farmers from Khalte also came to the intake. Khalte's most important leader, Mr. Bichari, the court official (who was not a water user of Ghartiswara) was absent, but his son went as leader of the Ghartiswara farmers. The atmosphere was tense. According to a few older farmers of Rupakot, some of the farmers from Ghartiswara Kulo were armed with sticks and threatened to beat up Mr. Writer. But the farmers from Rupakot did not tolerate that any harm done to their leader. In the beginning, Mr. Writer tried to convince the Ghartiswara farmers for the last time that they should reduce the volume of water entering into their *kulo*. His arguments were that the area irrigated in Ghartiswara did not need such a large volume of water while on the other hand the water could be very productively used in the Thulotar Irrigation System. But once again his demand was rejected by the Ghartiswara farmers. Faced with this refusal, Mr. Writer permitted his followers to dismantle the headwork of Ghartiswara Kulo. This was done within a few minutes. At this stage, the Rupakot farmers were

not willing to allow any water to enter into Ghartiswara Kulo. The Ghartiswara farmers could not react immediately.

From public dispute to private negotiation

An impasse had been reached which was troubling to several persons. Some members of Mr. Writer's patrilateral kin in Rupakot also had fields and used water in the Garthiswara system. They hoped that their Rupakot leader would allow at least the minimum required volume of water into Ghartiswara which would be sufficient to irrigate their fields in Ghartiswara. But Mr. Writer rejected these private initiatives which would soften the hard claims of Rupakot.

The next move was then made by Mr. Bichari, the court official and the most influential leader of Ghartiswara. He was not using water from the irrigation system, but he was related through common descent to most of those farmers whose fields were irrigated through Ghartiswara Kulo. Moreover, being an important official, he was regarded as one of the most important personalities and *pancha-bhaladmi* of Khalte village and the wider region. The dispute became a matter of prestige for him. His position as the popular leader of Khalte was in danger if he could not assure his brothers, friends and co-villagers of sufficient water to plant rice as had been done for the past 25 years. He therefore could not sleep in peace until this dispute found a satisfactory ending. So he decided to take the initiative. This was rather easy because he was related to Mr. Writer by one of the strongest social relationships, *mitra-saino* (ritual friendship, see note 12). One of Mr. Writer's patrilateral cousins was the *mit* of Mr. Bichari's son. This also made him Mr. Writer's ritual father *(mit-babu)* and Mr. Writer his ritual-son *(mit-chhora)*.

Shortly after the open conflict and the destruction of the Ghartiswara headwork, Mr. Bichari went to Rupakot early in the morning to wake up Mr. Writer in his house. Since Mr. Writer was his *mit-chhora*, Mr. Bichari hoped that they could find a solution which would be agreeable to both parties. At first Mr. Writer refused to have a private meeting with him but because they were tied by the *mitra-saino* relationship, there were no personal misunderstanding between them. And because both of them were the most prominent leaders in their respective village, they also knew that it was their responsibility to handle any trouble in this locality successfully. So Mr. Writer eventually also agreed to discuss briefly the dispute. In a short meeting, the two reached the solution that the water of Sabadi Khola would be equally divided between the two systems at the intake of Ghartiswara Kulo. Then both agreed to inform their followers and call a meeting the same day at Rupakot Phedi in the centre of Rupakot village.

The public ratification of the leaders' agreement

Consequently, a mass meeting of both disputing parties was held. In this meeting, the Rupakot and Khalte farmers agreed to share water equally. They also decided to put this agreement into written form in a charter.

The agreement between Rupakot and Khalte village ending their inter-system dispute[25]

"We, the following two parties among the citizens of Tanahun, Jyamruk, Rupakot, and West No. 3 Khalte hereby state that traditionally we had a common understanding of sharing the source of water of Sabadi Khola (including water from the creek of Dharapani) equally, to irrigate Ghartiswara Khet and Thulotar (also known by the name of Egharhasayatar). Although the long drought led to a misunderstanding between us this year, we now agree to share the specified sources of water for the whole future equally. Non-compliance of this agreement will be punishable according to the prevailing rules and regulations. We have written this document with the joint agreement of both parties and have kept a copy by each. The document is written at Charkune Chautaro of Rupakot Beshi in Tanahun Jyamruk in the presence of the following witnesses."

The charter was signed in August 1960 AD by seventeen representatives from Rupakot, including the two tax collectors for *khet* and *pakho* land, the oldest farmer and Mr. Writer, their highest leader, and by five representatives from Ghartiswara. Four witnesses (*sakchhi*) including the Mr. Bichari, the court official, also signed the agreement. *Sakchhi* is an institution of witnesses or observers which is used in all types of formal and informal affairs in Nepal. It is a person or group of persons which take the responsibility to be present when the agreement between parties is concluded and provide evidence of that in the future in case the understanding should be violated by one of the parties. In the case a document is made up of an agreement and the conditions of the understandings are written down, the witnesses do also join the respective parties in signing the agreement. The agreement itself, however, was not registered with any external agencies. Both parties have a copy.

The consequences of the dispute

The agreement reached by the disputing parties had a number of consequences.

The agreement signed by the both disputing parties has indeed become a charter for sharing equally the available volume of water in Sabadi Khola at the headwork of Ghartiswara Kulo for the following years. This charter has become the standard to check any potential dispute between Gartiswara and Thulotar. During the nearly four decades since the agreement was concluded, it has never been violated by either party, although the technical construction through which the water sharing is effectuated seems to favour Ghartiswara. Ghartiswara Kulo has temporary headwork made from stone and brushwood across the river and Ghartiswara farmers do not leave any space at this diversion in order to let half of the volume of water flow downstream. There is no permanent structure for dividing the water. However, the volume leaking through

[25] This translation of the original document has been made by the author.

the brushwood diversion is almost half of the water flowing through Sabadi Khola. The farmers from each system regularly go to the Ghartiswara intake to check whether the volume of water is divided equally, especially in July when there is sometimes too little water in both systems. The results of such meetings are always productive and both parties affirm that the water is distributed correctly.

The resolution of the dispute also had a number of consequences for the political and economic status of Rupakot's young leader, Mr. Writer. The first was that the position of Mr. Writer as the prominent leader in Rupakot was strengthened. He continued as chairman and leader of the water users association of Thulotar for another three decades until 1993 when he could no longer shoulder this responsibility due to his old age. Everyone was convinced by the leadership qualities he had demonstrated when handling the dispute. He became respected as the most important leader among the *pancha-bhaladmi* in the region and his requests and suggestions were also taken seriously by external agencies and officials outside Rupakot VDC.

The second consequence was economic. In exchange for his bold and successful leadership during the dispute with Ghartiswara, he was rewarded a separate field channel to his *chuhan khet* which is at the very tailend of the irrigation system (see Map 2). The retired land revenue collector, a very distant patrilineal kinsman, sacrificed a portion of his private land for creating this direct access to the irrigation canal. A *chuhan khet* is a field within the irrigation systems that has no direct intake to one of the channels. Such fields get water only after the upland field(s) have been fully irrigated. Apart from this, the rights to such fields are the same as pertaining to other fields (Schlager and Ostrom 1992). This was a rather "private" reward. The decision to change the irrigation structure in this respect was not discussed or sanctioned in the meetings of the WUA or its General Assembly; nor had other farmers proposed that a reward be given to Mr. Writer.

Conclusions

The Thuloar Irrigation System (TIS) has a long history of operation and management. The farmers were quite aware of their water rights as early as 1935 when the Ghartiswara Kulo was constructed about three hundred meters above the headwork of Thulotar. Under the then prevailing law the farmers of Kahlte village could only construct the new canal above the Thulotar canal if the diversion of water to the Ghartiswara Kulo would not have an adverse impact on the Thulotar Kulo or if the farmers of Thulotar Kulo would give their consent. But the grievances of Thulotar farmers - losing a significant volume of water from Sabadi Khola - were not claimed or disputed with their opponents, due to their lower social and political status. Only 25 years later, led by one aspiring young farmer of Rupakot, did they confront their opponents with their feeling of dissatisfaction in order to secure their prior users' rights. The outbreak of the dispute after such a long time after the event causing the original grievance shows that Felstiner, Abel and Sarat's (1981) assumption that

once a grievance is perceived as injurious experiences, claims are made against the other party and a dispute then arises, has to be qualified. My case study illustrates that not in all cases are such grievances claimed immediately after they are felt by the concerned party.

Although the increasing shortage of irrigation water in Thulotar was one of the important events leading to the inter-system dispute, the new initiative and spirit of the Rupakot farmers to claim their prior rights was mainly due to various social factors, especially changes in the positions of and relationship between the village leaders and farmers in Rupakot and Khalte villages. In the first place, it was due to the emergence of a relatively more literate, vocal and well trained leader among the Rupakot farmers who also was a government official (writer) in the revenue office - Mr. Writer. He could aspire to talk directly to Mr. Bichari, the leader in Khalte, a personality with a high social status. But the successful and effective negotiation between the disputing parties is largely due to the following elements in the strong multiplex relationship between and among the leaders and farmers of these villages (see also Mitchell 1983):

- Between 1935 and 1960 the very important *mitra-saino* relationship between these two leaders had come into existence.
- The two leaders had a similar social status, the same level of education and knowledge of the legal system.
- They also had a similar socio-economic status and access to external agencies and arenas.
- As leaders, they represented followers who were related to them by strong bonds of common patrilineal descent and neighbourhood.
- Also, both leaders belonged to high caste Brahmin families and represented the dominant families in their villages.
- Both leaders, and the great majority of their followers, shared the same political ideology and belonged to the same political party.
- Further, among the farmers, there were cross-cutting social ties and interests because some Rupakot farmers also had fields in the Ghartiswara system.

The conformity of the parties and the next generations of villagers even after more than three decades shows the importance of negotiation in handling disputes at village level. It has also shown the great importance of local leaders whatever official or customary role they occupy. The traditional institution of *pancha-bhaladmi* as such does not have to be invoked or mobilized when the persons who would be the prominent members of the *pancha-bhaladmi* such as Mr. Bichari and Mr. Writer appear in other roles (such as chairman of the Water Users Association) which are of primary concern for the people in the Hills of Nepal.

Looking at the agreement itself, however, one may conclude that the compromise reached and written up in the charter still reflects the superiority of Khalte village over Rupakot. In any case, by allowing half of the water of Sabadi Khola to Ghartiswara in the agreement, the farmers of Rupakot and Khalte have not given due respect to what is called "horizontal equity" (cf. Maskey, Weber and Loof 1994), i.e., the

distribution of water according to the size of the area to be serviced. Although the volume of water for Thulotar Kulo is significantly augmented even below the headwork of Ghartiswara Kulo by the small brooks and natural springs, the eleven hectares land of the Ghartiswara service area may not need half of the total flow of Sabadi Khola. More water for Thulotar would have a higher marginal value for their 20 hectare of land area. Certainly, if an irrigation systems having the service area almost double than that of another just receives an equal share, one cannot regard this equal sharing of water as justifiable in terms of social justice, especially since Rupakot farmers had the right to claim their prior water rights.

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