

Community Level Water Use Negotiation: Implications for Water Resource Management¹

Bishnu Raj Upreti

Introduction

Conflicts over use and management of water are common in Nepal, both at the national and the local levels, despite the vast water resources drained from the Himalayas. These conflicts are managed at various levels with different strategies and mechanisms. In this paper I discuss community level water use negotiation processes. Community level water use negotiation processes are guided mainly by socio-political, cultural and legal aspects of society. For the past few decades, water resources management (WRM) has been an important issue for donors, governmental organisations (GO) and non-governmental organisations (NGO) in Nepal. WRM for the purpose of this research includes the acquisition, distribution, utilisation and conservation of water as well as the legitimate ways of controlling it at the community level. Water use conflicts are one of the important elements of WRM. These days there is a growing debate on how to come to an efficient, productive and equitable use of water resources (Upreti 1998) and learn from past experiences for a better future. However, progress in this direction is not satisfactory. Conflicts over water use are widening, co-ordination among GOs, NGOs and donors is still weak, and local initiatives and efforts are not getting sufficient attention. Scarcity, competition and improper exploitation are the basic characteristics of WRM in Nepal.

Conflict over water use is a common characteristic in Nepal (Pradhan and Pradhan, 1997, Pradhan et al. 1997) where rural people have been involved in water use negotiations processes since time immemorial. They have their own mechanisms and procedures to deal with water use negotiation. These water use negotiation practices are still powerful in rural WRM. However, such local level water use negotiation

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processes and people's initiatives are getting only little attention in Nepal. Very few efforts have been made to explore on how local people learn and develop coping strategies over water use negotiation. The influence of local feudal elites such as mukhiyas (former revenue collectors on upland) is still enormous in the community level conflict resolution process. These local power structures and customary practices, though often unjust, are decisive in water use negotiation process.

It has become increasingly clear that conflicts are integral part of water management. The diverse interests of actors involved in water management cause conflicts. It is essential to explore how people resolve conflicts in local communities to contribute to the improvement of the contemporary water management. Water use conflicts and negotiations in Nepal are dominated by legal process, though there is a strong role of indigenous institutions. Little work, however, has been accomplished on how local people respond to water related conflicts in changing circumstances and what support they need to resolve such conflicts.

The purpose of this paper is to examine how water users deal with water use conflicts and how they learn to negotiate for effective use of available water resource. This paper attempts to analyse how water use negotiation practice is accomplished at the community level. To explore this process, a case study was conducted in Dolakha district in central Nepal, during June-September, 1997.² This paper attempts to illustrate the role of local people and intervention of external organisations in the negotiation processes, their strategies and procedures. Power relationships, the role of women, and customary and local norms are also discussed.

Approaching conflict management

In this section I illustrate the conceptual basis for the analysis of water use conflicts and negotiation processes in practice based on legal anthropological and social learning perspectives. A perspective is a guide to tell about where to look for what a researcher wants to observe. Perspectives shape the way of understanding. A legal anthropological perspective³ leads researchers to study the key issues: norms, power structure and discrepancies between rules and behaviour. It focuses more on understanding the social practices in the frame of multiplicity of legal institutional arrangements and normative repertoires in society (Spiertz 2000). The social learning perspective helps to analyse the implications of conflict and negotiation process for future improvement.

² The research methodology consisted of semi-structured and key informant interviews, focus group discussions, participant observation and transect. Respondents were represented from water users; non user villagers, VDC, NGOs and GOs.

³ The contribution of legal anthropological perspective in the study of conflicts is illustrated by Benda- Beckmann et al. (1997: 222) as: "Adopting a legal anthropological perspective means giving primary attention to description and analysis of the current legal situation and trying to understand the significance of that legal situation for the actual forms and practice which water rights and water management assumes. It means asking about the interrelation between law and social practice, rather than engaging in conventional doctrinal legal science."

For the purpose of this paper, the term 'negotiation' is explained as "a conflict resolution procedure in which conflicting parties are the decision makers, and the settlement of conflict is one to which both parties agree" (Nader and Todd 1978). Mediation, on the other hand, is defined as "an intervention into a conflict situation for negotiation process of an acceptable, neutral third party who has no final decision making authority, but who will assist contending parties to negotiate on acceptable settlement of conflict" (Pruitt and Carnevale, 1993). Negotiation is a process that deals with a conflict situation and functions on mutual dependency of the negotiating parties. Negotiation includes any instance in which two or more people are communicating with each other for the purpose of influencing the other's decision. Negotiation takes place between parties (individuals, groups or organisations) to resolve the incompatible goals. Hence, negotiation deals with diverse interests in conflicts (Pruitt and Carnevale 1993). Negotiation can lead to a win-win situation, win-lose situation and lose-lose situation for the different parties involved. Negotiation brings conflict situations into light. People have different and often conflicting interests and objectives. Therefore, negotiation is part of social processes and one kind of problem solving strategy (Gulliver 1979: iii). The purpose of negotiation is to discover mutually acceptable outcomes in disputing through means of persuasion or inducement. Gulliver (1979: xv) explains that patterns of interactive behaviour in negotiation are essential despite marked differences in interests, ideas, values, rules and assumptions among negotiators of different societies. He argues that a fuller understanding of negotiation process will be achieved when they are considered in their full socio-cultural context (1979: 170). He, therefore, focuses his attention on the process of negotiation, recognising that a conflict and its negotiation occur in broad cultural contexts and social institutions. He compares joint decision making by seeking common patterns that characterise interactive behaviour with adjudication or unilateral decision making (using third party judges to adjudicate disputes).

Negotiation can be categorised into two distinct forms, i.e., distributive and integrative (Wertheim 1997). The characteristics of distributive negotiation are to focus more on resource distribution. The attitude of negotiating parties is firm with attention to their own interests and a far reaching consequence may be a loss-loss situation (Rafia 1991, Kremenyuk 1991). The characteristics of integrative negotiation are to create resources (win-win situation) where negotiating parties are open for alternatives and give attention to the interests of others too through participatory problem solving. The collection of water in the collection tank at night, in the case discussed here, is an example of creation of resource for win-win negotiation. It leads to a collective decision and commitments by the negotiating parties to achieve an optimal collective solution (Moscovici and Doise 1994). Practically, negotiation is a problem solving approach in which conflicting parties meet face to face to reach a mutually acceptable agreement of the issues. In alternative dispute management approach, negotiations generally focus on the best alternative to negotiated agreement, interest (issue, position and criteria), and process

(create a condition for effective problem solving). According to Pruitt and Carnevale (1993), negotiations are often the best way of dealing with social conflicts as they are the main routes to a win-win situation. They explain that existing power relationships play an important role in the negotiation process. Actor specific characteristics like position, function, and personality highly determine power relations in negotiation.

In the study of disputing process Nader and Todd (1978) distinguish between three phases or stages: grievance⁴, conflict⁵, and dispute⁶. However, in this paper all these three stages are covered by the general term 'conflict'. Conflicts are part of everyday life in all societies (Caplan 1995). Accordingly, conflict is a central and dynamic concept in Nepalese society. The word conflict usually carries negative connotations and generally is interpreted as irrational, pathological and socially dysfunctional. But conflict can also be a constructive process to establish group boundaries, strengthen group consensus and sense of self-identity, and contribute towards social integration, community building and economic and social change (Dougherty and Pfaltzgraff 1990). Conflict is not only a sporadic event, but more importantly it is a social process and has great influence in shaping and changing social relations. Warner and Jones (1998) argue that conflicts promote adaptation by a society to a new political, economic and physical environment. New technologies, policies and procedures, privatisation of public services, commercialisation of natural resources, power exercise, etc. greatly affect conflict. Therefore, it is not appropriate and even not possible to avoid or suppress conflicts in practical life. Conflicts are influenced by values of conflicting parties (both values described and actually perceived), degree of incompatibility of goals, genesis of conflict, power structures, and so on. The alternate approach to conflict analysis focuses on the mode of behaviour of people, the organisation of their social life in the frame of social structures, functions, process, and their relationships.

Analytically, conflicts can be broadly categorised into psychological approaches and sociological approaches.⁷ In the psychological approach, psychologists, biologists, game theorists, and decision making theorists take the behaviour of individuals as a point of departure to analyse conflicts. They analyse conflicts from the knowledge of individuals to draw inferences. Sociologists, anthropologists, geographers, organisation and communication theorists, political scientists, international relation analysts and system theorists on the other hand examine conflict at the level of groups, collectivities, social institutions, social classes, political movements, religious and ethnic entities, coalitions and cultural systems. This analysis focus on knowledge of collective

⁴ Grievance is a pre-conflict stage: The circumstance or condition which one person or group perceives to be unjust, and the grounds for resentment or complaints. This condition potentially erupts into conflict.

⁵ Conflict refers to antagonism caused by a clash of cultural, political, social or economic interests between individuals and groups.

⁶ Dispute results from escalation of the conflict by making matter public and opting for confrontation.

⁷ The details about psychological and sociological approaches of conflict analysis are presented by Dougherty and Pfaltzgraff (1990: 189).

behaviour and is known as sociological approach (Dougherty and Pfaltzgraff 1990: 189). In this paper I use a sociological approach and an interpretative model⁸ of conflict study to analyse water use conflicts.

The common conflict management strategies are consensus, compromise, accommodation, withdrawal, and coercion (Warner and Jones 1998). In all these strategies people look for different possibilities and choices to resolve their conflicts, a process which is known as 'forum shopping'.⁹ Approaching the police, the courts, the district administration office, VDCs, NGOs, and local institutions are some examples of forum shopping. Similarly, various organisations involved in conflict management shop for forums (conflicts) in order to increase their prestige and power. There are several strategies to resolve resources use conflicts, which are briefly presented as follows:

- *Consensus*: In this strategy synergy of collaborative negotiations is used to widen the basis for decision making, thereby avoiding trade-offs altogether. It is more than a simple agreement. This was the principle guiding factor in the negotiation process discussed here.
- *Compromise*: Compromise is a more common strategy in conflict management if there is less possibility of reaching a consensus. In this strategy at least one of the parties perceives that it has relinquished something.
- *Accommodation*: It values a continuing relationship between conflicting parties above the attainment of its own goals. In this case the conflicting parties elected to 'accommodate' the interests of other parties, withholding some of their claims. The accommodating party perceives itself to have gained by securing good relations, accompanied by 'good will' and the option to achieve some greater goal at a future date. Self actualisation plays a great role in this strategy.
- *Withdrawal*: This option is suited to those parties whose desire to avoid confrontation outweighs the goals they are trying to achieve. The power of withdrawal can be used as a threat to force reluctant and sometimes more powerful parties to negotiate in a more consensual fashion. However, disadvantaged groups may also withdraw out of a feeling of helplessness. This strategy is based on check and balance and social harmony. But often this strategy is used by the weaker party to surrender their claim.
- *Coercion/force*: This conflict management strategy is chosen when one party has the means and inclination to win regardless of the consequences for the other party. Not all conflicting parties will be able to use the same force. It largely depends upon the power that one party holds relative to another. In some cases, recourse to the legal system is a form of 'force' in that one party can use their superior resources to 'buy' better advice or raise the stakes (for example, by taking a lost case to an appeal court). Social differentiation and power inequality are the enhancing factors in the choice of this strategy.

⁸ Interpretative model is an empirical model that describes how people behave; how they perceive uncertainties, accumulate evidence, and update perceptions; how they learn and adapt their behaviour; and why they think the way they do. This model is more commonly used by social scientists to analyse conflict without trying to modify, influence and moralise the behaviour of people.

⁹ Keebet von Benda-Beckmann (1981) explains in detail about "forum shopping" and "shopping forums" in the context of Indonesian dispute settlements.

Water rights and ownership issues were the major claiming factors responsible for the escalation of conflict in the case discussed here. The notion of legal pluralism¹⁰ is used in this paper to understand the diversity in the role of cultural, social and normative practices in water use conflict. It is realised that the community is not shaped and guided by single legal framework. The actions and behaviour of community members are guided by several local norms, practices, beliefs and regulations. Even normatively defined government laws are reshaped by actors and translated into practice differently according to local situations. Society is guided by the coexistence of complex legal phenomena derived from and embedded in multiplicity of local systems, legal systems and rights (Benda-Beckmann et al. 1998). In practice access, control and transfer of water resources and resolutions of associated conflicts are not completely regulated by states law and regulations alone. Every community has their own organisations, laws and procedures to address these issues. In reality the existence of plural legal systems in the community is itself a source of conflict over water resources. The actors often modify or change state laws fit the local situation. The claim of the owner of the water source for irrigation against the priority for drinking water defined by Water Resources Act of 1992 is example of this modification.

As human behaviour change over time due to social, political, economic and technological changes, water rights also change. Laws and regulations administered by the government are only one of the many forces that change human behaviour and action. There are other guiding factors like customary practices and regulations, religious rules, local norms, economic opportunities, and technical advancement, which greatly influence human behaviour concerning control, use and management of water. These customary practices, adopted local rules and norms to address the changing circumstances, which Benda-Beckmann et al. (1998) call 'local laws', greatly influence water related issue in society. In this regard it is noteworthy to state that the Nepalese court's involvement in settling water related disputes are only small portion of the large number of conflicts over water (Benda-Beckmann et al. 1997). The majority of such conflicts might have been managed by other local forums and processes than courts. Therefore, it is important to know these alternate forums and processes, the people's perceptions about conflicts over water, how they manage these conflicts, the decision processes used to resolve the conflicts, and why they opted for a particular "forum" to resolve their disputes (Benda-Beckmann 1981).

Case study on spring water use negotiation: narrative description

This case study was based on a spring water source named Bhoteko Dhara which is located in ward seven of Pawoti VDC in Dolakha district. The population composition of the study site is Brahmin, Chhetri and Tamang. The population of the

¹⁰ Spiertz (2000) argues that 'legal pluralism means that in many life situations, farmers, water-users, village headmen, bureaucrats, and officials can make use of more than one normative repertoire to rationalise and legitimise their decisions or their behaviour. Plurality of normative frameworks pertaining to the various domains of social life can be found in any society'.

study area is not very diverse socio-economically, but it is a politically diverse group. Political parties like Communist Party Nepal-United Marxist Leninist (CPN-UML), Nepali Congress (NC), Rastrya Prajatantra Party (RPP) were active in this case to influence people in their favour. The study area is relatively densely populated and has few spring sources for drinking water which were providing drinking water for more than 70 households. Among them Bhoteko Dhoro was one of the bigger spring water sources located in the land of an individual and serving seven households (hereafter referred as the permanent users) mainly for drinking water and partly for irrigation. Of these seven households, all by and large of similar economic condition, one was a Tamang and three each were Brahmin and Chhetri households. The water source owner was a Chhetri, with a relatively weak economic condition. The average land holding of the permanent users was one hectare. In the lower part of the village 13 households (hereafter referred as "new users"), all economically relatively well-off and socially in higher strata, did not have access to drinking water. All 13 households were Brahmins. Their average land holding was 1.5 hectare. The educational level, access to information and power centres of the new users were also higher than that of the permanent users.

Around 1970, two rich Brahmin families from the lower hamlet tried to obtain water from that source. The source owner and the permanent users agreed to provide part of water to them, but due to the high investment required to complete this project these two households cancelled it. Later in 1989, again all households of the lower hamlet explored the possibility to obtain part of the water from this source and discussed their problem with source owner and permanent users. In the beginning, the permanent users and the source owner agreed to share the water. Accordingly, they decided on the locations of the tap stands, collected stones, requested and received the hardware fittings and construction materials like cement and polythene pipe from the District Panchayat Secretariat (DPS), fetched these materials from district headquarters, and dug out an alignment for laying the pipe. But the construction process was stopped from May 1990 for 2 years as social setting in the village was disturbed on account of the popular movement and the overthrow of the despotic Panchayat regime. In May 1992, the new users again started discussion with the source owner and the permanent users to construct the project.

At that time, the source owner refused to give water, citing the possibility of shortage of water for the dry season. The hidden reason behind this disagreement was rooted in the better position of the new users and the political differences between many members of two groups. The source owner perceived that the new users were relatively better-off and some of them had tried to diminish his status in the past by accusing him of being the agitator of the community. A few people from another area, who had hopes of getting water from this source and were politically different from the leaders of the new users, supported and pushed the source owner to refuse to share water, raising the problem of lack of water to irrigate the area surrounding this source. Hence the source owner refused to share this water source. Those people who were politically different from the many of the new users indirectly enhanced this

conflict. At the same time, one of the new users threatened the source owner, saying that if he would not give water, he should be ready to face physical attack, and he announced his determination that at any cost he would take water from this source. The source owner explained his view on this matter thus:

“Earlier I agreed to provide part of the water. But when some of them tried to demonstrate their muscle power to take my property, I did not agree. Should I compromise the irrigation to my rice field because of their threats? Their power and money are usually very decisive, but they cannot influence me. I have rights over this water source. They knew that I have no other source to irrigate my field so at least there should be some solution to irrigate my field. I was looking for alternatives. But when I got the threat of physical attack, I immediately refused to share the water source.”

The political differences between the villagers were one of the major factors responsible for accelerating the conflict. According to villagers other than the permanent and the new users, this source was sufficient for both groups of people, both for drinking water and for irrigation of the field surrounding that water source. Therefore, lack of water was not the real cause of the conflict. The root cause of the disagreement was the jealousy over the rising prestige¹¹ of the new users.

The new users were continuously attempting to resolve the problem based on the customary rule which accorded priority for drinking water over irrigation. They also approached the District Development Committee (DDC) for a negotiation as the DPS¹² was involved in this project. However, the DDC was not interested to get involved in this conflict and suggested that they resolve it locally with the help of their VDC. The VDC also did not show interest to resolve this conflict. The main reason for the unwillingness of the DDC and the VDC was political, as the majority of the new users were politically different from the VDC chairman¹³ and some new users were even his strong opponents. So, the Ward Chairman (WC) was requested by the new users to negotiate with the permanent users and the source owner. As a problem solving strategy, the WC invited one 'overseer' from the District Water Supply Office (DWSO) to measure the capacity of the water source. The overseer verified that the source was sufficient to meet the need of both groups of users. This negotiation process was disturbed for some time due to local and parliamentary elections and further delayed due to the absence of the source owner who had gone to Kathmandu to work for some months. In the mean time, the new users were looking for an

¹¹ Having a water tap in the house is a symbol of prestige in the rural areas. Therefore, the source owner was not interested to see the new users having drinking water taps in their houses because he had no water tap stand in his house.

¹² The name of the District Panchayat Secretariat (DPS) was changed to District Development Committee (DDC) after the restoration of democracy in 1990.

¹³ The DDC Chairman was convinced by the VDC Chairman and followed his approach because they were from the same political party.

alternate source from Bhaireko Dharo. During the process of exploring alternate sources, the new users were passive about the disputed source. However, this alternate source was found to be economically very expensive. Therefore, the new users again returned to negotiate for the disputed source that took almost three years to reach a compromise.

An active woman from the new users group, who was also one of the initiators of the negotiation process, said that fetching water was the main responsibility of women. Women from every household have to collect approximately 200-400 litres of water daily for household (human and animal) consumption. Generally, it takes around 20-25 minutes to collect water from the source. Hence, the drinking water problem was primarily related to women. Therefore, the women of the potential users informally talked many times with and convinced the women of the source owner and the permanent users. That effort put positive pressure to their male members. They intensively discussed this problem in various public occasions such *mela-parma*,¹⁴ *hatbazaar*,¹⁵ *pani-pandhero*¹⁶, *ghans-daura janda*¹⁷, and *bibaha-bratabandha*.¹⁸ The new users used relatives of the permanent users and religious leaders to convince the resisting party. The Brahmin priest commonly called *purohit*¹⁹ was mobilised to convince them. The villagers invited the Environment and Population Awareness Programme (ENAP), an NGO facilitating different activities in other areas in the VDC, to help resolve the conflict. ENAP organised different trainings on water source conservation, sanitation, community participation, conflict resolution and formal and informal meetings and discussions. At the end of all these efforts and with the help of ENAP the villagers succeeded in forming a mediation group (MG) from within the community to mediate between the conflicting parties.

The MG proposed the following suggestions to resolve the conflict on the use of the water source. The source owner should either sell the water source to the new users on the condition that it would be accessible for both groups of users, or the owner should allow them to take water under the following conditions:

- The new users should construct a reservoir tank close to the source to collect water.
- Water should be collected in the reservoir tank at night.

¹⁴ An exchange of labour in the village to perform main agricultural activities like transplanting of rice, harvesting of crops, etc. People from all households participate in such activities rotationally.

¹⁵ An informal forum where people gather weekly or fortnightly to sell or buy different goods and to settle many practical issues. *Hat-bazaar* is the principal forum to discuss different problems and issues.

¹⁶ Every morning and evening many women gather at a water source to collect water. At that time they discuss different issues and share their feelings, experiences and difficulties.

¹⁷ As a common practice in the village many people go together to the forest to collect firewood and grass where they share their ideas and opinions and discuss different issues.

¹⁸ These are religious ceremonies which represent the marriage (*bibaha*) and sacred thread (*bratabandha*) given to the male to be eligible for marriage. For these occasions women have to work together in advance to prepare materials where they share their feeling and experiences with each other.

¹⁹ Brahmin priest. He has generally strong influence on his clients (*jajamans*).

- Water should not be collected in the reservoir tank during the time there is water shortage for transplanting rice.
- The new users should take the responsibility for the conservation of source.
- The source owner and the permanent users should inform the new users and the MG before diverting the water for transplanting rice.
- Both groups should apologise for the past mistakes.
- If a misunderstanding emerges, then users should inform the MG.

This proposal was thoroughly discussed in successive meetings with the permanent users, the source owner, the staff of the ENAP, other villagers and the new users. Finally the proposal with the above mentioned conditions was accepted and an agreement was reached to use the source by both groups of users.

Discussion and analysis of the conflict resolution process

In this section, I will analyse the conflict resolution process from an interpretative approach to answer the questions why and how the conflict was negotiated in that particular way. This case is an example of successful water use negotiation at the community level from the initiatives of the local people. The major strategies chosen for the negotiation processes in this case were accommodation, consensus and compromise. Both parties did not opt for coercion or withdrawal strategies to resolve this conflict. Rather they sought a solution within the frame of accommodation and consensual compromise. Water use negotiation in this case is not operated in a vacuum. It is involved with the wider social relations and processes in the community. Conflict or negotiation depends on decision and activities of the actors involved. So water use negotiation in this case is related to cultural, social and customary practices of the community. Water use conflicts are a complex social process and can be affected by confusions and misunderstanding among the actors. These conflicts may erupt due to several potential reasons such as diversity and inconsistency in the application of customary practices and formal legal procedures, different perceptions of ownership and rights, and management differences. The crucial roles played by the factors and actors in the conflict resolution process are discussed briefly below. This is an example of a win-win (Bush and Folgar 1994, Wertheim 1997) type of negotiation through consensual compromise. Accommodation of the interest of the other party was the main characteristics of this negotiation.

Drinking water needs of the villagers

One of the major factors for both the creation and the resolution of the conflict was the need for drinking water of the new users. They greatly suffered from a shortage of drinking water so they made utmost efforts to obtain it. The main arguments of the new users to lay claims to this source were (1) the sufficiency of water in the source, (2) it is less expensive than the alternate source to use, and (3) the source owner and the permanent users had agreed to provide part of water in 1970.

They were trying to resolve the conflict through consensus. Therefore, they had approach various forums. They approached the DDC and the VDC, mobilised the priest, their relatives, wives and community leaders to convince the source owner and the permanent users, and also invited ENAP to facilitate the negotiation process rather use formal legal measures (through police and courts). Various forums like ENAP, DWSO, and the priest were actively involved in negotiating the conflict. In this circumstance, these forums were involved not only to resolve conflict but also for their identity and prestige. If the new users had not made such rigorous efforts, the problem would not have been resolved. They learnt new ways to resolve water use conflict through mediation. However, this does not mean that the local people did not know about the local process of mediation. But the way they approached this mediation was different from the conventional ways of local level mediation. The saying that "necessity is the mother of invention" was clearly reflected in this case, as the users made every effort to resolve the conflict in a consensual way. The argument of the new users was based on the priority given to use water for drinking water over irrigation. It was a matter of debate among the villagers about the control over water by an individual and the right to use water publicly. But the perception of the villagers on water as a common resource for drinking water was strong in the locality. People argue that they have a common right to use water first for drinking water as a customary and religious practice accepted since time immemorial in this area which is still guiding human behaviour in this matter. This case clearly reflects that government laws and regulations are not the only force which gives priority to drinking water; several other social relations and practices, religious rules and local norms also give priority to drinking water over other uses of water. These social relations and practices have enormous influence in the local level water use negotiation (Benda-Beckmann et al. 1998, Spiertz 2000, Upreti 1998).

Issue of water rights and ownership

Scarcity of water is the means for the people to find ways to acquire rights to such water sources either by using their historical association or citing riparian rights or interpreting legislated laws in their favour. Water rights (WR) and ownership deals with sanctioned behavioural relations among men that arise from the existence of things and pertain to their use. WR are closely embedded in the historical, social and cultural context. The concept of water rights asserts specific legal status to water and even is even connected with land rights, i.e., the land on or in which the water source is located. This determines the customary water right. The case shows that customary rules such as existing users have senior rights over new users, the land in the vicinity of the water source has a prior right, etc. (Cf. Khanal and K.C. 1997) do not function always very strictly, rather, they function on the basis of agreement (Benda-Beckmann 1996). People construct water rights on the basis of historical and normative background (Upreti 1998, Benda-Beckmann, et al. 1997). The landowner claims water right when the source is located in his land (Upreti 1998). Water rights could also be directly related with land rights and other social relations. The Water Resources Act

1992 explicitly specified that the ownership of water within the kingdom of Nepal is vested in the state and that the right to use water is granted with certain provisions by the state (see Pradhan, this volume). Due to increase in population, change in land-use pattern and technological changes, water rights patterns are also changing to address such changes. Water rights are also shaped and influenced by power structure and social relationships as well as other rights. Legal construction of water rights should be distinguished from actual social relationships among right holders to better understand water rights.²⁰

The issue of water rights (especially ownership issue) was one of the important causes of the conflict. It is important to note that the context (e.g., the presence or absence of rules about the uses of water, alternatives to exploit water resource, and ways of monitoring and controlling the behaviour of source owner), content and time factors were important in this negotiation process. The source was located in the land of an individual. So he claimed that he had ownership rights, including both use and control rights, to this source. This claim was also supported by riparian right, right of prior appropriation and ownership rights of his land where the source was located. In contrast, the new users claimed their right according to the priority given to drinking water by the Water Resources Act, 1992 and on religious ground. This case study reveals that local people reconstruct and renegotiate water rights by using religious and normative arguments (Benda-Beckmann et al. 1997). In this situation, the disputing parties looked for different options to justify their claims. The new users first approached their DDC and VDC to resolve the conflict. These formal authorities commonly make decisions on such complaints with references to legal principles, rules and procedures (e.g., VDC and DDC Acts). They later contacted informal but socially recognised institutions and forums such as the former revenue collector and priests, who negotiate such disputes on the basis of customary norms and local practices. In this case, local cultural and religious systems clearly emphasised the common use of water by both permanent and new users. Finally, all permanent users agreed to provide water to the new users which made the stand of the source owner weaker and ultimately he too agreed to provide water to the new users. However, the permanent users and the source owner have good relations with new users due to the influence of local norms which emphasised the co-operation and harmony among the villagers. The existence of legal rules and principles may not necessarily always shape the behaviour of people. These rules and principles can be relevant only when people respond and behave accordingly (Benda-Beckmann et al. 1997). People follow legal rules or look for legal basis to legitimise their claims when water rights become problematic or contested.

²⁰ To elaborate this Benda-Beckmann et al. (1997: 226) explain, "water rights and the legally defined conditions under which certain social entities can acquire such rights are part of water law; the actual constellation of social relationships between concrete social entities and concrete water resources on the other hand quite different phenomena. If this distinction is not made, there is no room for looking at interrelationships between legal forms or types of property relationships and the concrete manifestations of property relationships in social and economic life. Questions concerning the relationships between types of water rights and their distribution can not be dealt with systematically."

Another important issue in conflicts related to water rights is the interpretation of local laws (or rules) by different categories of people involved in the conflicts. The interpretation of these laws by authoritative experts (for example, judges, administrators and project personnel) might be different from the local people themselves. The interpretation of local law by the priest and the source owner was entirely different at the earlier stage of the conflict. In conflicts related to water resource, disputing parties do not necessarily always approach the legal authorities for legal solutions. Even if one of them approach legal authorities, they cannot continue with their claim for long as the legal or formal solution highly depends on power relationship. For example, the problem of the new users was not taken seriously by the DDC and the VDC due to political differences. After that, the conflict was locally resolved through negotiations and compromises on the basis of social networks and local power relationship. Good relationship with local elite and powerful people may facilitate quick negotiation as against accelerating conflict by bad relation with them. The stability of conflict management is often shaped by the stability of local power relations and networks. Changes in power structure and social relationships, technological changes, etc. alter the earlier negotiations and create new conflicts. The role of the Ward Chairman was important as he had authority as an elected local politician as well as a member of the village elite. It is important to think what would have happened if the new users had been poorer than the source owner and he had better outside connections. Certainly, the outcome of the negotiation would not be the same as it is now. So the role of social status, economic condition and linkage is important.

Cultural norms, values and beliefs

Norms, values and beliefs play a crucial role in conflict resolution process (Spradely and McCurdy 1981). These norms, values and beliefs led to a pragmatic course of action in water distribution and use. In the study area, it was considered a sin not to provide drinking water. As a norm, it does not matter who owns the source, drinking water should be accessible to the general public and should get priority over irrigation. A strong belief promoted by the priest that 'those who hinder others from taking drinking water will go to hell after death' had great influence in the negotiation to use the water source. In this way religious law shaped the behaviour and action of the villagers. In customary practice, people from their own experience inherited from their ancestors learn to coexist peacefully in their community. Villagers have a saying, "*Desko deuta bhanda gaon ko bhut kamlagchha* (The ghost of one's own village is more useful than a god in another locality)." So, the villagers adapted their behaviour locally to address their needs in an accommodative way and made utmost efforts to negotiate locally in a win-win condition.

Local institutions such as the *purohit*, *mela-parma*, and *bibaha-bratabandh* are inherited from the religious culture. These institutions play an important role at the local level to shape the course of action for negotiation. A belief like "to provide drinking water is to pave the path to go to heaven and to create obstacles on

drinking water use is to be prepared to go to hell and face serious trouble of drinking water after death" was a crucial psychological factor to bring people to the negotiation table. The priest presented this belief to the source owner and the permanent users to provide water. The MG, on the ground of local norms, persuaded the permanent users to share the water with the new users. Negotiation for sharing water source promoted water users to use local networks and social relations. The drinking water problem was successively discussed in the different forums by the new users, which created a very favourable situation to resolve the conflict. It has become evident that mobilisation of indigenous institutions for joint actions is essential for local level water use negotiation. Indigenous institutions were able to create a conducive environment for the negotiation. Indigenous institutions are also important to deal with power²¹ in this case. Power played a crucial role in resolution of the water use conflict.

The mediation group and the priest

Mediation practices and the *purohit* (priest) are inherited from past generations to deal with the social and religious issues in the community. The MG was composed of socially respected local people, four men and three women of the village, selected by the villagers to mediate the water use conflict. The criteria to select the MG members were their neutrality, convincing ability and willingness. Mediation differs from arbitration. In arbitration both conflicting parties consent to the intervention of third party whose judgement they must agree to accept before hand (Nader and Todd 1978). In this case the conflicting parties did not agree to accept the judgement of the MG beforehand. The *purohit* is a culturally and socially recognised person who performs domestic religious ceremonies and also acts as a bridge between the villagers for information and communication. These two institutions played a crucial role in mediating this case. From the beginning, the MG made several attempts to convince the source owner and the permanent users, contacted the DWSO and brought a technician to justify the capacity of the water source, organised discussion meetings, developed and forwarded different problem solving proposals, established norms, and coordinated the implementation of project. The ENAP strategically supported the MG to perform these activities. The priest convinced the source owner and the permanent users by highlighting the religious importance of giving drinking water to others. Because of the nature of his work the priest had frequent house-to-house contacts and good relations with his clients. Generally, his clients did not prefer to go against his arguments. This made the work of the ENAP and the MG easier. Therefore, mediation by such institutions has the potential to change the behaviour of people who are in the very midst of conflict. Mediation processes are greatly influenced by cultural and social situation and by the positions of mediators.

²¹ Power is conceptualised as the ability to gain the preferred outcome in opposition to the other party's interest (Colemann 1977, King 1987).

In rural areas mediation is very common as the senior people mediate between conflicting parties in many issues. However, the form of mediation in this case was different from this indigenous form of mediation because the mediation in this case was of semi-formal structure, with a committee composed of selected people representing and accepted by both groups of users. From this case it is clear that the success or failure of mediation is determined by social relation of the mediators. The MG members were socially accepted and believed by both groups of users which were the main reason for the acceptance by both parties of the resolution formulated by them (the MG members).

The role of women

In the hill and mountain regions, women are the key persons for using and managing resources. Rural women are one of the main sources of indigenous knowledge and skills for resources handling and management (Ghale and Gurung 1998). Therefore, women are a crucial force in local resource management. The initiative of the women from the new users group was another factor which contributed to the resolution of the conflict in this case. These women discussed the drinking water problem in different forums with the male members of the permanent users and together they ultimately were able to create a favourable condition to share the water. In addition, some women participated in the training provided by ENAP. A few women were even members of the MG and played an important role in the mediation. In this case women, especially older married females, were far more co-operative and assertive in resolving the local level conflicts because of their ability to accommodate different perspectives. Even the wife of the source owner was in the favour of providing drinking water to the new users. From this event it is very clear that drinking water is the top priority of women. Women members explained that men were very much sensitive about drinking water as against irrigation because they do not fetch drinking water.

The solidarity among the women of both groups was a unique strength in this mediation. The male members were involved in the conflict, but the women were creating a positive social pressure to resolve it. The political grouping and biases are very low in case of women as compared to male members in the community. Therefore, the party-led political bias was not a hindrance to share and discuss the problem among the women. From such efforts of the women, even the political manipulation of the conflict by different local political workers became weak. In this case the role of women was not only significant in acquisition and distribution of water but also equally important for decision making and conservation of water source.

The role of the ENAP and the DWSO technician

Though initiative was taken by local people, especially by women, ENAP later played an important role in resolving the conflict by organising different awareness raising activities, discussion meetings and conflict resolution trainings. The strategic support

of ENAP to the MG in performing the mediation task appeared to be very important. The overseer (technician) from the DWSO technically justified the capacity of the source sufficient for both groups of people. This justification weakened the stand of the source owner. The real cause of the conflict was actually not the shortage of water. All the villagers, including the source owner, the permanent users, the new users and the local politicians were aware about the sufficiency of this water source for both group of users. Political differences and social prestige were the real reasons for the disagreement which was framed in terms of shortage of water for irrigation. Therefore, the DWSO technician was brought in by the MG not really to assess the capacity of the water source, but to technically disqualify the claim of the source owner. So the role of DWSO technician was strategic and tactical rather than scientific and technical. After the report provided by the technician, the permanent users also became passive because they had no room for argument about the sufficiency of water. Local politicians also lost their ground to support the argument of lack of water for irrigation. Then other villagers, the MG and the new users further exerted pressure on the source owner to negotiate. So this type of facilitation²² process contributed significantly to the resolution of the conflict. This study revealed that given an appropriate facilitation by independent development organisations (e.g., ENAP) and the opportunity to create a common forum, actors themselves are able to learn to resolve the conflict. In this case the neutrality of the facilitators and mediators was very important. It appeared that the initiatives taken by the local people were supported by the ENAP and DWSO technicians. The conflict resolution process was moved fast with the help of these organisations. Basically this is a social learning process (Parson and Clark 1995, Maarleveld et al. 1997, Röling 1996a, 1996b) facilitated by an NGO and the new users. In this case the role of social learning seems crucial because it enabled people to modify their behaviour to resolve the conflict. People learn from the negotiation process itself to resolve community conflicts.

ENAP was working in the VDC since 1993 in various awareness raising activities. This was an opportunity for ENAP to get involved in the conflict resolution process so as to increase their popularity in this locality. ENAP explored the real cause of the conflict which was not lack of water. Rather, it was framed in terms of political interests and personal differences. So ENAP worked as a forum to facilitate the negotiation process and shopped for a forum (conflict) to enhance its prestige. Due to various efforts by the mediators the earlier interest-based relation of the source owner and the permanent users with the new users changed. The permanent users were convinced by the arguments of the women and the overseer and were in favour of resolving the conflict through negotiation which ultimately weakened the claim of the source owner also led to the loss of the support of his neighbours. This case reveals that just as conflicting parties shop for forums to

²² Facilitation is a process which develops the capacity of conflicting parties to solve their conflicts by learning and adapting. Facilitation focuses on capacity building to cope with conflicts through participation of the conflicting parties in decision making and action process.

resolve their conflicts, different organisations and institutions like ENAP, Ward Chairman, and the priest too shop for conflicts which they attempt to 'resolve' in order to enhance their power and prestige.

Communication and facilitation

Communication plays a central role in any approach to the resolution and management of conflict (Habermas 1989). Listening to others and understanding their views are important steps in conflict resolution process. Communication helps to identify alternatives, get agreements on rules of negotiation and build relationships for conflict resolution. The ability to communicate is a fundamental step in conflict management (Hamilton 1995). Linkages and dialogues between users, their wives, friends the priest, the MG and the staff from development organisations were good examples of the communication networks in this case which not only enhanced the resolution of conflict but also promoted learning in water resource management. Two way communication and exchange of information among and between these various actors proved decisive in resolving the conflict. Communication helped people of different levels of social aggregation (users, other villagers, the DWSO, etc.) to develop adaptive knowledge to resolve the conflict. The negotiation process was guided by the perception of two dimensions of conflict, i.e., how important or unimportant it is to satisfy our needs and how important or unimportant it is to satisfy other people's needs. This led to a collaborative negotiation. Here mediation involved two levels: a rational level of decision making process and a psychological (emotional) process. The outcome of negotiation in this case is likely to be a result of psychological process.

Facilitation is a pragmatic approach to enhance flexibility, adaptation, information gathering, utilisation and interactive learning to promote non-coercive change (Röling 1996a, 1996b; Woodhill and Röling 1998; Maarelveld et al. 1997). This facilitation process starts either locally or with the help of external organisations. In this case, ENAP facilitated the resolution of the conflict. Facilitation brought the conflicting parties together in a common forum, i.e., the MG, to discuss the issue. The role of an NGO seemed crucial to create awareness among the users and to form the MG which ultimately resulted in the negotiation. One of the important aspects of social learning is the facilitation of mediation and negotiation of conflicts between individual and collective interests. Negotiated agreement on use of the water source is an example of communication. Facilitation in this case promoted participatory processes of conflict resolution by involving all stakeholders in the discussions of the problem, norms setting and agreement on water use. Therefore, facilitation promoted recognition of consensual agreement on water use. Many learning theorists have highlighted that 'learning provides alternatives for problems' (Röling 1996a, Hamilton 1995); this case exemplifies this statement. People learn from the process itself. Conflict was necessary to come to an agreement to share the water source for common benefit. Collective action process promoted such long term

co-operation among the people of the two hamlets. The study shows that local people were not only active negotiators and mediators of conflict but also active managers and networkers. Local people deliberately seek relationships with different people to exchange knowledge, information and experiences and to build alliance to develop and implement new ways of managing conflicts. Local people are the principal managers of the local natural resources (Rhoades 1997). Instead of going to the court to resolve their conflict, they successfully negotiated locally in a way which was acceptable to the both groups.

Power relationship

Power relationship was a common characteristic in both the creation and the resolution of conflict in this case because the conflict was repeatedly manipulated by politicians for their political benefit. Earlier in 1970, the source owner agreed to share the water source with two powerful people because they forced him to do so. It was very difficult for him not to give water to them because of their strong influence and hold in the village. Even till 1989, the power relationship in the village was stable and the new users were more influential. But after the restoration of democracy, the earlier stable power relationship was changed. The emergence of different political parties drastically changed the local power structure. The permanent users, the new users and the villagers were involved with different political parties as their voters and supporters. Therefore, these political parties exercised their political and social power in favour of their voters and supporters, thereby greatly influencing the negotiation process. In this case, power relations among the actors were crucial in the community level water use negotiation process. Consensual conflict resolution could be achieved without any delay if earlier power relationships were acknowledged. But this type of power relationship was not really contributive to the democratisation of society.

The discussion of the case study clearly illustrates that this case is an example of successful water use negotiation at the community level. Different factors and actors played important roles to resolve the conflict in a condition of consensual accommodation. Among them local laws, religious norms, and customary practices greatly influenced the negotiation process. The roles of local institutions, technical report of the overseer and the facilitation process of ENAP were other contributing factors in this successful negotiation. The importance and suitability of local institutions to resolve water use conflict at community level was distinctly observed. Different local institutions provided effective forums to discuss the problems and to explore alternatives. These institutions have their own peculiarities in dealing with the activities of community members. Learning aspect in this case was strong. Social networks were effectively mobilised to bring conflicting parties to the negotiation table. The facilitation role of NGO proved to be crucial to bring the conflicting interests of different people to an agreement.

Conclusion

I used community level water use negotiation practice as a starting point to analyse the dynamics of conflict resolution practices using legal anthropological and social learning perspectives. This conflict was related to acquisition and distribution of drinking water and legitimate way of control. Hence, the interpretation of the case was based on normative beliefs and values of the community. The emergence of networks and purposeful platforms (Röling 1996a) gave optional choices for forum shopping (Benda-Beckmann 1981) to the disputing parties. The case shows that the users are capable and knowledgeable of negotiating for sharing the water source in a plural legal and normative situation using various forums. The role of local norms and institutions is very important in conflict resolution. Learning from experiences, joint decision making and collective action, effective communication, purposeful platforms and local networks are also important variables in any successful negotiation. The study shows that different groups and individuals react very differently to the same problem. This leads to the conclusion that conflicts over water resource are not neutral but culturally and socially defined and purposefully interpreted. One of the lessons I can draw from the case study is that communities are not guided by a unitary legal system and that rules do not always shape the behaviour of people. Rules are modified locally by people to suit their needs and claims. Conflicts are not only harmful but also play a positive role in changing existing power structures and social relations towards the democratisation of society.

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