

# RELATIONSHIPS BETWEEN RESOURCE GOVERNANCE AND RESOURCE CONFLICT: NEPALESE EXPERIENCES

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## 1. Introduction

In this paper I am attempting to highlight the relationship between resource governance, resource scarcity, and conflict in Nepal. The notion of resource governance is discussed to address environmental problems such as scarcity of natural resources and environmental services. Environmental governance, in this paper, refers to a principle, process and practices of mainstreaming environmental and ecological issues and concerns in policies, plans, laws and regulations, strategies, decisions and actual actions at different levels (Including the national level) within a good governance framework. This framework is consensus oriented, participatory, guided by the rule of law, effective and efficient, accountable and transparent, responsive, equitable and inclusive.

Conflict in this paper refers to observable differences in opinion, misunderstandings, clashes of interest, disagreements, complaints in public, protests by argument and physical assault, antipathy, and filing of cases with the local administration, police and courts (Upreti 2002). When the latitude of tolerance crosses the bottom line then conflict occurs. Feelings of unfairness, suspicion, injustice, mistrust and suchlike ultimately lead to conflict. Resource conflicts produce both positive and negative consequences and alter existing social relations (Buckels 1999). They induce change in resource management and utilisation, policy process, livelihood strategies, land and agriculture, gender

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relations, power structures, and individual and collective behaviour. In most cases the combined effect of some or many of such factors can either escalate or resolve a conflict (Upreti 1999).

The study of resource conflict involves investigating almost all aspects of human activity and interactivity ranging from the behaviour of individuals to group characteristics concerning governance of environmental services. Dominant thinking in conflict paradigms treats 'environmental and resources conflict' as a particular event in a particular point of time that needs to be resolved through legal and regulatory interventions. However, I perceive conflict as an inevitable process that can be used as a constructive means for social transformation and agrarian change. I prefer to use the term 'conflict management' instead of conflict resolution. Conflict management is making progress. On aspect of improving a conflict situation, progress may be developed in mutual gains, learning, achieving agreements, laying foundations for further negotiation or fully resolving conflict. Progress is a way of thinking about a conflict situation that recognises that conflict is inevitable and ongoing, and that management of the conflict comes from continual improvement in areas of substance and relationships (Daniels and Walker 1997). It is not always possible to fully resolve all environmental and resources conflicts but it is possible to manage them. Conflict resolution implies that conflict is totally resolved.

Conflict management basically focuses on negotiations about the use of resources. Conflict is also a source of learning<sup>1</sup> how to create opportunities for social change in society. When there is conflict it gives people opportunities to think, understand the causes of the problems, and look for solutions. Natural resource-conflict needs to be viewed in the wider context of historical, political, cultural, economic, institutional, organisational and technological dimensions that provide the basis for the creation, escalation, stalemate or management of conflicts. Therefore, resource conflict is interconnected with broader socio-political issues and their implications for environment, society and processes of agrarian change.

Land, forest and water are the most important resources for the economic

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<sup>1</sup> Learning is a complex activity, which manifests itself in a change in people's behaviour. It is rooted in the human capacity to improve their understanding and skills on the basis of day-to-day experiences (Engel and Salomon 1997), external knowledge and surrounding environment.

development of Nepal. Conflict is common in the use and management of these resources. Therefore, management of conflict is crucial to achieve sustainable use and management of natural resources (Upreti 1999, 2001).

**Box 1**

Positive and Negative Outcomes of Conflict

Positive: Conflict can –

- motivate people to try harder – to win
- increase commitment, enhance group loyalty and spirit
- increase clarity about the problem and raise awareness
- lead to innovative breakthroughs and new approaches
- clarify underlying problems and facilitate change
- focus attention on basic issues and lead to solutions
- increase energy level, making visible key values
- sharpen approaches to agrarian reform and social change

Negative: Conflict can –

- lead to anger, avoidance, sniping, shouting, frustration, fear of failure, sense of personal inadequacy
- suppress critical information
- lower productivity by diverting effort to wasteful conflict
- sidetrack careers, ruin relationships
- disrupt patterns of work
- consume money and time
- escalate to violence, destroy social harmony, and lead to the collapse of society

In the context of natural resources the perceived inconsistencies in the allocation between people of acquired rights and incurred obligations, or contradictions between two or more jurisdictions lead to conflict. In the legal sense conflict management is the application of the laws and regulations to ensure rights and provide remedies that reconcile the inconsistencies and decide which systems are to govern particular cases (Oli, 1998).

## 2. Resource Scarcity as a Source of Present and Future Conflict

A Report of the Johns Hopkins Population Information Programme (JHPIP) highlights that nearly half a billion people worldwide are currently facing water shortages (JHPIP 1998). By 2025 one in every three people will live in countries short of water. At present 31 countries are facing water stress or water scarcity and by 2025 the number will have exploded fivefold. The World Water Forum (2000) also stresses that more than one billion people in the world have no access to water of sufficient quantity and quality to meet even a minimum level of health, income, safety and freedom from drudgery. The World's projected total of 8 billion people in 2025 will enormously increase pressure on natural resources and environmental services and may cause a catastrophe. The competition between industrial, urban, and agricultural use for natural resources is mounting and the per capita consumption of natural resources is increasing (JHPIP 1998). Regional conflicts over natural resources are brewing and could turn violent as shortages grow. In all continents and countries, people are already bickering over access to natural resources and competition for their use can be fiercer in the future. For example, serious conflicts are developing concerning large dams such as the Lesotho Highlands Water Project in the Malibamatso and Little Orange Rivers in Southern Africa funded by the World Bank. For such projects the World Bank is facing an onslaught of criticism not only over its support for big dams, but also for creating severe conflict in the host countries. As world water scarcity bites deeper into economies dependent on cheap water supplies, there is conflict over river catchments and lakes. Dams such as the Three Gorges Dam in China have become symbols of official tyranny, with whole cities being flooded and engineers being given free reign to resettle populations who are inconveniently living in river valleys (Ohlsson 1995). Because of the competition for available natural resources by an over-growing population, and resource capture by certain powerful people, the vital ecosystems on which humans and other species depend are severely threatened (World Water Forum 2000). The earth has lost 15% of its topsoil over the last 20 years through inappropriate agricultural practices. Water logging, salination and alkalisation affect another 1.5 million hectares of mostly irrigated agricultural land. Desertification and drought are severely limiting the production potential of the global agricultural system and posing several ecological challenges<sup>2</sup> (Röling 2000).

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<sup>2</sup> See Beck *et al.*, (1994) for details about future risks, problems and challenges to modern societies. Also see Lubchenco (1998) for challenges to science to achieve sustainable future environmental management.

Conflict between Egypt, Ethiopia and Sudan about the Nile with respect to flooding and water flow diversion, between Belgium and the Netherlands about the Maas and the Schelde with respect to salination and industrial pollution, between France, the Netherlands, Germany and Switzerland about the Rhine with respect to industrial pollution, between India and Bangladesh about the Brahmaputra and the Ganges with respect to siltation, flooding and water flow diversion, between Mexico and the USA about the Rio Grande and Colorado rivers with respect to salination, water flow and agrochemical pollution (Ohlsson 1995) are some examples to mention. Similarly, the conflicts such as those over the Amazonian, Borneo and Sumatran forests, the Massai forest, the Yellowstone National Parks, and also land disputes,<sup>3</sup> are all derived from political, economic or environmental motives. Internationally and domestically, the political wrangling and strife over natural resources are predicted to be one of the fundamental issues of the new millennium.

Globalisation is increasingly posing new challenges and creating new conflicts in Nepal. For example, the conflict between Article 27.3b of the Trade Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organisation (WTO) and the Convention on Biological Diversity (CBD), increasing bio-piracy, uncertainties and threats caused by genetically modified organisms and terminator technology in the agricultural sector are all creating conflict.

If there is scarcity of resources, there is competition, so natural resources will be a continuous source of future conflict. In this context a few sentences of the speech delivered by Fidel Castro on the occasion of the 50th anniversary of the World Health Organisation is worth mentioning.

The weather is changing, the seas and the atmosphere are heating up, the air and the water are polluted, the soil is eroding, the deserts are growing, the forest is disappearing, water is getting scarce. Who will save our species? The blind and uncontrollable

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<sup>3</sup> The dispute between Israel and Palestine, the Kashmir land disputes, the grazing land dispute between the Tibetan autonomous region of China and Nepal, the Kalapani land dispute between Nepal and India, and land conflict between ethnic people and the white minority in Zimbabwe are just a few examples of land conflicts.

laws of the market? Neo-liberal globalisation? .... (Idris, 1998: 5).

### 3. Governance of Nepalese Natural Resources and Conflict

Population pressure, poverty, inequitable distribution and control, and bad governance are some of the root causes of conflict over natural resources and environment in Nepal. Land and forest resources are over-exploited because of heavy dependence of the ever-growing population (both human and animals). Resource scarcity is therefore directly linked with governance, accountability and transparency and a historically power-skewed socio-cultural legacy.

Water is one of the most important natural resources of Nepal. It is estimated that there are a total of 6000 rivers (CBS 1995). Despite the vast amount of water available, drinking water is scarce in many parts of the country. Industrial use of water in urban centres has created competition and conflict in inter- and intra-sectoral water use. Irrigation in mountain and hill regions, which constitute 83% of the Nepal's total area, is difficult because of steep slopes and the fragile geography, which causes recurring landslides and soil erosion. The growing population requires more food and growing more food requires more water. Physiographic characteristics and climatic factors affect such consumptive use of water but they vary spatially and seasonally. This leads to an unequal distribution. Nepalese water resource management is therefore characterised by an unjust and insufficient use of water, by contradiction and by conflicts. Water scarcity, competition and conflict are common features of social, economic, political and legal issues in Nepal (Upreti 2002).

Growing population, factories and farms all need more water and other natural resources. Competition between domestic consumption, industries, and farms is increasing and turning into disputes. Water pollution is another issue of conflict. We can see examples in Kathmandu Valley where the river systems are almost collapsing because the river-water is no longer useable. Conflict between the needs of populations living upstream of river basins and those dwelling downstream is mounting. Irrigation, a principal sector of water use in Nepal, intended to minimise the water scarcity in the field of agriculture, is creating its own conflicts and competition (Pradhan et al. 2000).

Forests are another important natural resource for economic and social

development. Forest resources are one of the major resources directly contributing to the survival of rural people in Nepal. Forest resources directly fulfil forest-related subsistence needs of women, poor and backward people as well as commercial needs of well-off people. They provide inputs for agriculture and livestock, and supply medicinal herbs, timber and non-timber forest products. Forests also support irrigation, conserve watersheds, improve the condition of the soil, provide recreation for tourists through forest-based ecotourism and national parks and wildlife reserves, provide a habitat for flora and fauna and provide raw materials for the forest-based industries (Upreti 1999). Many of the agricultural production systems of the country are based directly or indirectly on forest resources. However, the Nepalese forests are severely threatened by political and commercial interests. In 1964 forests covered more than 45% of the total area of the country, and this had declined to 29% by 1998. It is reported that the forest area of Terai is being destroyed at the rate of 1.3% per year (NPC 1998: 290). Smuggling of forest products is posing another serious challenge. The productivity of the forest sector is decreasing due to uncontrolled migration and encroachment, smuggling, illegal hunting, grazing, forest fires, lack of scientific forest management, and poor political commitments and bureaucratic performance. Deforestation is resulting in an increasing loss of habitats for birds, wild animals and reptiles. IUCN has reported that 24 species of mammals, 9 species of reptiles, 27 species of birds, 2 species of insects and 13 species of plants have become endangered in Nepal (NPC 1998: 219).

The land use systems in Nepal are rapidly changing because of increased environmental consumerism through the information revolution, technological advancement, market intervention and globalisation processes. As a consequence, over-exploitation of natural resources and environmental services is becoming harsh reality. The lack of strong environmental governance, weak institutional arrangements and rapid globalisation are exerting enormous pressures on natural resources. Well-planned land use is one of the most important aspects of environmental governance to achieve economic and social development. If land is managed and used properly, according to its quality, type, capacity and physiographic characteristics, not only the agricultural productivity and other social and economic benefits can be increased but also environmental risks can be minimised (Upreti 2003).

Land is a crucial resource for the livelihood of Nepalese farmers. It is also a basis of feudalistic wealth and power. Due to the increasing human population and increasing numbers of unproductive livestock extreme pressure is being exerted on

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land resources (NPC 1998). Soil erosion, fertility decline, sedimentation and floods have degraded and continue to degrade the land. Causative factors of soil loss are steep slope cultivation, use of marginal land, overgrazing, forest fires, and population pressure.

Internal migration is rapidly increasing the population in urban centres and putting additional pressure on the urban environment. More than 90% of urban centres are located in the fertile agricultural areas. Huge quantities of land are used annually in building construction by government, semi-government, nongovernment and the private sectors (NPC 1998). The increasing pace of rural to urban migration is reducing the productivity of land in both rural and urban areas (HMG/N 1992). The government is not able to develop mutual links between rural and urban areas nor to provide equal opportunities in the rural areas. The regional imbalance, lack of infrastructure and employment opportunities and the unavailability of basic service facilities are the triggering factors for migration from rural to urban areas (NPC 1998). Land encroachment and unplanned settlements are the result of such migration whereby an imbalanced situation develops between men and land resources.

Skewed land distribution and gross disparities in land ownership are one of the major causes of poverty, injustice and social discrimination (Upreti 2000a). Because of such disparity, a large number of people have no access to productive land resources. More than 70% of farmers have less than one hectare of land (NPC 1998). Substantial regional variations in the distribution of agricultural lands exist in Nepal. The Terai Region occupies 17% of the total land area comprising 49% of the total agricultural land whereas the Hill Region covers 63% of the total land and accounts for 40% of agricultural land. Mountain Region occupies 20% of the total land with 11% of agricultural land. The Human Development Report-Nepal 1998 shows that the bottom 40% of agricultural households use only 9% of the total agricultural land owning on average less than 0.5 ha. The top 6% occupies more than 33% of the total. These inequalities are manifested in the higher incidence of poverty and landlessness. Smallholders are marginalised and transformed into landless people (Shrestha 1997). This means that a few landlords control a huge fraction of the country's land. The Nepalese land resource is besieged by multifarious problems such as dual ownership in land tenure, fragmentation, unequal distribution, institutional obstacles and unfocused government policies. Dual ownership is severely limiting productivity because

neither owner nor tenants invest in the land.<sup>4</sup>

Legal measures to implement land reform, to prevent land fragmentation, and to promote land consolidation are ineffective (Ghimire 1992; New Era 1988). Because of a lack of effective land-use planning, the agricultural sector is not able to reach its potential through specialisation and diversification. Erosion, landslides and floods in the Hill areas have seriously affected the river banks, the lower slopes of the Hills and the fertile land of the Terai region, and have had a negative impact on agriculture, irrigation, hydro-electricity, forest, bio-diversity, the environment, road systems, transport and tourism.

Land management practices in Nepal are still insensitive to the negative effects on the wider environment, and become a source of conflict. For example, cultivation on the steep-slope land in the foothills of the Himalayas in Nepal is contributing to floods in the delta areas of Bangladesh (Tear Fund 1999). Buildings are rapidly covering highly fertile lands of the Terai region and urban centres as city centres expand. The land reform campaign, although initiated in 1951, has so far been merely a political slogan rather than significantly contributing to its reform. All major political parties have highlighted the land reform agenda in their election manifestos, but none of them are fulfilling their commitments.

Despite the fact that the government, donors and local communities are investing much more effort, time and money in natural resource management, and despite the fact that several natural resource related offices have been established in all districts, environmental scarcity and conflicts are growing (Upreti 2004). My previous research findings show that conflicts are increasing through the intervention of external development organisations without a proper understanding of local systems, lack of user participation in natural resource management and defective policies (Upreti 2000a, b, c, 2002). Therefore it is time to rethink the dominant natural resource management approach in Nepal. Evidence is accumulating that, despite the efforts of the government, donors and NGOs, environmental problems and resource scarcity are mounting and leading to conflict and violence.

Perhaps nobody would disagree that bad environmental governance has created

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<sup>4</sup> The Rural Credit Survey of Nepal Rastra Bank (1994) has indicated that investment in land improvement in Nepal is less than 3% of household income.

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resources scarcity leading to conflict. Resource degradation, conflict about access, rights and obligations, fair distribution, maintenance and benefit sharing were basically under-emphasised in governance practices in Nepal. Various endogenous and exogenous factors such as population growth, globalisation of markets, and environmental and technological changes are imposing new conflict on the natural resources sector. Many large and small natural resource management projects implemented by different agencies are introducing new conflicts as well as having various negative impacts on society. For example, ignorance of the importance of indigenous knowledge in planning and designing new systems, extortion, alteration of local rights and regulations, the replacement of old institutions by new ones, and the imposition of technocratic solutions are some of the immediate implications of the new interventions. These interventions have their own firmly fixed and uniform policy and a rigid procedure based on reductionist-positivist orientation. They are technocratic in nature and generally do not acknowledge local diversities. This is becoming one of the major causes of conflict in natural resource management.

Conflict arises if the new natural resource management policy of the government conflicts with local cultural practice. The economic motive of people to acquire more from the existing natural resources on a competitive basis also leads to conflict. Conflict is also growing as a result of the contradiction between environmental and economic interests. Changes in historical use patterns of natural resource use can bring conflict into a community. Similarly, contradictions between legal arrangements and customary practices have promoted several conflicts.

The social dimension of natural resource management is crucial in natural resource-related conflicts. The social dimension refers to the more human-related aspects of negotiations, such as knowledge, institutions of technology, and forums (platforms) (Röling 2000). In the study of conflict it is important to understand the role of the human dimension in respect of natural resources (Röling 1997). In the contemporary development discourse natural resources are usually perceived as hard,<sup>5</sup> objectively fixed, bio-physical facts (e.g., soil, crops, livestock, disease and

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<sup>5</sup> Röling (1997) illustrates the notion of soft and hard science in natural resource management in his commonly used term “Soft Side of Land Perspective’. It is important to look beyond the common categorisation of social science as soft science and technical science (biophysical) as hard science. It implies that positivist and constructivist thinking exists within both sciences. For example, even within

pests, water, yields, erosion, caring capacity, bio-diversity, physical properties) Such factors as human goals, organisation and technological aspects (Röling 2000) are usually ignored. But conflict concerning natural resources is the outcome of societal arrangement, human intention and behaviour (Röling 1997) framed within those biophysical properties. Therefore, both of these dimensions of natural resources are essential for a better understanding of conflicts in natural resource management. Resource management decisions and the activities of resource users, the performance of bureaucracy, the functioning of user groups and associations, access to and control over resources, customary practices and state laws/regulations, livelihood requirements and the welfare of people are therefore important issues to be addressed in any study of conflict.

In Nepal the dominant development paradigm still treats technology as a ‘black box’ and gives little attention to human intentions and behaviour in managing natural resources. Responsive institutions, collective learning, negotiation and concerted actions in my opinion are vital but neglected components in natural resource management discourses and practices. Several researchers and academics (for example, Röling 1997; Pradhan *et al.* 2000; Uphoff 2000, Chambers 1988) have shown that natural resource management is not only a technical domain, but that it is more importantly a social discourse, shaped and influenced by social processes and intentional human activities. A plural legal situation can create several conflicts because of its uncertain and manipulative nature. Most of the legal reforms related to natural resources have yet to be translated into real practices. If and when they are practised, power brokers manipulate them and the weaker section of society still feels uncertain and insecure.

During my twenty-five years of practical experience in the rural development, natural resource management and environmental sectors, I have increasingly realised that a government’s policies and a donor’s strategies are more focused on management and control of natural resources through prescriptive technical solutions than through a meaningful participation of people. This leads to conflict and disturbance in the self-regulated use of ecological systems. We are now entering the twenty-first century, where conflict between economic objectives and

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the social sciences there are both positivist thinking, such as the resolution of conflict by enforcing acts and regulations and use of the courts and police, and constructivist thinking such as the resolution of conflict through learning, negotiation and collaboration.

sustainable ecological use of natural resources is accelerating. Obviously the increasing problems such as the lack of pure drinking water, loss of bio-diversity, climate change, environment pollution and other ecological challenges are the product of increasingly developed consumerism, population pressure, economic motives and governance failure. These problems are not only disrupting self-sustaining NR systems but also creating severe conflicts in society. Therefore, an economically guided focus for these problems is in itself a source of further conflict.

### *3.1 Case one: mis-governance in a donor-funded irrigation system*

In 1982 a local leader requested the Department of Irrigation (DOI) to construct an irrigation canal. The DOI conducted a survey but did not proceed any further. This project came into the light again when a District Irrigation Office (DIO) was established in Dolakha district in 1989. An active local political worker (hereinafter referred as the initiator), who was also a professional contractor, by using his 'relation of special intimacy'<sup>6</sup> (Wade 1982) with engineers initiated this project. The DIO Engineer approved the project within the provisions of the Asian Development Bank (ADB) funded Irrigation Sector Support Project (ISSP).

Difficulties started when the local people discovered that the proposed alignment of the canal had been changed.<sup>7</sup> A Water Users Committee (WUC) was formed without informing villagers and they elected chairmen of the two Village Development Committees (VDCs) of the command area of the canal. So the conflict became more serious and the public started to oppose the activities of the WUC. Users of the canals downstream raised the issue of water scarcity. As a consequence, the disgruntled people lodged a complaint to the District Administration Office to stop the construction. The Chief District Officer organised meetings with both groups and an agreement was reached with the following provisions:

- (a) sharing of water with downstream canals,

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<sup>6</sup> Bargaining for a bribe between contractor and engineer is more direct and surreptitious in the developed relation of special intimacy (Wade 1982).

<sup>7</sup> According to the respondents the motive for the change of alignment of the canal was to increase the total cost of the project.

- (b) sharing of power by reorganising the existing WUC of the project, and
- (c) sharing of construction work and budget by users.

Accordingly, the existing 11-member WUC was expanded to 19 members. The newly expanded WUC divided the total construction work into 35 sections and allocated these to WUC members and their supporters. However, 85% of the people that obtained construction contracts were not beneficiaries of the project. Therefore they were not much interested in constructing a canal of good quality, and did not use the proper ratio of cement to concrete, nor quality construction materials, seeking to save money on the ground. Most of the people who got contracts were either WUC members themselves or their close relatives and supporters.

The technology used in the project was expensive and complicated. The irrigation technicians, in consultation with the WUC used cemented structures, masonry, gabion wire etc. to raise the cost of the project, as this gave ample scope to get commissions while purchasing, and they could save a huge amount out of the transportation cost of the construction materials. The quality of work was poor because they were not using construction materials according to the standard norm, in order to save money (Upreti 2001), doing what Wade (1982) describes as 'saving in the ground' and Thapa (2002) and Panday (2001) describe as 'corruption'. In this way, full of conflicts and tension the project was officially completed in 1996. Today only the canal track remains and the WUC is completely dysfunctional. The villagers filed a case for corruption against the WUC in 1995. This was dismissed by a Special Police Investigation in the same year. Local people blamed that the alleged offer by the WUC of a bribe to dismiss the case (Upreti 2001). This type of manipulation and corruption is not new in the development programme in Nepal (Panday 2001; Thapa 2002). In this context, Hari Bahadur Thapa has made a thorough analysis of Nepalese corruption in his recent book entitled *Anatomy of Corruption*. He writes:

Corruption has flourished because of lack of strong political will to control it. Nepal's political leadership has been more concerned with its own party political interests than the welfare of the nation (Thapa 2002: iv).

*3.2 Case two: conflict between the farmers of an irrigation system*

A deep conflict was observed over an irrigation system when the government expanded the existing canal in Pawoti village of Dolakha District. In consequence of this work the existing rules and regulations were replaced, water scarcity was observed and tension between different farmers and between the farmers and the irrigation authority mounted. Before the external intervention irrigation conflicts had been resolved by users themselves using locally developed rules and procedures. Water sharing and maintenance of the canal was effective. Afterwards people were unhappy with the misuse of money received from the government and stopped contributing their volunteer labour to maintain the canal. The conflict became very serious and generally tail-end farmers were not allowed to take water. These farmers approached the local authority, district irrigation offices, and the district administration but the conflict was not resolved because the government authority was not willing to solve the problem. Instead, the conflict became increasingly politicised, the canal became dysfunctional and the villagers fell in to deep conflict. The main causes of this conflict were ignorance of the rules developed and enforced by the community, and of the voice of local people, and the ineffective role of the government organisations responsible for addressing conflict.

*3.3 Case three: conflict between the village elite and the local people in a pastureland*

Access and control of the pastureland located in Ward 7 of the Pawoti VDC was the main cause of this conflict. Local elite and powerbrokers started to terrace the centuries-old communally managed public pastureland. Being powerful politicians of high economic status and with strong network connections with bureaucrats, the pastureland invaders seriously undermined the symbolic and economic attachment of the local community to this land. When the users started to protest against the invasion the conflict escalated. Local efforts over several years failed to resolve the conflict. Ultimately, the case reached the senior government administrator. The administrator decided in favour of the community but the invaders did not leave the invaded land. The community members appealed for the execution of the earlier decision, but the power and influence of the powerbrokers prevented an effective enforcement of the decision and the appeal was dismissed. The legal procedure was too complicated and expensive for the community. Therefore, they did not go for further legal remedies. The conflict continues and the society is

divided.

*3.4 Case four: conflict between two communities over a spring water source*

A serious conflict between two communities over the sharing of water from a spring was observed in Pawoti VDC. The existing water users were not prepared to share this water source. They claimed that there would be a problem of scarcity of water to irrigate their fields if they shared the source with another community. The case went to the government's district office but was not settled. It was politicised by the district politicians influencing the government bureaucrats. So the conflict remained unsettled for several years. Later, with the help of a local priest, a women's leader and a local NGO, the conflict was resolved with the following provisions:

1. the new users should construct a reservoir tank close to the source and collect water at night time;
2. in case of water shortage during rice transplanting, water should not be collected in the reservoir tank during that time;
3. the new users should take responsibility for the conservation of the source;
4. the existing users should inform the new users before letting the water flow out for rice transplanting;
5. both groups should apologise for past accusations and misunderstandings; and
6. if problems emerged, the users would have to call a meeting to find ways to resolve them.

This proposal was thoroughly discussed in successive meetings with the existing users, staff of the NGO, other villagers and the new users. They used their past experiences, learnt from their mistakes, and worked collectively to settle the conflict. In this way the serious conflict, which could not be solved by the government agency, was solved at local level with win-win outcome.

*3.5 Case five: conflict between the landlords and the tenants in agricultural lands*

A deep-seated conflict between the 123 tenant households and 50 landlords of the

Deurali village of the Pawoti VDC was resolved after 39 years through several efforts at different levels. The landlords had been a rich and powerful ruling elite in the village for several generations. So they were not ready to accept the demands for tenants' rights from their tenants. The tenant farmers made all possible local efforts to establish their rights over the land. They mobilised local priests, relatives of landlords, and themselves approached the landowners to engage in negotiation, but these efforts did not work. They also paid the price of the land to the landowners to induce them to transfer the land. But the landlords did not transfer the land ownership. Because of the complicated nature of the legal procedure, high fees and the potential fear that the decision would go against them because of the influence of power and money, the tenants did not opt for a legal battle. Instead they stopped paying the rent. Then the landlords filed a case against them. The governmental organisations responsible for dealing with land conflicts gave a verdict in favour of the landlords. The tenants did not accept the decision and continued with their claim. The tenants were strongly organised, learnt from past mistakes while dealing with landowners, discussed their problems with other people in the village, and won the support of all villagers. The determination and concerted actions of the tenants forced the landowners to rethink the issue. The landlords realised that the solution of evicting them from the land would not work. If the tenants were evicted they would be landless and create severe problems and even pose a risk of physical insecurity to the landlords. Finally the landowners transferred the ownership rights to the tenants and the tenants paid 100,000 rupees in return. Then the conflict was resolved locally in a win-win situation.

#### 4. A Framework for Resource Governance and its Legal Dimensions

I define resource governance as a set of policies, laws and regulations, institutions, technologies and cognitive aspects like values, perceptions, understanding and actions, through which people manage (conserve and utilise) natural resources in a transparent, accountable, participatory and equitable manner. Generally resource governance covers:

- setting broad objectives,
- planning for specific targets, and framing policies to attain those targets,
- selecting specific policy instruments,
- establishing institutional mechanisms to implement them, and

- adopting appropriate approaches for involvement and empowerment of stakeholders.

All these elements give rise to conflict if not handled properly. This dimension is discussed in detail in this section. Conflicts in Nepal over lands, water and forests are given an analysis in this section based on the concept of resource governance systems.

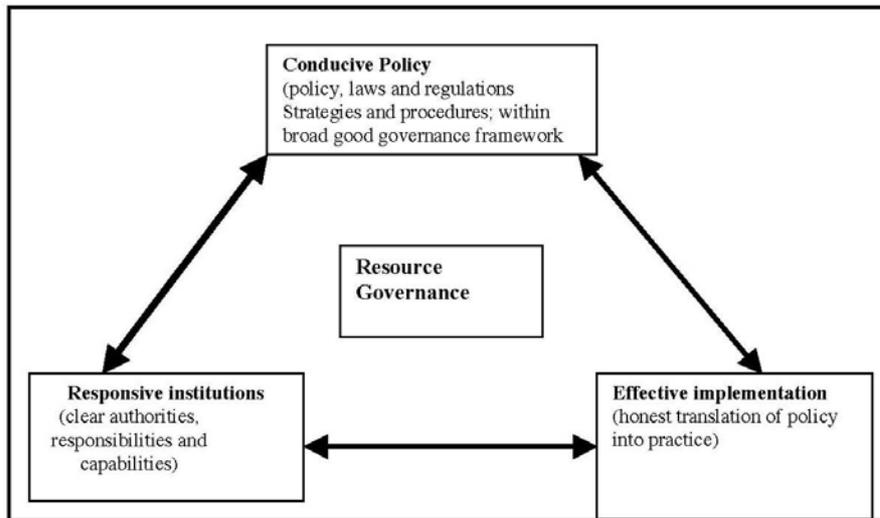


Fig. Interrelationship between diff components of environmental governance  
Figure 1. Interrelationship between components of environmental governance

Though weak in their implementation, several international efforts have been made in environmental governance. Nepal is a signatory of more than 22 Multilateral Environmental Agreements (MEAs) (Silwal and Prasad 2002) and works within international guiding principles and frameworks.

His Majesty's Government of Nepal uses general policy documents like Periodic Five Year Plans, the National Conservation Strategy (NCS) 1988, the EIA Guidelines 1993/1997, the Nepal Environmental Policy and Action Plan (NEPAP I 1995 and II 1996), the Sustainable Development Agenda of Nepal (SDAN) 2002, and sectoral policy documents like the Agriculture Perspective Plan (APP), the Hydropower Development Policy 1992/2002, the Forestry Policy 1992, the Industrial Policy 1992, Nepal Environmental Health Initiatives (NEHI) 1997, and

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the Cleaner Production Policy 2001 (Silwal and Prasad 2002) to facilitate environmental governance practice.

In Part 4, Article 26 (State Policies) of the Constitution of the Kingdom of Nepal, 1990 stipulates:

(3) The State shall pursue a policy of mobilizing the natural resources and heritage of the country in manner, which might be useful and beneficial to the interest of the nation;

(4) The State shall give priority to the protection of the environment and also to the prevention of its further damage due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and the State shall also make arrangements for the special protection of the rare wildlife, the forest and the vegetation.

To meet the constitutional requirement there are two specific enactments, i.e., the Environmental Protection Act (EPA) 1997 and the Environmental Protection Regulations (EPR) 1998. These two provisions govern access to environmental services. In addition to that there are other acts supporting environmental governance (Box 2).

In addition to these provisions there are also some other important provisions such as the Parliamentary Council for Conservation of Natural & Cultural Resources (CCNCR), the Environment Conservation Council, the Parliament, National Planning Commission (NPC), Environment Protection Council (EPC), Water and Energy Commission (WEC), etc. (Silwal and Prasad, 2002).

Box 2 Acts and Laws	
<b>Agriculture related:</b> Pesticide Act 1992/Rules 1994; Livestock Health and Service Act, 1998 /Rules 1999; Seed Act, 1989/ Rules, 1996; Food Act, 1967; Aquatic Animals Protection Act, 1961.	<b>Land related:</b> Land Act, 1964; Land (Measurement) Act, 1963; Land Revenue Act, 1979; Land and Watershed Protection Act, 1983; Soil and Water Conservation Act, 1992.
<b>Air related:</b> Vehicular and Transport Management Act, 1992.	<b>Water related:</b> Water Resources Act, 1992; Electricity Act, 1992.
<b>Forest related:</b> Forest Act, 1993.	<b>Industry related:</b> Industrial Management Act, 1992; Industrial Enterprise Act, 1992; Labor Act, 1991.
<p><b>Local Self Governance Act (LSGA), 1999.</b> The LSGA provides more autonomy to Village Development Committees (VDCs), District Development Committees (DDCs) and Municipalities by empowering the local authorities to manage natural resources, and guides them to integrate environmental resources and environmental planning (Part V, 5.3). Some of the highlights that pertain to environmental governance are:</p> <ul style="list-style-type: none"> <li>wards are required to help in the protection of the environment through plantations (Section 25[e]);</li> <li>rights and duties of the VDCs are stipulated (Section 28)</li> <li>VDCs are empowered to levy taxes on utilization of natural resources (Section 55);</li> <li>property of VDCs, i.e. natural resources, are listed (Section 68)</li> <li>powers are provided to formulate and implement plans for the conservation of forest, vegetation, biological diversity and soil (Section 189);</li> <li>power is given to formulate bylaws in the area of management of all the natural resources i.e. air, water, land and forest.</li> </ul>	

Source: Silwal and Prasad 2002.

## 5. Political Economy of Natural Resources in Nepal

Political economy refers to the public power or decision-making over access to and control over resources. The basic questions are, who gains, who loses, who has control, and how? In discussing the political economy of natural resources it is important to examine how politics function in a particular social setting. In the agrarian society of Nepal people use the land, but the true owner is the state and a feudalistic mode of production exists. Society is not a mere sum of individual acts, but rather a complex totality of interacting individuals tied up with specific social and economic relationships and interdependent structures. Individuals in society are embedded in particular class relationships and class interests. Political life is an expression of dependency and state domination. The elite, particularly the formal power holders, have an interest in maintaining such a dependent structure so as to gain the most advantage from the system for themselves. This is truly reflected in Nepalese rural societies where there are hierarchies of chains of relationships, which have an exploitative structure. There is a formal power structure that is represented by the elite at different levels. At the political level there are the top civil servants, businessmen, religious leaders, etc. At the local level these elites advance their interests through power. They share certain common ideologies and political positions, values and perspectives and act accordingly to maintain the existing mode of resource management and utilisation. Investment of resources in development is organised accordingly.

The history of the Nepalese political economy of natural resources shows that prior to 1734, when the present-day Nepal was a fragmented groups of petty states, people were deliberately encouraged to cultivate as much forest and pasture land as possible. This ensured them a good living and increased the productivity of the land. They then paid a certain portion of their returns to the state (Regmi 1978). Until 1950 it was common for the state to grant tax-free land to officials, religious organisations and individual favourites of the kings or rulers. Traditionally land was considered as the property of the state [state landlordism] and this land is called *Raikar*<sup>8</sup>. Only the state had the right to alienate land through sale, mortgage

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<sup>8</sup> M.C. Regmi argues that there were mainly two types of land tenure system in Nepal, i.e., *Raikar* and *Kipat*. All other tenured forms of land were derived from *Raikar* (Regmi 1976, 1978). The meaning of *Raikar* land has changed since 1951, from crown land to land owned by individuals. *Raikar*-land ownership denotes an

or bequest (Regmi 1976). Using this right of alienation the state granted cultivated or uncultivated state-owned *Raikar* lands to individuals in the form of *Jagir*, *Birta*, *Rakam*, *Sera* and *Rajya*, and charitable or religious organisations in the form of *Guthi* (Regmi 1976).<sup>9</sup> The *Guthi* land tenure system also included the endowment of private lands (obtained from the state) by individual landlords for religious

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ultimate state ownership over those lands, which were actually cultivated by individuals as direct tenants of the state. The tenancy of *Raikar* land has two categories, the actual tenant-cultivators and the tenant owners. The latter category of tenants are those who pay rent to the state, but who can sell or bequeath their *Raikar* land, whereas the former category (the tenant cultivators) have no right to sell sublet or otherwise alienate the land which has been allotted to them. The usufructuary assignment of *Raikar* land to individuals and institutions is a deliberate means of rewarding them and ensuring their loyalty, paying them for services rendered and promoting social and religious activities. The *Raikar* land grant was practised in several forms viz.: *Birta*, *Jagir* and *Guthi*, *Rakam*, *Rajya*, and *Sera*.

<sup>9</sup> A *Birta* grant was given to a noble as a reward for a service rendered to the state. It had no time limits and it could be rented out or inherited until confiscated or recalled by the state. *Birta* owners usually had full rights to possess, occupy, sell, lease, subdivide and bequeath their lands. Most *Birta* lands were not taxable. They have become the foundation of the modern, private landed property arrangement. *Jagir* land holding was more conditional and subtle and often granted to government servants rather than to members of the ruling elite. A *Jagir* assessment was usually an assignment of the income from *Raikar* lands in lieu of a salary and it could not be assigned or sold. *Jagir* rights lapsed on the cesser of employment, or at the discretion of the government. The *Birta* and *Jagir* forms were abolished in 1959, with the enactment of the *Birta* Abolition Act and were converted to *Raikar* land (New Era 1988: 28-31). *Sera* was a form of land tenure explicitly used by the royal palace to meet the food-grain and other land-related requirements. *Rakam* is another form of land tenure where cultivators have to compulsorily provide unpaid labourers to the government as carpenters, masons, and postmen. *Rajya* was another modified form of land tenure granted as the princely state award for members and relatives of Royal families. This land-granting practice was common, up until the *Rana* regime. Rulers granted large portion of lands to soldiers as *Jagir* to keep them under their control. *Rana* rulers confined the land-grant practices to their relatives and key officials.

purposes. *Kipat*<sup>10</sup> was another communal land-tenure system whereby individuals derived land rights from their association with particular ethnic groups, located in a particular area. Regmi states that “individuals who cultivated land in their capacity as a member of a *Kipat*-owing ethnic group owed allegiance primarily to the community, not to the state” (Regmi 1972: 27).

Almost one-third of agricultural and forest land of the nation was granted to private individuals by 1950 and the remainder belongs to *Rana* (members of the ruling clan) themselves (Regmi 1978). Local functionaries, all favourites of *Rana*, implemented the land-grant policy in the villages and were able to assure most benefit for themselves. They obtained a great deal of land from the state through *Jagir* and *Birta* grants and rented these lands to peasant farmers under tenancy arrangements. In this way local functionaries turned into landlords. Peasant farmers had to pay half of their crop yield as rent to the local landlords. Gradually, to ensure their rent, landlords introduced the *kut* (contract) system where only those tenants who were able to pay high rents could get a contract. Irrespective of the performance of their crops, even if the crops failed, farmers had to pay rent as *Kut*. Eventually these peasant farmers effectively turned into slave labourers of the *Jagir* and *Birta* holders (Regmi 1978). After 1951 the government nationalised all the forest in Nepal so as to release land from the grip of *Birta* holders, especially from *Rana* families. However, this did not function well in practice. Historically land resources in Nepal played a crucial role in socio-economic and political change and were used by principalities and national governments for their political goals.

Large portions of all these forms of land tenure were cultivated under tenancy arrangements, in the form of sharecropping. Some landlords were entrusted by the government as *Mukhiya* in the Hill regions and *Chaudhari* and *Jimidar* in Terai regions to work on land administration (Pradhan *et al.* 2000). They had the authority to establish settlements in new areas, and to collect tax and pay part of it to government (Regmi 1976). The emergence of a unified nation was the outcome of the consolidation of small kingdoms, fiefdoms and principalities. The state began to regulate the available natural resources to generate government revenue.

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<sup>10</sup> This was an ancient type of communal land tenure where an ethnic community was granted land by their king in recognition of a traditional communal tenure. Headmen had the authority to grant individuals the right to cultivate certain areas and to collect forest products from other areas (Regmi 1978)

This led to the establishment of control mechanisms: different departments and regional offices, policies, acts, rules and regulations to control systematically the available natural resources. It can be seen from the above brief history of land tenure systems in Nepal that the rulers used land as a means of maintaining functionaries for the consolidation of power and maintaining good relations with family members, close allies, members of the nobility, military personnel, civil employees, royal courtiers and potential foes. The mode of production in and distribution of natural resources was very much feudalistic in nature.

In the history of Nepalese development (especially between 1951 and 2000), development intervention as a means of agrarian change has had three complementary objectives: (i) to raise production and productivity, (ii) to raise livelihood,<sup>11</sup> and (iii) to sustain the existing natural resource base. The emphasis given in national policies and planning (in, for example, the Ninth Five Year Plan (NFYP), and the Nepal Agriculture Perspective Plan (APP)) was to increase production, achieve a trade balance and increase employment opportunities in the natural resource sector; and enhance national economic growth by effectively utilising the available natural resources. However, the performance level of such intervention in alleviating poverty in Nepal has not yet reached expectations. There is evidence that productivity-oriented achievements are not fully able to address problems such as the widening gap between rich and poor, unemployment, and degradation of the natural resource base. These problems are not only creating inequality but are also creating fundamental conflict between the rich and the poor. The growing Maoist movement in Nepal is an example of such conflict. The implications of such conflicts are long term and are dividing society, and disrupting social harmony and cohesion. In this context Chambers explains that “the problem of poverty in South Asia at least is not now a problem of production, or of food availability: it is a problem of who produces the food and of who has power to obtain it” (Chambers 1988:7).

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<sup>11</sup> Chambers (1988) explained the first and second objectives in detail in the context of South Asia. According to him livelihood thinking “is assessed in terms of the adequate and secured livelihoods it generates and sustains, putting antipoverty efforts, and people, before production *per se*” (Chambers 1988: 7).

Box 3

Impacts of Development Intervention in Conflict

Mohan Mainali has severely questioned the contribution and effectiveness of donor funded development intervention to address the root causes of the conflict. He writes:

... What we say of the USAID implemented Rapti Zone Rural Area Dec Project, and its second incarnation, the Rapti Development Project, aimed to fulfil the basic needs of the poor majority, the farmers of the mid hills. The Programme spent about US\$ 50m in “improving household food production and consumption, improving income generating opportunities for poor farmers, landless labourers, occupational castes and women”. In short, the project’s overall goal was to increase the well-being of people. The Americans thought they’d need 15 years to achieve their objectives. And, going by their reports, they worked ‘hard’ for those 15 years. The project started in 1980 and ended in 1995, just a month and a half before the Maoists began their armed movement.... The government and donors both say development packages will help eliminate the Maoists. If that were true, why was Rapti Zone so favourable for the development of Maoist movement? If that is what you get after 15 years of American funded development, we were perhaps better without it. (Mainali 2003: 125-126)

## 6. The Denial Psyche in Nepalese Conflict:

The denial psyche is a unique characteristic of Nepalese society. Nobody is ready to acknowledge their own weaknesses in addressing the current conflict. Parliamentary parties are not ready to accept their failure as one of the main causes of the conflict. The government is not ready to accept the fact did not take correct approach to address this conflict; the rebels are not ready to accept that the general public want peace and not the violence. They are all denying that all of them are equally responsible for the escalation of this conflict. Bureaucracy denies its

failure, the NGO sector denies its malpractices in the name of development. The business community denies the very fact that businessmen are among the top promoters of corruption in this country. The donor community denies their failure to support development in this country. Professionals deny their professional failure. So all major actors deny the reality and their own weakness and put the blame on others and shift the responsibilities onto others.

Box 4

Paradox of Conflict

Paradoxically empowerment led to conflict in Nepal. A plausible explanation of the emergence of the Maoist conflict in a particular time is the growing awareness and empowerment of the Nepalese people during the initial years of multiparty democracy. People have become more aware of poverty, inequality, discrimination, corruption and lack of employment opportunities. They are empowered to raise their voices against injustice, poverty and social exclusion. Therefore, paradoxically the current crisis is not only the syndrome of system failure but also an indicator of social awareness and people's empowerment. Multiparty democracy gave ample opportunities for different categories of people to organise, to form organisations to fight for their rights, and these helped tremendously to empower people.

The individual and collective political psyche has so far preferred to ignore reality rather than to face challenges that are threatening Nepali democracy. A powerful defence mechanism, used by politicians and power centres alike, is denial. They deny the seriousness of the current situation, afraid to admit that their prevailing attitudes and practices are inappropriate and causing problems. They feel even more obstinately defensive when Nepali people confront them with evidence that their actions need to change. In Nepal denial is rooted in the individual and institutional level in politics, in political parties, in government departments, and in other power centres. The difficulty of overcoming this magnitude of denial by democratic reform should not be underestimated. It is necessary to replace the ideas, values, greed and orthodoxy that underlie formidable and complex obstacles with a new set of ideas and values. If this paradigm shift is accepted as inevitable, the current conflict may be a great opportunity for fundamental reform of Nepali society.

Box 5

The Nepalese Crisis is a Complex Mix of Everything

Acute inequalities, absolute poverty, lack of access to resources and the failure of political structures to address these issues, have made Nepali society extremely vulnerable to conflict and mass movements like the Maoists' 'people's war'. Several examples from Peru, Chile, Mozambique, India, Nicaragua, Tanzania, Senegal and Columbia show that resistance from below is obvious and predictable if the state is not responsive to basic concerns of the rural poor. Deep rooted social cleavages in terms of caste, ethnicity, gender and regional, cultural, linguistic and religious forms of discrimination provided fertile ground for conflict to escalate. The Maoists successfully capitalised on the highly unsatisfactory democratic transition of 1990. The people of Nepal are deeply disillusioned by the poor performance of current political structures and processes. The dominance of certain groups in all social, political and economic sectors has bred strong feelings of injustice and revenge, as the socially marginalised people strongly believe that they have been excluded from opportunities and resources. The Maoists have tactically exploited this resentment. The emergence of ethnic interest groups, and increased awareness of social exclusion and ethnic inequalities and governance failure further fuelled the conflict.

## 7. Conclusion

The raising of productivity<sup>12</sup> still dominates thinking in Nepal. Environmental governance is not getting the required attention in the broader national governance system. Resource use and environmental services are taken for granted. The severe implications of resource scarcity and disruption of fundamental ecological processes are either not internalised or deliberately ignored in a realm of growing consumerism and the economically driven profit-making motive. Natural resources

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<sup>12</sup> Both the Ninth Five-Year Plan and the Agriculture Perspective Plan focused exclusively on economic growth of the agricultural sector through effective natural resource management.

have strong and diverse impacts on different categories of people such as landless farmers, wage labourers, tenant farmers, women, landlords and powerful elites. The sustainable contribution of natural resource management in reducing the vulnerability of impoverished people, sustaining ecological services from natural resources, stabilising social mobility and improving the quality of life of the rural poor is yet to materialise. Conflict mitigation and the addressing of environmental scarcity are beyond the dominant development paradigm. Sustainable use and management of natural resources can only take place through a strong political commitment, clear vision, fair and responsive administration, protection from malpractice such as rent-seeking (Wade 1982), expansion of institutional understanding (Ostrom 1990), and the embrace of collective learning and concerted action (Röling and Wagemakers 1998). These crucial elements of environmental governance are severely lacking at present. The economic transformation of the more than 49% of Nepalese people who are below the poverty line is still more wishful thinking than a reality. In contemporary Nepal ethics and responsibility (providing basic livelihoods to the burgeoning population) do not drive natural resource management objectives, but rather they are driven by the drive towards the accumulation of wealth and power.

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