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Bishnu Raj Upreti

Resource Conflicts and Conflict Resolution in Nepal



Resource conflicts are an inevitable part of Nepalese society. Their causes include hierarchical and patron–client social relations, the incompatibility of formal laws, conflicts of interest, perception and belief, competi-

tion over scarce resources, ambiguity over roles and responsibilities, the unwillingness of the state to respond to social, economic, political and technological changes, corruption, and bad governance. The present study analyzes resource conflicts and practices used to resolve them in Nepal. It was conducted in 6 districts of Nepal, representing the mountain, hill and terai regions, using focus groups and informal discussions, semi-structured and key informant interviews, observation, life histories, and a questionnaire survey. It concludes that existing, legally engineered formal conflict resolution systems are administratively complicated, expensive, elitist, heavily influenced by money and power, non-transparent, and inaccessible to the poor, and are therefore hardly adequate to address growing conflicts in Nepal. Likewise, informal systems are also distorted and inherently biased towards those with power. Hence modernization of existing formal conflict resolution systems is urgently needed in Nepal.

Keywords: Resource conflicts; social conflicts; conflict resolution; formal–informal; Nepal.

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Introduction

The present study presents experience with resource conflicts in Nepal and practices used to resolve them. People in Nepal face several resource-related conflicts concerned with appropriation, distribution and control (Kaplan 1995). These conflicts are further linked with other social and political issues that make the situation more complicated (Upreti 2002).

Conflict in the present context refers to disagreements, public complaints, and protests involving arguments, physical assault, violence and lawsuits. Feelings of unfairness and injustice, suspicion, anger, emotion, and mistrust lead to conflict (Martinelli and Almeida 1998). Conflict occurs because of difference in values, beliefs and interests, ambiguity over responsibility and authority, poor communication, and unwillingness to respond to social, political, cultural, technological, eco-

nomic and social changes (Buckles 1999; Walker and Daniels 1997). In a conflict situation each party attempts to destroy, injure, thwart, influence or control the behavior of another party (Sidaway 1996). In Nepal failure to meet social, political and economic needs, scarcity of resources, corruption, bad governance, poverty and inequality have provided fertile ground for emerging social and resource conflicts (Upreti 2002). Contradictions and inconsistencies in the application of formal legal procedures and customary practices, diversity in local norms and beliefs, and management differences also contribute to conflict (Oli 1998). Pervasive corruption, abuse of authority, discretionary and arbitrary exercise of power, illegal forms of pressure, lack of transparency, and deviation from public duties are additional contributing factors (Upreti 2002; Panday 2001). Current experience in Nepal shows that escalation of conflict into violence creates pervasive despair, sorrow, grief and irreparable damage to society.

This study examines the existing Nepalese conflict resolution system by posing 3 questions:

1. What are the most common social and resource conflicts in Nepal?
2. How are they actually resolved?
3. How does the existing conflict management system perform in Nepal and why?

Based on field research, this study argues that existing conflict resolution practices in Nepal are top-down, legalistic, elitist, costly, complicated and therefore not successful in resolving growing conflicts. Hence a more robust, responsive, participatory and focused approach that incorporates good indigenous practices and innovations is essential. The current political violence in Nepal is excluded from direct consideration here.

Methodology and description of study areas

Data for this study came from 56 focus group discussions, 55 key informant interviews, 15 life histories, 150 general informal discussions, and 200 semi-structured interviews. The respondents included individuals in the courts, government offices, NGOs, INGOs and political parties, as well as lawyers, police officers and members of users' committees involved in conflicts. A questionnaire survey was also conducted on specific issues. The fieldwork was carried out during a period of 25 months between 1998 and 2001 as part of the research for a PhD dissertation. Five specific resource-related conflict cases involving a farmer-managed irrigation system, forest and pastureland, a spring that supplies drinking water, a development project, and religious agricultural land were examined in 2 Village Development Committees to gain deeper insights into current conflict resolution practices. The

main observations from the in-depth study were then tested in 5 other districts to find similarities.

Research was carried out extensively in the Dolakha District and findings were tested in 5 other districts of Nepal (latitude: 26°22' to 30°27' N; longitude: 80°4' to 88°12' E) to find similarities and differences (Figure 1). The Dolakha and Ramechhap districts are mountain areas where most people are poor and basic services are often inaccessible. The literacy rate is lower than in the other study areas. Geographical isolation is also a barrier in accessing government conflict resolution services. However, several indigenous conflict resolution systems exist. Kaski District is hilly and better off than Dolakha and Ramechhap districts, but worse off than Chitwan, Banke and Kanchanpur districts in terms of the above indicators. Chitwan, Banke and Kanchanpur districts belong to the *terai* (lowlands) and are geographically more accessible. But in terms of services, they are similar to the other research sites. However, in all districts a hierarchical patron–client relationship still prevails and heavily influences formal conflict resolution practices in the study areas. Corruption, favoritism, and political influence are common in all areas.

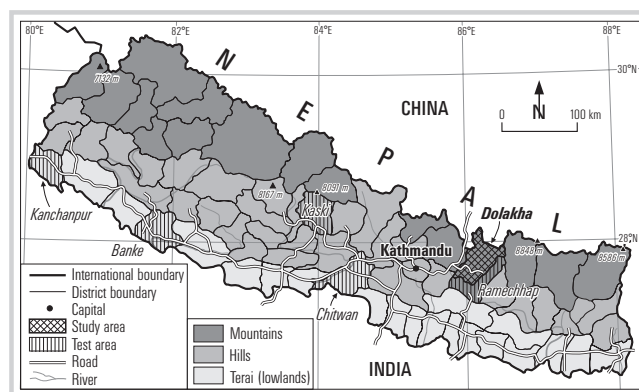
Based on archival study of the occurrence of conflict in these districts, Dolakha District—with a total area of 2191 km², a population of 200,000, and socio-economic and ethnic heterogeneity—was selected for the in-depth study.

Results

Social conflicts

Inter-household conflicts were the most frequently reported form of conflict in all study areas. They were related to transactions, marriage and sexual offences, ethnic identity, assault and theft, and external development intervention. In the transaction-related conflicts, lending, borrowing and repayment were the most frequent. Discrimination against wage laborers by landlords and fake payment documents were other common sources of conflict. Looting, fights, and property damage were also frequent sources of conflict in the study areas. Partition of parental property, disputes over religious invasion, and accusing women of witch hunts were also common. Polygamy, child marriage, inter-caste marriage, fraudulent marriage, trafficking in girls, prostitution, sexual abuse (harassment, rape and molestation), character defamation, separation, alimony, pregnancy and abortion, paternity and divorce were other frequently reported issues in the study areas. Forms of ethnic and caste-related discrimination such as untouchability became major sources of conflict, especially since the political changes of the 1990s, after which there was greater political freedom to voice complaints about discrimination.

FIGURE 1 Location of the study and test districts in Nepal. (Map by Andreas Brodbeck)



External development interventions introduced several conflicts because of their technocratic, top-down, bureaucratic and political nature. Misuse of financial resources and kickbacks, abuse of authority, and nepotism were the most frequently reported problems. Professional troublemakers and power brokers have blatantly manipulated development interventions for financial and political gain, exploiting their sociopolitical network, legal knowledge, and access to information.

Resource conflicts

Conflicts related to natural resources are referred to here as resource conflicts. Conflicts over land, water and forests were dominant in the study areas. Boundary and demarcation, change in ownership rights, looting of crops, tenancy rights and tenant eviction, development infrastructure on particular sites, and obstruction of existing paths were the most frequently reported land conflicts. Other major sources of land conflicts were related to public land encroachment and control, biased land quality assessment by surveyors, redemption, fraudulent sale, partition, order of succession, and gifts of parental landholdings.

Forest resources were the most contentious issue, given their multiple uses. The same forests are used by traders to collect medicinal herbs and other non-timber forest products, by local communities to collect wood for construction of buildings and bridges, and by local elites for political and economic gain. This led to severe conflicts among users and within the community. Forest conflicts were related to ownership, identification of users, access to forest products, payment of royalties, illegal collection of non-timber forest products by outsiders, hunting and poaching of wild animals, and collection of medicinal plants by commercial traders in high-altitude forests managed and used by communities. Forest encroachment by non-users, unauthorized collection of firewood, use of trees to build bridges and cremate the dead, and competition for leadership of forest user groups (FUGs) were also frequently reported. Local

FIGURE 2 Women of the Brahmin and Chhetri castes in Pawoti village, Dolakha District, discuss a dispute over a drinking water source in order to settle the conflict between two communities informally. (Photo by Bishnu Raj



politicians use FUGs as a platform for political gain. Conflict between the Federation of Forest Users and the Forest Department became severe when the government took over some of the authority and responsibility granted by the Forest Act to the users of community forests.

Major water conflicts were related to source disputes, sharing of drinking water and water for irrigation, and payment of compensation for damage caused by the construction of water-related projects. Other frequently reported conflicts were related to non-compliance with maintenance of irrigation and drinking water systems, the ambiguous roles and responsibilities of water users' committees, and uneven treatment of different water users by government technicians and officials.

Use of the same communal land by community members for different purposes such as grazing, collection of litter, and alignment of irrigation canals initiated several community conflicts. Water disputes were more frequent, especially in the dry season when different people use water for different purposes such as drinking, irrigation, and water turbines. The multifunctional nature of water was one of the principal ongoing sources of conflict.

Conflict resolution practices in Nepal

Existing Nepalese conflict resolution practices can be broadly categorized as formal and informal. Formal practices are those that must follow official procedures, guided by government rules, regulations and laws. Informal practices are adopted by communities in accordance with their customary practices, and often do not fit within the government's legal framework. Both practices are discussed below.

Informal practices

Most social and resource conflicts in the study areas are resolved through informal practices, with no writ-

ten records kept. Elderly and socially respected people, traditional landlords, teachers, faith healers (*jhakri*), priests (*purohit*) and local tax collectors (*mukhiya*) are the principal players in resolving a wide range of local conflicts. They have the time, credibility and willingness to be involved, and villagers commonly accept their solutions to conflict. These informal practices are a blend of local customs and are based on a sense of justice and religious feeling rather than official procedure (Upreti 2001), and generally involve decisions on the terms and conditions for negotiation (Khadka 1997). The criteria for resolution do not come from legal evidence but are rooted in religious faith, historical development, and practical realities (Oli 1998). These practices are traditionally based on values and customs (*riti-thiti*). Nevertheless, not all customs are effective in promoting equity and justice.

It was observed in the field that local negotiators listened carefully to both conflicting parties, inspected conflict locations, assessed previous records of conflict, and consulted neighbors as eyewitnesses who gave verdicts. Khadka (1997) and Kaplan (1995) also recorded similar observations. Sometimes negotiators pressured offenders by threatening to reveal the truth or exerted pressure to accept a settlement. Occasionally, they also combined local resolution practices with formal processes (eg, inviting the police to execute a decision which a proven offender failed to honor).

Women play an important role at the household level in negotiating family and transaction-related conflicts. They exert pressure on male family members to negotiate (Upreti 2000). They also act as mediators between male family members in conflicts with neighbors. It was found that sending women to report a case made the case stronger. It is commonly believed in the study area that women do not come forth to report problems unless they are directly victimized. Women were also found to be more accommodating than men in dealing with conflict. The involvement of women to resolve drinking water conflicts informally is common all over Nepal (Figure 2).

The major reasons expressed by people in opting for informal resolution were trust in negotiators, the ease of reaching a settlement, maintenance of social harmony, and a lack of the resources (money, knowledge and time) needed for formal conflict resolution processes. Nevertheless, the credibility of such informal mechanisms is eroding due to political interference and verdicts biased in favor of those with power (Khadka 1997; Kaplan 1995).

Dharma bhakaune (sacred test): This method is based on an "oath of innocence." Negotiators invite contending

parties to local temples and ask them to take an oath of innocence while touching sacred materials such as *saligram* (a sacred stone), copper, sacred plants such as *Ficus religiosa* (*peepal*), *Ocimum sanctum* (holy basil), *Cynodon dactylon* (dub grass) or sacred books. Sometimes conflicting parties are asked to hold their children while performing such vows. These tests are undergone in the presence of villagers, negotiators and the conflicting parties. The belief is that it would be sinful if falsification occurred in this context.

Sagun garne (reconciliation): This is a common method in which the subject of a conflict is discussed in a meeting attended by villagers, negotiators and the conflicting parties. When a settlement is reached, gifts are exchanged between the disputing parties; this is known as *sagun garne*. The conflict is declared “settled” when both parties accept a gift. This is followed by a small celebration where all people drink *jaad* (a type of fermented liquor). However, there are no written records of such settlements: the evidence is the witness of villagers present at the *sagun garne* ceremony. This practice is most common among Matwalis and Tibeto-Burman ethnic groups. The gifts are usually liquor, eggs, meat, etc.

Mafi magne (public apology): Negotiators invite villagers and disputing parties to discuss the issue. They decide the case and ask the guilty party for a public apology. The guilty party, in the presence of villagers, begs for pardon and swears not to repeat the offence. This is sometimes also combined with a fine or other form of punishment.

Mit laune (tie of special friendship): *Mit laune* is a unique form of negotiation in cases where 2 individuals or groups are involved in low-level conflict. In this process, people gather in public places to settle conflicts. Then both parties exchange money, flowers, clothes or some other special gifts in the presence of witnesses, with or without a simple religious ceremony. *Mit laune* symbolizes an accommodating form of negotiation and results in a win-win situation.

Formal practices

Formal practices involve 2 major categories. The first includes the court system. The second includes semi-judicial organizations such as government offices concerned with resources, police and local administration. These practices work within the government’s regulatory framework. The party to conflict files a particular claim for which lawyers have to be consulted in order to prepare a case, and the defendant files a counter claim. The plaintiff then files a reply prepared by lawyers before the case is decided, which generally takes more than a year and up to 7 years. This process requires a huge amount of money, time, and legal knowledge.

TABLE 1 Performance of formal and informal systems as assessed by disputing parties. (Source: primary data, 1998-2001)

Rating of performance (n = 200)	Formal system		Informal system	
	Number	%	Number	%
Good	10	5	50	25
Satisfactory	30	15	100	50
Poor	130	65	30	15
Don't know/no comment	30	15	20	10

TABLE 2 Factors affecting performance of formal practices. Respondents gave up to 5 reasons. The total number of responses is thus greater than the total number of respondents. (Source: primary data, 1998-2001)

Reasons for poor performance	Response (n = 130)			
	“Yes”		“No”	
	Number	%	Number	%
Political interference	120	92.3	10	7.7
Legal complications	100	76.9	30	23.1
Inaccessible/expensive	110	84.6	20	15.4
Influence of money	100	76.9	30	23.1
Elite bias in decisions	115	88.5	15	11.5
Lack of transparency	120	92.3	10	7.7
Need for reform	130	100	0	0

Field data for this study revealed that the performance of the formal system is felt to be extremely poor, as shown in Table 1. Only 5% of 200 respondents rated the performance of the formal system as “good,” compared to 25% for the informal system. The vast majority (65%) rated performance of the formal system as poor. Only 15% of respondents were satisfied, and another 15% did not know or had no comment. By contrast, 50% of respondents were happy with the performance of the informal system, 15% were not satisfied, and the remaining 10% did not know or were not eager to comment. Table 1 thus indicates that the formal system does not enjoy public trust and its credibility is questioned. The informal system is believed to be more effective than the formal one.

The 130 respondents who were not satisfied with the performance of the formal system were asked to identify the major causes of underperformance. This study confirms the findings of earlier research (Khadka 1997; Kaplan 1995). Table 2 summarizes the assessments of respondents in relation to factors affecting the poor performance of formal practices. The vast majority of respondents (92%) perceived “political interference” and “lack of transparency” as the 2 major causes of poor performance in formal systems. Almost 77% of the respondents believed that “legal complications” and

TABLE 3 Means used by disputing parties to win cases in the formal system. Bribes include both cash and kind. *Kind*: rice, fruit, vegetables, animals, animal products (hides, *ghee*, milk), fish, honey, furniture, forest products (wood, herbal medicines), clothes, gold and occasionally land. (Source: data, 1998-2000)

Means used to win cases	No	%
Bribe (see caption)	70	35
Influence of political parties	80	40
Mobilization of network of relatives, friends, political allies, etc. (<i>afnomanchhe</i>)	32	16
Fair; no illegal means	18	9
Total	200	100

the “influence of money (bribes)” were the causes of poor performance, whereas 88% believed that “elite bias in decisions” was the main cause of underperformance. Among the 130 respondents, 85% felt that the formal process of conflict resolution was expensive and inaccessible to the poor and the powerless. There was unanimous agreement among all respondents on the urgent need for reform of the existing formal systems (Table 2). Other researchers (Panday 2001; Thapa 2002) have also made similar observations on the issues of political interference, abuse of power, and lack of transparency.

Table 3 presents levels of corruption in conflict resolution. A total of 200 conflict case winners were asked to indicate the means they used to win their cases. Among them, 127 cases were related to lending and borrowing, use of fake documents, fights, property damage, sexual abuse, polygamy, property partition, etc. The remaining 73 cases were related to natural resource-related issues such as ownership, sharing of benefits from forests, use of water sources, access to land, forests and water, and the ambiguous role of user committees. Only 9% of the respondents won cases without using any illegal means. The remaining 91% used bribes, power, or mobilized their *afnomanchhe* to win cases involving conflict. Among the different means used, the most common was the influence of a political party with which they were affiliated (40%), followed by bribes (35%) and use of *afnomanchhe* (16%). Bribes, political influence, and mobilization of networks of relatives were collectively used in more complicated cases such as land conflict, polygamy and sexual abuse. Local politicians illegally used influence to resolve conflicts related to such things as water sources, lending, and borrowing in their favor. This confirms that fair judgment and real justice are seriously jeopardized in the existing system of formal conflict resolution.

It was observed that relationships between professional troublemakers, power brokers, and government officials shape the course of conflict resolution in formal practices. Often, professional troublemakers negotiate between disputing parties and officials. Pat-

terns of corruption such as abuse of authority, illegal pressure, lack of transparency, arbitrary exercise of power, etc. are often reported in Nepal (Panday 2001). The types of corruption discussed in the present study have prevailed for a long time in South Asia (Wade 1982).

The best practices in informal systems are not incorporated in formal procedures. Learning from local experience and integration of local knowledge and skills are absent in formal systems.

Discussion

The above empirical findings reveal that existing formal conflict resolution practices are expensive, inaccessible, and biased in favor of the powerful. Political influence is one of the main causes of poor performance. One government official, on the condition of anonymity, stated:

If civil servants adhere to legal rules and do not obey the illegal instructions of politicians, they have to face punishment or transfer to difficult areas or Maoist-affected districts. Politicians, through concerned ministers, take action against officials who disobey these instructions if the person concerned has no countervailing power in political and bureaucratic circles or does not offer a bribe. Such transfers happen within 48 hours in some cases. So it is better for us to obey illegal instructions, collect bribes and hand over to them instead of facing such punishment.

Several other studies (Panday 2001; SNV 1998; Kaplan 1995) have also indicated this harsh reality highlighted by the respondents (Tables 2 and 3). If local people had proper legal knowledge about their rights and legal protection, the role of bribes and the influence of politicians in conflict resolution, as observed in this case, would be less. The legal complications presented in Table 2 are due to methodological limitations and the disputing parties' lack of knowledge about procedures. All the key informants mentioned that several unfamiliar formalities and technicalities of judicial administration had to be fulfilled in the processes by ordinary people. A further important observation was that women are not encouraged to become actively involved in conflict management practices (Figure 3).

Corruption in the form of bribes and abuse of power was a major factor in the poor performance of formal systems. In this context one key informant stated:

One no longer believes that the Nepalese administration operates on the principle of what is fair and just but everyone believes that it operates on source force and corruption.

The empirical evidence presented in Tables 1, 2 and 3 also indicates the glaring dominance of corruption in conflict resolution. Stiller and Yadav (1979) revealed that every rule, law and procedure can be bent to one's purpose if adequate resources are at hand. The Netherlands Development Organization (SNV) also made similar observations. It revealed that source force is universally applied for employment, promotions, transfers, scholarships, to win disputes, in training—in fact, for almost any activity in Nepal. Competence, evidence of right and wrong, and justice become secondary in the face of source force. Source force easily bypasses bureaucratic hurdles, saves unnecessary hassles, and leads to favorable results (SNV 1998). Special relations between government staff and power brokers (eg, lawyers) make formal conflict resolution expensive and inaccessible. Lawyers and solicitors deliberately work at a complacent pace to maintain a continued source of income from conflict. Settling a simple water source dispute through formal legal procedures generally requires US\$10 to 30, but lawyers and troublemakers charge up to US\$110.

Resolution of resource conflicts is not only a regulatory idea. It is a way of managing social relations. Conflicts related to ownership, access and control of resources are basically the product of changing social relations and multiple patterns of resource use. But formal practices are not yet capable of recognizing this reality.

The present study confirmed observations made by several other authors (Oli 1998; Upreti 2002; Kaplan 1995; Khadka 1997). Lack of legal knowledge on the part of most disputants, the high cost of litigation, bribery and kickbacks, complicated judicial administration of the litigation process, lack of transparency, domination by elites and the influence of power are the major reasons for the poor performance of formal systems in Nepal.

Conflict is an outcome of human activity. Hence only effective human interaction, mutual learning and collective action can help manage conflict. Walker and Daniels (1997) have also highlighted the importance of collective learning in conflict resolution. Multifunctional use of resources is a major cause of conflict. This can be addressed by collective efforts. Integration of local needs, interests, experience, skills and knowledge, and external scientific knowledge into the existing conflict resolution system is essential to address growing conflict.

FIGURE 3 Community members meet to discuss a forest-related conflict in a formal process of conflict resolution in Pawoti village, Dolakha District, in 1999. This meeting was organized by the local Village Development Committee. Typically, women are absent. (Photo by Bishnu Raj Upreti)



Conclusion

Fairness, ethics, the rule of law, and judgment have so far played a minor role in conflict resolution in Nepal. More than anything else, the existing sociopolitical system determines the outcome of disputes. There is no assurance whatsoever that faith in legal systems will bring a fair resolution of conflict. All in all, there appears to be little supportive evidence for the effectiveness of the existing legally engineered top-down system for addressing conflict. Only the powerful and elites benefit from the current system.

Conflict is the product of human relations. Resource conflicts arise due to the scarcity and multifunctional nature of resources. Therefore, prevention or effective resolution of conflict cannot be achieved without collective learning and concerted efforts by all actors involved. Conflict prevention and resolution strategies and practices require learning processes as well as integration of external knowledge and local experience, accountable bureaucracy, transparent procedures, and an accessible judicial system. Those who deal with conflict need appropriate knowledge and skills in negotiation, facilitation, communication and mediation. In essence, responding constructively to resource conflicts requires ingenuity, creativity, commitment and alternative methodologies, which are lacking in Nepal. Existing conflict resolution systems therefore require fundamental reform.

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