

# **Disputing, Negotiating and Accommodating as Means to Acquire and Protect Water Rights: A Case Study of Conflicts in Dang<sup>1</sup>**

*Mahesh C. Pradhan and Rajendra Pradhan<sup>2</sup>*

## **INTRODUCTION**

There are many ways of acquiring and protecting water rights in farmer managed irrigation systems. Water rights are acquired principally by investment in original construction, rehabilitation, or extension of a system, and by inheritance or purchase of irrigated land (U. Pradhan 1990). It is often the case that the farmers who have water rights are not willing to share water with farmers who do not have such rights in their irrigation system or water source. These farmers try to acquire rights to use water from the irrigation system or water source by means of state intervention, negotiation or disputing. The existing rights holders use similar means to protect their water rights.

The means used to acquire or protect water rights depend on specific situation, relations between stakeholders and the options available to them. If relations are cordial, new claimants may acquire rights by contributing for the rehabilitation or maintenance of the system; if relations are problematic, new claimants may acquire rights by seeking help of the state or by disputing. Powerful local elites may use threats or violence or ask for help from state agencies to acquire or protect their rights and small farmers may take recourse to the courts or administrative bodies or 'steal water' to acquire or protect their rights. Changes in political situation and power relations may compel the disputing parties to negotiate and accommodate instead of taking a conflictuous stand.

The means used to acquire or protect rights are thus different strategies employed by the stakeholders. Strategies include the forum to which the disputes are taken, such as the courts, local

bodies and the streets, the type of claims being made (of ownership, use rights, senior and junior rights) and the justifications offered for the claims.

Claims to water rights (of ownership or use) are justified by reference to law. Different communities have different local laws which legitimize claims and different ways of acquiring rights. The state has its own laws which may or may not recognize such local laws. In most communities in Nepal it is often difficult (or rather was difficult) to distinguish between 'customary' law and 'state' law, unless they contradict each other, because the everyday practices of water rights do not always distinguish between the two. It is mostly when disputes occur and are taken to judicial or quasi-judicial bodies, or when the state is involved, that such distinctions are most relevant. For the purpose of this paper we will explicitly refer to customary or state law mainly if the distinction is relevant which may be the case if local or supra-local actors apparently orient themselves at the one or other, or at a specific combination of the two. Otherwise we will just speak of local rules or local law.

There are different levels and kinds of rights to water: property rights; use rights; senior or first rights and junior or secondary rights; rights for specific season and so on (cf. U. Pradhan 1994; Wiber 1992). Prior appropriation of water from a source by constructing an irrigation system (thus by investment) usually gives the investors senior rights to water from the source. Investors who later construct another canal using the same source of water acquire rights junior to the rights of the prior appropriators. Upper riparian users may have senior rights to lower users. Some users may acquire rights to use water from a source by virtue of long use even though they do not own the water source.

This paper discusses the means used to acquire or protect water rights in farmer managed irrigation systems. It will be argued that the specific means used by the stakeholders depend on which strategy they consider most suitable in the existing situation, social relations between them and the options available. It will also be argued that the law which is used to justify claims are not only fixed 'customary law' or 'state law' but local rules or local law, generated by the local people. The paper describes three conflict cases in Telia Kulo (Guhar Khola Irrigation Project) to illustrate how conflicts arise and disputing and negotiation are used to acquire or protect water rights as well as how and what rules are generated by the stakeholders. It will be argued that disputing is one of the options available to the stakeholders and is used either when other means fail or better alternatives are not available. Similarly, the stakeholders take their disputes to the forums which they believe best suit their interests (Benda-Beckmann 1984).

## **A BRIEF HISTORY OF TELIA KULO**

Before describing the conflict cases, it will be useful to give a brief history of Telia Kulo. Telia Kulo is located in Bijauri Village Development Committee (VDC), formerly known as Bijauri Village Panchayat, in the northern section of Dang Valley, at the foothills of the Mahabharat hills. Bijauri VDC comprises of several villages such as Kharkhare, Hadime and Doghare. Dang Valley is a part of Dang District in the southern part of Nepal, known as Terai. The Terai is the northern part of the Gangetic plain and is flat land except for some areas such as Dang Valley. Dang Valley

is surrounded by the **Chure** and Mahahharat range of hills

Dang Valley was at first populated solely by Tharus, who **are** indigenous to the Terai. From the 14th century onwards they were ruled by kings from outside the area. Until the middle of this century Dang was part of petty kingdoms and relatively independent from the center. The kings of this kingdom donated huge tracts of tax free land to their Brahmin priests. These priests were sometimes granted whole villages as gifts. For example, an ancestor of the present day Majhgainyas received the village Majhgaon as a gift from a king. According to one estimate, the Majhgainyas received over 2040 ha of land as gifts in Dang District. The Majhgainyas, like other landlords, constructed irrigation systems to irrigate their fields.

Telia Kulo was constructed between 150 to 200 years ago by Majhgainyas to irrigate their mustard crops in **Hadime** and **Doghare**. Later it was also used to irrigate rice crops. The canal was later extended to service other villages such as Pakare and Mairawa. And as described below, it was again extended in 1982, this time by the government, to service villages such as Hemantapur, Bankatta and Nimuwa. Currently, the main crops during monsoon is rice and corn and during winter wheat and mustard.

The Majhgainyas, known as Jamindars (landlords), were the most powerful families in the command area of Telia Kulo. Though they are not as powerful as they were formerly, they are still influential in village politics. The traditional rivals of the Majhgainyas in Telia Kulo command area are the **Regmis**, another Brahmin family. They own land in the head sector of the command area and claim that their ancestors first constructed the irrigation system. Whatever may have been the case, the Majhgainyas controlled the management of Telia Kulo. The actual operation, maintenance, and water distribution activities were carried out by the Tharus, their servants and tenants, under the supervision of a **Tharu Sardaruwa** (leader) who was appointed by the Majhgainyas. The Majhgainyas, however, made all the decisions relating to the management of Telia Kulo.

The main source of water of Telia Kulo is Guhar Khola, a perennial river which begins from the hills and flows from the north to the south. Guhar Kholais also the main source of water for several other irrigation systems such as **Malware Kulo**, **Manpure Kulo** and **Duruwa Kulo**, all of which are located below (south of) the intake point of Telia Kulo. In accordance with the local law, which seems to be accepted by most of the farmers in the locality, Telia Kulo, as the most upstream of all these irrigation systems, has first priority (senior rights) in acquiring water from the river. Telia Kulo farmers may withdraw as much water as they want from the river even to the extent of leaving no water in the river for the downstream irrigation systems. This means that more intensive irrigation or extension of the existing command area of Telia Kulo would lessen water supply to the downstream irrigation systems.

We are not aware of any conflicts or disputes between the farmers of Telia Kulo and the downstream irrigation systems over sharing water from the river. Presumably, as long as they received sufficient water, the farmers of these downstream irrigation systems accepted, or were made to 'accept', the local law of first priority to the upstream canal. The farmers of the downstream canals were not totally deprived of water from Guhar Khola for three reasons. First, the diversion weir of Telia Kulo was constructed of brushwood which allowed water to seep

through. Second, the farmers of Telia Kulo did not expand their command area or allow the conversion of non-rice fields to rice fields (*khet*) which would have increased demand for water. Third, some of the leading families in Telia Kulo had fields or relatives in villages served by the downstream canals.

The alignment of Telia Kulo canal parallels Guhar Khola for a few kilometers then snakes east towards Lama Khola. Several villages such as Hemantapur, Bankatti and Nimuwa lie to the east of the old command area of Telia Kulo, beyond Lama Khola. These villages have their own sources of water such as Sakram Khola, Dude Gajari and Lama Khola, which, however are (and were) not sufficient to meet their irrigation needs for winter crops. The elite fanners from these villages had made various attempts for about a century to acquire water from Guhar Khola to irrigate their fields. They did not succeed because it was difficult and expensive to construct a new canal, which would have to be at least 13km long, on the hilly terrain between Guhar Khola and their villages. Another option, cheaper and more feasible, was to link their canal to the tail end of Telia Kulo. But they had to get permission from the farmers of Telia Kulo. However, the Telia Kulo farmers were not willing to cooperate because the increased demand for water would have reduced supply to the irrigation systems which tapped water below the intake point of their canal.

We are not sure whether the farmers from Hemantapur and other neighbouring villages negotiated with the Telia Kulo farmers (especially the Majhgainyas). It seems more likely that they used other means to try to acquire water from Guhar Khola and Telia Kulo. For example, in **1907** one person sought and received permission from the Land Revenue Office (*Mal Kachhari*) in Dang to construct a canal from Guhar Khola to irrigate his fields located in the present day new command area of Telia Kulo. He was unable to complete the construction of the canal due to the difficult hill terrain. Some sixty years later, landlords of Hemantapur constructed Mani Kulo which diverted water first from Dude Gajari and Lami Khola and later from Chammi Sota and Jhari Bharne, all located close to the tail end of Telia Kulo. Some fanners from Telia Kulo allege that the real intention of constructing Mani Kulo was to acquire water from Telia Kulo. All they had to do was to dig a ditch which would link these two canals. This allegation may be true because in **1975** leading fanners from several villages served by Mani Kulo petitioned the Zonal Commissioner and at his insistence, they were able to buy water from Telia Kulo to irrigate their winter crops. However, after a few years they were unable to buy water from Telia Kulo due to a violent confrontation over the timing of water distribution to these villages.

Finally the leading farmers of Hemantapur and other neighbouring villages appealed for help from the Dean of the Sanskrit Institute to which they had donated large tracts of land. The Sanskrit Institute is located in Baljhundi, near Hemantapur. The dean, who lived in a house owned by one of these farmers, had close links with the royal family. During the king's visit to Dang, the dean petitioned the king for an irrigation system which would irrigate fields in Hemantapur and several other villages. The king then directed the concerned ministry to implement such a project, which is known as Guhar Khola Irrigation Project.

Prior to the implementation of Guhar Khola Irrigation Project (GIP), Telia Kulo was 6 km long, with a gross command area of **450** ha and actual irrigated area of 260 ha (177 ha of *khet* and 88 of *bari*). It benefitted 340 households in wards six, eight and nine of Bijauri VDC. After the completion of the project the canal is 13 km long, with a gross command area of **700** ha and actual

irrigated area of 344 ha (177 ha of khet and 167 of bari), and benefits 465 households in wards four, six, eight and nine of Bijauri VDC and ward 7 of Manpur VDC.

The irrigation systems downstream of the intake of Telia Kulo service a gross command area of 3984 ha in Bijauri, Halwar, Manpur and Daruwa VDCs and benefit approximately 2900 households.

## **CONFLICT CASES IN TELIA KULO/(GIP)**

We will now discuss three cases of water rights related conflicts in Dang District. The first case describes the conflict between farmers of irrigation systems downstream of Telia Kulo irrigation system and the Department of Irrigation, more specifically the Guhar Khola Irrigation Project (GIP), over the rehabilitation and extension of Telia Kulo which would affect water supply to the downstream irrigation systems. The second case is between the existing water rights holders of the old command area of GIP and the claimants in the newly expanded command area. The third case is between existing rights holders and new claimants (owners of *bhit* land) within the old command area of GIP<sup>3</sup>.

In the first case, the existing rights holders used political and administrative means to protect their water rights whereas in the second case they used the court. In the third case, the existing rights holders first used their power to prevent new claimants from acquiring rights but later accommodated their claims. The new claimants in all three cases used political and administrative means to ~~try~~ to acquire water rights. In all three cases, the new claimants were able to acquire water if not water rights to some extent by state intervention in the first case, negotiation and accommodation in the second case and accommodation in the third case.

### **The Conflict Over Guhar Khola Irrigation Project**

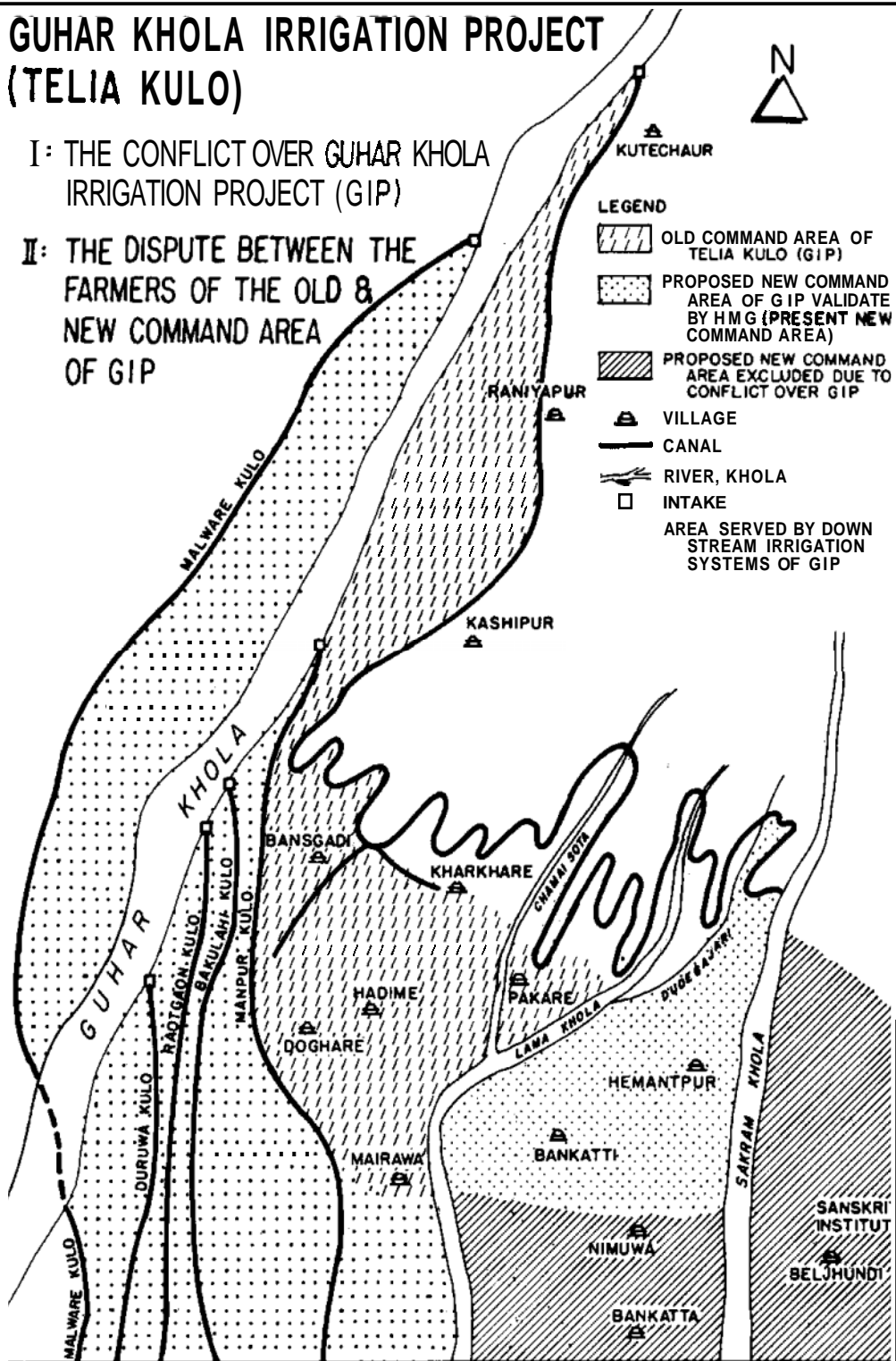
As per the royal directive, a project was sanctioned to irrigate fields in Hemantapur, Bankatti, Bankatta, Nimuwa and several other villages, all east of Lama Khola, with water from Guhar Khola (See Map I). The project, known as Guhar Khola Irrigation Project (GIP), was initiated in 1978. It was financed by the International Labour Organisation (ILO) and implemented by the Department of Irrigation. Like many projects implemented during this period, both the donor as well as the implementing agencies did not take into consideration the existing water rights of the local communities and, as elsewhere, this led to conflicts and disputes (cf. U. Pradhan 1990).

Many of the farmers of the old command area of Telia Kulo and the downstream irrigation systems claimed that the feasibility study for the project was done in secret and that they were never informed about the project, much less consulted. The farmers of the downstream irrigation systems had not objected to the project when a few sections of Telia were rehabilitated because they were ignorant about the proposed project plan. But once the construction work in the headworks had begun, a few of them somehow managed to get information about the actual plan of the project.

# GUHAR KHOLA IRRIGATION PROJECT (TELIA KULO)

I: THE CONFLICT OVER GUHAR KHOLA IRRIGATION PROJECT (GIP)

II: THE DISPUTE BETWEEN THE FARMERS OF THE OLD & NEW COMMAND AREA OF GIP



Guhar Khola Irrigation Project Map I

The original plan of the GIP was to construct a permanent concrete diversion weir at the intake point of Telia Kulo, and to rehabilitate and extend the canal. The command area was to be increased by 525 ha, east of Lama Khola, to benefit villages such as Hemantapur, Bankatti and Nimuwa. Land owned by the Sanskrit Institute would also benefit. None of the villagers served by irrigation systems downstream of the intake of Telia Kulo would benefit from the project; on the contrary, they would be deprived of their existing water rights.

Traditionally Telia Kulo farmers constructed temporary brush wood diversion weir which allowed sufficient water to seep through to the canals downstream of the intake point. The permanent diversion weir was designed such that all or most of the water could be diverted from the river, leaving no or very little water in the river below it. And there **was a very strong possibility** that most of the water would be diverted to Telia Kulo (GIP) to irrigate the newly extended command area because GIP was a government project funded by ILO and the irrigation system, renamed GIP by the government, was to be managed by the Department of Irrigation. This would considerably reduce water supply to the downstream irrigation systems such as Malware Kulo, Manpure Kulo and Duruwa Kulo whose intakes were located below the weir. The farmers of these downstream irrigation systems would be deprived of their traditional share of water from Guhar Khola. They thus protested and disputed very vigorously to protect and assert their water rights.

In this case the major conflict of interest over water rights in Guhar Khola (and Telia Kulo/ GIP) was between the farmers of the proposed new command area and the downstream irrigation systems. But they do not seem to have negotiated or disputed with each other directly. The water rights of the downstream farmers would not have been threatened had the GIP project not been implemented. As we have seen earlier, all the attempts of the farmers of the proposed new command area to acquire water from Guhar Khola had failed. The farmers of the downstream irrigation systems therefore disputed directly with the GIP project office because it was the implementing agency of the project. The farmers of the old command area of Telia Kulo were not involved in the dispute but apparently supported the farmers of the downstream irrigation systems behind the scene. According to some farmers from the old command area of Telia Kulo, they did not join in the dispute because they would benefit from the project (the permanent diversion weir and rehabilitation of the canal would reduce labour and maintenance requirement considerably) and they were afraid that the government may cancel the project if they protested about it.

The farmers of the downstream irrigation systems first petitioned and protested with the project officials. The project officials were unable or unwilling to alter the project plan for two reasons. First, the project was apparently approved by the king himself and second during this period the state did not tolerate any protest against 'development' work, especially, foreign funded projects. Seeing no other immediate alternative, about 500 farmers of the downstream irrigation systems, led by local landlords destroyed part of the diversion weir. A few of the leaders were arrested for a day and then released on bail. The leaders then organised protests and demonstrations and sent petition letters to different offices and officials such as the GIP office, the Chief District Officer, the Zonal Commissioner Office. These officials too could or would not help them *so* they took the help of a Member of Parliament of Dang District to petition several offices in Kathmandu again in without success. Finally, again with the help of their Member of Parliament, they petitioned the cabinet to protect their water rights.

The cabinet did not take a hasty decision but instead sent a high level commission to Dang to investigate. After the commission had submitted its report, the cabinet met to discuss what to be done. The cabinet had to take several factors into consideration while making its decision. The project could not be stopped because, as mentioned above, it was approved by the king and funded by ILO, and also because most of the construction work had already been completed. At the same time, the project would have adversely affected about **2900** households of the downstream irrigation systems and benefitted only about 855 households in the proposed new command area. Further, the project had created a law and order problem and needed to be defused. The cabinet finally decided to change the plan of the project and directed the concerned ministry to do so. The ministry, more specifically, the Department of Irrigation, Hydrology and Meteorology, instructed the Guhar Khola Irrigation Project office (i) to reduce the proposed new command area from **525** ha to **250** ha ii) to allocate water to the farmers of the new command area only for monsoon crops iii) not to allocate more water to the old command area than it had traditionally used and iv) to **construct the sluice gates of the headworks in such a way** that the supply of water to the downstream irrigation systems would not be **less** than it had traditionally (*sabik*) received.

The cabinet's decision protected water rights of the existing rights holders (the farmers of the **old** command area of Telia Kulo as well as the farmers of the downstream irrigation systems). Most of the targetted beneficiaries of the project (**730** households) were unable to acquire rights to water in GIP (and Guhar Khola) because the the new command area was not expanded as originally proposed. Other farmers (125 households) acquired rights to water from the system but only for monsoon crops when they really wanted water for winter crops.

The farmers of the downstream irrigation systems were able to protect their water rights by means of protests, petitions and use of administrative and political connections. The farmers of downstream irrigation systems used these modes and forums of disputing instead of going to court for several reasons. The three most important reasons cited by informants are: i) The judicial process takes a long time and is expensive and troublesome; ii) they believed that the courts would decide in favour of the government (the Department of Irrigation) because it had invested heavily in the project and, moreover, the courts usually favoured the government, and iii) they had connections in Kathmandu and believed that it would be better for them and quicker if they used administrative and political channels instead of the judicial process. They had to resolve their dispute **as** quickly as possible because it would be very difficult to alter the plans once the project had been completed.

The cabinet's decisions were accepted by all the stakeholders for the moment. The conflict however remained and later there were other disputes over water rights in Telia Kulo/ **GIP**. These disputes had been simmering for a long time and came to boiling point after the completion of the GIP project. We will describe two such disputes, the first between the farmers of the old and new command area and the second between the existing rights holders and the 'new' claimants in the old command area of Telia Kulo. The farmers of the downstream irrigation systems were not involved in any of these disputes.



## **The Dispute Between the Farmers of the Old and New Command Area of GIP**

As discussed earlier, the farmers of Hemantapur and Bankatti, in the new command area of GIP, had made several attempts to acquire water from Telia Kulo for their winter crops because their water sources supplied sufficient water during monsoon but not during winter. After the Guhar Khola Irrigation Project was implemented, they acquired rights to water from the canal hut only for the monsoon crops, as per the cabinet's decision. A few years later, they asserted claims to water rights for their winter crops by petitioning the Bijauri Village Panchayat (now known as Bijauri Village Development Committee) for help in securing their rights.

The chairman of Bijauri Village Panchayat was an old rival of the Majhgainyas, the elites of the old command area, and (as politics go) a friend of the elites of the new command area of the GIP. The chairman was very willing to help the petitioners especially because his father had lost a court case some forty odd years ago in a dispute over water rights issue with the Majhgainyas.

The chairman of Bijauri Village Panchayat in collaboration with other Village Panchayat officials and the petitioners formed a water users' sub-committee and allotted water to the new command area for winter irrigation from Telia Kulo/ GIP. The farmers of the old command area were not consulted about water allocation from Talia Kulo but simply informed by a letter sent by the Village Panchayat office. These officials justified their actions on the grounds that the GIP was no longer a 'private' but a government irrigation system (*sarkari kulo*) and, therefore, the Village Panchayat had jurisdiction to allocate the water.

The farmers of the old command area were not willing to share water with the farmers of the new command area for winter irrigation. They believed that Telia Kulo was their irrigation system and had the right to decide whether and to whom they would allot water. To assert and protect their right, some of the farmers of the old command area, led by the Majhgainyas, filed a case in the Zonal Court against a few farmers of the new command area, the water users sub-association, the Chairman of the Bijauri VDC, and the Bijauri VDC. In their petition they requested the court to issue an injunction ordering the defendants not to acquire water from Telia Kulo. They suspected that the defendants were trying to acquire water illegally from Telia Kulo and thus infringe on their traditional water rights. They argued that Telia Kulo was constructed by their ancestors and that they, the petitioners, have been lawfully using it for a long time. It is their property. However, the government rehabilitated and extended Telia Kulo and renamed it Guhar Khola Irrigation Project. The decision of His Majesty's Government (of 1983) clearly states that the farmers of the new command area have rights to water only for monsoon crops and not winter crops. The court dismissed the case on procedural ground, namely that cases pertaining to property, of establishing ownership, should first be filed in the District Court and not directly in the Zonal Court.

The petitioners filed an appeal against the decision of the Zonal Court with the Regional Court of Appeal but they did not pursue this case in the court. They gave two main reasons for this. First, it was expensive and time consuming to visit the court in Nepalganj. Second, they settled the dispute out of court for 'political' reasons. During this period there was a nation wide movement to overthrow the Panchayat regime and restore democracy in Nepal. Many of the litigants were actively involved in this political movement and found themselves on the same side. They were able to discuss the dispute and reach a compromise. The chairman of the Village Panchayat and the Village Panchayat were not involved in the discussion or the compromise. The agreement they

reached was that the new command area would be allocated water for up to 20 days a year to irrigate mustard but not wheat crops. They would get water only after the old command area had been fully irrigated. In exchange, the fanners of the new command area would contribute labour for repair and maintenance of the canal.

In this case when other means (use of Village Panchayat by one party and of the court by the other) failed, the fanners of the new command area acquired secondary rights to water in Telia Kulo for their winter irrigation and the fanners of the old command area were able to protect their senior rights by negotiation, accommodation and compromise instead of further disputing.

## **The Dispute Between Bhitwals and Other Farmers in the Old Command Area**

Telia Kulo is in the Terai, the stretch of flat land, stretching from east to West, in the southern part of Nepal. In Terai, land is classified either as bhir or dhanhar which is similar to the *pakho/khet* classification in the hills. Fields which are levelled and bunded and are suitable for rice cultivation are called khet or dhanhar. Fields which have not been levelled and bunded and in which crops which do not require irrigation but depend on rain such as corn and millet are cultivated are known as pakho or bhit. Bhit fields may be irrigated but only for winter crops.

In the old command area of Telia Kulo, bhit fields are located mainly between Raniyapur and Bangsadi and in Kashipur and Kharkhare (see Map II), i.e. between the head and middle sectors **of the command area. Most of the owners of these fields are small farmers, mainly recent migrants** from the hills. They bought these small plots of land from the landlords, some of whom, including Majhgainyas, continue to own bhit fields, especially in Kharkhare and Kashipur. The farmers, especially the small fanners who did not own rice fields, slowly started to convert their bhit fields to khet, especially the fields which adjoined the canal, and to grow rice. However they were not allotted water by the fanners who managed Telia Kulo.

As mentioned earlier, the Majhgainyas, the biggest landlords in the Telia Kulo command area, managed the irrigation system, assisted by other fanners. Water allotment in the tail end of the old command area of Telia Kulo, where the Majhgainyas live, was based on labour contribution for repair and maintenance of the canal (which in turn was based on the size of the land irrigated). Water was not allotted to new fields without the consent of the Majhgainyas. The Majhgainyas were reluctant to allow conversion of bhit fields to khet because additional land under rice cultivation increases demand for irrigation, especially if the monsoon is late or poor. Fanners depend on irrigation for flooding their fields during and just after rice transplantation.

The bhitwals, as the owners of bhit fields are called, were not allotted water but they would 'steal' water to irrigate their monsoon rice crop by breaching the canal banks adjoining their fields. According to the tail end fanners, the bhitwals did not close the holes they had made which led to loss of water and reduction in water supply to the fields in the tail end of the command area. The powerful landlords forcefully seized livestock or household items as fine (khara) to punish the fanners who were caught stealing water and the local authorities did not intervene when these small fanners complained against the Majhgainyas. They and the Majhgainyas believed that the owners of bhit land did not have rights to water from Telia Kulo.

# TELIA KULO (GIP)

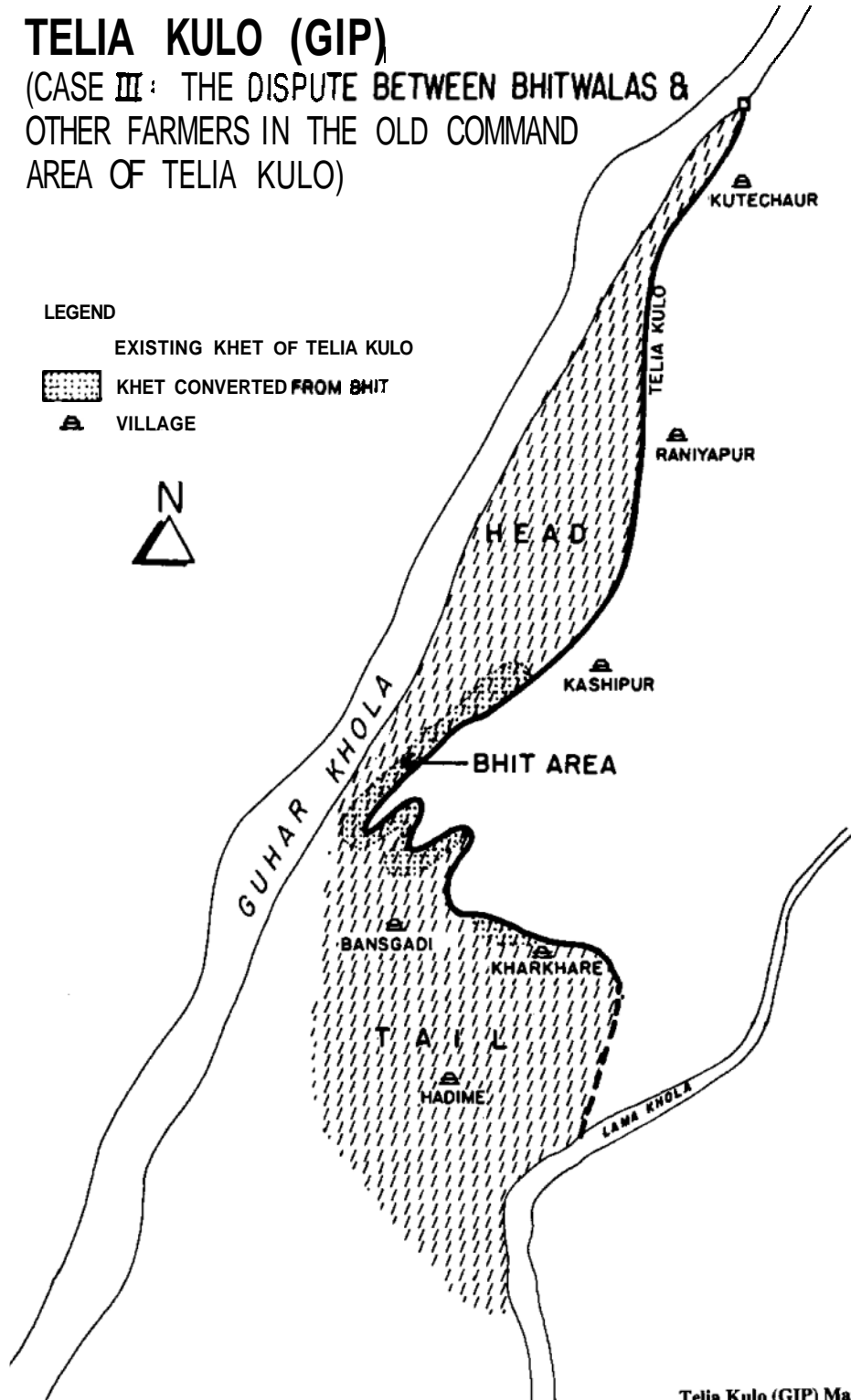
(CASE III: THE DISPUTE BETWEEN BHITWALAS & OTHER FARMERS IN THE OLD COMMAND AREA OF TELIA KULO)

## LEGEND

EXISTING KHET OF TELIA KULO

 KHET CONVERTED FROM BHIT

 VILLAGE



Telia Kulo (GIP) Map II

While the Majhgainyas were still very powerful, the villagers did not dare openly convert bhit land to khet but they began to do so when the Majhgainyas began to show less interest in irrigation management and their power and influence declined. In the beginning bhit fields were converted by the bigger landlords, especially the rivals of the Majhgainyas. Encouraged by these examples and supported by a few liberal landlords and Bijauri Village Panchayat officials, other villagers, mainly small farmers and low castes, converted their bhit land to khet, especially after 1979 when the construction work for the rehabilitation and extension of Telia Kulo was initiated.

At first the Majhgainyas tried to deter the bhitwals, especially the small farmers, from irrigating their newly converted khet fields by forcefully seizing livestock or household items as fine and by patrolling the canal. The Majhgainyas lost interest in preventing them from diverting water after their authority was undermined by the Village Panchayat which intervened several times on behalf of the bhitwals. The bhitwals began to 'steal water' more openly.

A document in our possession (presented below) supports the contention of the Majhgainyas that the Village Panchayat office intervened on behalf of the bhitwals. The document was signed by the villagers who had appealed to the Bijauri Village Panchayat to help them recover livestock and household items seized by the Majhgainyas as punishment for "stealing" water. They recovered the seized items with the help of the Village Panchayat and then signed this document in 1985.

The document is an agreement (*majuranama*) and a confession signed in 1985 by seven persons, four from Bansgadhi and three from Raniyapur, that they had diverted water from the canal to their fields<sup>4</sup>. They agreed to divert water to their fields once in five days and only for that year. They would not take or demand more water. They also agreed to abide by the decision of the GIP office regarding water allocation. They agreed to pay the fine as per traditional practice if they diverted more water to their fields than agreed upon.

*When (branch) canals of Telia Kulo were being constructed by the Guhar Khola Irrigation Project and we converted our private land to dhanhar (rice fields). The owners of land below us complained that their fields in Bansgadhi, Thangaon, and Bijauri which traditionally received irrigation (sabik pati aayeka jagga), did not receive sufficient water and were in danger of drying up (sukha parti jan sthithi). We (the undersigned persons), therefore, agree that once His Majesty's Government completes the irrigation project, we will do whatever it decides as regards water allocation (howsoever and to whosoever it decides to give water: je jaslai je jasto kisimle pani dela so bamojim garne) and until then agree that bhit land will remain as bhit and dhanhar as dhahnar. Further, we agree to divert water for one day every five days under the supervision of the Sardaruwa of Telia Kulo (and increase the flow of water to the canal from Guhar Khola) to see through this year's harvest. We will not ask or take more water than this. Until the Irrigation Project makes another arrangement, we will not say anything and continue to maintain bhit land as bhit. If we do not do as stated above and take more water, we will pay khara (fine) as per traditional practice.*

In effect, the persons who signed the document seem to have been forced to accept the "customary rule" that the traditionally irrigated fields (*sabik pati aayeko jagga*) had first rights to water from

Telia Kulo but at the same time, as the document in shows, they subtly hinted that they too could have rights to water from the canal, renamed Guhar Khola Irrigation, if the state (or the Project officials) *so* decided. Similar views, with additional justifications, were expressed by the 'bhitwals' during interviews with them. Informants from the tail end of the command area stated that these were the reasons given by the 'bhitwals' for diverting water to their fields.

According to the tail end irrigators, the bhitwals justify their action by arguing that Telia Kulo is no longer a private canal but a public or government canal because it was rehabilitated and extended by the government. Everyone with land in the command area has rights to use water from the government canal. As if to emphasize this point, they call the canal '*sarkarikulo*' (government canal) or '*sinchai kulo*' (irrigation canal) instead of Telia Kulo. They further argued that if the farmers in the new command area have rights to the water from the canal, they too should have rights because they own land in the (old) command area. Moreover, since the canal passed through their fields, they should have rights to use water from the canal.

Over the past few years, the tailenders have more or less accepted the fact that the bhitwalas will divert water to their fields, licitly or illicitly. So rather than ignore them, an attempt is being made to coopt them within the system. The recently converted kbet land in Kashipur are not allocated water officially. However, the bhitwalas are allowed to deliver water to their fields unofficially for fixed periods. Initially, they neither contributed nor were allowed to contribute labour for repairs and maintenance because the old irrigators feared that if they contributed labour, they may claim water rights in the future. Later they contributed labour for emergency repair of the canal. At first their labour contribution was not recorded but the Sardaruwa now keeps a record of their contribution and even demands that they contribute labour. The claims of these bhitwals to rights to water from Telia Kulo is gradually being accepted by the existing rights holders. The fact that some of these bhitwalas (i.e., the bigger farmers) are maternal relatives of the Majhgainyas probably helped them secure 'unofficial' water rights.

The claims of the bhitwals from Kharkhare are also being accepted, however reluctantly. The recently converted fields of a big landlord was allocated water first since he is an influential Majhgainya and had migrated to Kharkhare from the tail end of the command area to take advantage of the new section of the canal. The small landholders, recent migrants, were also allotted water by the water users' committee since 1994 for three to three and a half hours per day to dissuade them from diverting water whenever they wanted. These bhitwals however do not contribute labour for system maintenance. They are thus accepted 'freeriders'.

Over the years the bhitwals have been able to acquire water to irrigate their rice crops, if not water rights. If in the beginning they 'stole' water and were punished for it, later they were supported by the Village Panchayat Office and some landlords in acquiring water. The implementation of the Guhar Khola Irrigation Project changed property relations, or rather perceptions of property relations of the bhitwals and other farmers, in that Telia Kulo was considered by them as a public or government canal and not a private one. The Majhgainyas were less powerful and could no longer enforce their rules. They and other farmers in the tail end of Telia Kulo were forced to be more accommodating and less conflictuous.

## CONCLUSION

In the cases described above, the farmers used different means to acquire or protect water rights. In all three cases, farmers sought to acquire water rights not by investment, or negotiation or litigation in the courts but by political maneuvering because it was the best means available to them. The existing rights holders were not willing to share water with other farmers. The rights of the prior appropriators were accepted by most of the farmers, even if there were disputes as to who the prior appropriators were. And the courts in most cases upheld the rights of the prior appropriators.

Another means used to justify claims to water rights, if not to acquire rights, was to subvert the justification for exclusive use of water by existing rights holders by insisting that property relations had changed. The new claimants argued that with the initiation of the Guhar Khola Irrigation project by the Department of Irrigation, Telia Kulo was not a private canal but a public or government one. Therefore, everyone who owned land within the command area had rights to water from the system and the Village Panchayat could intervene.

In the first case, farmers from Hemantapur and neighbouring villages (the new command area of Telia Kulo/ GIP) sought the help of a person close to the king to sanction a project which would deliver water to their fields. Earlier efforts to acquire water from Telia Kulo had failed but a project sanctioned by the king and implemented by the government would be difficult to oppose. In the second case, the farmers of the new command area asked for help from the Village Panchayat officials who were rivals of the Majhgainyas, the main persons who opposed sharing water with them for winter crops. The Panchayat officials allotted water to them for winter crops which they justified on the ground that Telia Kulo was no longer Telia Kulo, a private canal, but Guhar Khola Irrigation Project, a government canal. The bhiti land owners similarly used the village Panchayat officials and the Guhar Khola Irrigation Project to legitimize their claims to water from Telia Kulo. Another tactic they employed was to use the strategic location of their fields next to the canal and above the tail end of the old command area to divert water on a regular basis, especially at night when it was difficult to patrol the canal.

The existing rights holders used three means to protect their water rights. In the first case, the farmers from irrigation systems downstream of the diversion weir of Telia Kulo/ GIP took to the streets, protested, petitioned, and used political and administrative channels to alter the plan of the GIP project. They felt that this was a better strategy than using the judicial process. Although the conflict of interest over water was between the farmers of downstream irrigation systems and farmers in the proposed extension of the GIP command area, one party could get water only at the cost of the other. They did not confront each other directly but used the GIP as a medium to try to acquire rights or protect rights. The protests, petitions and political maneuvering by the farmers of downstream irrigation systems were actually directed to the farmers of the proposed new command area and not the Department of Irrigation. They were able to protect their existing water rights, thanks to the cabinet decision. The farmers of the new command area acquired some rights, but secondary to the existing rights holders.

In the second case, the farmers of the old command area of Telia Kulo resorted to the court to

defend their water rights, their rights to use water exclusively for themselves for the winter irrigation. Faced with claims that Telia Kulo was not their irrigation system but a public or state property, they had to establish that the irrigation system was indeed their property. Once this was established by the court, and thus 'legally' accepted, they could prevent others, including the Village Panchayat office, from acquiring water from their system. It is unfortunate that the court did not give its judgement as to who 'owns' the irrigation system because the issue is still not settled. With changes in the political circumstances, they negotiated a compromise and agreed grant limited or secondary water rights for the farmers of the new command area.

In the third case, the Majhgaiyas were able to use their position as powerful local elites to enforce the dominant local rules concerning water acquisition (bhit owners did not have rights to water for rice crops). When their power declined and the village Panchayat office intervened, they changed their strategy and became more accommodating. The strategy they then used was to allocate water or 'allow' the bhitwals to acquire water without officially accepting their claims to water rights in Telia Kulo.

Claims to water rights have to be established and justified by reference to law. In this paper we have tried to show that the law that is used to justify claims is plural, multiplex and dynamic. Law as understood here is not one law, customary or state, but often a combination of both types of law and other normative repertoires. State law does become relevant when the actors go to court or the state is involved but state law is only one of the nonnative repertoires available to the actors in a semi-autonomous social field and sub-fields. As Moore (1978) has argued, actors in a semi-autonomous social field generate rules which draw upon several normative repertoires and the rules are not static but change over time. In the case of Telia Kulo/ GIP irrigation context, actors draw upon repertoires of perceptions of state law (and state power), of tradition (customary law), patronage and power, normative ideas derived from perceptions of cropping constraints and opportunities, and perceptions of property relations. Different actors generate different rules or use different repertoires to justify their claims, depending on which they believe best suit their interests.

## NOTES

- 1 This paper is a revised version of the paper read at the workshop titled, "Water Rights, Conflict and Policy," held in Kathmandu. Jan 23-26, 1966. Fieldwork for the paper was done in Dang as part of the Ford Foundation funded IIMI/ FREEDEAL study on water rights in Nepal. We are grateful to Joep Spiertz for detailed comments on the paper. The paper is based on fieldwork carried out jointly by IIMI and FREEDEAL for the research project on "Water Rights in Nepal".
- 2 Mahesh C. Pradhan was formerly Research Associate in IIMI/Nepal for the research project on "Water Rights in Nepal" and is currently attached with FREEDEAL on the second phase of the study. Rajendra Pradhan was consulting anthropologist to IIMI/Nepal and is currently directing research on water rights in Nepal for FREEDEAL.
- 3 These cases have been discussed elsewhere from a different perspective (R. Pradhan and U. Pradhan 1996). The first case has also been discussed in this book by Pradhan, Haq and Pradhan.
- 4 The document is a translation of the agreement (manjurnama) signed by the owners of bhit land. We

photocopied the document from Mr. Janardan Pokhrel, a Majhgainya, and former leader of the Telia Kulo management committee. The document, dated 042/5/3 B.S., i.e. 1985 A.D., is a copy of the original document. According to Mr. Pokhrel, this agreement was submitted to Bijauri Village Panchayat Office. The seven persons who signed the agreement are all bhitwals. Presumably there was a complaint against them.

## REFERENCES

Benda-Beckmann, K. von. 1984. "Forum shopping and shopping forums: dispute settlement in a Minangkabau village in West Sumatra, Indonesia." In K. von Benda-Beckmann, *The broken staircase to consensus: Village justice and state courts in Minangkabau*. Dordrecht: Foris. pp 37-66

Moore, S. F. 1978. "Law and social change: the semi-autonomous field as an appropriate subject of study". In Moore, S.F., *Law as a process: an anthropological approach*. London: Routledge & Kegan Paul. pp. 54-81.

Pradhan, Rajendra, A. Haq and Ujjwal Pradhan. 1996. "Laws, rights and equity: Implications of state intervention in farmer managed irrigation systems." Paper presented at the conference in "Water Rights, Conflict and Policy", Kathmandu, January 22-24.

Pradhan, Rajendra and Ujjwal Pradhan. 1996. "Staking a claim: Politics and conflicts between statutory and customary water rights in Nepal." Paper delivered at the Sixth Annual Conference of the International Association for the Study of Common Property, "Voices from the Commons", Berkeley, California, June 5-8, 1996.

Pradhan, Ujjwal. 1990. *Property Rights and State Intervention in Hill Irrigation Systems in Nepal*. Ph.D. dissertation submitted to Cornell University.

1994. "Farmers' Water Rights and Their Relation to Data Collection and Management." In Sowerine, J, G. Shivakoti, U. Pradhan, A. Shukla, and E. Ostrom (eds). *From Farmers' Fields to Data Fields and Back*. Kathmandu: IIMI/IAAS. pp 187-198.

Shivakoti, Ganesh and Ujjwal Pradhan. 1995. "Managing support services: A comparative study of processes and performance of FMIS interventions in Nepal." In *Improving Support Services to Farmer Managed Irrigation Systems in Nepal*. Kathmandu: Research and Technology Development Branch\ IIMI. pp 1-16.

Wiber, M.G. 1992. "Levels of property rights, levels of law: a case study from the northern Philippines". *Man (N.S.)*, 26: pp 469-92.