



Nepal's Constructive Dialogue on Dams and Development

Ajaya Dixit

Chairman, Nepal Water Conservation Foundation, Kathmandu, Nepal; adbaluwater@ntc.net.np

Dipak Gyawali

Research Director, Nepal Water Conservation Foundation, Kathmandu, Nepal; dipakgyawali@ntc.net.np

ABSTRACT: This paper describes a consultation process that took place in Nepal from January 2003 to July 2004 involving dam builders, dam managers and dam critics. It discusses the key findings of the review and reflects on the differences between dams built with domestic designs and funding that suffer no controversy and ongoing dam projects involving international agencies that are mired in dispute. The paper concludes that Nepal must continue with the deliberative process which characterised the period immediately after the WCD Report was released if it is to end the policy impasse that plagues the development of hydropower in the country.

The government of Nepal, like the governments of its neighbours India and China, unequivocally rejected the recommendations of the World Commission on Dams (WCD) Report soon after its release in November 2000. Later, more considered reactions revealed more complex sentiments among Nepalis inasmuch that social activists welcomed the recommendations as valid and necessary, while the dam building community, including the official hydrocracy, held that they were impracticable. The then government, assessing that the business-as-usual dam building approach would face an impasse and not help meet Nepal's growing need for water and electricity, concluded that the country could ill-afford to reject the WCD's findings. It took a policy initiative in December 2002 to engage with the report more aggressively, comparing the WCD recommendations with Nepal's own national laws, acts and policies in order to explore the contours of an alternative approach. Lessons from the consultative and inclusive global review effort that the WCD represented needed to be thoroughly internalised by Nepal so that no bad dams would be proposed for funding and only good dams built.

The consultations of 2003-2004 revealed that many Nepali laws were already robust and did, in fact, incorporate the WCD recommendations adequately. A second cycle of consultations identified many second-generation problems, including those related to ensuring compliance, gaining public acceptance, recognising entitlements, sharing benefits and conducting comprehensive options assessments. The major limitation to Nepal's ability to take up the WCD recommendations turned out to be less in the laws themselves and more in the implementation of, and compliance with, these laws.

The findings of the two consultative reviews meant little to either subsequent governments of Nepal or to the international aid industry, despite the opportunity for change that the dramatic democratic movement of 2005/2006 offered – government hydrocracy and the political parties guiding it, as well as international donors, continued to favour the conventional model of dam building. Their silence about the review is inexplicable, especially in light of the flaws in, and controversy surrounding, the ADB-funded Kali Gandaki A and German-funded Middle Marsyangdi dams, both of which followed conventional practice. A new electricity act currently tabled in the parliament also fails to take into account many of the lessons that should have been learnt so easily from past mistakes.

KEYWORDS: Water conflicts, dam building, foreign aid and investments, Nepal

NEPAL'S DAM DEBATE

Since the end of World War II, it has been a political truism in Nepal that the country's problem is poverty and its greatest asset is its enormous hydropower potential, estimated at 83,000 MW. This

figure, known to almost any schoolchild, is repeated endlessly in the media as Nepal's passport out of poverty. It is equally well known that more than half a century of effort by various Nepali governments, its giant neighbours and international aid agencies has not produced the imagined cornucopia. By the end of 2009, Nepal's installed hydropower capacity stood at only 634 MW – far below the demand and leading to endemic daily power cuts of up to 16 hours a day. Indeed, wags have turned the truism around, joking that poverty is Nepal's biggest asset (since it seems to attract so much foreign aid) and hydropower its biggest problem (since it has led to so much conflict and bad political blood, including the splitting of political parties as happened with the Mahakali Treaty with India regarding the Pancheswar high dam).

Harnessing the country's hydropower potential is seen by some as the means to eradicate poverty and promote development, and this may very well be possible. However, the many flaws associated with conventional power projects, including the collapse of the World Bank-led Arun-3 hydroelectric project and the high cost of government-led developments, present a stark contrast to the successes of small-scale private and community schemes. This contradiction has forced a public debate among hydropower players, challenging them to rethink the path and purpose of developing Nepali water resources. Given the country's ecological diversity (from the tropical in the Tarai plains to the arctic in the Himalaya, all within a 200-km north-south range) and its rich social mosaic (103 caste and ethnic groups speaking 93 languages), it is no surprise that views about the nature of water development and, indeed, about what development itself entails are diverse and even divisive.

The debate became contentious after 1990 when multi-party democracy was restored in the country. Before this period, dam building was considered good per se, indeed seen as development's iconic symbol, and there was little questioning of the enterprise which was dominated by foreign expertise and followed a top-down approach for planning, design and construction. The basic tenets of development such as local capacity-building, using energy to enhance forward and backward linkages in the economy and assuring access to electricity for the country's large rural population never came seriously within the ambit of hydropower planning. This view saw hydroelectricity not as a primary input to increasing domestic production but as a commodity for export. The logic was that since so much hydropower could be generated, and that hardly any would be consumed within Nepal itself, the surplus should be exported to earn revenue for the government. This notion was reinforced by the dominant discourse coming from the lower riparian India, which propagates the paradigm that hydropower generated in Nepal should be used to run groundwater pumps and to promote industrial development in the Indian plains (Verghese, 1999). It must be borne in mind that Nepali tributaries are estimated to contribute about 45% of the average annual, and 70% of the dry-season, flow of the Ganges.

Dam builders have not normally concerned themselves with questions about benefits or their distribution. In recent times, however, this structural engineering approach has been questioned by social movements, which define the problem of scarcity and development very differently. Unsurprisingly, they proffer solutions vastly different in the choice of technology, its control and the social strata to which the benefits should accrue (Schwartz and Thompson, 1990). Since the arguments and counter-arguments of the pro- and anti-dam lobbies come from widely differing premises (Gyawali, 2009), they are not amenable to easy consensus or neat compromises; nonetheless, their very coming together on one contested policy terrain has forced the protagonists to confront, if not come to terms with, new issues and clumsy considerations. In recent years, these debates have led to some new and positive developments such as the involvement of rural communities in electricity distribution, participation of the local private sector in small- and medium-scale hydropower development and the transferring of the government's royalty revenues to the districts and local community; however, there have also been incidents of sliding back to old ways of doing business (Dixit, 2008). The narrative of prosperity through electricity export has made a political comeback with the establishment of a republican order, even as over half the country's population continues to have no access to electricity and new social activism goes back to critiquing the main political parties and the hydrocracy guided by

them for not being reflexive enough. As a result, the swing of the history of hydropower development pendulum continues from the euphoric promotion of projects by one set of players to despair and anger from another set (see table 1 for a chronology of the water debate in Nepal).

It is within this context that the WCD Report appeared and was responded to in Nepal. The report was initially rejected by the official hydrocracy, which saw it as a threat to its big dam building agenda, but it was welcomed by activists who saw it as an appropriate starting point for having their concerns addressed. While the report did galvanise collective engagement among a triangle of hydropower actors – the state, the market and civil society – between 2003 and 2005, the political imperatives of drafting a new constitution and enforcing the terms of the 2006 peace agreement between the insurgent Maoists and the parliamentary parties pushed the dialogue about water and hydropower development on to the backburner. Since Nepal's development needs will require some dam building, the debate will have to be revisited in the future when the political dust has settled and development picks up again. That such a debate did happen and provided a precedent inspires hope, as does the fact that even the fiercest dam critics in Nepal do not say 'No dams!' but rather 'No bad dams!' What bad dams need to be avoided and how good ones can be built in the future will be an issue for which the constructive engagement of 2003 will have to serve as a starting point.

WCD AND THE ROLE OF NEPALIS

Nepal's effervescent history of water-related activism in the early 1990s served as an important contributor leading to the WCD process, and the country remained a site of contestation for its final report as well. Nepali debates added volume to the outcry against dams across South Asia. For example, in India, it was the Tehri and Sardar Sarovar dams that were attacked in a very public fashion; in Bangladesh, the Flood Action Plan; in Sri Lanka, the Kotmale hydroelectric project; and in Pakistan, the Kalabagh dam and the Ghazi Barotha hydroelectric project. Although only the very occasional maverick government official or daring journalist had questioned dam projects during the party-less *Panchayat* system from 1960 to 1990, a sustained and vociferous debate emerged only after the re-establishment of multi-party parliamentary democracy in April 1990, when hitherto mute voices took advantage of the new political openness. Indeed, the vehemence of activists' criticisms of water projects took the government and aid agencies by surprise, and the 1990s came to be known as a decade of water conflicts.

Before 1990, water resources development projects were whatever the experts in the power and irrigation ministries decided upon, as long as they were able to find backing and funding from the donor community, including the governments of Nepal's giant neighbours, China and India. The first political protests started in 1991 with the Tanakpur hydroelectric plant, built unilaterally by India on the Mahakali river forming the border between Nepal and India in the west. India failed to take into account Nepal's sensitivities when the then Nepali Prime Minister Girija Prasad Koirala reached an 'understanding' with India during his state visit, allowing India to extend the project's left afflux bund into Nepali territory. It was subsequently subsumed under the larger Mahakali Treaty of 1996, which has remained an even bigger controversy ever since. This debate brought forth into the public domain other issues of water resources development such as water rights, benefit-sharing and the integrated nature of water.

Table 1. Time-line and context of the water debate in Nepal (1990-2010).

Date	Events
April 1990	Restoration of multi-party democracy opens the space to question proposed hydropower projects, especially the World Bank-led 201-MW Arun-3. It is criticised for its high cost US\$5400/kW) – four times more than that of small plants built by the private sector.
December 1991	Nepali Prime Minister G.P. Koirala signs an 'understanding' with India on water resources development that allows, inter alia, India to build 540 m of the left afflux bund inside Nepali territory to complete its unilateral construction of the Tanakpur hydroelectric project on the Mahakali border river. A writ petition is filed in the Supreme Court against the 'understanding' and to have it declared a treaty requiring ratification by two-thirds of the parliament as per Article 126(2) of the 1990 Constitution of Nepal (details in Gyawali and Dixit, 2000).
15 December 1992	The Supreme Court decides that the Tanakpur agreement was indeed a treaty requiring parliamentary ratification. Its verdict leaves the question of whether ratification requires a simple or a two-thirds majority vote to be decided by the government and the parliament.
February 1993	The first public hearing on Arun-3 is held in Kathmandu. A loose coalition of activists, the Alliance for Energy, launches a campaign against the Arun-3 project and proposes better alternatives. About the same time, the Arun Concern Group, which includes members from the project area, launches an independent campaign.
8 May, 1994	In a landmark decision, the Supreme Court orders the government to disclose fully all Arun-3 documents. The ruling is in response to a case filed by Inhured International, a group of Nepali activists opposed to Arun-3, against the electricity utility Nepal Electricity Authority (NEA) and the Ministry of Water Resources for violating the public's right to information.
April 1995	World Bank president James Wolfensohn issues a statement withdrawing funding for Arun-3, claiming that Nepal cannot bear its unacceptably high (macroeconomic) risks. In Nepal, political parties launch a blame game about 'who lost Arun-3'. In order to break the impasse on Tanakpur, the minority communist government proposes a "package deal" to India, allowing India the right to develop the 6,480-MW Pancheswar high dam upstream of the Tanakpur project. As part of the deal, Nepal would receive additional water and electricity from the Tanakpur project (see details in Gyawali, 2003).
29 January, 1996	The foreign ministers of Nepal and India sign the Mahakali Treaty to facilitate the building of the Pancheswar high dam. The ministers re-initial the treaty on 12 February, 1996. The very next day, the Maoist Nepal Communist Party launches its "people's war" against the "bourgeois parliamentary system", citing, among other things, "unequal" treaties between Nepal and India, including the Mahakali. The insurgency lasted until 2006.
20 September, 1996	Despite serious misgivings and ambiguities regarding the status of the headwaters of the Mahakali river and India's share of the water, two-thirds of a joint sitting of the upper and lower houses ratify the Mahakali Treaty close to midnight. However, a separate set of strictures passed earlier challenges the treaty's legitimacy, as does the fact that 14 years after ratification, not a single task in the time-frame has been undertaken – no detailed project report in six months, no financing arrangements in two years or the dam constructed in eight years. Ratification also leads to a split in the main opposition party, the Nepal Communist Party (United Marxists Leninists).
10 October, 1996 to 26 May, 1999	No progress is made by an all-party joint committee formed on 10 October, 1996, to study the implications of the strictures on the Mahakali Treaty, as Nepal has seen many unstable coalition governments scrambling to sign a spate of poorly considered MoUs with private hydropower developers. For instance, the licence to develop a storage dam on the West Seti river for exporting power to India was given to an Australian developer, SMEC, without going through parliament, despite the protest of activists. Another near-disaster was Enron, which almost secured a licence to develop both the Arun-3 and the 10,800 MW Karnali Chisapani high dams. It was narrowly averted by NGO activism.
16 November, 2000	The final report of the WCD is released in London and sent by the World Bank to governments of member countries.

10 January, 2001	A workshop on the WCD's report is held in Kathmandu by the Nepali chapters of ICID, ICOLD and IHA and by an NGO of mainly ex-hydrocrats, the Jalasrot Vikas Sanstha (JVS). It concludes that the WCD Guidelines in their present form would make it impossible for Nepal to build any dams.
23 January, 2001	Nepal's Ministry of Water Resources sends a detailed letter to the World Bank arguing why it could not accept the WCD Guidelines (see box 3).
1 June 2001	Royal massacre in Nepal, which decimates the institution of monarchy.
May-October 2002	Party infighting leads to parliament's dissolution. Parties are unable to hold elections as required by the constitution, forcing the new king's takeover of government as per the residual powers in Article 127.
January 2003	Upon request of the Ministry of Water Resources, a constructive engagement among Nepali hydrocrats (dam managers), the construction industry (dam builders) and social and environmental activists (dam critics) begins under the coordination of IUCN. The World Bank stays out of the discussions.
July 2004	The first scoping study to emerge from this constructive engagement, <i>Constructive Dialogue on Dams and Development in Nepal</i> , is published (Dixit et al., 2004a; 2004b).
2004-2005	Those involved in the consultative process agree upon a second round of study in four Strategic Priority areas (summarised in Dixit, 2007): gaining public acceptance (Singh et al., 2005), a comprehensive options assessment (Pokharel, 2005), entitlement and benefit-sharing (Chintan and Shrestha, 2005) and ensuring compliance (Dixit and Basnet, 2005). This effort is funded mainly by the German aid agency GTZ, with support from Winrock International, and is coordinated by IUCN.
Dec 2005 -April 2006	Parliamentary parties and the insurgent Maoists sign the 12-point understanding in New Delhi and launch protests, which end with the resurrection of the old parliament. It sidelines the monarchy until it is abolished by the newly elected Constituent Assembly in May 2008.
April 2006 – April 2008	The interim government awards licences to Indian companies, including GMR and Satluj, to develop attractive hydropower sites such as Arun-3 and Upper Karnali for the export of electricity to India. In doing so, it bypasses the interim parliament and, according to activists, violates Article 156 of the interim constitution. In its ruling on a writ petition filed by activists against SMEC and its West Seti storage project, however, the Supreme Court decides that hydroelectricity is not a resource and thus that Article 156 (same provision as Article 126 in the earlier 1990 constitution) is not relevant and the government does not need parliamentary approval to award licences to hydropower exporters. An appeal challenging that verdict is pending in the Supreme Court.
15 August, 2008 – 4 May, 2009	The Maoist-led government declares that 10,000 MW will be developed in the next ten years (though Nepali demand will not exceed 3000 MW). Hydropower development policy remains the same – large-scale and export-oriented – but affected locals are increasingly disgruntled. Leftist cadres disrupt the surveys of private developers and vandalise their offices. In response, the Maoist leadership promises to set up special security provisions for hydropower developers, but resigns after a failed attempt to change the army chief. A coalition government of 22 parties takes over, splitting the Ministry of Water Resources into a Ministry of Energy and a Ministry of Irrigation and Flood Control to accommodate the demand for ministerial posts. This anti-Maoist coalition announces even more ambitious aims to generate 25,000 MW over the next 20 years. The polarisation in the water and energy sector is extreme: the government dreams of large dams, while activists question the very purpose and path of water resources development in Nepal.
2009-2010	Nepal's integrated national grid suffers power cuts of up to 16 hours a day, but the parastatal monopoly, NEA, is reluctant to sign power purchase agreements with Nepali developers of small and medium hydropower plants, pushing instead for uncertain large schemes with foreign developers. The Maoist party, now in opposition, changes its policy and declares it will not support the export of hydropower. SMEC's ADB-backed and export-oriented West Seti project collapses after China declares willingness to assume a 51% share. With the new constitution unlikely to be ready on time, a crisis of legitimacy looms: the two-year term of the elected parliament/constituent assembly expires on 28 May 2010.

It took the campaign against Arun-3 on the eponymous river in the east of the country to bring the focus back to economics. By targeting the World Bank and its bevy of seven international donor agencies, the activists put the spotlight on development philosophy itself. As a run-of-river project with a 201-MW capacity (named 'baby' in contrast to the full 402 MW version), it was not in itself a particularly large high dam, except that the project proposed to almost double the country's total generation capacity in one go, as well as put all development eggs in one vulnerable basket. Since it was in a remote area of the country and the pondage entailed no resettlement, social and environmental issues did not form the bulk of the Nepali activist agenda. The issue was bad project economics: at the time of its cancellation, Arun-3 was estimated to be costing US\$5400/kW. Nepali developers have, subsequent to Arun-3's cancellation, developed the 3 MW Piluwa hydroelectric project in the same road-less Arun valley at approximately one-quarter of the Arun-3 estimate. The high cost of earlier donor-funded hydropower projects, including the 60-MW Kulekhani-1 and the 69-MW Marsyangdi, had been criticised, but the Arun-3 campaign widened and deepened the debate by engaging the international community and improving the academic, as well as legal, quality of critique.

However, the structural adjustment and privatisation-led 'Washington Consensus' model of development in the 1990s also brought forth overseas hydropower developers with a single focus on acquiring licences to plum Nepali hydropower sites and construct dams for the export of electricity to India. Unstable coalition governments of that period were unable to resist, especially in the aftermath of the internal political backlash that followed the cancellation of Arun-3 with the withdrawal of the World Bank. The 750 MW West Seti storage project was licensed to SMEC of Australia – and continuously renewed despite the failure to find financing or complete a bankable power purchase agreement – to be developed for exporting power to India, while Enron almost acquired what is known as a 'hunting licence' for the 10,800 MW Karnali Chisapani project, as well as the full 402 MW version of Arun-3, by using questionable means. These turbulent times are best captured in the quote of a former (and subsequently again twice) Prime Minister Surya Bahadur Thapa in a reply (in an interview with the national daily newspaper, *Kathmandu Post*) on the forces trying to destabilise democracy: "The biggest destabilizing force is the politics of commission. [Agents of] Arun-3, Karnali, Enron, etc. have come to play a crucial role in the frequent changes in government and the distribution of portfolios within a government" (see details in Gyawali and Dixit, 2000).

In all these projects, including the ongoing Melamchi transbasin water transfer project for Kathmandu valley, Nepali critics persistently put forth their alternative views on the economic, legal, social, institutional and other aspects of water projects. With this impressive portfolio of 'opposition expertise', Nepali activists and their international network were amply primed to take part in both the initiation and the aftermath of the WCD process (see the interviews in boxes 1 and 2 for a description of their engagement).

Box 1. An Arun-3 activist's role in the emergence of the WCD.

Bikas Pandey, a key figure in the anti-Arun-3 campaign and one of the original participants in the Gland discussions that resulted in the formation of the WCD, recounts his experience. His narrative is a compilation of a Skype interview from Pakistan and a face-to-face meeting in Kathmandu.

The World Bank had to withdraw its funding for the Narmada dam in India over unresolved social issues and, in 1995, from the Arun-3 hydroelectric project in Nepal as well, because of its bad project economics [its estimated construction cost was US\$5400/kW, while that of the private sector was US\$1500/kW]. The bank could not justify the expense before its board and the global activist community. There were critics within the bank who felt that if dam building was to be an element of development in the future, there had to be some rethinking of past practices and a search for new ways of doing business in the sector. In a sense, the time was ripe for a 'constructive engagement' between the proponents and the critics of dams, and the WCD was the eventual outcome.

I left for further studies on a Fulbright Fellowship to UC Berkeley, a few months after the World Bank withdrew from Arun-3 as a result of a campaign run by the Alliance for Energy in partnership with Arun Concern Group and the International Rivers Network, as well as many other NGOs in Europe, Japan and America. While in Berkeley, I actively participated in the debate on dams and their role in development, which had been ongoing between the community of activists and developers but had reached an impasse. To explore whether or not there was a common ground on large dams, a meeting was organised in Gland in 1997 through the initiatives of the World Bank and the International Union for Nature Conservation [IUCN]. I was a participant. What made negotiating a common position difficult was that it was not a debate between countries or companies where known tools and methods could be used within conventional boundaries. The debate pitted a nebulous group of environmental and social activists located across the globe and united in their championing of the rights of the poor and indigenous groups against Southern governments and their partner development agencies.

After several rounds of consultations, a decision to form an inclusive global 'commission' was made, but it was not without problems. Even Kader Asmal, who became the chair of the commission, initially opposed the idea at a one-and-a-half-day meeting held in Cape Town in 1998. Asea Brown Boveri (ABB), which represented industry, did not support the inclusion of Laxmi Chand Jain, a senior Indian planner, because of his well-known Gandhian grassroots views, but ironically accepted Narmada activist Medha Patkar because it seemed not to have heard of her. In the names proposed as potential commissioners, there was deep polarisation between developers and the World Bank on the one hand and the IUCN and activists on the other. I tried to inject the idea of including technical people who were critical of dams and social scientists who supported them (because the reality was mostly the other way around), but ultimately it was a balance between the polarised positions of the big players, the World Bank and the IUCN which prevailed. Kader Asmal played a key mediating role in reaching a consensus on the composition of the WCD.

Once the Gland process moved forward, we saw the participation of more Nepalis. Gopal Shivakoti Chintan, too, joined the process in subsequent consultations. He was a leading lawyer in the landmark 'right-to-information' case against the Nepal government in which the Supreme Court decided against the government, forcing it to provide critical information on Arun-3. Much later, Janak Lal Karmacharya, the project manager of Arun-3, who subsequently became the vice chair of the International Hydropower Association and now works with the Clean Energy Development Bank, also joined the Dams and Development exercise to represent the hydropower industry. Parsuram Tamang, a leading Nepali advocate for the rights of indigenous peoples, became involved to represent the voice of indigenous groups affected by dam building.

The release of the WCD Report did not bridge the divide as was envisaged, but perpetuated it. The pro-dam lobby argues that the suggestions of WCD are impracticable and, if accepted, would increase bureaucratic layers that enrich consultants and impoverish the poor by depriving them of the benefits of dams. Anti-dam activists argue that the suggestions of the WCD are the starting points for reforms in dam building practices so that they do not make the poor and more marginalised indigenous communities more miserable or continue to degrade the environment. Although the WCD did force international industrial actors – builders, financiers and consultants – to reflect on their past practices, that reflection in the industry is absent in countries in the South such as Nepal, where the mainstream water bureaucracy and political parties continue to treat any criticism of dam projects as 'anti-developmental'. As a result, even the international aid community in Nepal seems paralysed and unable to support developing small-scale renewable energy systems in a meaningful way.

Box 2. Legal activism and the WCD.

The Water and Energy Users' Federation-Nepal (WAFED) continues to be an important activist group challenging the official development agenda in Nepal, whether that agenda is of the Nepali government, its partner aid agencies or India. Leaders of this group, Gopal Shiwakoti Chintan and Rattan Bhandari, recounted their experience in discussions with the authors as follows.

'Activist' NGOs do not accept the existing legal and institutional framework; they often see it as the embodiment of the problem, and challenge it in the courts and on the streets. 'Service-delivery' NGOs, on the other hand, work within the existing set of laws and institutions and hope to create better conditions by delivering succour to the needy. It has been argued that, if efficient markets existed and if governments did deliver social justice, service-delivery NGOs would not exist: they thrive when markets and governments fail. Activist lawyer Gopal Shiwakoti Chintan was an important figure in the anti-Arun-3 campaign, as well as in the WCD process. Among the first complaints filed with the Inspection Panel of the World Bank was the one Chintan filed against the Arun-3 project. Over the last two decades, Chintan and his group have conducted sustained campaigns against water projects that they consider hostile to the environment, the poor and Nepal's national interests. They have acted through activist organisations such as Inhured International and the Arun Concern Group and later through the Rashtriya Sarokar Samaj [which evolved into the WAFED], and these organisations have been supported or opposed by different political alignments. Like many other activist NGOs, they have, in the process, irritated governments, aid agencies, embassies and political parties.

WAFED's involvement with the WCD was most pronounced in the input it provided through national consultation meetings with local dam activists in different parts of Nepal between 1999 and 2000. Project authorities at the site of the then ongoing 144-MW Kali Gandaki 'A' project, a project funded primarily by the Asian Development Bank, were fearful of WAFED's mobilisation of locals critical of the project's performance. The meeting Chintan organised was disrupted by the police, and Chintan was escorted from the project vicinity back to the town of Pokhara. WAFED continues to question the performance of the Kali Gandaki 'A'; however, its key concerns are the high construction costs and the non-fulfilment of promises to the affected. When the WCD selected the World Bank-funded 60-MW Kulekhani-1 hydropower project as a case study, WAFED provided critical input by mobilising the locally affected, including the fishing community.

WAFED continued its activism after the WCD Report was released in 2000, translating key portions of the report into Nepali and disseminating them across the country to communities in the vicinity of potential dam sites. It was also a partner in the independent assessment of the WCD conducted by the World Resource Institute with Indian activist organisation Lokayan under the leadership of India's leading civil voice on the subject, the late Smitu Kothari (Dubash et al., 2001). As the World Bank is currently not much involved in large dams in Nepal, WAFED's attention has shifted to using the experience it acquired through the WCD process to raise awareness among local communities that are resisting the takeover of the sector by private dam developers, both Nepali and foreign. The West Seti storage project has been one of its key focuses.

FIRST ENGAGEMENT

Globally, reactions to the WCD's *Dams and Development* (DAD) Report ranged from strong support by communities of activists to outright rejection by official hydrocracies. NGO advocates lauded the opportunities DAD provided for finding ways beyond the polarised debates of the past, while opponents condemned what they saw as its inadequate coverage of the benefits derived from dam projects built in the past. Many of the latter saw the Guidelines as unrealistic and impractical, and claimed that they would unnecessarily delay the implementation of many projects.

Nepal's response to DAD was similarly polarised: the government expressed reservations about the WCD framework and was critical of its report, while activists welcomed its findings. Following a number of consultative meetings held after the report was published, on 23 August, 2001, Jalasrot Vikas Sanstha (JVS), an NGO with many retired hydrocrats among its prominent and active members, organised an interactive meeting in which the staff of government and non-governmental organisations working in the water sector, public utilities and engineering colleges were included. The papers presented at the meeting discussed the role of dams in Nepal vis-à-vis DAD, and commented on the proposed guidelines. The comments were mixed inasmuch that some participants opined that the Guidelines would prolong the period of implementation of projects and thus add to their cost, while others claimed that the suggestions were useful in making dams in Nepal respond to the needs of the nation and communities. Even among the technical presenters, there was grudging recognition that critics had a point in that geotechnical considerations of seismicity and sedimentation had not been adequately taken into consideration in the past. Overall, however, the response of the government functionaries present highlighted how divorced the Nepali hydrocracy was from the civic debates in the country that had contributed to the formation of the WCD. Despite the suggestions and views in the meeting that did express notes of caution regarding social, environmental and geo-hydrological aspects of dams in the Himalaya, the government sent a letter to the World Bank explaining why it could not accept the WCD's report and its recommendations (see box 3).

On 8 December, 2002, one author of this essay¹ was invited to preside as chief guest at a function organised by WAFED at which WCD commissioner Medha Patkar was the chief speaker. Despite strong opposition within the ministry regarding high-level participation "in a meeting of anti-dam activists", the function went ahead and the government's previous rejection of the WCD Report was reviewed. Serendipitously, at this juncture, a letter arrived from the Japanese aid agency JICA responding to the Government of Nepal's request for funding for the construction of the 14-MW Kulekhani-3 hydroelectric project at the tail-race of the upstream Kulekhani-2 and storage-type Kulekhani-1 projects. JICA asked if the proposed project complied with the Guidelines of the WCD. It was obvious that a curt official reply reminding the Japanese that the government of Nepal had rejected the WCD Report would hardly help loosen the Japanese purse strings, so a reluctant hydrocracy of dam managers was persuaded to participate in a "constructive dialogue" with Nepal's dam critics and dam builders to find out what was it that they did not like about the WCD's DAD report – and why.

On 2 January, 2003, a meeting was held at the IUCN office in Nepal between ministry officials and concerned stakeholders, including the country's leading dam builders and a number of critics. The consensus was that Nepal's laws needed to be re-examined in light of the WCD Guidelines and Strategic Priorities, that this had to be done by a team with representatives from the ministry, the business community and activists and that the end result had to be a *Nepali* set of Guidelines. With the backing of the Ministry of Water Resources and the facilitation of IUCN Nepal, a steering committee of members drawn from different organisations was formed in January 2003. The mission of this committee, the National-Level Dialogue on Dams and Development, was framed as follows (Dixit et al., 2004a):

To carry out national consultations on dams and development to consider the relevance of the recommendations of the WCD and other bodies in the Nepalese context with the ultimate aim of recommending development and adoption of a national guideline for improving decision making, planning and management of dams and alternatives for Nepal.

¹ Dipak Gyawali was Nepal's Minister of Water Resources from November 2002 to May 2003.

Box 3. Government's response.

On 23 January, 2001, Nepal's Ministry of Water Resources formally submitted its response to the World Bank regarding the Final Report of the WCD. The letter had nine sections: Preface, The WCD Report in General, Greenhouse Gas Emission, National Background, Participatory Decision Making Process, Stakeholders, Options Assessment, Riparian Issues and Conclusion. The letter expressed its rejection of the report as follows: "Nepal has difficulties and hesitation on expressing her view on a report that has not passed even through the scrutiny of its limited 50 forum members". In doing so, the letter concurred fully with the concerns raised by the ICOLD, IHA and ICID on 13 November, 2000, that only the commissioners and the secretariat of the WCD had been involved in preparing the report, and the forum members had not been given the opportunity to see or review any of the drafts.

The letter suggested that the WCD Report was biased towards highlighting the negative impacts of large dams, thus creating an unprecedented level of uncertainty and debate on the development process of dams. The letter highlighted Nepal's unharnessed potential storage and regulating capacity. It mentioned hydroelectricity as the primary resource of Nepal to meet people's energy needs, the participatory decision making process in place, as well as the Environment Protection Act 1997 and Environment Protection Rules 1997 of Nepal. These instruments were seen as adequate in addressing some of the concerns raised. The letter further drew attention to the WCD suggestion of reviewing the terms of licence every five years or so along with public consultation; the terms, *inter alia*, include sharing of the benefits, and noted that this suggestion was unacceptable. Similarly, it expressed the risk of increased transaction costs in building dams as viable energy source options. The letter also questioned the guideline of notification requirement. Finally, the letter expressed reservations about the generalisation of location-specific key issues that must be viewed from the perspective of the rules and regulations of the individual nation (letter reproduced as annex in Dixit et al., 2004a).

The results of the first scoping study surprised all those who participated in it – a wide range of participants from government to developers and fisherfolk to those affected detailed in Dixit et al. 2004b. While there was general agreement on the relevance of the WCD's six Strategic Priorities (gaining public acceptance, conducting comprehensive options assessments, addressing existing dams, sustaining rivers and livelihoods, recognising entitlements and sharing benefits and ensuring compliance), the seventh Strategic Priority (sharing rivers for peace and development) was unacceptable to the representatives of all three Nepali social solidarities engaged in the exercise – the government, the market developers and civil society. They rejected this priority because water relations with downstream India were very tense at the time, and they felt that the seventh Strategic Priority was biased against upstream riparians. Moreover, they believed that if the upstream riparian was a powerful country such as the United States, and the downstream riparian a weak country like Mexico, this might be acceptable. However, it would be intolerable if power relations were reversed, as was the case for Nepal and India. It did not seem fair that Nepal was obliged to inform India of its proposed non-consumptive developments (including the construction of small and medium hydropower plants) but India did not have to inform Nepal, even when it developed large-scale irrigation schemes in Bihar and Uttar Pradesh – that consumptive water use could be claimed later as India having prior right in watercourses shared by the two countries.

Even more surprising were the results comparing the WCD's 143 defining issues – the nine pertaining to the seventh Strategic Priority were ignored – with the prevailing Nepali laws. The findings are well summarised by the scoping study report in the text and table (numbering changed) reproduced below (Dixit et al., 2004a):

A more specific picture is obtained when a summary of the provisions is compared with DAD's defining issues, to provide a basis to judge the relevance of the 26 Guidelines (table 2). To do that, the 143 defining

issues are grouped into the following four types: a) addressed by legal provisions, b) practised in Nepal but not mentioned in legal provisions, c) adaptable in the short term (5-10 years), and d) adaptable in the long term (10-20 years).

Table 2 shows that twenty-eight per cent of the 143 defining issues confirm with Nepal's legal provisions. Forty-eight per cent can be reconciled in the next 5-10 years. Eight per cent of the issues are being carried out even if they are not mentioned in the legal provisions. The remaining sixteen per cent issues are of long-term implications and presently hold only academic importance and can be deferred.

Table 2. Summary of defining issues and framework for adaptation.

Strategic Priorities	No. of guidelines	No. of defining issues	Addressed	Practised but not mentioned in provisions	Framework for adaptation	
					Short term (5-10 years)	Long term (10-20 years)
Gaining public acceptance	3	12	6		6	
Conducting comprehensive options assessments	8	49	13	6	14	16
Addressing existing dams	2	29	3	5	16	5
Sustaining rivers and livelihoods	3	15	5		10	
Recognising entitlements and sharing benefits	4	17	7		9	1
Ensuring compliance	5	21	6	1	13	1
Sharing rivers for peace and development	1	9				
Total	26	152-9 =143	40	12	68	23
Per cent			28	8	48	16

Source: Dixit et al., 2004a.

Hindsight makes it obvious that Nepal's laws and practices regarding dam building would naturally be influenced by the debates and protests of the 1990s from Arun-3 onwards, and that a slow process of modification over the decade was underway without much fanfare. The best example of the change relates to the need to share the benefits of the dam locally – initially, government regulations required that 12% of the total government revenue from hydroelectric dams go to local governance bodies, but political pressure from districts that did not have hydropower plants increased this proportion to 50%. This flow of central government revenue, from dams back to the regions where the dams were located, provided significant funds for local governments, leading to a kind of competition among districts to build dams. While various governments have attempted to take credit for equity in development, activists argue that it is they who are responsible for rupturing the status quo ante. The values in the table and the slow and almost imperceptible (measured in terms of media coverage) improvements that occurred in the rules for developing Nepal's water resources indicated that, instead of rejecting the

WCD Guidelines, the government of Nepal should have pointed out *how well* it had already complied with them!

The first phase scoping study concluded as follows:

Nepal's legal provisions do reflect synergy with the values, strategic priorities and defining issues suggested in DAD. In addition, many policy initiatives, which offer new opportunities in water and energy management and development, have been introduced in Nepal in a pluralised policy terrain. A foundation to proceed with in preparing the country's own Guidelines exists. Developing such a guideline is recommended as a way forward.

This process can begin by working on the six strategic priorities, which can provide a starting point from which discussions about local processes of negotiations can move forward. Indeed, DAD does emphasize the responsibility of governments for making policies and legal frameworks essential for more inclusive decision making. Openness on all sides, renunciation of an adversarial approach and promoting dialogue among all stakeholders form the foundation of the rights and risk-based approach. The nature of the most appropriate mechanism varies from country to country. The scoping exercise has underscored the necessity of developing Nepal's own Guidelines to suit local conditions.

In its recommendation for further analysis, the study highlighted 14 issues that needed urgent attention in the Nepali context.²

SECOND SET OF ENGAGEMENTS

As per the recommendations of the steering committee of the first phase of constructive engagement between Nepal's dam builders, dam managers and dam critics, a second phase was carried out in 2004 and 2005 to look in-depth at what were called 'second-generation problems', much beyond the simplistic 'big versus small' or 'dams versus no dams' debates of the earlier years. The overarching focus was on who had to face risks, big or small, and what could be done to mitigate or ameliorate the consequences of those risks. Participants agreed to further analyse four Strategic Priorities of the WCD, namely gaining public acceptance (GPA), comprehensive options assessment (COA), entitlement and benefit-sharing (EBS) and ensuring compliance (EC). The discussions and public workshops that accompanied the analysis were captured by the lead coordinators in their reports whose summary and conclusions follow.

Ensuring compliance

Chintan and Shrestha (2005) argue that the WCD was established in response to debates on the performance and outputs of large dams. Nepal's main problems are rooted in poor compliance because of the lack of comprehensive implementation and monitoring mechanisms. It is hoped that the new constitution being drafted will adopt and improve the fundamental rights of the people enshrined in the 1990 version. These rights include the right to information, which, though limited (the state cannot be forced to provide all information, particularly that considered to be a state secret), has nonetheless

² These were: 1) providing better access to information about dams and dam-related development activities, especially at the local level, in order to mitigate discontent arising from the lack of information; 2) developing participatory decision making and consultation processes; 3) maintaining livelihoods for all marginalised communities; 4) drafting clearer and more equitable policies regarding acquisition, compensation and rehabilitation; 5) improving monitoring, compliance and social auditing capacity; 6) making new arrangements for more equitable benefit-sharing; 7) revisiting Nepal's Environment Protection Act and Regulations not conforming with the spirit of the environment impact assessment guidelines; 8) improving social upliftment programmes; 9) reviewing existing water use systems; 10) learning from social innovations in the water resources sector, especially at the local level; 11) studying the implications of international legal instruments; 12) reviewing and updating multiple criteria screening in selecting hydropower and irrigation projects; 13) revising lessons learnt from selecting and managing improved technologies in water resource engineering; and 14) defining what a large dam is in Nepal's Himalayan context.

been made explicit in a landmark Supreme Court ruling on Arun-3 through its eight-step guidelines on the procedures to be followed by plaintiffs seeking access to any kind of government document. These guidelines are summarised below.

The plaintiffs should first ask for a list of documents related to different subjects from the defendants. If the defendants provide that list within seven days, the plaintiffs should demand that an arrangement be made for them to inspect the concerned documents. Within three days after a demand is made according to [a specified set of rules], the defendants should provide a notice to the plaintiffs specifying the time, date and place for inspection. Notes should be taken during the inspection and, if copies of some or all of the documents are required, a request should be made to the specified officer. If rules for providing copies are lacking, certified copies should be provided after charging the real cost for making such copies. If the defendants cannot permit the plaintiffs to inspect the documents, take notes on them or make copies of them, they should state the reasons and notify the plaintiffs within three days after receiving their demand. If the plaintiffs are denied access, they can file a petition in the Supreme Court either for denial of access or for dissatisfaction with the reasons specified. The final stipulation of the ruling is that the procedure for action on the petition shall be according to the rules of the Supreme Court.

While there are several legal regimes in place within the Nepali legal framework providing for the rights to equality, property and freedom of speech, including the Environmental Protection Act and Regulations, and while Nepal is a signatory to several international covenants covering human rights and environmental protection, implementation is poor. To improve compliance, the second phase of the constructive dialogue recommended that the following five principles be adhered to:

1. *Right to Information*: Despite adequate constitutional and legal provisions, there is a need to develop specific procedures that cover all agencies, domestic or foreign, that use public funds. In all water projects, basic documents must be made available to the affected population in the local language.
2. *Right to Public Participation*: In order to move beyond tokenism, public participation must be defined through a comprehensive set of operational guidelines that include public hearings conducted throughout the project cycle. Any reason for refusing to take appropriate mitigation measures raised through such consultations must be justified publicly.
3. *Environmental Assessment and Mitigation Plans*: The Environmental Impact Assessment Review Committee's suggestions, which are currently non-binding, must be made mandatory and non-compliance must be made punishable.
4. *Compensation and Resettlement*: Since the current land acquisition act is unsatisfactory in many ways, it should be amended to incorporate livelihood protection measures and to retain for the affected the right to claim for previously unforeseen social, economic and environmental costs attributable to the project.
5. *Rights of Affected Indigenous and Local People and Benefit-Sharing*: There must be provision for free, prior and informed consent in the case of projects located in areas settled by indigenous peoples with weak or non-existent local government through the formation of multi-stakeholder committees. Provisions must be made so that a certain percentage of project benefits and income from royalties reaches affected areas directly and can be used for their overall development.

Conducting a comprehensive options assessment

Of the eight Guidelines and 49 defining issues under this Strategic Priority, five are addressed directly or indirectly by Nepal's existing legal documents and manuals, including the Interim Constitution. The rest of the guidelines, regarding the assessment of greenhouse gases, the distributional analysis of projects

and the improvement of risk assessment, are not included in any official plan or policy. Pokharel (2005) states that while discussing the possibility and use of options assessments with respect to water resources in general, and hydropower development in particular, three levels of policy approaches should be kept in mind:

1. *Global*: Nepal's water resources strategy and millennium development goals, which provide a framework and long-term development goals.
2. *National*: A poverty reduction strategy, which provides a medium-term framework for resource allocation.
3. *Local*: District planning processes, which provide the basis for serving the interests of local people.

Clearly, not all the suggestions made by the COA of the WCD can be implemented by Nepal, and even those that cannot be implemented immediately should be interpreted positively and implemented gradually to be included in the system as far as possible. While stakeholders can be categorised broadly into three groups – the government, the market and civil society – the COA must be the primary responsibility of the government, which must ensure participation as well as firmness in policy once it is agreed upon. (In the past, the private sector was disturbed by new tax regimes introduced post hoc). A three-tiered approach is recommended wherein policy-level assessment is done by the National Planning Commission, strategic level assessment by the Ministry of Water Resources,³ and implementation-level assessment by project proponents guided by the Ministry of Environment. However, given that the new Electricity Act currently tabled in parliament has several amendments awaiting discussion, it is necessary to clarify what role the Water and Energy Commission will play. It is also important to be very clear on what the relations should be between the government-owned monopoly utility (the NEA) and private developers, so that not only is there no conflict of interest but each is encouraged to play the role for which it is best suited.

Gaining public acceptance

Singh et al. (2005) summarise the consultation's view that Nepal's Environmental Protection Act and Regulations of 1997 have sufficient provisions to gain public acceptance through public hearings if they are properly implemented. A survey conducted under this study revealed that dams in Nepal gained public acceptance after this legislation was properly enforced. It also showed that although the survey respondents feel that acceptance by the public is necessary for the sustainable development of a project, total acceptance by all is impracticable. They also expressed their desire that negative impacts be mitigated through consultations with stakeholders. In their view, good dams cannot be built and delays and unhealthy debates will ensue unless local people and local organisations are consulted on sharing benefits and mitigating adverse impacts. Gaining public acceptance is also a function of the quality and usefulness of the information provided to local people.

Recognising entitlements and sharing benefits

Dixit and Basnet (2005) summarise the concerns of this part of the Strategic Priority assessment, which elaborates four guidelines – the identification of baseline social conditions; the analysis of impoverishment risks; the implementation of a mitigation, resettlement and development action plan; and the development of a benefit-sharing mechanism – and 17 defining issues. Nepal had already institutionalised certain mechanisms to ensure that the benefits of dams or hydropower projects were

³ Since this exercise was completed, the Ministry of Water Resources has been split into the Ministry of Energy and the Ministry of Irrigation and Flood Control, making comprehensive assessment even more problematic.

shared with concerned districts. As described below, policy shifted in seven major ways after 1990, when constitutional multi-party democracy was adopted.

First, the private hydropower sector was allowed entry in a context dominated by a vertically integrated government monopoly, the Nepal Electricity Authority (NEA), through the promulgation of the Electricity Act of 1992. A second characteristic of the paradigm shift was when direct foreign investment began with the implementation of the 36-MW Bhoté Kosi and 60-MW Khimti hydropower projects with American and Norwegian investment, respectively, although now 'second-generation' concerns have also emerged over power purchase agreements entered into by the government with foreign private developers without taking consumer interests into account. A third element was the announcement by the NEA of buy-back rates that allowed private Nepali entrepreneurs to begin developing small- and medium-scale hydropower projects. The 'internal unbundling' of the utility in 2003 was the fourth characteristic of the shift; this change allowed for an element of natural competition among components of the industry as a whole. A fifth change was the promulgation in 2003 of the Community Electricity Distribution By-Laws, which allowed rural communities to buy electricity in bulk from the NEA and retail it themselves, a sort of institutional tinkering that, by ensuring double accounting, got rid of electricity theft wherever it was implemented. The sixth element was the government's engagement in dialogue on dams and development with civil society groups and market institutions. This report is part of that engagement.

The final shift, and the most important for benefit-sharing, was the provision for the disbursement of a share of the royalties from hydroelectric plants to local governments. In 2001, the central government began disbursing 10% of the royalties it obtained from any given hydropower project to the district development committee which housed that project. In 2003, the amount was increased, first by a ministerial decision and subsequently by a gazette notice, to 12% to local areas and 38% to all the districts in the development region where the plant was located. The disbursement was to be followed by the establishment of a rural electrification fund, but this provision has not yet been implemented. This provision for benefit-sharing recognises local rights and offers opportunities for extending benefits to other affected people. Though they are still being contested and negotiated in Nepal's unstable political terrain, these provisions nonetheless do offer opportunities for moving towards a pluralised policy environment of equitable dam development.

CONSTRUCTIVE ENGAGEMENT: THE WAY FORWARD

Nepal's examination of the WCD report and its Guidelines in the context of Nepali laws was a unique exercise. Was it a success? The answer, five years down the line in an atmosphere of political uncertainty (the new secular federal republic has been unable to write a new constitution in the given timeline), is both 'yes' and 'no'.

One has to admit that it had little success in a sense that a distinct backsliding occurred, despite the fact that one of the authors of the second phase reports (Pokharel, 2005) is the current vice-chairman of Nepal's National Planning Commission and another (Singh et al., 2005) is the chief of the Pancheshwar project. And while the World Bank as a lead agency in the WCD process stayed out of the constructive engagement in Nepal described above, smaller bilateral development agencies such as the GTZ did support the exercise. Furthermore, the Japanese JICA did find the WCD report worthy of using as a benchmark to ask questions about hydroelectric projects it was expected to fund. However, the expected linear movement forward to a more intensive and expanded third phase of the exercise did not even begin. The construction-oriented forces within the water and power bureaucracies that preferred the old ways of doing business believed they would continue to receive support from the political parties that preferred grandiose, media-catching schemes, and they were partly right (Gyawali and Dixit, 2005). The Maoist-led government that came to power after the country was declared a republic formed a task force of prominent water experts, both retired and serving, to see how the existing capacity for generating electricity of approximately 600 MW could be increased to 10,000 MW

in ten years. When the Maoist government fell and a coalition of Marxists and democratic socialists formed the current government, the target, expected to be reached in 20 years, was increased to 25,000 MW, despite the fact that the country reels under 12 to 16 hours of power cuts a day and no real effort has been made to encourage small- and medium-scale Nepali developers, who are capable of increasing production by 30 to 60 MW a year. The large projects required to fulfil the visions of these grand schemes, however, are not moving ahead in any meaningful manner.

In fact, these projects have faced significant setbacks. In some cases, local protest movements have successfully stopped the surveys, and investigations planned by foreign companies. In these protests, the views of the central leadership of political parties are at wide variance with those of local leaders. In addition, this is more pronounced in the more left or more radical parties, as seen by the stoppage of survey works at the district level by local Maoist cadres, despite their senior leadership assuring the private developers that their security would be guaranteed. In this centre-periphery rift, one more factor has now entered the equation: ILO 169, the convention of the International Labour Organisation protecting indigenous tribal rights, and its implications for the current debate on restructuring Nepali administration and polity on a federal basis. Nepal has already signed this convention, and local political workers, especially from indigenous ethnic groups, are now demanding that their interpretation of ILO 169 be the basis for developing hydropower in Nepal. Their argument is that indigenous groups have a right to control the resources in their area, which means no central government can decide on a project without their prior and informed consent. Thus, a central hydrocracy that rejected activists' arguments for local prior consent envisaged in the WCD report is now facing a more formidable opponent in the form of ethnic political movements.

While the backsliding of the hydrocracy is meeting new forms of resistance, the success of the indigenous review of the WCD report and the publication of its findings have not only taken the dialogue down to the affected communities but brought some fundamental questions to the front burner of national debates. A new electricity bill that was very friendly to foreign investors was tabled in the parliament by the Maoist-led government, and when it fell it was again championed by the current ruling coalition of 22 parties. However, because of strong pressure exerted by local people and activists on the Members of Parliament, the bill has not yet been passed. The 142 amendments to the bill tabled by MPs from across the political spectrum are still under discussion. These amendments bear an uncanny resemblance to the WCD Guidelines and defining issues inasmuch that they demand, for example, that the preamble of the act declare that Nepali hydroelectricity be developed to replace the importation of fossil fuel. They also demand equity between urban and rural electrification, a comprehensive assessment of multi-purpose projects and national capacity-building.

Perhaps it should not have been expected at the outset that the WCD Report would be immediately embraced by the national hydrocracy and implemented flawlessly. Rather, it has turned out to be a slow policy osmosis to the grass-roots level. The preference of the hydrocracy for the conventional path, however, is not able to address a sense of unfairness simmering in Nepal, as the hegemony of the hydropower export paradigm dominating the public policy arena is challenged by resentment at the consumer level, even as the national grid faces 12-14 hours of planned power cuts every day. This failure indicates serious flaws in Nepal's national energy development approach because of fundamental contradictions in its very conceptualisation. What will be the way forward? Whatever the answer to this question, it is clear that the business-as-usual approach will not work.

To engender a constructive shift would require continuing the deliberative process of consultation. Can emerging processes such as the Abu Dhabi Dialogue, currently facilitated by the World Bank, or post-WCD efforts such as those by the International Hydropower Association (IHA), which has proposed a tool for consultation, provide windows of opportunity? While the IHA efforts are a welcome break from policy stagnation, activists see them as being led by the industry and thereby not a consensus

outcome involving the voices and concerns of the affected.⁴ The Abu Dhabi Dialogue, and the South Asia Water Initiative (SAWI) into which it has morphed, need to make conscious efforts to ensure it becomes a meaningful dialogue between contending views – and not a monologue of converts among serving and retired government hydrocrats – if it is to facilitate a creative course out of the present impasse.

Any future dialogue must push the comfort zones of dam builders, dam managers and dam auditors alike, to explore the contours of a new future where Nepal's energy security receives primacy. Such a transition is not possible without getting the basics right: the goal should be access to reliable and affordable electricity for Nepal's domestic and commercial consumers and not necessarily only increased revenue from hydropower export projects to state coffers. At the conceptual level in such a future, as Verweij et al. (2006) argue, dam managers should provide "wise guidance and careful stewardship", dam builders need to emphasise on "promoting entrepreneurship and technological progress", while dam auditors have to articulate their concern for developing "a whole new relation with nature".

ACKNOWLEDGEMENTS

We would like to thank Bikash Pandey of Winrock International, as well as Gopal Shivakoti Chintan and Rattan Bhandari of WAFED, with whom we had discussions which provided additional insights into the WCD process and its aftermath in Nepal. The then Secretary of the Ministry of Water Resources, Keshav Bahadur Chand, and his team at the ministry were very supportive of the 'constructive engagement', and without such cooperation, let alone this article, even the 2003 exercise might never have been initiated.

ACRONYMS

ADB	:	Asian Development Bank
COA	:	Comprehensive Options Assessment
DAD	:	Dams and Development
EBS	:	Entitlement and Benefit Sharing
EC	:	Ensuring Compliance
GPA	:	Gaining Public Acceptance
GTZ	:	German Technical Cooperation
HSAF	:	Hydropower Sustainability Assessment Forum
ICID	:	International Commission on Irrigation and Drainage
ICOLD	:	International Commission on Large Dams
IHA	:	International Hydropower Association
IUCN	:	International Union for the Conservation of Nature
JICA	:	Japan International Cooperation Agency
JVS	:	Jalasrot Vikas Sanstha, a Nepali NGO
kW	:	Kilo Watt

⁴ A consultation workshop was held in Kathmandu on 2 December, 2009 by the IHA and the WWF with Nepal's Ministry of Energy to discuss the HSAF. The World Bank participated in it and indeed the senior water specialist of Transparency International addressed the meeting; he had been the World Bank's main task manager of the Arun-3 project for a decade until it was aborted in 1995. Ministry officials who requested anonymity (personal communication) mentioned discomfort with the meeting for the following three reasons, ranked in order of importance: 1) not much that was discussed about Nepal's main problems in developing hydropower with India had anything to do with issues of storage and pricing of regulated water as well as resettlement; 2) none of the previous works carried out by the ministry with the IUCN in 2004 and 2005 were discussed; and 3) the consultation itself did not involve the participation of civil society representatives who had been raising issues about dams and development.

MW	:	Mega Watt
MoU	:	Memorandum of Understanding
NEA	:	Nepal Electricity Authority
NGO	:	Non-Governmental Organisation
SMEC	:	Snowy Mountains Engineering Corporation
UC	:	University of California
US\$:	US dollars
WAFED	:	Water and Energy Users' Federation-Nepal
WCD	:	World Commission on Dams
WI	:	Winrock International
WWF	:	World Wildlife Fund (Global Conservation Organisation)

REFERENCES

- Chintan, G.S. and Shrestha, N. 2005. *Dams in Nepal: Ensuring compliance*. Dialogue on Dams and Development in Nepal. Nepal: International Union for Conservation of Nature (IUCN).
- Dixit A. 2008: Hydropower development in Nepal: Pluralistic policy terrain or mono-centric path? *SAWAS* 1(1): 91-105. <http://www.sawajournal.org/templates/sawas/hydropower.pdf>
- Dixit, A. 2007. *Continuing reasoned debate on dams and development – A summary of Dialogue on Dams and Development in Nepal*. Nepal: IUCN.
- Dixit, A. and Basnet, S. 2005. *Recognizing entitlements and sharing benefits: Emerging trends in Nepal's hydropower terrain*. Dialogue on Dams and Development in Nepal. Kathmandu, Nepal: IUCN.
- Dixit, A.; Adhikary, P. and Bisanghke, S. 2004a. *Constructive dialogue on dams and development in Nepal*. Published for the National Steering Committee on Dams and Development, Kathmandu, Nepal: IUCN and Nepal Water Conservation Foundation.
- Dixit, A.; Adhikary, P. and Bisanghke, S. 2004b. *Baandh Ra Bikash: Rachanatmak Sambaad* (in Nepali – Dams and Development: Constructive Dialogue). Published for the National Steering Committee on Dams and Development. Kathmandu, Nepal: IUCN and Nepal Water Conservation Foundation.
- Dubash, N.K.; Dupar, M.; Kothari, S. and Lissu, T. 2001. *A watershed in global governance? An independent assessment of the World Commission on Dams*. India: World Resource Institute, Lokayan and Lawyers' Environmental Action Team.
- Gyawali, D. 2009. Pluralized water policy terrain = sustainability and integration. *SAWAS* 1(2): 193-199. www.sawajournal.org/index.php?option=com_content&view=article&id=60&Itemid=102
- Gyawali, D. 2003. *Rivers, technology and society: Learning the lessons of water management in Nepal*. London and New York: Zed Books.
- Gyawali, D. and Dixit, A. 2005. Dammed H₂O. In Lal, V. and Nandy, A. (Eds), *The future of knowledge and culture: A dictionary for the 21st century*, pp. 59-64. Delhi: Penguin Viking.
- Gyawali, D. and Dixit, A. 2000. Mahakali impasse: A futile paradigm's bequested travails. In Kumar, D. (Ed), *Domestic conflicts and crisis of governability in Nepal*, pp. 236-304. Kathmandu, Nepal: Center for Nepal and Asian Studies, Tribhuban University. Earlier version published as *Mahakali impasse and Indo-Nepal water conflict*, *Economic and Political Weekly* 34(9), February 1999, Bombay.
- Pokharel, J.C. 2005. *Comprehensive options assessment for electricity sector in Nepal*. Dialogue on Dams and Development in Nepal. Nepal: IUCN.
- Schwartz, M. and Thompson, M. 1990. *Divided we stand: Redefining politics, technology and social choice*. London, UK: Harvester Wheatsheaf.
- Singh, D.B.; Singh, A. and Shrestha, S. 2005. *Gaining public acceptance*. Dialogue on Dams and Development in Nepal, Nepal: IUCN.
- Vergheese B.G. 1999. *Waters of hope: From vision to reality in Himalaya Ganga development cooperation* (short article by the same title published in 1970 in *Hindustan Times*, India). New Delhi, India: Oxford and IBH Publishing Company.
- Verweij M.; Douglas, M.; Ellis, R.; Engel, C.; Hendriks, F.; Lohmann, S.; Ney, S.; Rayner, S. and Thompson, M. 2006. The case for clumsiness. In Verweij, M. and Thompson, M. (Eds), *Clumsy solutions for a complex world: Governance, politics and plural perceptions*, pp. 1-31. Basingstoke: Palgrave Macmillan.