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*Understanding the Land Issues and Agrarian Reform in Post Conflict Nepal*

## **Land right from below in Nepal and the role of land monitoring: Civil society perspective in converging equity and efficiency**

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## **LAND RIGHT FROM BELOW IN NEPAL AND THE ROLE OF LAND MONITORING: CIVIL SOCIETY PERSPECTIVE IN CONVERGING EQUITY AND EFFICIENCY**

Purna B. Nepali\*

### **ABSTRACT**

Land issue is complex, dynamic and contentious in Nepal. After Nepal became a democratic country in 1951, land reform has been a highly discussed issue. Slogan like, 'land to the tiller' became a popular agenda for each political parties having different understandings and interpretations on land issue specifically during the last decades' armed conflict (1996-2006). To move ahead in this direction, scientific land reform has been laid a top priority in Comprehensive Peace Agreement 2006, Interim Constitution 2007 and newly promulgated constitution of Nepal 2015 to address equity and efficiency issues. There is a big debate going on equity and efficiency in the country. Realizing strengths of both issues, following analytical framework such as agrarian political economy and democratic and pro-poor land governance, it is found that civil society monitoring is playing a pivotal role in converging equity and efficiency issues of land reform. Such monitoring initiatives generate evidences that serve to exert pressure on effective response by Government to collective demands for justice. By combining equity and efficiency, Nepal's civil society and citizen-led initiatives are definitely promoting an active engagement of reformist actors and change-makers for generating equitable economic growth. Few determinants of this citizen led initiative are: activism and engagement, clear and articulated demand, efficient and accountable mechanism and putting voice of vulnerable groups.

**Key words:** efficiency; equity; land rights; land monitoring

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## INTRODUCTION

Land right is a complex, multiple and inter-woven issue in society. It is determined by socially constructed system of land (or resource) tenure. It can also be understood as a bundle of rights in the frame of property right. Resource tenure defines how right to resource (land) are assigned within society and it also depicts complex relationship among people with respect to land and resources. Land tenure and its rules are socially defined and thus tend to mirror the distribution of power within a given society or country. In general, powerful groups enjoy more secure land right whereas vulnerable groups have less land right (UN-HABITAT, 2008). It is also due to unequal agrarian power structure, which determines the property right systems.

Based on the concept of property right, ideologically there are divisions- capitalism and socialism. In capitalist's viewpoint, all property rights (user, income and alienation) are guaranteed and private property right is considered as key institution in capitalist development. However, in socialism, rights are protected and private property right is liquidated to strengthen socialist development largely driven by the state (Borras et al, 2005). Ideologically, there is also a debate on equity and efficiency as a

'chicken and egg problem' currently ongoing in land rights movement.

Different terms have been coined in political spheres in Nepal and in the field of land reform in Nepal like 'revolutionary land reform' and 'progressive land reform' with their own focus. After Comprehensive Peace Agreement 2006, the term scientific land reform<sup>1</sup> has gained greater currency and was also mentioned in Interim Constitution 2007 as a compromising term and it carries key essences of equity and efficiency of land right issues. Accordingly, different land reform commissions i.e. High Level Commission for Scientific Land Reform 2008 and High Level Commission for Land Reform 2009 were formed in which reform issues were extensively discussed in their technical reports, action plan of government and in some land and agriculture related polices and acts.

More than sixty-two acts and twenty-three legislations in Nepal have been formulated in the past six decades' efforts of land reform. However, land reform could not bring the fundamental changes i.e. socio-political and economic transformation in the lives of the common people. It seems that there might be some policy lacunae while designing the policies and laws. Prevalence of landlessness, inequality, unequal power structure and social injustice still are the underlying

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<sup>1</sup> "Scientific Land Reform" is a politically agreed term and used as such in the Comprehensive Peace Accord 2006, Interim Constitution 2007, and newly promulgated constitution of Nepal to connote land and agrarian reform used in contemporary scientific writings. The terms 'land reform' and 'agrarian reform' are commonly interchanged to mean the same thing i.e. to reform existing agrarian structure. In particular, land reform means reform of distribution of landed property, and agrarian reform refers to land reform plus complementary socioeconomic and political reform (Borras. et al 2005). Land reform is also understood and used primarily refer to access to land, security of land rights and titles, and improvement in the production structures (Ghimire, 2001).

causes of decade long armed conflict in Nepal (Geiser, 2005). It is also argued that redistribution of land could influence social democracy and enhance political stability and vice-versa in Nepal (Herring, 1990; Heller, 1995).

Various studies and theoretical debates on land reform issues (GoN, 2009; Adhikari, 2004, Upreti et al, 2008; Pyakuryal and Upreti, 2011) showed that key challenges in this field include inequitable access to land and social injustice (landlessness, tenancy, bonded labor, exploitative power structure/social relation, land ceiling etc.), poor land use and management (production and productivity), land conservation and development and land administration. These are not only mentioned in recent high-level land reform commission's reports, but also incorporated in Comprehensive Peace Agreement 2006, Interim Constitution 2007 and New Constitution of Nepal 2015. Due to elite nexus (as a result of existing unequal power structure) to fulfil vested interests of ruling class, these constitutional provisions lack implementation. Moreover, lack of appropriate policy instruments, centralized land administration, and no devolution program at Village Development Committee (VDC) have aggravated the issue of scientific land reform. In context of existing caste, ethnicity gender and geographical diversities, land reform requires targeted strategies for identification of diverse beneficiaries to address the most vulnerable sections of society.

## Issues related to equity and efficiency

Equity and efficiency have different meanings and interpretations. To the lawyer, it is the principle means to ensure strict application of law in absence of which an unfair outcome might surface in specific circumstances. Philosophers have produced enriching literature on equity. Indeed, the attributes that would characterize a just and fair society lie at the foundation of western political philosophy, from Plato's republic and Aristotle's politics onward (World Bank, 2005). Social choice theory is closely related domain of welfare economics which is concerned with the aggregate of preferences into some forms of social optimum (Sen, 1970).

According to the World Development Report (WDR) 2006 (World Bank, 2005), equity is defined as a particular social arrangement for society on the basis of fair processes. Equity entails equality of opportunities but not equality of outcome. Its interest in the distribution of outcome is limited to their instrumental impact on distribution of opportunities and other social goals (e.g. efficiency) and focuses on the distribution of asset rather than income.

Broadly speaking, efficiency describes a situation in which the aggregate amount of some output is the largest which can be obtained from a given amount of input. In economic definition of efficiency, the output to be maximized is utility or roughly speaking happiness. Efficiency is a situation in which an individual's ability can't be increased, without reducing the utility of someone

else. This is referred to as an economic efficiency or Pareto efficiency.

In case of land reform debate, there is always a question of equity (fairness in re/distribution) and efficiency (production in economic sense). Despite argument and counter-argument, equity has greater significance in a society in variety of ways: (1) equity is instrumental to the pursuit of long term prosperity in aggregate term for society as a whole, equity leads to inclusion; (2) equity ensures fair re/distribution process; (3) equity helps to correct past and historical inequity. In short run, equity and efficiency are trade off. But, in long run, equity and efficiency may complement each other but not substitute of either (ibid).

### **State of art in land monitoring of civil society on land right processes in Nepal**

Land monitoring means constantly watching, observing as well as critically examining input, process and output of land related phenomenon, programme and policy for its effectiveness and efficiency. Thus, it is the key aspect intrinsic to good land governance. It can also be understood as an important tool for promoting constructive, inclusive and evidence based dialogue on land issues. It has crucial role in land policy evaluation, advocacy for better land policy and in holding decision maker and institutions accountable for effective implementation of land policy (Bending, 2010).

Land monitoring by Civil Society Organization (CSO) itself implies that land governance is not only the task

of a government but that citizen-led initiatives can also contribute to effective land governance. There are several initiatives of CSOs on land monitoring; for instance, Land Watch Asia coordinated by Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). This monitoring initiative is set up in the framework of agrarian reform for equitable and sustainable development in rural areas; therefore, the generation of data is strictly linked to an advocacy campaign. The objectives of the campaign are to: take stock of significant changes in the policy and legal environments; undertake national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences on collective action on land right issues (ANGOC, 2012).

The same campaign has developed regional indicators to be adopted at national level by diverse partners and applied to their specific context. In case of Nepal, the adoption of land monitoring indicators in the frame of the Land Watch Asia Campaign has been led by Community Self Reliance Centre (CSRC). CSRC reported on CSO monitoring indicator by identifying and analysing the status, scope and challenges around the monitoring indicators of land reform.

The monitoring indicators were identified in five components of land reform which highlighted key indicators and their verifiers. Since this is an initial step in developing monitoring indicators, the set-up of the initiative as well as the methodology need to be further consolidated in the frame of a national “theory of change”. The development

of CSO monitoring indicators identified the information and data gaps in various components of land reform policies and implementations. Mainly, these are congruent to policy compliance. CSRC is coordinating the Land and Agrarian Rights Movement across the country organized through National Land Rights Forum (NLRF) which is actively working in 50 districts of Nepal. There is ongoing struggle of landless, poor and marginalized people who are dependent on land for livelihoods but are deprived of access and control over the land and other basic resources.

In sum, in the area of land monitoring, Nepal used and adapted the Land Reform Monitoring Indicators, developed by Land Watch Asia and applied them at the level of Inputs, Processes, Outputs, Outcomes

and Impacts. As a result, it identified explicit gap in data, lack of information, and ambiguous provisions in land related policy and its implementation. More importantly, it also suggested for updating land statistics e.g. landlessness data. Due to lack of traditional and manual record keeping and paper based land records, land statistics can not be updated periodically. Similarly, current land holding data of Central Bureau Statistics (CBS, 1991, 2001, 2011) does not give the complete picture about land ownership, indicating ambiguity and no clarity on data pertaining to landlessness. As a matter of fact, land holding differs from land ownership in a sense that land holding is equivalent to possession of land, but not land ownership. Whereas land ownership gives true picture of full property right.

**Table 1. Key variable and indicators for land reform monitoring in Nepal**

Inputs	<ul style="list-style-type: none"> <li>Policy : Land reform provisions in the Constitution and other policy documents</li> <li>Budget: Percentage of revenue generation, share of internal foreign aid in budget, allocation of budget to land reform and agriculture</li> <li>International conventions: Ratification and commitment to adjust national policies</li> </ul>
Process	<ul style="list-style-type: none"> <li>Institutional capacity: Organizational structure technical staff/ human resource (number of offices, staff)</li> <li>Stakeholder involvements: Partnerships and collaborations (number of collaborations)</li> <li>Policy formulation: Policy decision, court order(number of court decisions, processing time)</li> </ul>
Outputs	<ul style="list-style-type: none"> <li>Land entitlement: Number, area, and change in landless people; recipients of certificates, land ownership resume (sharecropper wage labor , companies )</li> <li>Tenant eviction and legal treatment: Number of households displaced from farm, number of casualties and cases in court, number of displaced migration</li> <li>Land fragmentation, common land and real estate land grabbing : area of land, number of estate companies, cabinet decision</li> <li>Displacement : Number of cases in police stations and in courts</li> </ul>
Outcomes	<ul style="list-style-type: none"> <li>Change in landholding: Number and percentage of landowners (categorized)</li> <li>Change in land resume : Area of fallow land</li> <li>Rural-urban employment mobility: Number of people (migrants)</li> <li>Food security: Annual food deficit and surplus; percentage of population consuming less than minimum recommended calories in the reporting period; Number of malnourished and undernourished; export-import data; malnutrition</li> </ul>
Impacts	<ul style="list-style-type: none"> <li>Poverty reduction and livelihood standard: Change in percentage of absolute poverty, per capita income</li> <li>Agriculture production and productivity: Production and growth</li> </ul>

Source: Land Watch Asia - ANGOC - CSO Land reform monitoring in Asia 2012 (ANGOC (2012) p. 110

Consequently, to fulfil the data gap, updating land statistics has also been well reflected in Thirteen Point Action Plan of Scientific Land Reform. With active engagement of Consortium for Land Research and Policy Dialogue (COLARP) in collaboration with Ministry of Land reform and Management, CSRC, OXFAM GB, Thirteen Point Action Plan for Scientific Land Reform has been formulated and it is abridged version of two recent reports of land reform commissions which is going to be endorsed by the cabinet very soon. It was one of the high priorities of Prime Minister's Office to provide immediate services to the land-poor people in 2012.

Similarly, Nepal also piloted the use of the Gender Evaluation Criteria promoted by Global Land Tool Network (GLTN) and reported interesting lessons learnt from pilot project on 'Evaluating Land Management Process with Equitable Approach'. The report concluded that overall land reform process in Nepal is not gender sensitive. It also does not address specific groups of women such as squatters, bonded labor etc (ISUDS, 2010). As this project is implemented by LUMANTI, Civil Society Organization (CSO) in collaboration with Ministry of Land Reform and Management and High Level Commission for Scientific Land Reform, it sensitizes all stakeholders and has sustaining effects in this regard.

## **FOCUS OF PAPER (OVERARCHING OBJECTIVE AND RESEARCH QUESTION)**

As mentioned above, there is a huge debate on equity and efficiency issues in context of land reform in Nepal. So, in this paper, the following research questions have been explored: Can efficiency and equity be promoted in the frame of a land reform process in Nepal by an active and effective role of civil society? Is evidence-based land monitoring initiatives instrumental to promote efficiency and equity in land reform?

In an ongoing debate, an attempt has been made to examine the civil society's perspective for securing land rights from below. Considering role of CSO monitoring, key land issues will be taken into consideration. They are: active citizenship participation, securing land right in democratic context, land right from below (degree of autonomy and power of rural social movement), pro-poor policies and right of small holders in context of domestic land acquisition especially land plotting done by real estates and private investors.

Civil society perspective advocates in favor of pro-poor land governance framework as an alternative to existing land governance (Fransco, 2008) and interprets land rights in terms of social relation. Civil society, is highly capable of understanding the modalities of effective and secure land tenure. It is grounded in human right-based perspective-heterogeneity of rural society-class, caste, ethnicity, gender and history.

## GLOBAL REFERENCE FRAMEWORKS AND THEORETICAL FRAMEWORK

There are many conceptual as well as governance frameworks that have been developed with different degrees of legitimacy, openness and participation at global level.

On 11 May 2012 the adoption by the Committee on World Food Security (CFS) of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forest in context to national food security (VGGT) introduced the concept of Responsible Land Governance. In fact at the beginning of the first part of the approved document the following description has been inserted to make sure the concept of "Responsible" was fully understood. The text said "*These Voluntary Guidelines seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments.*"

Being first resource tenure guideline and global soft law, it is serving as reference and guiding document for overall improvement of natural resource governance with emphasis on marginalised groups. Basically, it talks about the equitable as well as sustainable access and control over the natural resources by improving governance of land, fisheries, and forest for all with special emphasis on marginalized people for local and national food security. Hence, it also provides an opportunity for CSOs and social movements to advance their demand for realizing the right to food in coherent and consistent manner for the right of peasants, pastoralist and fishermen to land, water, and forest.

Prior to the global debate generated by collectively developing a framework of reference on such important matter as land governance, other relevant concepts were used to assess state-society relationships in the frame of land governance. In this paper we refer to: democratic land governance and agrarian political economy to elaborate the issues related to land governance.

### Democratic land governance

Land governance is concerned about rules, processes and structures through which decision are made about the use and control over land in the manner in which decisions are implemented and enforced and the way that competing interests in land are managed. It covers legal and political framework for land as well as traditional and informal practices that enjoy social legitimacy (FAO, 2009).

Governance is a neutral concept. Land governance looks at the resource tenure

from power perspective. Tenure defines relationship between people with respect to land and related natural resources i.e. how access and authority is granted to right to use, control and transfer land as well as associated responsibilities and restriction. Hence, it develops in the manner that depicts the power relations between and among individuals and social groups. It is clear that elites and even middle classes have stronger forms of land tenure, while the poor and vulnerable groups have weaker, more insecure forms of tenures (*Ibid*). Thus, it shows how land governance operates in power structure. But it fails to embrace the role of diverse actors and associated processes.

Democratic land governance, introduced by J Borras (2008) can be understood as a political process which is contested and debated by state and societal actors to have access, control over and use of use of land resources. It favors historically marginalized landless and near-landless working rural poor people only and is inherently part of the broader and strategic challenge of democratizing the state and society. It raises the fundamental question of land-based wealth and power (re) distribution to the poor. It requires the active engagement of both the state and the societal actors for reformist contribution, combining perspectives on formal and informal, official and non-official state and non-state institutions and processes. Furthermore, it goes beyond the classical notion of class consciousness i.e. land and land poor are plural like rural labor, bonded labor, artisan, ethnic and gender sensitivity and social diversities.

## **Agrarian political economy**

Bernstein (2010) summarized the Marxist materialistic concept of political economy and emphasized the Marxist theory of capitalist modes of production to make sense of diverse and complex agrarian society in the world. In this regard, agrarian political economy investigates the social relations and dynamics of production and reproductions, property and power in agrarian societies and their processes of change; both historical and contemporary.

Understanding agrarian change centers on analysis of capitalism and its development. According to Bernstein (2010), capitalism is the system of production and reproduction based on a fundamental social relation between capital and labour: 'Capital exploits labour in its pursuit of profit and accumulation while labour has to work for capital to obtain the means of subsistence.

Thus, agrarian political economy raises four questions on social relation of production and reproduction: i) Who owns what (Social relation of different property regime- ownership and property)? ii) Who does what (Social division of labor, specialized tasks within unit of production)? iii) Who gets what (Social division of fruit of labour, distribution of income)? and iv) What do they do with (Social relation of consumption, reproduction and accumulation)? While summarizing all the pertinent questions, it talks about how land ownership and tenure security determine social relations, social division of labour, utilization of production and distribution of benefit and its consequences in agrarian social structure.

Linking to question on land ownership and surplus created and its consumption, the populist concept of feudalism and semi-fedeudalism can be explained with few key attributes from Marx (on European): i) control over the means of production particularly land by a small land-owning class with political, ideological and economic power over a peasant majority, ii) surplus appropriated in kind using extra-economic coercion; and iii) driven by consumption rather than productive reinvestment. Such features of semi-feudalism are still found relevant in Nepali agrarian society with unequal power structure.

Using the key questions of agrarian political economy, it would be useful to understand how different groups with differential power and wealth interact in political and economic process in Nepali rural agrarian power

structure in general and land reform process in particular. Assessing political and policy documents (e.g. Comprehensive Peace Agreement 2006, and Interim Constitution 2007 etc) it can be better understood how land reform is going ahead in Nepali society. Indeed, these provisions are guiding framework for upcoming Scientific Land Reform in Nepal as well as a good reflection of how elite interests are at forefront in the power dynamics. The powerful concept like Agrarian Political Economy (APE) would be imperative to add the dimension of power asymmetries to the neutral concept of land governance. Land right and land governance is not only the technical matter but it also deals with the issues related to social, political and economic power.

Therefore, Democratic Land Governance and Agrarian Political Economic Perspective



raise potentially interesting questions for reformers.: Who own resources? Who does what? Who benefit from the status quo and is excluded? Who sets agenda for reform? How does other influence this agenda? What are the interests and objectives of stakeholders and how these play out in the reform processes? Why do reforms experience slippage during implementation? *How are benefits of the reform distributed? Who benefits and who does not and Why?* (FAO, 2010; Bernstein, 2010; Borras, 2008).

Taking all these pictures of responsible land governance together, the conceptual framework has been devised considering essential elements of democratic land governance (policy, institutions, processes, state and society), how key thematic areas of land reform interact with each other to address equity and efficiency. Since democratic land governance argues the role of state and society, it is imperative to combine and develop state and society analytical perspectives to look at land issues in Nepal. It is the mutual responsibility of state actors from above and societal ones from below to have sound analysis of empirical evidence that can impact on pro-poor land policies and land reform. In short, democratic land governance is a mutually reinforcing pro-poor land policy and democratic governance interaction. It can be achieved more fully and meaningfully only through the positive convergence of state and societal reformist actors.

## KEY ANALYSIS AND ARGUMENTS

In this analysis section, the proposed analytical framework is employed in the following thematic areas:

### **Mobilization of poor people from below for equitable access to land**

Land right movement has a long history in Nepal. The major objective of *this movement has been* to fight against socio-economic exploitation to reduce inequality between haves and have not in Nepali society. History reveals that there is conflict and contradiction between landlords and tenants. Moreover, marginalized groups have been mobilized for ensuring equitable access to land from different deprived and land victim people of Nepali society.

With active engagement of CSO named Community Self Reliance Centre (CSRC), poor people are being mobilized for securing land rights. There is tillers' organization (member based) named National Land Rights Forum (NLRF) which was established in 2004. NLRF comprises of land deprived people representing landless, land poor, squatters, slum dwellers, tenants, trust land tenants, ex-bonded laborers, Dalits and women. NLRF is covering 53 districts out of 75 districts. And it is led by land victim people which comprise 48 percent women and 56 percent people from Dalit community. The organization is leading land right movement throughout the country, demanding pro-people land

reform. It is interesting to note that they are independent from Nepal's party politics and their ideologies. To provide strong support to the NLRF, Nepal *Land Right Concern Group (NLRCG)* was also established as an alliance of reformist actors (media persons, social activists and land right activists). It has been actively engaged in capacity building of land right activists so as to support tillers organization to run land right movement effectively.

Similarly, with more regional specificities, Haliya Right Movement is also active and moving ahead with active engagement of Rastriya Dalit Network (RDN) and Rastriya Haliya Mukti Mahasang (RHMS). These organizations are working in Far-Western and Mid-Western Region of Nepal. After series of campaigns on awareness raising and public advocacy on *Dalit*<sup>2</sup> and *Haliya*<sup>3</sup> rights, *Haliya* organized for their rights themselves. However, their gathering realized a need of a federation to lead the movement by themselves at regional level. As a result, RHMS was formed. Its district chapters are in all the districts of the region. They organize and manage the movement successfully.

Hence, recognizing the Haliya movement, Government of Nepal (GoN) devised the rehabilitation package for ex-Haliya and started verification on statistics of Haliya and distribution of identity card to them. In addition, these issues are being addressed through formulating law and

legislation. So, Ministry of Land Reform and Management, in collaboration with International Labour Organisation (ILO) is on board to formulate Integrated Law for All Forms of Bonded Labour. In fact, the revolutionary leader Bhim Datta Panta had initiated this Haliya movement in Far-Western Region of Nepal. The main slogan of the movement was “*Kita Jota Halo, Kita Chhoda Thalo, Natra Hudeina Bhalo, Abata Kohi Chhaina Sano Thulo*” (Either plough land or leave place; otherwise, it will be no good, nobody is lower or higher in hierarchy). Next popular slogan is “*Jasle Jotyo Usko Ho Jagga, Hoina Bhane Thalu Ho Pakka*”, which means ‘Land belongs to those who till it, otherwise it will belong to feudal elite’

The focus of the social movement was *Haliya* and landlessness. Largely, it can also be said that Bhim Dutta tried to restructure the society. Besides, it is perceived that the movement was directly against the landlords, who were benefiting from the privileges provided by the regime. Unfortunately, the movement could not go ahead for long time as intended after his assassination which involved conspiracy.

Furthermore, similar labour movements such as *Haruwa* and *Charuwa* in Eastern parts of Nepal, ex-Kamaiaya in western terai, and *Hali* in Western hilly areas are active in Nepal. But, GoN has not paid due attention to their voices yet.

2 Dalit, who fall at lower rung of caste system, is one of the most marginalised sections in Nepal (Hoefer, 2004). They are facing caste based discrimination (untouchability) in accordance with caste system as well.

3 Haliya are ex-bonded labourer found in Mid and Far-Western Region of Nepal.

All these movements of tiller organization, land victims, bonded labour among others are being mobilized in non-violent way despite decades of armed political movement led by Nepal Community Party (Maoist) from 1996-2006. The movement deserves greater people's power to fight against their socio-economic and political exploitation.

As mentioned in the section above, there is an active land right movement where land poor and land-based victims are being mobilized. Such movements need to be analysed with respect to organizational power 'autonomy' and 'capacity' (Borras and Fransco, 2008). Autonomy is relational and a matter of degree. High degree of autonomy is essential to determine how organizations decide interest and concerns to what extent. The land right movement briefly informs about relationship between land-based victims (landless and landed poor), land right activists, researchers and bureaucrats. A matter of degree tells about how relationships among them are either co-operative or independence. Though there is a high degree of autonomy of victims' association in land right movement of Nepal, power seems somewhat moderate and thus it requires more efforts to organize. Despite having autonomy, there is no high degree of capacity that enables them to pursue their goals (Ibid). For this, CSRC and NLRCG are actively engaged for capacity building of land based victim organizations and land right activists emphasizing equitable aspects of land reform.

Land right from below means actual mobilization of land poor and land victims beyond the unitary notion of class-consciousness, reflecting various discrimination and exploitation in an agrarian society. Their emphasis is on substantive equitable aspects of rural agrarian society.

Addressing only equity does not ensure actual empowerment of diverse land based victims. Clear and explicit property right system can lead to efficiency. But, efficiency is implicit and less emphasized in land right movement. Recognizing the gaps and lacking in efficiency, recent reports of High Level Land Reform Commission have laid equal and balanced emphasis on equity and efficiency (GoN, 2009).

The World Bank (2003) is generally in favor of the De Soto thesis on Mystery of Capital<sup>4</sup> for promoting full property right that leads to actual empowerment of poor people (efficiency). But, Land Policy Paper 2003 also pointed out that under certain conditions, communal land rights can also be economically efficient (Ibid). In case of Nepal, Kipat, a kind of traditional communal land ownership, which has already been abolished was found to be effective and efficient (Regmi, 1988). Similarly, community forestry in Nepal has also demonstrated best communal ownership of natural resources with its proper and efficient management globally. It suggests that there are some avenues for practicing communal land ownership in Nepal. It can also be recalled

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4 De Soto (2000), in his book titled 'Mystery of Capital' argues that absence of full property right restricts poor people to enjoy economic right in full spectrum.

that the World Bank was at the forefront of pushing efficient use of land, indicating and advocating full property rights (Deininger 1995)

It can be rightly ascertained that land right with well-defined right to property is key to empowerment. If land right will be guaranteed with full property right, there is higher possibility of reducing poverty among land-poor community. It also holds true for Agarwal's (1994) argument on women's land entitlement i.e. productivity is enhanced if women land right is ensured. It is also true in case of other marginalized and excluded groups of Nepal (Nepali, 2011; RDN and COLARP, 2012; Pyakuryal and Upreti, 2011).

In sum, equity and efficiency are not trade off but can complement each other in the long run. Addressing equity can empower historically excluded and marginalized community to contribute to efficiency in a variety of ways.

### **Democratic land governance and land right of marginalized people from below**

Land governance should be seen in its broader context- that is ensuring political and social rights for citizen transparency and accountability of government and other institutions. Land governance does not come only from the top; it can also come from below as an assertion of rights through countervailing power of the people and communities asserting their rights (Quizon, 2013). As mentioned earlier, state-society interaction around the land policies are conscious of the key features of pro-poor land policies (Borras and Fransco, 2008). Pro-poor

land policies from above may be able to satisfy the need for state responsiveness but without much participation as they are unlikely to offer space for and encourage inclusive participation of the local people. Under such set up, it is unlikely that the process will nurture democratic value.

Land rights, restrictions and responsibilities are expressed through a socially constructed system of land tenure. In general, the powerful enjoy more secure land rights, while vulnerable groups have less secure land rights. Historically, land rights often came through hegemony, with their legitimacy resting on force (FAO, 2009). So, to counter the hegemony, there is always the struggle between land holders and peasant classes in Nepal since long time (Blaikie et al, 2000; Regmi, 1999; Upreti et al, 2008). The major issues are reducing inequality in land distribution and rural poverty and assymetrical power relations pertaining to equitable access to land resources.

By contrast, when land governance is effective, equitable access to land and security of tenure can contribute to improvements in social, economic and environmental conditions. With good governance, benefits from land and natural resources are responsibly managed and the benefits are equitably distributed (FAO, 2009). Based on this notion, rural poor people in terms of class, caste and gender get organized and are trying to organize for their democratic rights in Nepal in general and landless, squatter, bonded labour for securing political, social, cultural and economic rights in particular.

The following few cases of Nepal reveal the initiations taken so far in the field of land rights attempting to secure social, political and economic rights of land poor and victims:

Case 1: In High Level Land Reform Commissions formed by GoN in 2008 and 2009, there were representatives Mr. Baldev Ram and Som Bhandari from National Land Right Forum. They played a key role on raising the concerns of land poor and victim people.

Case 2: In Haliya Right movement, RHMS, an association of ex-Haliya, and bonded labour has been actively engaged since its inception. In different states' functionary, RHMS is representing and they have been contributing in drafting 'Haliya System (Prohibition) Bill, Freed Haliya and Monitoring Guideline' and formulating Integrated Labour Policy. They are playing instrumental roles for raising their concerns, sensitizing concerned stakeholders and authorities. It is a good illustration of how land based victim demonstrated their visibility and active participation in influencing policy makers to implementing agencies. In fact, it reflects true participation of grassroots level and also demonstration of exercising socio-cultural and political rights. They have a good stake in designing rehabilitation package as well as Integrated Labor Policy. It clearly shows that they are in democratic exercise for practicing political and social rights. They are on the way in securing all rights i.e. economic rights to be secured.

Case 3: Shanta Chaudhary was from ex-Kamaiya (bonded labour) community and she has been actively engaged in the land

right movement. In 2008, she was elected as a Constituent Assembly member and also became the chair of Parliamentary Committee on Natural Resources, Financial Right and Revenue Sharing. She served the nation in the highest capacity from 2008-2012. In fact, it is the successful case of exercising highest level of authority in state's apparatus by land based victim people. During her tenure, she has played a pivotal role in influencing policy and program. Some of them are formulating Land Use Policy 2012, allocating budget to women land right and education to Kamalari (domestic servant) and poor community.

Above cases clearly demonstrates that there is true and meaningful participation of land poor and land based victim people. These people are on the way for securing land right. In the meantime, they are exercising their social and political rights that would ensure their economic rights. It is achievement of land right movement in Nepal where poor people are capacitated and empowered to claim their political, social and economic rights.

Despite such accomplishments in, land right movement, problems exist in the area of policy formulation and implementation. In the steering committee, there is no participation of marginalized community. It raises the concerns and questions of translating equitable issues of landless and land poor people. Not only this, there is no provision of representation of marginalized community in effective implementation of Land Use Policy 2012 despite the policy being initiated under the leadership of marginalized community. It should not be ad hoc rather

it should be structurally and institutionally devised/designed to ensure meaningful and effective participation of poor and marginalized community in states' land governance.

Ideally, good land governance possesses the principles of universality of tenure security, equitable participation, adherence to the rule of law, sustainability, and effectiveness and efficiency. If there will be substantive mechanism and measures for marginalized communities, poor people are able to participate in decision-making processes meaningfully in a transparent way. When poor people have access to resource and information, then the most disputes are resolved (UN-HABITAT, 2008).

In urban area, effective land governance contributes to reduce social tensions and promotes economic growth and poverty reduction. But, the case seems different in Nepal . For instance, GoN forcefully displaced squatters and slum-dwellers from the public land encroached by them nearby Bagmati river, at the heart of capital city Kathmandu in 2012. During the forceful displacement, children, pregnant women and old people were crying and also under stress for a long time. There are struggle and social tensions between squatters and state. Land right activists, human right activists, women right activists have supported squatters because of the state's ad-hoc and brutal eviction and displacement. This is not only a single case that shows ineffective land governance, tenure insecurity and vulnerable situation of squatters. These kinds of situation are also found all over

the country in urban and rural slums. There are adhoc eviction of poor people from slum area and forest area. It also shows that due to the absence of effective pro-poor land governance, squatters have to face additional problems and insecurity, which limit their ability to exercise social, cultural and economic rights. It becomes not only hurdle for exercising their democratic rights (social, political and economic rights) but also to be a good citizen of the country.

### **Civil society land monitoring and evidence based policy dialogue/debate**

Civil society monitoring in Nepal used and adapted the Land Reform Monitoring Indicators, developed by Land Watch Asia and applied them at the level of Inputs, Processes, Outputs, Outcomes and Impacts for land monitoring. As a result, it identified explicit gap in data, lack of information, and ambiguous provisions in land related policy and its implementation.

Nepal's case can provide elements of debate in the relationship between equity as a fair, equal and secure land access for individual or collective property right and efficiency, such that an efficient use of resources can lead to the prosperity of the nation through equitable economic growth.

Under the strategic framework of the International Land Coalition (ILC) initiatives, Nepalese ILC members commenced National Engagement Strategy that is resulting in a consultative process where many actors, as co-builders, have identified key areas to advance pro-poor land governance. Thus,

all these areas proposed in the strategy clearly indicate converging of equity and efficiency issues of land reform in Nepal.

In Nepal, community-based monitoring is a central activity of the National Land Rights Movement, a grassroots organization. Community groups record and analyse land-related issues within their communities and use the information as a basis for developing their own strategies to promote change at the local level (Mauro, 2013). The data is also collected at district and national level through the National Land Rights Forum to inform strategic planning at these level and provide an evidence base for advocacy.

Monitoring can also play an important role in coalition building or discussions between organizations, resulting in information sharing that informs debate about strategic priorities and the coordination of efforts. This has been a lesson learnt from the experience of Land Watch Asia. This report argues that monitoring plays a crucial role in the evaluation of land policy, advocating for better land policy and holding decision-makers and institutions accountable for the effective implementation of land policy.

Hence, community based land monitoring with inclusion of diverse society and state actors can generate evidence and empower them. It not only empowers, but also enhances common understanding and reduces gaps and resolves tension

between state and society actors for policy assessment, effective implementation of land reform policy and state service delivery in land sector.

### **Growing domestic land acquisition and small holder's issues**

Currently domestic land acquisition<sup>5</sup> (also locally known as plotting of agricultural land in Nepal) is rapidly ongoing and there is a higher possibility of erosion of small farmer agriculture. Growing land acquisition leads to dispossession of productive assets for the most vulnerable such as landless, small-scale producers, rural women, pastoralists and indigenous peoples. Dispossession of land determines the quality of people's life in terms of labor, mobility, identity, nutrition etc. So, there should be strong and supporting policies to protect land rights of locals especially the poor, small holders and women. Thus, it encourages them to invest and increase productivity. It promotes sound and sustainable investment in land to undertake efforts to implement land policies that facilitate equitable access and secure rights of community and poor.

Globally, land grabbing or large scale land acquisition is rapidly ongoing phenomenon and it can be seen in the form of purchase or lease of large areas of land by the rich, food scarcity (production deficit) across the nation and the interest of the private investors from mostly poor, developing countries in producing crops for export (Daniel

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5 The terms such as 'land grabbing', 'large scale land acquisition', 'foreign and domestic land deals' or 'investments by multi-national companies for long term lease' are interchangeably used for contemporary global literatures. In similar sense, domestic land acquisition is used for this paper and it is locally known as land plotting of agricultural land for different purposes. Due to this, land uses pattern is rapidly changing.

and Mittal, 2009, Borras and Franco. 2010, Cotula and Leonard, 2010, and Hall, 2011). According to International Land Coalition (ILC) (2012), between 2000 to 2010, around 203 million hectares of land was acquired worldwide, which is equivalent to over eight times the size of United Kingdom (UK). ILC identified that such lands were not only used for food cultivation and farmlands but also for biofuels production, mineral extraction, industry, tourism etc (Ibid). Therefore, land grabbing is seen as controlling the distant land for the purpose of large-scale cultivation of crops for exports. These crops are used for many purposes from consumption, transaction, and economic activities to make biofuels. Mostly, people are targeting the best lands and Africa is the highly targeted country for land acquisition (Ibid).

In Nepal, such large-scale land acquisition seems to be growing in a bit different way from global practices, indicating engagement of domestic actors (domestic real estate and agro-based companies) for acquisition of large tracts of agricultural land for housing and commercial farming purposes. Multi-national (foreign land deals) as well as national companies (domestic land deals) are actively engaged following similar principles, mechanism and pathways of global land grabbing. Mechanisms are legal procedure or arrangement i.e. purchasing and transfer of land ownership from local farmers to companies (real estate and agro-based agency). Local brokers employ tactful ways especially compelling local farmers to sell their land. Similarly, alternate business model like contract farming or out grower, in case of agro-based multi-national or

domestic real estate companies are also found as other ways of land dealings. It can also be considered as indirect form of land grabbing and important form of indirect land use change. The major actors such as business people, investors, and local brokers are found to be engaged in this phenomenon for economic benefit. In this process, economically well off people are main and active investor and appear at the forefront. Few political and social leaders also work with them or are engaged invisibly. Hence, it creates or develops nexus among the politicians, land brokers, bureaucrats, and businesspeople for fulfilling the economic interests. This elite nexus can easily resolve the problems like administrative and legal processes that arises during accumulating, plotting and selling land. From this land acquisition, there are negative impacts: a) Rapid purchase and transfer of land ownership results into dispossession of land and increasing number of landlessness; b) unwanted or forced sale from local people due to land broker; c) tensions between local broker and local people. Eventhough business and employment opportunities exist, poor local people are not in position to tap opportunities. It negatively affects the local natural resource use patterns such as water, forests. In the long run, it has negative consequences on food security and they are in favor of slogan, '*stop concretization of agricultural land*'. It is hampering food sovereignty situation. In other words, land as a main source of food production resource is vital.

Increasing dispossession and accumulation has severe impacts on small holders and producers especially

on their food security, social tensions and indigenous practices. Consequently, it causes rapid changes in land use patterns, thereby altering local food production systems, with negative effects on local-level food security, various types of social tension, and resource conflicts. Therefore, Albenia government is also promoting on small family farm (ILC, 2009). It is suitable and appropriate for economy of Albenia and domestic production has been encouraged. In support of this argument, in International Conference of ILC in 2008, Oliver De Schutter, Special Rapporteur on Right to Food, also presented several advantages of small farms: i) alleviation of rural poverty, ii) generating income for masses of poor, and iii) managing complex system, maintaining bio-diversity. Hence, it requires paying urgent attention to small holders right protection.

National evidences as well as global reports reveal that small holders are at risk due to corporate interest, high intensive agriculture, undermining their roles in sustainable development. As a matter of fact, they are caught under vicious circles of poverty despite having greater role and potential to feed the growing national and global population.

Against this backdrop, UN General Assembly declared International Year of Family Farming (IYFF) 2014 in December 2011 to address the concerns of small holders. It tried to focus on equitable access to land resource through either redistribution or restitution and their tenure security. It also emphasizes on empowerment of small-scale producers and family farmer i.e. strong development of organization of

producers (women and marginalized communities) for their political and economic rights.

### **People Centred Land Governance and debate of equity and efficiency in local context**

ILC's General Assembly held in Guatemala 2013 introduced and declared the concept of People Centered Land Governance with consent and endorsement of ILC members. The 'People-centered land governance' is a broad concept implicit in ILC's statements of vision, mission and strategic objectives as per Strategic Framework. Basically, it attempts to secure equitable access to land and control over land reduces poverty and contribute to identity, dignity and inclusion and ultimately the framework provides the basis to pursue higher standards for the benefit of the rural poor.

As mentioned earlier in section of theoretical framework, in context of competition for scarce and natural resource, working definition was developed through the ILC consultation on the Voluntary Guidelines as '*sound and sustainable land governance that eradicates hunger and poverty, promotes sustainable development and healthy ecosystems, fosters equitable economic growth, and contributes to identity, dignity and inclusion*'.

It has embraced four key components in line with FAO Voluntary Guidelines: i) people centered land policies that prioritize interests of vulnerable groups, whose livelihoods depend on land, including the landless, land poor and rural workers (power asymmetry, human rights,

models of investment),, ii) democratic decision-making over land that includes the full spectrum of land users (meaningful and timely participation, democratizing decision-making over land, gender equality, decentralization, monitoring transparent), iii) diverse, flexible and plural tenure systems and the protection of the commons (diverse, flexible and plural tenure system-legal pluralism, commons, evolution of customary land laws), iv) agrarian reform and land distribution to counteract excessive land concentration and landlessness (secure and equitable access to land right, equitable land distribution, rural heterogeneity).

While looking at content of people centered land governance, equity aspects are well emphasized such as concerns of landless, land poor, rural works/laborers, gender justice, small scale farmers etc. Similarly, efficiency to enhance agricultural productivity such as tenure security, land use, land management has been accorded a top priority. As a matter of fact, inclusion of both issues has sustaining effects for securing social, economic and political rights of land poor people.

The presented equity and efficiency of people centered land governance is in line with the content highlighted in the reports of High Level Land Reform Commissions and also in Nepal National Engagement Strategy Paper (2012-16) for land issues. For illustrations, equitable issues are inequitable access to land and social injustice (landlessness, tenancy, bonded labor, exploitative power structure/social relation, land ceiling etc) whereas efficiency issues are measures of land use and management

that can contribute to production and productivity.

In line with these measures and variables, land based civil society monitoring indicators can categorically be divided into equity and efficiency, two essential aspects of land reform. But, these are implicit in a sense that these are not well addressed. If so, issues related to equity and historical exclusion from productive resources would not come at forefront and it will remain unnoticed . In the long run, it would result into persistent inequality and poverty.

In an interview with land right activist Mr. Jagat Basnet, Executive Director, CSRC, he said that land right monitoring has been effective to assess the land reform progress in Nepal. He added its high relevancy in process of land policy formulation because it identifies the gap in land policy implementation for securing their land rights. However, there are some difficulties faced in evidence or data collection from field, cases of eviction from land tax office and court cases. Similarly, they are also undertaking similar types of activities in shadow report preparation of International Convention on Economic Social and Cultural Right (ICESCR).

Nepal also piloted the use of the Gender Evaluation Criteria (GEC) promoted by GLTN. According to Sama Vajra, Programme Manager LUMANTI piloting GEC/GLTN is wonderful experience through which they got opportunities to work together with MoLRM and High Level Land Reform Commission. *They employed participatory tools thereby enhancing the capacities of target groups*

and other concerned stakeholders. They also pointed out that land reform lacks gender justice and sensitivity.

Furthermore, it is interesting to note that CSO land monitoring should be multi-stakeholders' efforts in practice i.e. active and meaningful engagement of all stakeholders from academic, research, policy and practitioners. If so, it would have achieved more than explained above. It is because it provides insights and lens to understand issues from different angles.

Taking all those CSO engagement and initiative together, CSO is attempting to tradeoff between equity and efficiency. Political parties on the other hand have clear distinction and demarcation in their ideologies about scientific land reform. But, scientific land reform as mentioned in CPA 2006 and IC 2007 is itself balanced and compromised between these two. So, there is a room for convergence of equity and efficiency.

## CONCLUSION

In Nepal, issue of land reform is hotly debated where equity and efficiency are at the center. Equity issue covers historical disadvantages and injustices relate to land issues whereas efficiency issue includes ways and mechanisms of enhancing agricultural growth leading to national economic prosperity.

Despite the political divide among parties, civil society is proposing transformative land reform in governance framework to strengthen equity and efficiency i.e., the rules, processes and structures of land

sectors and land governance are crucial factors in sustainable development that results in food security of the poor and incentives for investment in agriculture.

Land governance issues are politically sensitive, bearing witness to historical injustices, exclusions and disadvantages. It requires careful attention to deal with these politically sensitive and structural issues. As per analytical framework of democratic and pro-poor land governance i.e. proper interaction of autonomous mass mobilization from below and state reformist actors from above, it would provide basis for democratic space to exercise citizens' right to secure equitable access to land right and property right.

In this context, specially Nepal's civil society is playing pivotal role for securing land rights from below (grassroots) and exercising democratic land governance and pro-poor land governance. The following determinants of this process are briefly illustrated below: i) Mobilization of Poor from below is the key to promote equitable access to land and thus securing property right to land. ii) In rural societies, securing land rights is not only the part of a broad democratic context of exercising rights, but also is crucial for marginalized people to become citizens. iii) Civil society land monitoring provides evidences for judging land reform implementation and policy assessment. iv) In context of growing large scale land acquisition, domestic land acquisition also leads to dispossession of productive assets of small holders and it results into inequality and vulnerability of for the most vulnerable such as landless, small scale producers, rural women,

pastoralists and indigenous peoples.

In addition to these, examples from Nepal can provide elements of debate about the relationship between equity as fair, equal and secure land access for individual or collective property right and efficiency, such that an efficient use of resources can lead to the prosperity of the nation through equitable economic growth. Thus, all these recent efforts on land monitoring for policy and action plan clearly indicates

converging of equity and efficiency issues of land reform in Nepal.

All those monitoring initiatives generate evidences that serve to generate pressure on effective response by Government to collective demands for justice. By combining equity and efficiency, Nepal's civil society and citizen-led initiatives are definitively promoting an active engagement of reformist actors and change-makers for generating equitable economic growth.

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