

# Ethnic and indigenous groups in Nepal's peacebuilding processes

By Clare Castillejo

## ■ Executive summary

The historical exclusion of indigenous and ethnic groups was a driver of conflict in Nepal. How to address such identity-based exclusion became a central and highly divisive issue within the country's peace and constitutional processes, expressed in competing visions for federalism and state restructuring. Since the conflict ended, ethnic and indigenous groups have mobilised in unprecedented ways to participate in politics and influence the direction of Nepal's peacebuilding process. However, ultimately a new constitution was developed by a restricted group of political elites that failed to deliver on the aspirations of indigenous and ethnic groups. The resulting protests and alienation of these groups could threaten Nepal's stability.

This report explores how ethnic and indigenous groups participated in conflict, peacemaking and constitutional reform in Nepal. It examines the ways in which they mobilised and the factors that shaped their ability to exercise influence. The report also asks how international actors have engaged with indigenous and ethnic groups and with issues of identity-based exclusion, arguing that at this critical time Nepal's donors must strengthen their engagement in this area.

## Introduction

Nepal's conflict and peacebuilding process positioned the historical marginalisation of indigenous, ethnic minority, and other identity groups at the centre of the political agenda and saw these communities mobilise in unprecedented ways. While Nepal's peace and constitutional processes involved a range of commitments to address historical marginalisation and build a more inclusive state, so far these commitments have not been met. The resulting disillusionment and anger among indigenous and ethnic groups could threaten the country's stability, and addressing this issue must be a priority for Nepal's political leaders and international donors.

## Identity and exclusion in Nepal

Nepal's population is made up of a complex mosaic of different ethnic, caste and regional identities. According to the 2011 census there are 123 caste and ethnic groups in Nepal speaking 125 languages. However, political power and access to resources have historically been controlled by high-caste, hill-based groups, notably Brahmins and

Chhetris, who developed the Nepali state and national identity to reflect their interests. As Neelakantan et al. (2016: 7) describe,

the state defined particular, restrictive ways of being Nepali to create a nation in the image of its "upper-caste" Hindu, Nepali-speaking ruling groups. An aspirational Nepali identity has been aggressively promoted through the Nepali language, and acceptance of the supremacy of the Hindu religion.

A number of caste and ethnic identity groups experience deep, structural marginalisation. Nepal's officially recognised indigenous populations ("Janajatis") make up around 37% of the population and comprise 59 groups, each with a distinct language, history and cultural identity. While Janajati communities are very diverse, they have common experiences of social, political, and economic marginalisation and the appropriation of traditional lands and natural resources. According to the UN Special Rapporteur on Indigenous People, "Across the country, [Janajatis] rank

low in all human development indicators. Most ... live in conditions of poverty that, on the whole, are double or more the national poverty level” (Anaya, 2009: 9).

Another minority ethnic people who have faced historical discrimination are the Madhesis. These are caste-based Hindus and Muslims living in the Tarai (the plains that border India) who speak plains languages and have extensive economic, linguistic, social and kinship ties with India. Madhesis have faced discrimination from hill communities based on the belief that they are not truly Nepali and are not loyal to the Nepali state. Madhesis have a long history of activism over their political identity.

In addition to ethnic discrimination, caste discrimination runs throughout most of Nepali society. Indeed, Dalits<sup>1</sup> are among Nepal’s most marginalised populations, while other low-caste groups also suffer discrimination. Other groups also face identity-based exclusion, including freed bonded labourer communities, Muslims and other religious minorities, and women.

Any attempt to understand how indigenous and ethnic groups have engaged with peacebuilding must recognise the complex and overlapping nature of identities in Nepal. These can create double discrimination, e.g. for Dalits or Muslim Madhesis, or for indigenous women. They also shape access to power and resources both at the national level and within ethnic communities; e.g. high-caste men dominate Madhesi political parties, just as they do mainstream political parties. It is also important to understand how different identities have been mobilised at different times, and how emphasis on certain types of identities can create political momentum in some areas, such as around political autonomy for Madhesi or Janajati populations, while undermining opportunities to mobilise across such ethnic identities around other sets of interests, such as Dalit- or gender-related issues.

Throughout the history of Nepal there has been little space for the expression of ethnic identity demands. However, from the 1960s onwards there was some limited mobilisation by ethnic communities, e.g. around the appropriation of indigenous lands in the eastern hills, or language and access to government jobs in the Tarai. The advent of democracy in 1990 marginally increased the political space to discuss identity issues. The 1990 constitution formally recognised the country’s ethnic,

religious and linguistic diversity, although Nepal remained a Hindu monarchy with Nepali as the sole official language. This period saw a mushrooming of Janajati civil society organisations that drew on global discourses on indigenous rights to demand language rights, decentralisation, political autonomy and representation in state bodies. As Strasheim and Bogati (2016: 5) describe, “these movements began to influence the political discourse on how to restructure the state” and contributed to the passing of the Nepal Federation for the Development of Indigenous Nationalities Act in 2002, which recognises “Janajati” as a legal category.

### Experience of conflict

The Maoist party recognised that multiple identity-based forms of discrimination were a central driver of inequality in Nepal and had championed the rights of marginalised ethnic communities even before its armed struggle had started.<sup>2</sup> Once the Maoists launched their insurgency in 1996 many of their core demands around inclusion, language, political autonomy, secularism, and discrimination aligned with ethnic and indigenous interests. The Maoists incorporated ethnic issues into their policies and structures, creating a central-level ethnic department in the party and basing the boundaries of autonomous regions in the Maoists’ people’s government on ethnic criteria.

While the Maoists’ championing of ethnic and indigenous demands came from a genuine commitment to address structural inequality in Nepal, it also enabled them to capitalise on the aspirations of marginalised communities. As Cats-Baril (2014: 307) argues,

Nepal’s indigenous peoples and other marginalized groups were easy recruits to the insurgency – their willingness to join the Maoists only highlighted the degree of social and political discontent that these groups felt living under the Hindu-dominated government and the extent of their disappointment in the democratization project initiated by the ratification of Nepal’s 1990 Constitution.

The Maoists’ heartland of mid-west and mid-hill areas has high levels of Janajati populations, from whom the organisation recruited heavily for party members and fighters. However, according to the International Crisis Group (ICG, 2011) it was in the eastern hills and the eastern and central Tarai that the Maoists were most

<sup>1</sup> Hindus considered “untouchable” by upper-caste groups.

<sup>2</sup> For example, calling for the end of ethnic discrimination, a secular state, the equality of languages and regional autonomy.

dependent on building alliances with ethnic activists to gain support. However, the Maoists' relationships with ethnic groups were often fraught. Maoist leaders were mostly from high-caste hill communities, and some ethnic groups questioned the priority they gave to ethnic issues and criticised their failure to appoint members of ethnic communities to senior posts in Maoist structures. Indeed, some Tarai leaders ultimately broke away from the Maoists to form new groups focused solely on regional and identity issues.

The security forces targeted indigenous and ethnic communities during the conflict, and these communities continue to have a fraught relationship with these forces. The Janajati Tharu community<sup>3</sup> suffered particularly high levels of human rights abuses, constituting one-third of the 900 Nepalis who were "disappeared" by the state between 1996 and 2006, despite forming only 7% of the population (ICG, 2016). Similarly, the security forces targeted both the Janajati Magar community – the dominant ethnic group in much of the Maoist heartland – and the Madhesi communities in the Tarai. In sum, indigenous and ethnic groups were disproportionately involved in the conflict as combatants and casualties, and in the suffering experienced by their communities. They played a critical role in the Maoists' success and believed that the Maoists would further their interests.

## Peace process

In 2006 Nepal's decade-long civil war ended with the signing of the Comprehensive Peace Agreement (CPA). This agreement called for state restructuring and social, economic and cultural transformation through a Constituent Assembly (CA). It stated that

in order to end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities (Janajatis), Tarai communities (Madhesis), oppressed, neglected and minority communities and the backward areas by deconstructing the current centralised and unitary structure, the state shall be restructured in an inclusive, democratic and forward looking manner (CPA, 2006).

In the post-conflict environment the issue of addressing the exclusion of historically marginalised communities became central, driven initially by the Maoists. Identity

groups took advantage of the new political space to mobilise in unprecedented ways. For example, the Janajati movement consolidated and allied itself with the Maoists in negotiations on the formation of the CA, while Madhesi groups formed new ethnic political parties. As identity issues became increasingly important, ethnic pressures also emerged within traditional, non-ethnic political parties. As the International Crisis Group describes, "the new democratic space allowed these groups to rapidly gain organisational strength and intellectual clarity [and to] challenge the strong, state-supported definition of Nepali identity created in the image of the Nepali speaking, hill-origin, Hindu upper-caste male" (ICG, 2016: 3).

However, it is important to note that not all excluded groups were able to make their voices heard in the post-conflict environment, and hence some identity-based interests were privileged over others. As Neelakantan et al. (2016: 9) describe,

real participation was extended to those [excluded groups] who could also claim to mobilise politically, such as the Madhesi parties, to contest elections, but also to organise shutdowns and street movements .... To a lesser extent, Janajati actors were able to lay similar claims through their informal cross-party caucus in the first CA and in the major street mobilisation that preceded its dissolution. There was minimal expansion in the influence of Dalit and women representatives.

Dalits in particular have struggled to promote their interests within the process of post-conflict state restructuring, because they are spread out across Nepal's territory and frequently subsumed into other identity groups in which they occupy a subordinate position.

In 2007 an interim constitution was adopted. The two main traditional parties, the Nepali Congress (NC) and the Communist Party of Nepal – Unified Marxist and Leninist (UML), initially blocked the inclusion of commitments to federalism in this constitution. This had been a central demand of the Maoists and marginalised communities, who saw federalism as a means to devolve power away from traditional elites and ensure the greater political representation of excluded ethnic groups and regions. Hence, in response the Madhesis launched protests across the Tarai in 2007, resulting in the interim

<sup>3</sup> The Tharus are an indigenous people of the Tarai plains who have faced significant historical discrimination from hill-based elites. Like the other major Tarai population, the Madhesis (caste-based Hindus and Muslims with links to India), the Tharus have strongly resisted federal structures that would divide up the Tarai across various geographic units, thereby reducing the political autonomy and influence of Tarai populations.

constitution being changed to include federalism. In 2008 the Madhesi again mobilised in protest to successfully push for a higher quota in the proportional representation (PR) element of the mixed electoral system. This Madhesi mobilisation in 2007 and 2008, together with a less intense Janajati movement over similar issues, highlighted the new power of excluded ethnic and indigenous groups, as well as the important role of street protests, in influencing the direction of peacebuilding. Neelakantan et al. (2016: 9) argue that these protests “launched a forceful public discussion about the exclusionary nature of the Nepali state”. Throughout the long constitutional process the Madhesi have been the most vocal and influential identity-based group.

### Constitutional process

From 2008 to 2015 Nepal experienced a long-drawn-out, complex and frustrating process of constitution drafting during which the political parties represented in the CA repeatedly failed to reach agreement. In 2015, following Nepal’s devastating earthquake, the three main political parties ‘fast tracked’ the adoption of a constitution that did not meet the aspirations of many identity groups and triggered major unrest.

#### *The Constitutional Assembly*

In 2008 the first CA was elected, with the Maoists winning the most seats. Maoist commitments to identity-based federalism had allowed them to harness the vote of marginalised identity groups and were a major factor in their success.

The electoral system that the Madhesi and Janajatis had pushed so hard for resulted in a highly inclusive and representative CA. Out of 601 representatives, 191 women, 196 Madhesi and 192 indigenous representatives were elected.<sup>4</sup> However, there was concern among Janajati representatives that, despite their significant numbers in the CA, the electoral and party system prevented them from having much influence. Janajati CA members were elected from among candidates chosen by mainstream political parties and were subject to these parties’ whip system and voting discipline, while the parties had the power to unseat members at any time. This made it difficult for Janajati CA representatives to break party lines to promote indigenous issues or be accountable to indigenous populations. Also, Janajati CA members represented a range of different indigenous

groups, with somewhat differing priorities and interests, as well as varying levels of experience of political engagement. However, despite these constraints, indigenous representatives managed to develop an active cross-party Janajati caucus for collaboration on common indigenous issues. The Madhesi, on the other hand, were largely represented in the CA through their own parties and had a significant history of political activism to draw on, giving them greater freedom and political capacity to operate.

During the first CA the Maoists, Madhesi and Janajatis were relatively united. Their core demand was for identity-based federalism, with federal states constructed primarily on ethnic, linguistic or cultural lines, which they saw as a central means to address the political, economic and cultural exclusion of Nepal’s many non-elite ethnic and regional groups. However, the NC and UML, together with smaller right-wing parties, rejected identity-based federalism as undermining national unity, meritocracy and individual rights, and instead promoted geographically based federalism, which offered less power to identity groups. The Maoists, Madhesi and Janajatis also wanted an electoral system that involved a significant proportional representation (PR) element and quotas for marginalised communities, as well as the restructuring of state institutions such as the judiciary to redress historical marginalisation and redistribute power.<sup>5</sup> However, traditional political parties also opposed these demands. In essence, this was a struggle between those groups that were disadvantaged and those that were privileged by Nepal’s old political settlement, with each promoting a federal model and reform agenda that served its interests.

The CA was unable to come to agreement, and after multiple mandate extensions it lapsed in 2012. This failure of the first CA was accompanied by large street protests by ethnic, caste and regional identity-based groups who were frustrated by the lack of progress on their agenda. It was also followed by a split in the Maoist party due to internal tensions over the party’s inability to achieve results and its future direction.

A new CA was elected in 2013, in which the NC and UML were the largest parties, with the Maoists a distant third. Madhesi parties and newly formed Janajati-based parties<sup>6</sup> had splintered and also did badly at the polls.

<sup>4</sup> It is important to note that there were limits to the inclusivity of the first CA. It was mostly elite members of excluded groups (e.g. high-caste, male, etc.) that were included, and some doubly discriminated-against populations such as Janajati women were largely left out. In addition, of the 59 recognised Janajati communities, 29 were not represented in the CA (Guinée, 2015).

<sup>5</sup> Currently, Brahmin and Chhetri caste groups constitute close to 90% of all judges in the country (Guinée, 2015). The new judges recommended for the High Court in January 2017 demonstrate that the principles of inclusivity and proportional representation continue to be overlooked in judicial appointments.

<sup>6</sup> Led mostly by breakaway indigenous UML members.

Hence, those advocating for identity-based federalism had less voice in the second CA. This CA also struggled to make progress and missed its own deadline for drawing up a constitution of January 2015. It was only following the earthquakes in spring 2015, and with the Maoist party significantly shifting its position to drop insistence on identity-based federalism, that a way forward was developed for agreeing a constitution. However, it was one that violated previous commitments to inclusion contained in the CPA and interim constitution, notably to restructure the state in “an inclusive, democratic and forward looking manner” (CPA, 2006).

### *Nepal's problematic politics*

The problematic nature of Nepali politics has been a major barrier to addressing the historical marginalisation of ethnic and indigenous groups within the constitutional process. Nepal's political parties are weak and personalised, with undemocratic structures and decision-making processes. The main parties are also overwhelmingly controlled by a Kathmandu-based, male, high-caste, hill-community elite that has little understanding of the experiences and grievances of excluded communities. Moreover, the hierarchical nature of these parties means that leaders have been able to resist internal pressure to address identity issues. More broadly, the unstable nature of Nepal's political system keeps parties focused on gaining power rather than developing or delivering on a policy agenda. While hopes were initially high that the CA would break with this unstable and undemocratic type of politics, this did not happen and the new identity-based political actors instead adopted this political culture. As Neelakantan et al. (2006: 11) point out,

At both the national and local levels ... the behaviour of the new actors has very much reflected the workings of the old political order – the use of connections, reliance on state patronage networks, and the instrumentalisation of agendas, ideology and weaker partners in the pursuit of access to state power and resources.

Critically, Nepal's political parties – old and new – lacked the capacity to address the complex political challenges involved in renegotiating the political settlement, and instead became bogged down in political wrangling and the promotion of personal agendas. Without the internal democracy needed to build intra-party consensus or effectively represent their members, all the main parties have experienced internal conflict and fragmentation. This can be seen in the dissent, factionalism, and

leadership crises within the NC and UML, which are riven by divisions over key political issues, including ethnic demands. It can also be seen in the split in the Maoist party and its ultimate abandonment of the inclusion agenda as, caught up in endless politicking and power struggles, the party turned into what is largely yet another mainstream, elite-led party. As Neelakantan et al. (2006: 14) describe,

Political and social groups have supported or resisted inclusion according to their (sometimes fluctuating) interests .... The coherence of the Maoists' wartime solidarity with Janajatis and other “oppressed nationalities”, for example, has struggled to survive the vagaries of peacetime, and their commitment to advancing inclusion has come up against competing priorities and the realities of power politics.

### **The new constitution**

After the spring 2015 earthquakes and resulting humanitarian disaster, Nepal's political parties were under intense pressure to finalise the constitutional process. In summer 2015 the leadership of the three largest parties (NC, UML and Maoists) developed and pushed through a new constitution, ignoring dissent from within their own parties, objections from other parties, and warnings from the international community that wider buy-in was needed for the constitution to be accepted as legitimate. Nepal's new constitution was passed on 20 September 2015 and was widely rejected by historically marginalised groups, including Madhesis, Janajatis, women's activists, Dalits and religious minorities, who see it as violating repeated commitments to an inclusive and progressive state made during Nepal's peacebuilding process and instead maintaining the old power order.

### *An exclusionary process*

The exclusionary process by which the constitution was developed caused great anger. The leadership of the three main parties did the deal, with minimal consultation within their own parties or with other parties. Because this was a ‘fast-track’ process, there was minimal time for public consultation and also insufficient time for CA members to read and debate the draft. In addition, public consultation processes in the Tarai were heavily policed, which meant that many Madhesis and Tharus stayed away.

Hence, after the significant efforts made to ensure an inclusive CA and the lengthy negotiations over how to build a more inclusive state, the constitutional deal was ultimately done in an untransparent way by a small group

of party elites that represented traditional power interests and ignored the demands of identity groups. Identity groups were particularly bitter that the Maoists had joined with the NC and UML to drive through the new constitution. As Strasheim and Bogati (2016: 6) describe,

The Madhesi and Tharu communities – which fought in the Maoists’ People’s War in the hope that identity-based federalism would be the outcome of a Maoist victory – also perceive the Maoists’ acceptance of the geographical division of federal units under the new constitution as a major betrayal. They feel abandoned by their representatives in the capital.

#### *Exclusionary content*

Despite its limitations, the 2015 constitution is in many ways a progressive document. For example, it advances women’s rights in several areas and recognises LGBT rights. However, it fundamentally fails to address the structural discrimination experienced by ethnic and indigenous groups or meet their core demands for an inclusive Nepali state.

Most fundamentally, the new constitution provides for geographically based federalism, not identity-based federalism, dashing ethnic and indigenous groups’ hopes “that identity-based federalism would expand their political representation ... and that upper-caste elites within identity-based federal units would inevitably have to cede some power to minorities and give Madhesi, Tharus, and Janajatis majority rule over some provinces” (Strasheim & Bogati, 2016: 7). Particularly contentious is the fact that the Tarai is divided across all provinces – effectively carving up both Madhesi and Tharu ancestral lands – with only one state being plains-dominated. Likewise, the traditional lands of large indigenous groups such as the Magar and Gurung have also been divided among provinces. Madhesi and Janajati groups see this as an attempt to reduce their influence on future state- and provincial-level politics and to further the interests of local political and economic elites.

Beyond the core issue of the delineation of federal provinces, there was anger over the delineation of constituencies, which Madhesi parties claim do not reflect population densities. Ethnic and indigenous groups were also angry at the reduction in the PR element of the electoral system, which has been decreased from 60% to 40%, reducing the opportunities for marginalised groups to be elected. Also, they are frustrated at the dilution of commitments to affirmative action to increase representation in state organs, as well

as at secularism provisions that religious minorities argue cement the primacy of Hinduism, e.g. by privileging religion that has been “practiced since ancient times” and banning religious conversion. According to Ghale (2015),

the high caste rulers in Kathmandu forcibly brought Janajati communities under the Hindu caste system, and then used this as a source of legitimacy to exploit them. Partly as a way of escaping poverty and caste discrimination, many Janajatis ... converted to Christianity. The ban on religious conversion will almost certainly ... lead to the persecution of converts to Christianity, many of whom belong to highly disadvantaged groups.

Women activists and Madhesi have rejected the citizenship provisions of the new constitution that discriminate against all women in passing citizenship to their children, but are particularly aimed at the Madhesi community, who frequently marry Indian citizens; these provisions demonstrate the state’s fears about Madhesi-Indian ties.

#### *Reaction and protest*

The drawing up and passing of the new constitution was accompanied by deadly protests by Madhesi and Tharu groups across the Tarai that continued for months, leaving 57 dead and reportedly resulting in backlashes that forced thousands of Tharus to flee their homes (ICG, 2016). The protests had deep support within these communities and reflected their increasing sense of alienation from the state. The response of Nepal’s political leaders was highly securitised and involved an excessive use of force that only increased resentment against the Nepali state.

Following the passing of the constitution, Madhesi groups undertook a 135-day blockade of the Nepal-India border with the tacit support of India, which has close ties with the Madhesi population and is generally supportive of their demands, and which was unhappy with both the process and content of the constitution. Given Nepal’s dependence on imports from India, this blockade had very serious consequences, limiting supplies of fuel, basic goods and post-earthquake reconstruction materials. It seriously affected Nepal’s economy, hitting the poorest particularly hard and exacerbating humanitarian challenges. Not only did the blockade demonstrate the deep anger among the Madhesi population, but also highlighted Nepal’s extreme political and economic weakness.

In the face of the protests and blockade, political leaders from the main parties held some talks with ethnic leaders, but remained resistant to their demands. However, in January 2016 the major parties unilaterally passed two constitutional amendments related to more inclusive representation in state organs and the delineation of constituencies. However, these were rejected by Madhesi parties and protestors who wanted a much deeper revision of the new constitution and who saw these amendments as illegitimate, because they were not based on consultation. The blockade of the border ended in February 2016, with the population tired and disillusioned, but the core issues remained unresolved.

Following months with little progress, in November 2016 the Nepali government, which since August 2016 has been led by the Maoists, proposed constitutional amendments to partially address the demands of dissenting Madhesi parties. This proposal alters provincial borders to create two provinces made up only of Tarai districts, provides that representation in the upper house is based partly on population share, and modifies citizenship laws to grant naturalised citizenship to non-Nepali women who marry Nepali men. This goes some way to meeting Madhesi demands, although still leaves significant areas unaddressed and is unlikely to be enough to reduce high levels of distrust and polarisation. However, since then there has been little progress on these constitutional amendments, with mainstream parties arguing that local elections should be held before amendments are passed and Madhesi parties demanding amendments as a prerequisite for such elections. Meanwhile, Madhesi leaders continue to mobilise mass demonstrations in the Tarai.

### International actors

In the first years following the conflict international actors in Nepal actively championed inclusion and identity issues, frequently integrating these into political dialogue with leaders and the support they gave to peacebuilding and reform processes. Nepal's donors provided significant support to marginalised groups, including women, Dalits, Janajatis, and Madhesis aimed at building their capacity for mobilisation and participation in peacebuilding processes, and strengthening their access to state institutions and services. Many donors included exclusion issues into their programming frameworks and encouraged government institutions to do the same. Indeed a "gender equality and social inclusion" (GESI) lens is now widely adopted across

Nepal's government structures and donors, although this is often more lip service than a real effort to address unequal power relations.<sup>7</sup>

This donor emphasis on exclusion prompted a backlash from Nepal's elite. Since the end of the first CA in 2012 successive governments and the bureaucracy in Nepal have used arguments about donor interference and the imposition of Western values to push back against donor engagement on identity and exclusion issues. As International IDEA (2015: 36) states,

[donors] were criticized by some political parties for "creating friction between castes and communities". However, a constitutional expert from Nepal justified this saying, "The international community should be credited for empowering the marginalized communities. The criticism came from the ruling elites because they were not happy that the status quo was challenged."

Indeed, this was part of a broader trend in which the Nepali establishment pushed back against donor pressure on a range of normative issues, including transparency and accountability, human rights, and transitional justice, and sought to limit donor engagement to more traditional development domains.

As a result, in recent years donors have had less space to engage on identity and exclusion or to support marginalised communities. As Neelakantan et al. (2016:10) argue,

from 2006 to 2012, international donor partners referred heavily to the language of social inclusion and targeted programming for historically marginalised communities and regions .... [but] some donor projects aimed at inclusion and federalism came to be heavily criticised by parts of Nepal's traditional establishment for having stoked ethnic sentiment or promoted ethnic federalism, and donors subsequently backed away from the inclusion agenda .... Inclusion is dismissed as one of a number of "progressive" agendas being pushed by donors.

In the face of this resistance from political elites, Nepal's donors have been largely reluctant to continue championing identity, exclusion and rights issues, and have instead prioritised maintaining good relations with the government.

7 For a discussion of how GESI is understood in the Nepali context and how it is integrated into government policies, see Kelles-Viitanen and Shrestha (2011).

When the three main parties announced their plans for the new constitution in 2015, international actors in Nepal were largely supportive. This was both because they wanted to avoid further accusations of meddling, and because they were frustrated by the lack of progress in the CA and recognised the pressing need to end the lengthy constitutional process and concentrate on other priorities. As the protests grew, international actors began to raise concerns that marginalised groups must be given buy-in to the process and that speed must not be prioritised over legitimacy. However, the International Crisis Group reports that diplomatic efforts to raise these concerns were overly cautious and poorly coordinated (ICG, 2016). While Nepal's donors could undoubtedly have engaged more consistently on issues of identity and exclusion, as well as intervened more effectively around the 2015 constitutional process, it is important to recognise that they have relatively limited influence, their agendas can easily be dismissed as interference, and their actions are unlikely to result in significant changes being made.

By far the most important external actors in Nepal are China and India, who compete for influence in the country. India – which has extensive influence in Nepali affairs and has at various points blocked progress on peacebuilding – wanted a constitution that addressed Madhesi concerns and pressed Nepali leaders to deliver this. India's support for the border blockade demonstrates its frustration that Nepal's leaders had rejected its requests. Meanwhile China – whose influence in Nepal is less than India's, but is growing rapidly through expanding aid and investment – does not want identity-based federalism, because it is concerned that such identity agendas could spill over into Tibet. While neither of these countries can dictate to Nepali leaders, as Strasheim and Bogati (2016: 8) argue, "The influence of both regional powers can be regarded as affecting the opportunity structure of the state and of the Tarai protesters by further deepening already existing divisions and contributing to the polarisation of the debate within Nepal".

## Conclusion

The increasingly hardline identity-based movement in the Tarai could pose a serious threat to stability in Nepal. It is critical that the deep grievances of marginalised communities – notably the Madhesi and Tharus, but also others that have been less vocal – are meaningfully addressed, while bearing in mind legitimate concerns about individual rights and national unity.

The recent proposal of several constitutional amendments may offer a chance for progress, although it is not yet clear where this will lead. What is clear is that any future efforts to address the demands of the Madhesi and Tharus should be based on political dialogue that includes these and other marginalised groups. Such inclusive dialogue has so far been sorely lacking and its absence has fueled divisions and tensions. As Strasheim and Bogati (2016: 8) describe,

At first glance, the federalist debate in Nepal appears to be deadlocked particularly due to *substantive* differences about whether federal units should be delineated according to geography or identity; however, to a large extent it is also the *manner* in which the federalist laws have been introduced that has driven the recent violence.

Nepal is at a critical juncture, and responding to the range of challenges that it faces will require international donors to act together in a more coordinated and effective way, become more politically engaged, strengthen their engagement on exclusion issues, and push back against government efforts to limit their activities to traditional "development" agendas. They must also ensure that the CPA and other past commitments – which were agreed by all actors and underpin Nepal's peace – are the basis for all donor engagement. One pressing challenge is post-earthquake reconstruction, which is just beginning, and which has the potential to deepen inequality and divisions if it is badly managed. It is critical that donors are conflict and inclusion sensitive in their support for earthquake reconstruction.

The deadline for the implementation of Nepal's constitution is January 2018, although local elections are required to be held earlier. However, holding local elections or moving ahead with the implementation of the constitution – particularly the provisions around federal restructuring – without some agreement on how to resolve Madhesi and Tharu demands threatens the risk of serious violence. Nepal's donors, who will be expected to provide significant funding for elections and for the reforms required by the constitution, must insist that such an agreement is in place before implementation begins and that marginalised identity groups can meaningfully participate in shaping the next phase of peacebuilding and statebuilding in Nepal.

## References

- Anaya, J. 2009. *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya: Report on the Situation of the Indigenous Peoples in Nepal*. United Nations General Assembly, Human Rights Council. Geneva: United Nations.
- Cats-Baril, A. 2014. "Ensuring inclusive democracy for Nepal: indigenous peoples' case for 'direct representation' in political processes." In B. Ed Karki & R. Edrisinha, eds. *Participatory Constitution Making in Nepal: Issues of Process and Substance*. Nepal: UNDP.
- CPA (Comprehensive Peace Agreement). 2006. *Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist)*.
- Ghale, S. 2015. "Why Nepal's Janajatis feel betrayed by the new constitution." ConstitutionNet. Stockholm: International IDEA.
- Guinée, N. 2014. *Inclusive Constitution Building: Identifying Common Ground through Political Dialogues on Contentious Constitutional Issues and Indigenous Peoples' Concerns in Nepal*. Stockholm: International IDEA and Nepal Federation of Indigenous Nationalities.
- ICG (International Crisis Group). 2011. *Nepal: Identity Politics and Federalism*. Asia Report no. 199. Brussels: ICG.
- ICG. 2016. *Nepal's Divisive New Constitution: An Existential Crisis*. Asia Report no. 276. Brussels: ICG.
- International IDEA. 2015. *Nepal's Constitution Building Process: 2006-2015 Progress, Challenges, and Contributions of International Community*. Stockholm: International IDEA.
- Kelles-Viitanen, A. & A. Shrestha. 2011. *Gender Equality and Social Inclusion: Promoting the Rights of Women and the Excluded for Sustained Peace and Inclusive Development*. Kathmandu: United Nations.
- Neelakantan, A. et al. 2016. *Peace, Power and Inclusive Change in Nepal: Political Settlements in Practice*. London: Conciliation Resources.
- Strasheim, J. & S. Bogati. 2016. *Nepal's Quest for Federalism: A Driver of New Violence*. GIGA Focus Asia. Hamburg: German Institute of Global and Area Studies.

### THE AUTHOR

**Clare Castillejo** is a research associate at the Overseas Development Institute. She specialises in governance and rights in fragile states, with a particular interest in inclusive peacebuilding and statebuilding, and has worked with donors, UN agencies, think tanks, and NGOs on a range of conflict- and peacebuilding-related issues. Her main areas of expertise are South Asia, West Africa, and the Middle East and North Africa. She has an MA in the anthropology of development from the University of London.

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