

Women in Peace and Transition Processes

November 2016

Name of process

Constituent Assembly after the peace agreement

Type of process

Constitution-making

Modality of women's inclusion

- Direct representation at the negotiation table
- Mass action

Women's influence

Limited influence due to:

- Major political leaders, who made decisions outside of the Constituent Assembly, in exclusive fora that women could not access;
- Women from various parties in the Constituent Assembly who did not form strong coalitions around shared priorities relating to women's rights and broader concerns;
- Women's low levels of formal education, literacy, and political experience; and
- Ultimately, the Constituent Assembly that did not succeed in adopting a new constitution before its tenure expired in 2012.

Nepal (2008–2012)

Nepali women's groups played a prominent role in the popular movement that brought down King Gyanendra's authoritarian rule in 2006. This paved the way for the Comprehensive Peace Agreement between the Government of Nepal and the Maoist armed group, which had been fighting since 1996. The key mechanism for implementing this peace agreement was the Constituent Assembly, tasked with establishing a new set of principles to govern Nepal, including drafting a revised constitution. The Constituent Assembly featured 33 percent women throughout all delegations. For Nepal, this level of representation was remarkable: until 2007, women had never comprised more than six percent of the country's parliamentarians.¹

I. Background

Nepal is a country fragmented along caste, gender, and ethnic lines. The country's 100 ethnicities are roughly divided into: the Hill groups, the Madhesi from the Southern plains, and the Adivasis/Janajatis, those known as the Indigenous. Power has long been concentrated in the hands of two hill-based Hindu castes—the Chhetris/Ksatriya and Bahun/Brahmins²—as well as the urban-based Newar.

Nepal is listed at the low end of the Human Development Index and ranks 108 out of the 155 countries in the 2014 Gender Inequality Index.³ Nepali women face many forms of discrimination; not only on the basis of gender, but also intersectionally around caste, ethnicity, and religion, among others.

Human development indicators also reveal persistent disparities between men and women.⁴ Figures for 2014 showed that only 18 percent of women had attained at least a secondary level of education, compared to 38 percent of men. This discrepancy also exists around access to the labor market.⁵ Historically, the few women holding influential political positions tended to be from higher castes or were close relatives of male politicians.⁶ Today, thanks in part to the precedent set by the first Constituent Assembly, Nepali women hold approximately 30 percent of parliamentary seats.⁷

Nepal was a monarchy for 240 years; from 1846 to 1951, however, this was undermined by the autocratic rule of the Rana regime—a small family of elites who seized control. In 1959, Nepal held its first democratic elections, but a year later, King Mahendra dissolved the parliament and re-imposed direct rule. He introduced the Panchayat system of self-governance, which remained in place from 1962 until 1990.⁸ During this time, political parties were banned and power rested with the royal family. In 1990, the “People’s movement” secured a multi-party system for Nepal.

Reacting to widespread exclusion and discrimination, a Maoist rebellion emerged in 1996 in the remote regions of Nepal’s Midwestern hills, spreading rapidly. In 2001, the Maoist insurgency gained momentum across the country, prompting the declaration of a state of emergency and the mobilization of the army. In addition to addressing political and economic discrimination, the Maoists advocated for women’s liberation from oppressive social, cultural, and religious structures. Indeed, women assumed an active role in the Maoist movement—an estimated 24 percent of combatants were women⁹—though they rarely obtained leadership roles.

From 2001 to 2005, several peace negotiations occurred between the Maoists and the government of Nepal. After King Gyanendra dismissed the Nepali Congress-led government and imposed direct rule for the second time, sidelined political parties formed a coalition, known as the Seven Party Alliance, and allied with the Maoists in a strategic coalition aimed at toppling the King.

Rising popular discontent with the monarchy erupted into protests in April 2006, leading to the king’s peaceful abdication and the parliament’s reinstatement (the monarchy was formally abolished in 2008). Finally, the Maoists and the government signed the Comprehensive Peace Agreement in November 2006, committing to “end discrimination based on class, caste, ethnicity, gender, culture, religion and region and to address the problems of women, Dalits, indigenous people, ethnic minorities (Indigenous groups), Terai communities (Madhesis), oppressed, neglected and minority communities” and to reconstruct the state “in an inclusive, democratic and forward looking manner.”¹⁰

The Constituent Assembly became the most representative body of its kind in Nepal's history in terms of gender, caste, and minority inclusion

The most important mechanism for implementing the Comprehensive Peace Agreement was the establishment of the Constituent Assembly. The Assembly was mandated by the interim constitution of Nepal (2007) to: 1) draft a new, permanent constitution, and 2) act as legislature/parliament until the constitution was adopted and a new legislature convened. The peace agreement also mandated the adoption of a proportional representation mechanism and a quota for women (as well as other marginalized groups) in the new Constituent Assembly¹¹. As a result, it became the most representative body of its kind in Nepal's history in terms of gender, caste, and minority inclusion (and more inclusive than many parliaments worldwide).¹²

However, although women's inclusion in the Constituent Assembly was mandated, they faced various forms of coercion, ranging from informal threats to acts of physical, psychological, and sexual violence. Seventy percent of all female Constituent Assembly members faced some form of violence as a result of their political participation. The main perpetrators of this violence were the security forces, including the police and army, but also employers and family members.¹³ In addition, 36 percent of the 197 women involved in the Constituent Assembly faced legal action due to their political involvement.¹⁴ Within the Assembly, women routinely struggled with male politicians' negative attitudes and behavior toward them.¹⁵

In 2008, the country held elections to form the Constituent Assembly. The Maoists won an unexpectedly large number of seats, cementing their transition from armed group to political party. Numerous legal requirements and disputes delayed the drafting of a new constitution, however, and the Assembly's tenure expired in 2012 without a finished constitution. Core disagreements were related to the future structure of the federal government and how to integrate former Maoist combatants into the army. Elections for a new Constituent Assembly took place at the end of 2013. This second assembly (not examined in this case study) finally adopted a new constitution in 2015, and Nepal became a federal republic.

Actors involved in the process

All members of the Constituent Assembly were drawn from political parties and chosen via national election in 2008. The largest parties were the Unified Communist Party of Nepal (Maoist), the Nepali Congress, the Communist Party of Nepal (Unified Marxist-Leninist), and the Madhesi Front. These four parties effectively controlled the Constituent Assembly committees. In total, 26 different parties were represented in the Assembly (this would subsequently rise to 30 due to splits among the parties).¹⁶ In addition to the main four, the list included other political, ethnic, regional, and fringe left- and right-wing parties.

Women Involved in the Process

The Constituent Assembly included a quota of 33 percent for women, resulting in 197 out of 601 seats

The Constituent Assembly included a quota of 33 percent for women, resulting in 197 out of 601 seats.¹⁷ At the time, this gave Nepal the highest percentage of women parliamentarians in Asia and the fifteenth-highest worldwide.¹⁸ Nepal has a long history of women's organizations, dating back to at least the 1948 Nepal Women's Association, if not earlier.¹⁹ A new wave of women's engagement took place during the April 2006 People's Movement.²⁰ Some women's groups have primarily adopted political party agendas; others represent specific ethnic or religious groups, castes, or geographic regions. While many operate across Nepal, most are based in Kathmandu. During the peace process, several women's networks were active, including Shanti Malika (formed in 2003), the Women's Alliance for Peace, Power, Democracy and Constituent Assembly (formed in 2007 and later renamed Sankalpa), and Women Acting Together for Transformative Change.²¹ This case study focuses on the roles of organized women's groups in the Constituent Assembly, including women's coalitions, or networks, as well as the roles of female delegates to the Assembly. It also considers the role of women's groups, including civil society organizations and networks, alongside the Constituent Assembly process.

Modalities of Inclusion of Women's Groups²²

Two modalities of women's inclusion prevailed in Nepal. First, organized women's groups were part of mass mobilizations. Demonstrations demanding a larger role for women helped secure them a place in the drafting committee for the interim constitution. Second, women were direct participants in this drafting committee and in the Constituent Assembly. As part of the Assembly's work, the committees also held consultations, which could be considered a third modality of women's inclusion. However, there are no records of the input received or how it was incorporated (as such, this third modality is not examined here).

1 | Mass Action

Women's active participation in politics and civil society intensified after the 1990 constitution guaranteed women's right to free expression and organization.²³ Women actively took part in the mass mobilization that brought down the authoritarian regime in 2006. During the peace process that followed, activists called for women's greater inclusion in the exclusive negotiations. In June 2006, the Maoists and seven other political parties signed an eight-point understanding that not only guaranteed the right of the Nepali people to participate in the Constituent Assembly, but also stated the importance of solving "gender-based problems through assembly elections."²⁴ Despite women's prominent role in the Maoist forces,²⁵ not a single female delegate signed this understanding or was even included in the decision-making process. Soon after, women's lobbying and protests resulted in four female delegates joining the interim constitution drafting committee, alongside 12 men.²⁶ Although the drafting committee was dominated by male leaders, this helped secure more inclusion for women in the subsequent Constituent Assembly.

In 2009, another tangible result of women's mass action emerged. Women Acting Together for Change, an umbrella organization for local women's groups, organized a march of more than 10,000 rural women in the Kathmandu Valley, where they presented a list of demands to members of the Constituent Assembly's committees to be considered in the constitution drafting process. As a result, some political parties adopted a gender-equality agenda.²⁷ Because of the design of the Constituent Assembly's committees, it remains unclear how these demands were incorporated in their drafts.

2 | Direct Representation

Interim Constitution Drafting Committee

Some political parties had the right to nominate representatives to the interim constitution drafting committee. The Seven Party Alliance and the Maoists first selected a group of six men to represent them. However, a segment of the Maoists and other small parties protested against the committee's composition; this led to its expansion to 16 members, including indigenous (known as Adivasis or Janajatis), Madhesi, and Dalit representatives and other small parties. Four of these 16 delegates were women.²⁸

The members were expected to be independent, but because they were appointed by political parties, they largely followed party lines. In theory, each member had equal decision-making power, but decisions were nonetheless dominated by a few influential male actors from higher castes. Additionally, the interim constitution required consensus from the political parties. As a result, Dalits, indigenous peoples, and women had little power to push for particular issues. No public hearings were organized. Although the general public submitted a large number of recommendations, they were classified as confidential, and there is no evidence that they were incorporated.²⁹

The interim constitution played a vital role in guaranteeing women's inclusion in the upcoming Constituent Assembly

The interim constitution played a vital role in guaranteeing women's inclusion in the upcoming Constituent Assembly. In fact, women's inclusion in the Assembly was possible because of a proposal submitted by two female members of the House of Representatives: Bidhya Devi Bhandari, of the Communist Party of Nepal (Unified Marxist-Leninist), and Kamala Pant, of the Nepali Congress. This proposal, along with favorable timing and support from the political parties,³⁰ resulted in the inclusion of milestone issues in the interim constitution, such as the 33 percent representation quota for women in the Constituent Assembly and in all state bodies, as well as the abolition of some discriminatory laws against women.³¹

Constituent Assembly

The Constituent Assembly Election Act of 2007 mandated that the political parties present candidates in proportion to their share of the Nepali population. This requirement, which only applied to candidates in the proportional electoral system, extended to include gender diversity in these groups. For example, Dalits are 13 percent of the total Nepali population, so 6.5 percent of candidates had to be Dalit women and 6.5 percent had to be Dalit men.³² Thus, inclusion on the proportional representation ballot translated directly to representation in the Constituent Assembly. The assembly included 601 members from 26 different parties, which later increased to 30 parties.

Decision-making within the Constituent Assembly took place directly in the plenary or in thematic committees, in which proposals were accepted or rejected by a majority vote. The Assembly operated through 11 thematic and three procedural committees. All thematic committees, once they finalized their proposals, submitted their reports to the Constituent Assembly's plenary for discussion. These reports were prepared in consultation with experts, activists, civil society leaders, and other citizens. Though it is difficult to pinpoint the origin or authorship of suggestions made to the 11 committees, it is clear that these proposals sent a strong message regarding the inclusion and empowerment of women. They covered a wide range of issues, from proportional appointments and women's representation in all organs of the government, to special provisions for the protection of women against violence and discrimination. This agenda was reflected in the committees' reports; one committee proposed special protections for women rights, and three supported the creation of a women's constitutional commission.³³ This commission aims to protect and promote women's rights and interests. Among its various legal mandates, it monitors policies and programs and carries out gender equality research.³⁴

Even though women were represented in each of the 11 thematic committees, they only occasionally overcame differences to speak with a common voice

Finally, once the committees' reports were ready, the Constituent Assembly held discussions and voted based on a simple majority vote, except for certain issues that necessitated special voting procedures. Provisions for the new constitution required a unanimous vote in the first round and, upon failure to achieve this, a two-third majority in the second round. Even though women were represented in each of the 11 thematic committees, they only occasionally overcame differences in ideologies and party interests to speak with a common voice.³⁵ Several factors enabled or constrained women's participation, which will be discussed in the following section.

II. Analysis of Women's Influence: Enabling and Constraining Factors

In Nepal, women's participation in the Constituent Assembly was achieved through a quota system, which led to 197 female Assembly members out of 601.³⁶ A variety of factors either enabled or constrained these women's ability to influence the process. These factors included significant resistance among major political parties (mainly male actors) and the lack of a collective women's voice. The following process and context factors enabled or constrained women's influence.

Process Factors

1 | Selection Criteria and Procedures

Representatives to the Constituent Assembly were chosen through a national election process in April 2008. Approximately 40 percent of seats were allocated according to a first-past-the-post system, 56 percent were allocated according to a proportional representation system,³⁷ and four percent were allocated directly by the Council of Ministers for their contributions to Nepali society.³⁸ The proportional representation system enabled women's representation in the Constituent Assembly, as it favored candidates from smaller parties and less prominent candidates, as well as those whose support was not concentrated geographically. Of the 197 women elected, 30 were elected through the first-past-the-post system, 161 through proportional representation, and 6 were chosen by the Council of Ministers.³⁹

A proportional representation system is perceived as more favorable to the representation of women and other marginalized groups, because parties are unable to discriminate against these candidates (e.g., by withholding campaign funding, fielding them in unwinnable seats etc.).⁴⁰ In addition, the electoral quotas stipulated in the interim constitution (2007) and the Election to Members of the Constituent Assembly Act (2007) guaranteed for the first time that women from Dalit, Indigenous, and Madhesi groups (among others) participated in the Constituent Assembly.⁴¹ These quotas increased women's representation in the Assembly overall, which enabled women to raise gender-related issues and participate in the constitution drafting process.

Increased representation of women in the Constituent Assembly did not have a proportional impact on their influence

Even though the proportional representation and first-past-the-post systems facilitated women's *presence* in the Constituent Assembly, they did not have a proportional impact on women's *influence*. Proportional representation allowed for greater numbers of women Assembly members. On the other hand, women and men elected on first-past-the-post ballots were more accountable to their constituencies and perceived as holding greater legitimacy.⁴² A closer look at the women elected to the Constituent Assembly reveals that 28 families (husbands and wives) sat in that body.⁴³ This may be because under the proportional representation system,

each party had to present their own closed lists of candidates.⁴⁴ This left room for male politicians to favor the nomination of their own relatives. In fact, most of the women who ran or got elected were the wives, widows, or daughters of male politicians.⁴⁵ This form of “family-friendly” politics likely undermined the women’s ability to collectively pursue a common and distinct agenda.

The relatively high numbers of women and other politically marginalized groups that were included in the Constituent Assembly did not translate into substantive representation. Although women attended sessions more regularly than the average member, in the plenary they did not express themselves as frequently as men or advocate strongly for a distinct agenda. This may be partly explained by women’s overall lack of parliamentary experience and their limited ability to contribute independently from their political parties.⁴⁶

2 | Decision-Making

Male political elites undermined the inclusive decision-making processes by deciding issues in informal political meetings

Decisions were intended to be made either on a majority voting basis or in the plenary. However, many contentious committee reports were forwarded to the constitutional committee within the Constituent Assembly. For these reports, there were no plenary discussions, and none of the issues raised were voted on. Senior political leaders, invariably male, used this lack of agreement to justify taking over the decision-making process. Thus, instead of discussing options in the plenary, contentious issues were decided on behind closed doors in high-level political meetings, which were often kept secret from even fellow party members. Therefore, despite the unprecedented presence of women in the Constituent Assembly, they were not given equal decision-making opportunities.

3 | Coalition Building

A women’s caucus was established in the Constituent Assembly with the purpose of including a gender perspective and ensuring women’s rights in the new constitution. However, it was never granted a formal status. It was initially formed by women from particularly marginalized groups—the Dalits, Indigenous groups, and Madhesis—but ultimately included all 197 women from 19 political parties. This caucus enabled women to develop and advocate a distinctive agenda across party lines, but it struggled to bridge caste, class, and cultural divides. The caucus also failed to overcome other difficulties, such as the prioritization of party loyalties over the women’s common agenda, and the alliance was not strong enough to overcome the male dominance of the Constituent Assembly.⁴⁷

4 | Transfer, Communication, and Advocacy Strategies

Women's movements used a variety of means, including petitions, media, workshops, and weekly demonstrations, to voice their agenda

Women's movements used a variety of means, including petitions, media, workshops/ seminars, and weekly demonstrations, to voice their agenda.⁴⁸ In 2006, they drafted a "Charter for Equality," subsequently endorsed by 300 Nepali women. The charter was used to promote discussion and decision-making among women on different Constituent Assembly committees. It included security sector and economic reform, social equality and inclusion, and human security, among other issues.⁴⁹ However, there is not enough evidence to assess the extent to which this charter was included in the various committees' drafts.

During the constitution-making process in the Constituent Assembly, some women's organizations and networks articulated specific recommendations—principally to prohibit discrimination based on sex, gender, age, or marital status—even though the activities of women's organizations overall became more fragmented. In addition, consultations held by Constituent Assembly committees resulted in reports that advocated for women's rights and provisions and were directly transferred to plenary discussions. Among other issues, women advocated for equality, proportional representation of women in all state institutions, and the recognition of the women's caucus as a formal body. Ultimately, however, decisions in the Constituent Assembly did not favor any of these issues, due to the adverse factors described in this case study.⁵⁰

Context Factors

1 | Presence of Strong Women's Groups

Strong women's groups also supported mass action, a common mechanism used to influence peace processes (more than any other group, women have used mass campaigns in favor of peace agreements).⁵¹ For example, according to female Maoist leader Hisila Yami Parvati, women were much more effective than men in mobilizing the population because they had access to other members of the household.⁵²

Women's groups supported by international actors facilitated several initiatives to promote gender perspectives in the Comprehensive Peace Agreement and interim constitution, which effectively led to the quotas for women and other disadvantaged groups in the Constituent Assembly. Considering the patriarchal and hierarchical structures of Nepali society, the inclusion of women in the Assembly was an important first step for women to increase their influence. The Nepali case shows, however, that women's representation in negotiations does not necessarily lead to proportional influence or achievement of outcomes.

2 | Heterogeneity of Women's Identities

There was great diversity of ethnicity and caste among the women members of the Constituent Assembly. This often led to women articulating specific political demands that reflected their identity groups, rather than finding common ground on women's issues. For example, Dalit women focused on caste-based discrimination, whereas Indigenous women focused on issues such as the recognition of language and identity and the restructuring of the state to provide for regional autonomy. This division hindered the women's caucus from achieving its potential as a unified voice for women in the Constituent Assembly, therefore limiting their ability to influence the transition process. However, women in the Assembly did successfully advocate for issues such as the right to inherit, equality in attaining citizenship, and recognizing the women's constitutional commission.

3 | Preparedness of Women

Many women representatives were impeded by limited education and literacy, as well as a lack of experience and understanding of the political system

The traditional exclusion of women from many realms in Nepali society, such as education and politics, may have constrained women's influence on the transition process. For example, many women representatives were impeded by limited education and literacy, as well as a lack of experience and understanding of the political system. Only 27 out of the 197 women in the Assembly had previous parliamentary experience.⁵³

4 | Elite Resistance or Support

Women benefited tremendously from the Maoist movement's ideology. Women's empowerment was an important component of the Maoists' revolutionary agenda. Without the Maoist movement and its armed struggle for change, it is unclear whether issues relating to gender and women's rights would have made it onto the agenda of the peace and constitution-making processes.

On the other hand, women in the major political parties had historically been subordinate to male leaders—a hierarchical structure that essentially remained in place during the Constituent Assembly.⁵⁴ For instance, in some cases, women's opportunities were determined on the basis of their loyalty and kinship to particular leaders, rather than on merit.⁵⁵

Approximately 35 percent of women in the Constitution Assembly cited a lack of support from male members as the major challenge impeding the inclusion of a gender perspective in the constitution. Seventy percent stated that gender issues were not considered a real priority or taken seriously by male members.⁵⁶

5 | Public Buy-in

Initially, the Constituent Assembly had widespread political and societal support. This gradually eroded, however, as debates within the Assembly became politicized and the parties appeared unable to resolve their differences. This lack of agreement led to two extensions of the Assembly's term. This was exacerbated by the authoritarian nature with which a handful of senior leaders monopolized the decision-making process, resulting in significant public fatigue. Fading public support also had an indirect impact on women's influence. It undermined the legitimacy of the Constituent Assembly and further enabled political leaders to make decisions outside of this structure, thus circumventing women's participation.

III. Conclusion

Women's representation in the Constituent Assembly was high thanks to a quota system, which resulted in 33 percent representation. This quota system was possible thanks to a joint effort of two women members of the House of Representatives, favorable timing, and support from the political parties. In addition, women were represented in all 14 of the Assembly's committees.

However, women's overall influence in the Constituent Assembly was limited, because male political elites undermined inclusive decision-making processes and made major decisions behind closed doors. Women were also underrepresented in the Cabinet of Ministers in all three governments formed during the Constituent Assembly.⁵⁷

Ultimately, although the Assembly failed to adopt a new constitution, its composition transformed a unitary state into a more inclusive one with unprecedented levels of representation of women and ethnic minorities. In 2015, a new constitution was created by a second Constituent Assembly. Further study is needed to examine women's roles in this second Assembly and whether the foundations laid by women in the first and second assemblies affected the final document.

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Acknowledgments

This case study was written by Estefanía Charvet based on research conducted in 2016, and on information gathered in an unpublished background case study on Nepal (2005-2012) authored by Ashish Pradhan as part of the Broadening Participation Project. Both the original and this case study on women's inclusion in Nepal benefitted from several rounds of expert reviews. Our sincere appreciation goes to Martin Stürzinger who both reviewed the initial background case and provided useful clarifications on some of the aspects discussed in this case study. In appreciation of their in-depth comments and editing, we would like to give special thanks to Inclusive Security and in particular to Marie O'Reilly, Kristin Williams, and Jacqueline O'Neill. We are also grateful to Bhojraj Pokharel and Leena Rikkila Tamang for sharing with us their thorough analysis and suggestions.

Women in Peace and Transition Processes

Case studies in this series are based on findings of the “Broadening Participation in Political Negotiations and Implementation” research (2011-ongoing), a multi-year, comparative project led by Dr. Thania Paffenholz at the Graduate Institute of International and Development Studies, Geneva. The Broadening Participation project examines how and under which conditions various actors participate in and influence peace and political transition processes. The project’s dataset so far comprises 40 mainly qualitative case studies of negotiation and implementation processes, covering 34 countries and ranging from 1989 to 2014. These cases are categorized according to a range of groups of included actors and a framework of seven inclusion modalities developed by Dr. Paffenholz. Among the case studies under review for this project, 28 included measurable involvement of women. In this context, women were defined as relatively organized groups, including delegations of women, women’s civil society organizations, coalitions, or networks, which sought inclusion in peace negotiations and the implementation of agreements. The project did not investigate the role of women as mediators. For more information, see: www.inclusivepeace.org.

The creation of this series of women case studies was made possible in part through a contribution from Inclusive Security and UN Women, and the original research project was supported by the Governments of Norway, Switzerland, Germany, Finland, and Turkey. The Broadening Participation Project research was conducted in cooperation with Bilkent University in Ankara under the lead of Dr. Esra Çuhadar. The case study research additionally benefitted from cooperation with Tufts University in Boston in 2013 and 2014 under the lead of Dr. Eileen Babbitt.

The Inclusive Peace and Transition Initiative (IPTI) is dedicated to evidence-based research and its transfer to policy and practice. The objective of the initiative is to support sustainable peace by providing expertise and information on the inclusion of diverse actors in peace and transition processes. This expertise is drawn from a collection of research projects that have been conducted for nearly a decade at the Graduate Institute of International and Development Studies in Geneva under the lead of Dr. Thania Paffenholz.

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Suggested citation: “Women in Peace & Transition Processes. Nepal (2008–2012)”, Geneva: Inclusive Peace and Transition Initiative (The Graduate Institute of International and Development Studies), November 2016.

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