

Nepal's elections: new prospects for peacebuilding?

By Clare Castillojo

■ Executive summary

This expert analysis examines the main internal and external blockages to peacebuilding in Nepal. It explores the factors that led to the stalling of the Nepalese political process, from the weakness of the country's political parties to the rise of polarised, identity-based politics. It also examines those barriers to progress on peacebuilding that have been eclipsed by the focus on political negotiations, such as lack of justice, structural inequalities and a weak state-society contract.

The analysis goes on to address the role of external actors in shaping Nepal's peacebuilding process. It argues that strategic competition between China and India has exacerbated national tensions in Nepal and undermined key elements of peacebuilding, although China has also played an important economic and development role. While international actors have provided much-needed assistance to Nepal, they have largely failed to use their leverage to promote progress in the most challenging areas, such as the renegotiation of the political settlement and ensuring respect for human rights. Finally, the analysis assesses the prospects for progress following elections for a new constituent assembly and identifies entry points for international actors to help unblock the peace process.

Elections for a new constituent assembly (CA) in Nepal will take place in November 2013. The previous CA was dissolved in 2012 after four years (and multiple mandate extensions), during which it failed to reach consensus on the fundamental nature of the new Nepali republic or agree on a constitution.

The CA is the principal mechanism to renegotiate Nepal's political settlement towards one that is more inclusive and addresses the grievances that fuelled conflict. Its failure has not only created a political stalemate, but has stalled peacebuilding and created space for political fragmentation and extremist agendas. Can the election of a new CA revitalise Nepal's paralysed peace process?

This expert analysis will examine the main blockages to peacebuilding in Nepal and ask how the November elections could create new opportunities or risks for peace. It will also explore the international community's role in advancing peacebuilding in Nepal.

Peacebuilding stumbling blocks

Nepal's decade-long conflict ended in 2006 with a Comprehensive Peace Agreement (CPA) between the government and the Maoist rebels. There have since been peacebuilding achievements in a number of areas. These include the Maoists' integration into mainstream politics; the establishment of an interim constitution and the election of the 2008 CA; and demobilisation processes that included the integration of Maoist soldiers into the national army. However, further progress on peacebuilding has stalled for a number of reasons.

Conflicting visions of federalism

At the heart of the last CA's failure was disagreement over the nature of the Nepali state. The marginalisation of certain ethnic, caste and regional populations was a root cause of conflict.¹ All the actors involved in peace negotiations agree that a more inclusive state – articulated in a federal model – is required.² However, they profoundly disagree over the nature of this federal model. Federalism

1 Nepal's identity politics is extremely complicated. There are more than a hundred ethnic groups spread across the country and complex systems of caste that vary among communities. Access to power and resources is mediated by these multiple and interconnected ethnic, caste and regional identities.

2 Commitments to federalism are included in the interim constitution and were a binding commitment for the CA.

has in effect “become a powerful symbol for a wider agenda of inclusion, which encompasses other institutional reforms to guarantee ethnic proportional representation and a redefinition of Nepali nationalism to recognise the country’s ethnic and cultural diversity” (ICG, 2011: 1).

Ethnic federalism is central to the Maoists’ agenda and their credibility has been weakened by their failure to deliver this, despite having been the largest party in the previous CA.³ Newly emerged forces representing marginalised populations – in particular the Madhesi parties and *janajati* groupings⁴ – also demand ethnic federalism and formed an unlikely alliance with the Maoists on this. However, the two largest traditional parties – the Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist-Leninist) (UML) – along with smaller right-wing parties reject ethnic federalism as undermining national unity, meritocracy and individual rights. An ethnic federal model would certainly reduce the power of the Brahmin and Chhetri communities who comprise this traditional elite.

This complex political picture reflects a struggle between groups that were disadvantaged and those that were privileged by the old political settlement, with each promoting a federal model that serves its interests. What is required is a political process that can negotiate these differing interests, promote compromise, and build consensus for a settlement that is acceptable and legitimate enough for all. Nepali politics is not currently fit to play this role.

Problematic nature of Nepali politics

The problematic nature of Nepali politics has been a major barrier to overcoming tensions and building consensus, both in the CA and broader Nepali society. Nepal’s political parties are weak and personalised, with undemocratic structures and decision-making processes. Moreover, the unstable nature of Nepal’s political system (with 20 prime ministers in the last 20 years) keeps parties focused on gaining or regaining power rather than developing or delivering on a policy agenda.

Hopes were high that the last CA would break with this unstable and undemocratic politics, but it did not. In fact, the CA wasted significant time and energy on continued changes of government, with five prime ministers in four years. Critically, Nepal’s political parties lacked the capacity to address the complex political challenges involved in renegotiating the political settlement and instead became bogged down in political wrangling. Without the internal democracy needed to build intra-party consensus or effectively represent their members on these highly charged issues, 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 such as ethnic demands. Critically, in 2012 the Maoist party split and a significant minority broke away to form a more radical party, arguing that the Maoist leadership had abandoned its revolutionary principles and made too many concessions during the peace process.

Rise of identity politics

Identity has become the central axis for political mobilisation in post-conflict Nepal. As Sunam and Goutam (2013) explain, “the conflict succeed[ed] in providing marginalized populations – particularly dalits⁵ ... women, the landless and ethnic and indigenous people – with a wider political space to articulate their grievances”. Following the end of the conflict many of these identity groups and their demands were brought into formal politics through inclusion in the CA. Meanwhile, at the grassroots level multiple identity-based protest and rights movements have emerged.

The rise of identity politics has been positive in giving voice to marginalised groups. However, Nepal’s flawed political institutions have not provided effective channels to articulate and negotiate these identity-based agendas. This has resulted in rising levels of extremism, ethnic tension, and violence, and a growing multiplicity of identity-based actors. The International Crisis Group (ICG, 2012: 11) suggests that “polarizing ethnic politics is encouraged because mainstream political actors are scattered, often vague and sometimes dishonest, distracted by mutual sniping and prone to make undemocratic ... deals”.

Nepal’s identity politics will not go away, nor should it. In fact, Neelakantan (2012) argues that “identity will become more prominent. This can look like fragmentation, but for people in the districts and outside politics this is about creating new categories to better reflect their aspirations.” It is therefore vital that a new CA should emerge that can channel and negotiate these aspirations towards a new political settlement. The alternative is more violence and polarisation. Managing Nepal’s identity politics requires traditional political parties to change their practices by listening and responding to identity-based demands. It also requires leaders of identity groups to draw back from polarised positions and seek compromise.

Justice and accountability

Although the clearest failure has been in the political arena, there are other areas where peacebuilding has stalled, notably justice and accountability. The conflict in Nepal was characterised by extensive human rights abuses on both sides. Continued impunity for perpetrators, the

3 Ethnic federalism involves the establishment of provinces and the distribution of power based on ethnic lines.

4 The Madhesi are a historically marginalised population in the Terai region bordering India, where they have strong ethnic and linguistic cross-border ties. The *janajatis* are Nepal’s various indigenous populations. In the last CA ethnic assembly members formed a *janajati* caucus.

5 *Dalits* are the social group defined as the lowest caste within the Hindu caste system. They face extreme levels of social and economic exclusion.

lack of justice for victims, and an overall failure to address the legacy of violence or broader challenges of accountability remain major barriers to peacebuilding.

The CPA mandated the establishment of transitional justice structures, including a truth and reconciliation commission (TRC), a commission on disappearances, a high-level peace mechanism, interim relief provision and local peace committees. However, to date only local peace committees and interim relief measures have been implemented. In March 2013 an ordinance was finally enacted to establish a TRC. However, the planned TRC fails to meet international standards because it allows amnesties for gross violations; lacks political independence, because key figures will be political appointees; and does not adequately address victim support. Moreover, it was developed without consultation with victims, human rights activists or the National Human Rights Commission. Unsurprisingly, the plans for this TRC have caused anger in Nepal and internationally. Varughese and Luster (2013) ask, “how has a reconciliation-oriented mechanism managed ... to cause such deep disagreements, frustrations and tensions in society?”

The establishment of a flawed TRC is part of a broader pattern in which political leaders have consistently side-stepped promises of justice and fostered impunity. This can be seen in the recent failure to appoint new commissioners to the National Human Rights Commission and in the promotion of army officials accused of gross human rights violations.⁶ This pattern of impunity is in part because the two most powerful institutions in Nepal – the army and the Maoists – were responsible for the vast majority of human rights abuses.⁷ However, it is also because the political process has come to take priority over all other aspects of the peace process. As Human Rights Watch (2013) argues, “this [TRC] ordinance is just the latest example of the Nepali government’s cynical willingness to trade meaningful justice and accountability for political expediency”. While there is international pressure for transitional justice, this cannot compensate for the lack of political will in Kathmandu. In fact, on some occasions Nepal’s politicians have dismissed demands for justice as an “international agenda”.

This failure to deliver transitional justice must be understood as part of the broader challenges of weak rule of law and the lack of accountability of those in power. This can be seen not just in relation to justice, but also in growing corruption, the political capture of public goods, and a bloated and unaccountable security sector. Rather than being sidelined as secondary to the political process, justice and accountability should be understood as central political issues that are connected to decisions about the political settlement, the nature of the state and the exercise of power.

Structural drivers of conflict

The structural inequalities experienced by large sections of Nepal’s population were central drivers of conflict, and the CPA committed to address these. Local-level efforts to address these inequalities – frequently supported by international donors – have had some impact. However, political wrangling about federalism has diverted attention from the broader structural changes required to promote inclusive development. These include land reform (a commitment under the CPA), as well reforms directed at improving access to services and building human capacity in marginalised communities, and generating inclusive and employment-producing growth.

Critically, democratic local governance structures have been absent for more than a decade, making it difficult for people to access local public goods, improve the management of local resources, or hold the state to account at the local level. Strengthening state legitimacy and the state-society contract requires citizens to experience the state as both effectively delivering and being accountable for basic goods and services. This remains a major challenge in Nepal, where the state’s absence or weakness at the local level means that non-state actors frequently play this role.

The role of external actors

External actors play a complex role in post-conflict Nepal. They provide much needed support, but have also exacerbated tensions and blocked peacebuilding progress.

India and China

Nepal’s history has been shaped by its position as a buffer between China and India. Current challenges in consolidating peace must be understood within the context of this historical position and of increasing strategic competition between China and India for influence in Nepal and more broadly across the South Asia region.

Nepal is a traditional ally of India and there are close political, security, economic and cultural ties between the two countries.⁸ India offers Nepal economic opportunities through an open border in return for high levels of influence over its foreign and security policies. However, following the overthrow of Nepal’s monarchy, this Indian dominance has been threatened by a number of factors. These include the integration of the Maoists (who held a strong anti-Indian agenda) into political and security institutions previously dominated by elites close to India, as well as China’s growing engagement in Nepal.

Deeply concerned at this loss of influence, India has consistently obstructed peacebuilding progress by attempting to micro-manage Nepali politics; blocking the implementation of key aspects of the CPA, such as Maoist

6 For example, in 2012 Colonel Raju Basnet was promoted to brigadier-general despite facing allegations of torture, forced disappearance, rape and murder, and despite protests by national and international rights bodies.

7 The Maoists called a strike and its leader personally intervened in September 2013 when a Maoist cadre was arrested for a conflict-related murder.

8 For example, India accounted for just over half of all Nepal’s external trade in 2010 [European Commission, 2013].

integration into the national army; and undermining international actors who it views as too supportive of the Maoists (including pushing for the UN Mission in Nepal's (UNMIN) mandate not to be renewed in 2011). India's priority appears to have been retaining Nepal as a client state even at the cost of significant instability in the country. However, a partial rapprochement between India and the Maoists earlier this year could reduce India's anxieties and encourage it to play a more positive role.

China has traditionally played a limited role in Nepal, where its priority is stability and a strong regime that can suppress political activity by Tibetan refugees and co-operate on border security. However, since 2008 China has expanded its political, economic and security footprint in Nepal. It has dramatically scaled up its economic and military assistance, increased trade and investment, expanded its diplomatic and military missions in Kathmandu, and promoted people-to-people exchanges. Some new Chinese investments, such as a Nepal-Tibet rail link, are viewed by New Delhi as directly threatening Indian security.⁹ For its part, Nepal's government – particularly under Maoist leadership – has sought stronger ties with China as a “disinterested neighbor and remarkably attractive alternative to ‘Big Brother’ India” (Bajpai, 2010). China has developed relations with all of Nepal's political parties and repeatedly urged them to finish the peacebuilding process in order to ensure stability.

Nepal's position between an expanding China and defensive India clearly shapes its prospects for peace. Campbell et al. (2012: 82) argue that “If India [has] a destabilising influence on Nepal's peace process while China has a broadly stabilizing influence, then China's increasing engagement should have a positive effect in terms of peace and stability”. However, despite Chinese claims of “non-interference”, it seems that both regional powers want to shape Nepal's political settlement in their interests. While India wants a federal state that gives more power to the Terai region and its Madhesi population, *The Economist* (2013) claims that China “has made known its opposition to ethnic-based federalism in Nepal, fretting that Tibetans, just over the border, might get similarly uppity ideas”. In order to be viable the future Nepali state must ultimately take a form that is acceptable to both its neighbours.

International community

The international community has played an important role in establishing peace (notably through UNMIN) and supporting Nepal's post-conflict development. Since the conflict ended, international aid to Nepal has risen dramatically to 34% of government spending by 2009. International donors have largely prioritised areas that are important for peacebuilding, including delivering basic services, promoting economic growth, ensuring the rule of law and fostering inclusion. In 2011 Nepal's donors developed the Nepal Peace and Development Strategy to help

focus and harmonise their support towards full implementation of the CPA.

Despite these efforts, Pandey (2011: 4) argues that international actors in Nepal “struggle to effectively tackle the underlying structural, political and security obstacles to ensure aid effectively supports peace and development”. The impact of international support is undermined by political party capture of aid and interference in the distribution of state resources, the state's low absorption capacity, and weak rule of law. A particular criticism of international donors is that they have not engaged effectively with the political process or found ways to link other agendas, such as development and justice, to it. Adhikari (2012: 5) argues that “India led in the political process and Western donors in peace-building efforts (such as on human rights and justice). However the calibration of these two efforts was sorely absent.”

The engagement of China and India has undoubtedly reduced the influence of the international community in Nepal. International actors have been particularly frustrated at India's undermining of the internationally supported peace process. While China has played a more positive role, its growing assistance to Nepal (it is one of the country's five largest donors) has reduced the leverage of Nepal's traditional donors. This alternative source of investment has helped Nepali leaders resist international pressure on issues such as transitional justice. Traditional donors have largely failed to engage with China regarding Nepal, despite the former's growing influence.

Election prospects

The election of a new CA is a chance to revitalise Nepal's political process. There are some new factors that suggest progress might be possible this time round. These include a significant improvement in relations between India and the Maoists over the last year. This is due both to the Maoists' recognition that their anti-India stance was damaging their interests and India's realisation that its overt attempts to keep the Maoists out of power were creating significant anti-Indian feeling among Nepal's population. *The Economist* (2013) argues that “[India's] rapprochement with Nepal's Maoists, along with old ties to the Nepali Congress, suggest it could chivvy politicians to come up with a constitution this time around”. Similarly, concerns about growing instability could mean that China will press harder for a constitutional solution. In Nepal some younger political leaders are emerging who may have greater vision and be more willing to co-operate across party lines. However, perhaps most critically, the Nepali population is deeply angry at the failure of the last CA and wants a solution. While such public pressure may encourage political parties to reach a consensus, it also suggests that their failure to do so could have very serious consequences.

⁹ It is feared that this rail link could give the Chinese military rapid access to the Indian border.

However, there are also a number of important factors that could make it even harder for a CA to build consensus this time round. There has been a dramatic multiplication of political voices in recent years and November's elections are therefore likely to result in a more fragmented political scene containing more extremist agendas. Hostility among different factions – at both the political and social levels – has also grown during the years of political stalemate and will be hard to overcome. With little popular faith left in the political process, all groups are also more likely to take to the streets if they feel that their interests are not being advanced.

The election process itself has the potential to cause instability. The breakaway Maoist party is threatening to disrupt the elections. One of its central demands is that the caretaker government, which it believes represents the interests of “external powers”, be dissolved before any election is held. Basnet (2013) believes that “while they [the breakaway Maoists] are not strong enough to derail the electoral process, they can cause significant violence in over a dozen districts where they are comparatively strong”. Moreover, there has been bitter disagreement among political parties around a range of election issues, including the number of seats to be contested, constituency boundaries, the threshold for parties to gain seats through proportional representation and the eligibility of candidates with criminal convictions. While these issues are resolved for now, they remain potential flashpoints. The greatest risk is elections that are perceived as flawed, producing an illegitimate CA and widespread public unrest and prompting the disengagement of international actors.

Conclusion: what role for the international community?

The elections and a new CA offer an opportunity for international actors to engage more closely with the political aspects of peacebuilding in Nepal and with a new constellation of political actors. In doing so they should focus their attention on a number of key barriers to progress in peacebuilding:

- *Transformation of the political culture.* International actors should examine how they can promote the transformation of Nepal's political culture, e.g. by supporting the development of young leaders, promoting political party reform, fostering citizen demands for issue-based politics, and supporting accountability and oversight mechanisms.
- *A broader definition of inclusion.* Federalism debates have become focused on polarising definitions of caste, ethnic and regional identity. Through engagement with political actors and civil society, international actors should promote a wider debate that includes other forms of identity, such as age, gender or income, and that reflects the aspirations of all groups.

- *A comprehensive focus on law, justice and accountability.* While international actors do support various rule-of-law initiatives, a more comprehensive approach is needed that recognises that insecurity, impunity, and lack of justice and accountability are major and interconnected barriers to peacebuilding. This requires efforts to bring these issues back onto the main political agenda, as well as support for initiatives to improve human security, accountability and access to justice at the local level.
- *Strengthening the social contract.* For much of the population the state is absent or lacks either capacity or legitimacy. Therefore “strengthening [the] state-citizen relationship through service delivery is an essential component of sustainable peace and development in Nepal” (Pandey, 2011: 3). International actors must continue to support improved access to basic goods and services that are generally seen to be delivered by the state. This involves transition plans to move from non-state to state service provision across all sectors as soon as possible.
- *Engagement with Nepal's neighbours.* International actors admittedly have limited influence with China and India. However, they could make greater efforts to reach out to Nepal's neighbours in Kathmandu, at the capital city level and within multilateral forums. There are signs that engagement with India could be more constructive now that tensions between that country and the Maoists have reduced. Similarly, while China generally resists engagement with international actors in its region, shared interests in Nepal's stability could be a basis for limited dialogue. Given the impact of Sino-Indian tensions over peacebuilding across South Asia, international actors must also examine how best to reduce such tensions and draw both powers into multilateral engagements on peace and security.

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