**I. Background**

Nepal is a country fragmented along caste, gender, and ethnic lines. The country’s 125 ethnicities and castes are roughly divided into the Hill groups, the Madhesi from the southern plains, and the Adivasis/Janajatis, commonly referred to as indigenous peoples. Power has long been concentrated in the hands of two hill-based ethnic groups, the Chhetris/Kshatriya and Bahun/Brahmins, 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.\(^4\)
Nepali women face many forms of discrimination, not only on the basis of their gender, but also due to intersecting inequalities around their caste, ethnicity, and religion, among other factors. Human development indicators reveal persistent disparities between men and women.\(^5\) Figures for 2014 show that only 18 percent of women had attained at least a secondary level of education, compared with 38 percent of men. This discrepancy also applies to access to the labor market.\(^6\) Historically, the few women who held influential political positions tended to be from higher castes or were close relatives of men politicians.\(^7\) In 2017, owing in part to the precedent set by the first Constituent Assembly, Nepali women held 176 of 595 seats in Parliament.\(^8\) In addition, a new Constitution was promulgated in 2015, which has ensured a 33 percent representation of women in national and state Parliaments and 40 percent in local legislatures.

Nepal’s violent democratic transition has to be understood in light of its autocratic past. The country was a monarchy for 240 years, although from 1846 to 1951 it was the Rana dynasty who ruled, through a hereditary Prime Ministry. In 1951, sovereignty was restored to the monarchy, and the Rana fell. Nepal held its first democratic parliamentary elections in 1959. However, a year later, King Mahendra dissolved the Parliament and imposed direct rule. He introduced the Panchayat system of governance in 1962, which banned opposition parties and remained in place until 1990.\(^9\) In 1990, the first “People’s Movement” gathered 200,000 protesters in the capital and secured a multi-party system for Nepal through targeted pressure on the King.

With the objective of overthrowing the monarchy and reacting to widespread exclusion and discrimination, a Maoist group emerged in 1996 in remote regions of Nepal’s Mid-western hills and grew rapidly. In 2001, state of emergency was declared and the army was mobilized. In addition to addressing political and economic discrimination, the Maoists advocated for women’s liberation from oppressive social, cultural, and religious structures. Women took on an active role in the Maoist movement, and women represented 24 percent of combatants\(^10\), though they rarely obtained senior leadership roles.

King Gyanendra dismissed the congress-led government and imposed direct rule. In response an alliance of sidelined political parties known as the Seven Party Alliance agreed a strategic alliance with the Maoists with the aim of ending the autocratic rule of the King. Rising popular discontent with the monarchy erupted into protests in April 2006, known as the second People’s Movement, leading to the reinstatement of Parliament. The restored Parliament then suspended the monarchy.\(^11\) In November 2006, after several rounds of peace talks between the Maoists and the Government of Nepal, the parties signed the Comprehensive Peace Agreement committing to end all discrimination, including based on gender, and to reconstruct the state “in an inclusive, democratic and forward looking manner.”\(^12\) This was despite the fact that the process did not include any women representatives.
Implementation of the Comprehensive Peace Agreement was provided for through the establishment of a Constituent Assembly. Mandated in 2007 by the Interim Constitution of Nepal, the purpose of the Assembly was to: draft a new, permanent constitution, and act as both the legislative body and parliament until the constitution could be adopted and a new legislature convened. The Interim Constitution also mandated the adoption of a proportional representation mechanism and a quota for women (as well as other marginalized groups) in the new Constituent Assembly. Consequently, it became the most representative body of its kind in Nepal in terms of gender, caste, and minority inclusion—and more inclusive than many parliaments worldwide.

In April 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. Once the Constituent Assembly was set up, numerous legal requirements and disputes delayed the drafting of a new constitution. Core disagreements related to the future structure of the federal government, the electoral system, and the integration of former Maoist combatants into the army. While this study is restricted to the First Constituent Assembly, even though the Assembly’s tenure expired in 2012 without an agreed constitution, it was successful in establishing principles and common understandings on key societal issues, which served as strong foundations for a future inclusive constitution-making process. Elections for a second Constituent Assembly took place at the end of 2013. This second Assembly finally adopted a new Constitution in September 2015, and as a result Nepal became a Federal Republic.

Actors Involved in the Process

Almost all 601 members of the Constituent Assembly were drawn from political parties and chosen via national election in 2008 (26 members were appointed). The largest parties in the Assembly 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 dominated the Constituent Assembly and its committees. Other members in the Assembly were affiliated with smaller political, ethnic, regional, and fringe left and right-wing parties. In total, 25 different parties were represented in the Assembly, a number that rose to 31 due to subsequent splits among the parties.
Women Involved in the Process

Women held 197 of 601 seats in the first Constituent Assembly. At the time, this gave Nepal the highest percentage of women parliamentarians in Asia and the fifteenth-highest worldwide. Nepal has a long history of women’s organizations, dating back to at least 1948, when the Nepal Women’s Association mobilized to fight for women’s suffrage during the first general elections. A new wave of women’s political engagement began during the April 2006 People’s Movement when women’s groups began to organize themselves within the broader agendas of political parties or the interests of specific ethnic or religious groups, castes, or geographic regions. Many of these women’s organizations continue to operate across the country; however, most of them are based in the capital, 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. This case study focuses on the roles of organized women’s groups in the Constituent Assembly, including women’s coalitions, as well as the more specific role of a few prominent women delegates in the Assembly. It also considers the role of women’s civil society organizations and networks, acting alongside the Constituent Assembly process.

Modalities of Inclusion of Women’s Groups

Three modalities of women’s inclusion prevailed around the First Constituent Assembly. First, organized women’s groups were part of mass mobilizations that demanded the inclusion of women representatives in the drafting committee for the Interim Constitution. Second, and owing to the success of the women who made it into the committee, women were included as direct participants in both the drafting committee and Constituent Assembly. Third, women contributed to the process through consultations held by the Assembly’s committees to obtain inputs from the population at large. However, because there are no records of the input received or how it was incorporated, this third modality is only briefly examined by this case study.

1 Mass Action

Women’s participation in politics and civil society grew markedly after the 1990 Constitution guaranteed women the right to free expression and organization. Women actively participated in mass mobilizations that brought down the regimes of 1990 and 2006. During the peace process that followed, activists called for the greater inclusion of women in the exclusive negotiations. In June 2006, an Eight-point Memorandum of Understanding was signed between the Maoists and the Seven Party Alliance. Despite the prominent role women played in the Maoist forces, not a single woman delegate was included in the decision-making process or the signing of the memorandum. Nevertheless, it laid the foundations for the broader inclusion of women in the Constituent Assembly, as it emphasized the need for assembly elections in order to restructure the state and resolve “gender-based problems”.

The Constituent Assembly included a quota of 33 percent for women, resulting in 197 out of 601 seats.
In 2009, 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. They presented a list of demands to members of various committees within the Constituent Assembly, which women activists hoped would be considered in the constitution drafting process. Subsequently, some of the political parties adopted a gender equality agenda. While this mass action led to the successful transfer of advocacy objectives to party representatives, little is known about the extent to which the women’s demands were incorporated in the drafts proposed by the committees in the Constituent Assembly.

2 | Direct Representation at the Negotiation Table

Interim Constitution Drafting Committee

The Seven Party Alliance and the Maoists initially selected a group of six men to represent them as members of the Interim Constitution drafting committee. However, a segment of the Maoists and other small parties protested against the committee’s composition, which led to its expansion to 16 representatives and the inclusion of members from small parties, such as indigenous, Madhesi, and Dalit groups. Although only four of 16 members of the Interim Constitution Drafting Committee were women, those included played a crucial role in securing a greater presence for women in the future Constituent Assembly.

While members were expected to be independent, their appointment by political parties naturally meant that party lines were often followed. Each member had equal decision-making power; nonetheless, a few influential men from higher castes dominated decision-making. Additionally, the Interim Constitution required consensus across the political parties. As a result, Dalits, indigenous peoples, and women had little power to push forward specific issues of concern. In addition, there were no public hearings organized. Although the general public submitted a large number of recommendations, these were classified as confidential, and there is no evidence that they were incorporated.

The Interim Constitution played a vital role in guaranteeing the inclusion of women in the Constituent Assembly. This was possible due to a proposal submitted by two women members of the House of Representatives, Bidhya Devi Bhandari from the Communist Party of Nepal (Unified Marxist-Leninist) and Kamala Pant from the Nepali Congress. Favorable timing and support from the political parties, along with the aforementioned proposal, resulted in the inclusion of milestone provisions in the Interim Constitution, such as a 33 percent representation quota for women in all state bodies, and the abolition of certain discriminatory laws against women.
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, also stipulated gender diversity in these groups. To demonstrate, Dalits represented 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.\footnote{32}

The Assembly operated through 11 thematic and 3 procedural committees, 4 of which were chaired by women. The committees covered a diverse range of topics, separately pertaining to minority rights, natural resources, distribution of state power, governance structures, and the judicial system, among others. Each of the thematic committees worked towards finalizing proposals, from which reports were submitted to the Constituent Assembly’s plenary for discussion. These reports were prepared in consultation with experts, activists, civil society leaders, and other citizens. Once the committees’ reports were ready, they were presented to the Constituent Assembly for discussion and a simple majority vote (with the exception of a few issues that purportedly 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. Women were represented in each of the 11 thematic committees but they only occasionally overcame differences in ideologies and party interests to speak with a common voice.\footnote{33} This is further explained in section II.

Although it is difficult to pinpoint the origin or authorship of suggestions made to the 11 committees, it is clear that some of the shared advocacy objectives of the women’s organizations were carried over. Notably, the committee’s proposals advocated for the inclusion and empowerment of women through provisions on proportional appointments and women’s representation in all organs of the government, and special provisions for the protection of women against violence and discrimination. In addition, the final reports included special protections for women’s rights (recommended by one committee) and the creation of a national Women’s Constitutional Commission to protect and promote women’s rights and interests (supported by three committees).\footnote{34} The latter was successfully implemented and continues to hold various legal mandates from which it monitors national policies and programs, and carries out gender equality research.\footnote{35}

3 | Public Consultations

At the time of the first Constituent Assembly in 2008, public consultations were not new to Nepal. In the years that preceded the Assembly, the Interim Constitution drafting committee had conducted consultations with experts and the general public. As a result, approximately 700 written submissions from individuals and groups of citizens were collected. The thematic Committees of the Constituent Assembly started to operate in December 2008, and declared early on the need for public input into the process. The Constituent Assembly collected a total of 549,763 written submissions from citizens, NGOs, and political parties.\footnote{36}
Women and men of all ages made suggestions by filling in questionnaires prepared by each of the 11 thematic committees. Among the most common concerns raised were unemployment, a lack of health care facilities, and violence against women. Submissions from NGOs emphasized the need for a constitution that would ensure and protect the rights of women and children. Based on inputs from these consultations each committee wrote a draft report to be submitted to the Assembly.

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

Ultimately, women’s groups had a limited influence on Nepal’s First Constituent Assembly. Factors related to Nepal’s political context and to the design of the process both enabled and constrained women’s ability to influence the constitution-making process. Most notable of these factors was resistance from the major political parties (mainly men), as well as the lack of a collective women’s voice. The following section describes these aspects in more detail, starting with those relevant to process design and then turning to those related to the political context.

Process Factors

1 | Selection Criteria Facilitating Women’s Presence rather than Their Influence

The first Constituent Assembly was elected through a mixed electoral system. Representatives 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 according to a proportional representation system, and 4 percent were assigned by the Council of Ministers for their contributions to Nepali society. Electoral quotas stipulating that women from Dalit, Indigenous, Madhesi and other groups participate in the Constituent Assembly increased the inclusion of women delegates.

The proportional representation system proved numerically favorable for the representation of women and other marginalized groups, as parties were unable to discriminate against these candidates through such tactics as withholding campaign funding or fielding them in unwinnable seats. Of the 197 women elected, 161 were elected through proportional representation, 30 through the first-past-the-post system, and 6 by the Council of Ministers. The political parties were obliged to seek women representatives to meet the requirements for participation that were set and monitored by the Election Commission. To ensure these requirements were met, and in anticipation that men-dominated political parties would use the pretext of a lack of suitable women candidates to limit participation, Nepalese women’s groups strategically drafted a list of potential candidates for the Assembly and shared it with the parties.

The political parties brought women representatives to the Assembly. Women were most highly represented in the Unified Communist Party of Nepal (Maoist), Nepali Congress, and the Communist Party of Nepal (Unified Marxist–Leninist).
With relatively high numbers of women and other marginalized groups included in the Constituent Assembly, the proportional representation system proved the most effective in facilitating women’s increased presence in the Constituent Assembly; however it did not necessarily facilitate their meaningful involvement. While the proportional representation system enabled the increased presence of women delegates, it also bred perceptions that the elected women lacked accountability to their constituents. Each party presented its own closed lists of candidates for election by proportional representation for men politicians to favor the nomination of their women relatives. A closer look at the Constituent Assembly reveals that 28 families sat in the body. Indeed, some of the women who ran or were elected were the wives, widows, or daughters of male politicians. This form of “family-friendly” politics likely undermined the ability of women to collectively pursue a common and distinct agenda, and arguably lessened constituent support for women representatives. As a result, women elected on first-past-the-post ballots were considered to be more accountable to their constituencies and held greater public legitimacy than those elected under the proportional representation system.

Women representatives attended sessions more regularly than the average member but they did not express themselves as frequently as men in the plenary or advocate strongly for a distinct agenda. This may be partly explained by women’s overall lack of parliamentary experience, but also by constraints placed on them by the agendas set within their political parties.

2 | Exclusive Informal Decision-making Practices

The process determined that decisions were to be made either on a majority-voting basis or in the plenary. However, many of the reports produced proved highly contentious and led to impasses in the decision-making process. Senior political leaders, invariably men used this lack of agreement to justify certain issues being exempt from plenary discussions and votes. Thus, instead of discussing options in the plenary, contentious issues were decided behind closed doors in high-level political meetings, which were often kept secret from fellow party members. Therefore, despite the unprecedented presence of women in the Constituent Assembly, they were not given equal decision-making opportunities.

3 | Inability of Women to Bridge Divisions through 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 would feature in the new constitution. However, it was never granted a formal status. It was initially formed by women from particularly marginalized groups—Dalits, indigenous groups, and Madhesis—but ultimately included all 197 women from 19 political parties. While it provided the opportunity for women participants to develop and advocate a distinct agenda across party lines, it struggled to bridge caste, class, and cultural divides. The caucus also failed to prioritize a common agenda for women over party loyalties and was not strong enough to overcome the men’s dominance of the Constituent Assembly.
4 | Inconclusive Results of Women’s Advocacy Strategies

Women’s movements used a variety of means, including petitions, media engagement, workshops, seminars, and weekly demonstrations to voice their agenda. 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 the different Constituent Assembly committees. It included provisions on security sector and economic reform, social equality and inclusion, and human security, among others. However, there is not enough evidence to assess the extent to which the various committees’ drafts drew upon this charter.

During the constitution-making process in the Constituent Assembly, women’s organizations and networks managed to articulate recommendations—principally to prohibit discrimination based on 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, which 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. Even though the latter was not formally recognized, the women’s caucus played a strong role during the Constituent Assembly. As a result, the main political parties blocked the recognition of a new women’s caucus during the second Constituent Assembly in 2013. Ultimately, decisions taken in the first Constituent Assembly did not favor any of the issues that women had advocated for.

Context Factors

1 | Presence of Strong Women’s Groups

Considering the patriarchal and hierarchical structures of the Nepali society, the presence of strong women’s groups paved the way for a Constituent Assembly that was inclusive of women. First, women’s groups took part in mass action. These demonstrations helped women’s groups to create momentum and raise awareness of the need to include women in the then exclusive peace negotiations, and in the subsequent Constituent Assembly. In addition, strong women’s groups supported by international actors facilitated several initiatives to promote gender perspectives in the Comprehensive Peace Agreement and Interim Constitution. This indirectly resulted in quotas for women and other disadvantaged groups during the Constituent Assembly.

2 | Constraining Heterogeneity of Women’s Identities

The heterogeneity of the women elected constrained their ability to build coalitions in favor of women’s groups’ preferences. There was great diversity of ethnicity and caste among the women of the Constituent Assembly, and women tended to articulate specific political demands that reflected their identity groups. For example
Dalit women focused on caste-based discrimination, whereas indigenous Janajati and Madhesi 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. This said, the women provided a strong collective voice on issues relating to gender equality, including inheritance rights, citizenship equality, equal (or increased) representation of women in political as well as other state mechanisms, and recognition for the women’s Constitutional Commission.

3 | Lack of Preparedness of Women

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.57

4 | Insufficient Support from Men in the Constituent Assembly

Many context factors empowered women in Nepal in the years leading up to the first Constituent Assembly: from the Maoists, more liberal political agenda towards women, and the presence and prestige of women in the 2006 popular uprising, to improvements in educational opportunities for women, and Nepal’s increased international commitments towards women.58 In particular, women’s empowerment was an important component of the revolutionary agenda of the Maoist movement and arguably contributed to the eventual inclusion of gender and women’s rights in the peace and constitution-making processes. Despite this, hierarchical structures placing women in lower political party ranks than men remained in place during the Constituent Assembly,59 insofar as women’s opportunities were determined on the basis of their loyalty and kinship to particular party leaders, rather than on merit.60 Although only 35 percent of women in the Constituent Assembly cited a lack of support from men members as a major challenge impeding the inclusion of a gender perspective in the constitution, 70 percent stated that men members did not consider gender-related issues a real priority.61

5 | Fading Public Buy-in

Initially, the Constituent Assembly had widespread political and societal support. However, this gradually eroded, as debates within the Assembly became politicized and the parties appeared unable to resolve their differences. This lack of agreement led to an extension of the Assembly’s term, making it a four rather than two-year process. The situation 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 allowed political leaders to make decisions outside of the set structure, thus circumventing women’s participation.

6 | Violence towards Female Constituent Assembly Members

Although the inclusion of women in the Constituent Assembly was mandated, they faced serious challenges, including coercion, ranging from informal threats to acts of physical, psychological, and sexual violence during the process. As many as 70 percent of all women Constituent Assembly members were confronted with 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. In addition, 36 percent of the 197 women involved in the Constituent Assembly faced legal action due to their political involvement. Within the Assembly, women routinely struggled with men politicians’ negative attitudes towards them. This violent resistance to the inclusion of women further constrained their ability to influence the process.

III. Conclusion

Although the first Constituent Assembly failed to adopt a new constitution, its composition transformed the state into a more inclusive one with unprecedented levels of women’s and ethnic minorities’ representation. Women’s participation in the Assembly was high due to the quota system, which resulted in 33 percent representation. This was made possible by the joint efforts of two women members of the House of Representatives, and high levels of political awareness and support for women’s inclusion from the political parties, among others. In addition, women were represented in all 14 of the Assembly’s committees.

However, women’s overall influence in the first Constituent Assembly was limited, because men political elites undermined inclusive decision-making processes and made major decisions behind closed doors. Other elements such as the negative attitudes towards women, their lack of experience, and physical and psychological threats and violence, constrained the influence of women.

After the first Constituent Assembly’s mandate had lapsed, a second Constituent Assembly was formed in 2013, and promulgated a new Constitution for Nepal in 2015. Besides citizenship rights, the provisions of the 2015 Constitution on gender and ethnic representation also established the possibility for women to hold political positions at the highest level, such as President, Speaker of the Parliament, and Chief of Justice. Further research is needed to examine women’s roles in this second Assembly and how the foundations laid by women in the first and second assemblies affected the final Constitution.
References

3. The Bahun/Brahmins and the Chhetris/Ksatriya are the highest and second-highest caste in the hierarchical system.
11. The monarchy was formally abolished in 2008.
13. The Comprehensive Peace Agreement (2006) states that the parties are committed to the restructuring of the state in an inclusive manner and to end discrimination based on gender, class, ethnicity, language, etc.
15. Pokharel, Bhojraj. Interview with author (20 December 2016).
17. Ibid., 15.
21. Political upheaval in Nepal in 2008 included mass action and street protests demanding the end of King Gyanendra’s authoritarian rule.
In line with the Maoists’ support for gender issues, women were active participants in the Maoist insurgency.


Falch. *Women’s Political Participation*, 27.


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55 Pokharel, Bhojraj. Interview and informal exchange with author.
57 Khakurel. Women Members of the Constituent Assembly, 23.
58 Pokharel, Bhojraj. Interview and informal exchange with author.
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Acknowledgments

This case study was written by Estefanía Charvet based on research conducted in 2016 and 2017, 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 (2011-2017), a multi-year, comparative project led by Dr. Thania Paffenholz at the Graduate Institute of International and Development Studies, Geneva. The Broadening Participation project examined how and under which conditions various actors participated in and influenced peace and political transition processes. The project’s dataset 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.

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