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Transitional Justice and the Truth Commission in Nepal

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Transitional Justice and the Truth Commission in Nepal

Spring 2012 Honors Project

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URI College of Pharmacy, 2013

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<http://prezi.com/q5xq5cz8iqoi/transitional-justice-nepal/>

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Objective

The purpose of this project was to explore the role of transitional justice mechanisms in directing the peace process, constitution making, and power sharing in Nepal, a small but strategically important country located between China and India. How will a Truth and Reconciliation Commission move Nepal towards a more democratic, peaceful, just and equitable nation? What does this Truth and Reconciliation Commission need to look like in order to be effective? These are questions I intended to investigate.

Conflict in Nepal

For more than ten years Nepal experienced violent conflict between the national army and an insurgent political movement led by the Communist Party of Nepal-Maoist (CPN-M). Fought primarily in poor, rural districts away from the capital, the conflict claimed more than 13,000 lives, internally displaced more than 200,000 people, and damaged the entire nation. Along with killings, torture, illegal detentions, abductions, use of child soldiers and extortion, the conflict was characterized by widespread cases of disappearance. The families of those who were abducted or killed without a trace remain without answers.

This decade of violent conflict began with the Maoist insurgency in 1996 which grew out of centuries of accumulated resentment towards Nepal's exclusionary social and political systems. For more than 250 years, Nepal was ruled by a monarchy. A form of democracy emerged in 1990 after the first "people's movement" which instituted a constitutional monarchy in Nepal. Political infighting, corruption, and slow progress quickly led to dissatisfaction with the new government. Centralization of power in the capital of Kathmandu fueled discontent, and the CPN-M launched the "people's war" in February 1996 with the main objectives of abolishing the monarchy and establishing a republic.

The CPN-M promised gender equality, land reform, socio-economic progress and elimination of the caste system. The CPN-M's People's Liberation Army used this platform to recruit historically disenfranchised groups, but the army also used intimidation to compel others to join the movement.

After failed peace negotiations in 2001, the Royal Nepal Army, under the command of the King, was deployed against the CPN-M. Violent conflict escalated and both sides violated international humanitarian laws. The King began to gradually reclaim power, using the civil violence to justify a return to authoritarian rule. In February 2005 King Gyanendra declared a state of emergency, suspended Parliament and suppressed political and civil rights, and implemented strict censorship and restrictions on the freedom of expression and information, movement and assembly.

The CPN-M and an alliance of seven political parties united in opposition to the King. In April 2006, the King yielded to the second "people's movement." Cooperation between the CPN-M and the Seven Party Alliance led to a ceasefire, agreement on a code of conduct, and eventually the November 2006 Comprehensive Peace Accord (CPA). Among the many

issues mandated by the CPA were the holding of elections for a Constituent Assembly, and a specific commitment to establish a Truth and Reconciliation Commission.

The pace of political change slowed considerably in 2009 and 2010 with increasing political party turmoil and disagreement about how to integrate the nation's two standing armies, delaying the nation in a political stalemate. The Truth and Reconciliation Commission has yet to be established, and the constitution writing process has been slow and contentious. The new government has set high expectations for rapid and significant social reforms: land reform, poverty alleviation, closing socioeconomic gaps related to caste and gender, and the promise of justice for victims of past violence. The Maoists launched the 1996 insurgency in response to slow development, and with the current government's failure to progress on major issues, discontent may lead to more violence.

Transitional Justice

Transitional Justice refers to a range of approaches of fairly confronting legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma committed during armed conflict. Transitional justice seeks to answer the question of how individuals and communities confront past atrocities, reconcile and rebuild after conflict. Transitional justice follows, or is concurrent with, major political transformation. In Nepal, the major transformation that took place in 2006 was the end of a decade of violent insurgency and the subsequent shift from a monarchy to a democratic republic in 2008. The main objective of transitional justice is to build a more democratic, just or peaceful future by first demanding accountability and disarming secrecy.

In order to promote justice, peace and reconciliation, governmental and non-governmental institutions may consider a variety of transitional justice approaches, including both judicial and non-judicial responses to human rights crimes. Transitional justice mechanisms may be restorative, aimed at alleviating victims' pain, and/or retributive, aimed at punishing perpetrators. Transitional justice is characterized by five key elements: (1) truth-seeking, (2) prosecuting perpetrators, (3) providing reparations or rehabilitation to victims, (4) shaping collective memory to facilitate reconciliation processes, and (5) reforming abusive or inequitable institutions. Truth-seeking is at the center of these mechanisms and informs each by identifying perpetrators, identifying victims, and documenting patterns of abuses for institutional reform.

Truth-seeking usually takes the form of an officially sanctioned truth commission or commission of inquiry authorized to investigate the past. The proposed truth-seeking mechanisms in Nepal are the Truth and Reconciliation commission as well as a separate Disappearance Commission. Truth commissions function as a forum for victims and perpetrators to tell their stories and to meaningfully acknowledge past abuses. Truth commissions present an opportunity for a comprehensive examination of society, and an opportunity to transform a traumatic public memory into a collective self-awareness. Truth commissions may be public or private; may have legal rights to grant amnesty, or be without legal authority. Public truth commissions are intended to be a restorative

mechanism more than a retributive mechanism and many have been clarified as Truth *and Reconciliation* Commissions.

Transitional justice mechanisms are expected to bring about positive changes such as establishing the truth, achieving retributive, reparative, or restorative justice and contributing to peace and reconciliation, but accountability mechanisms are also associated with an increased risk of social division. Will revisiting events of the past threaten national unity and stability after transition? The inclination to avoid confrontation is an impediment to pursuing justice, and for this reason retributive measures may be replaced by more lenient policies including blanket amnesties- the least satisfactory solution. In the Nepali context, all the key players in the insurgency period are accused of human rights violations, and for this reason there is a fear that truth-seeking mechanisms may have destabilizing effects. Political leaders may purposely limit the scope or powers of the truth commission to avoid upsetting the country's tenuous stability. But, the citizens of Nepal are calling for a strong truth commission to move the country forward.

Truth commissions are a less risky accountability mechanism because they are a bridge between blanket amnesty and criminal prosecutions, indirect and personalized blame. Truth commissions are victim-oriented in that they are a public platform for victims, society-oriented in that they aim to promote reconciliation, and policy-oriented in that they document abuse patterns useful for reforming the system. There have been 25 experiences with truth commissions in the world to date, primarily in South American and African countries. Each has adopted a different framework, taking into account local conditions, the national context, the relation of government to society and the social institutions that fueled the conflict.

Accountability mechanisms signal a break with the past and herald the start of institutional reforms by demonstrating that all citizens are liable under the same law. The extent to which new regimes are willing to personalize responsibility, and the severity of repercussions for perpetrators, are indicative of the new regime's level of commitment to justice. The establishment of truth commission in Nepal in the absence of judicial prosecutions or individual accountability could impede the objective of achieving a meaningful sense of justice by victims and by society. Truth and justice are considered to be complementary - one does not replace the other.

Methods

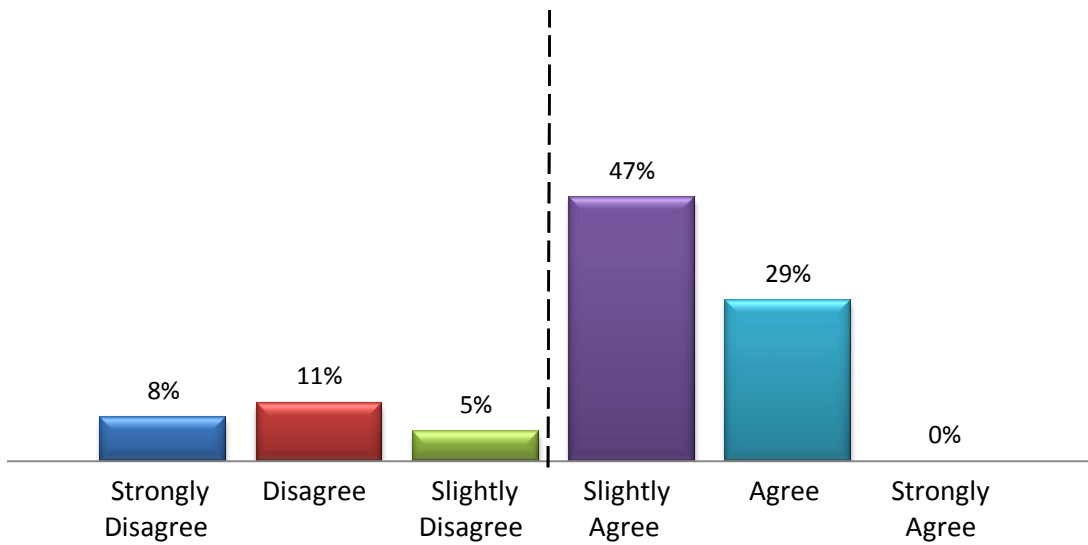
From March 9-18, 2012 I travelled to Nepal with the University of Rhode Island Center for Nonviolence and Peace Studies as a member of a team to conduct a three-day Nonviolence training course. Nepalese participants from the Collective Campaign for Peace (COCAP), Social Work for Development (SWD) and graduate students from the Tribhuvan University's Conflict Peace and Development Studies Department. Both male and female participants from these organizations were comprised of human rights activists, social work professionals, and young leaders working for a democratic, peaceful, and equitable Nepal. At the conclusion of the training, these participants were invited to voluntarily and anonymously complete a 25-item pencil and paper survey on aspects of transitional justice

mechanisms. Each item presented a statement and asked for participants to respond using a six-point Likert scale ranging from Strongly Disagree to Strong Agree. The survey was designed to capture opinions and attitudes about transitional justice mechanisms, specifically the truth commission mandated by the 2006 Comprehensive Peace Accord. The purpose of the survey was to gather information in order to better understand how societies rebuild and how, or indeed whether or not, transitional justice mechanisms can contribute to this process. Participation was voluntary, both male and female adults over the age of 18 participated, and the surveys did ask respondents to provide any personally identifying information. All 38 of the Nepalese participants completed the survey. Meeting and engaging with many of the participants was facilitated due to the highly interactive nature of the training sessions. Dialogues and conversations on transitional justice mechanisms with a number of participants, as well as transitional justice and human rights experts who visited the training served as the basis for additional information gathering as a type of informal interviewing process. As leaders and advocates for human rights, and as witnesses to the violence, the participants' opinions and attitudes derived from the surveys and conversational interactions are considered to be valid measures of the degree of support for various mechanisms and represent the needs and future direction of Nepal.

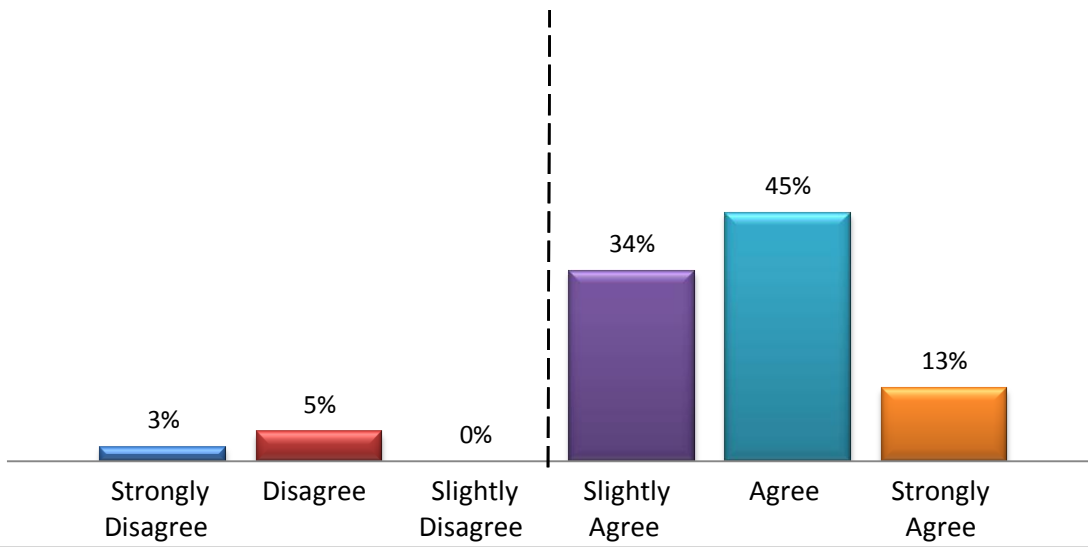
Results

The following questions were generated to measure public opinion towards various transitional justice mechanisms, receptiveness to justice and truth-seeking initiatives, and factors influencing the implementation of transitional justice policies. The questions explore attitudes towards reparations, national unity, institutional reform, the role of the international community, and the truth-justice dilemma.

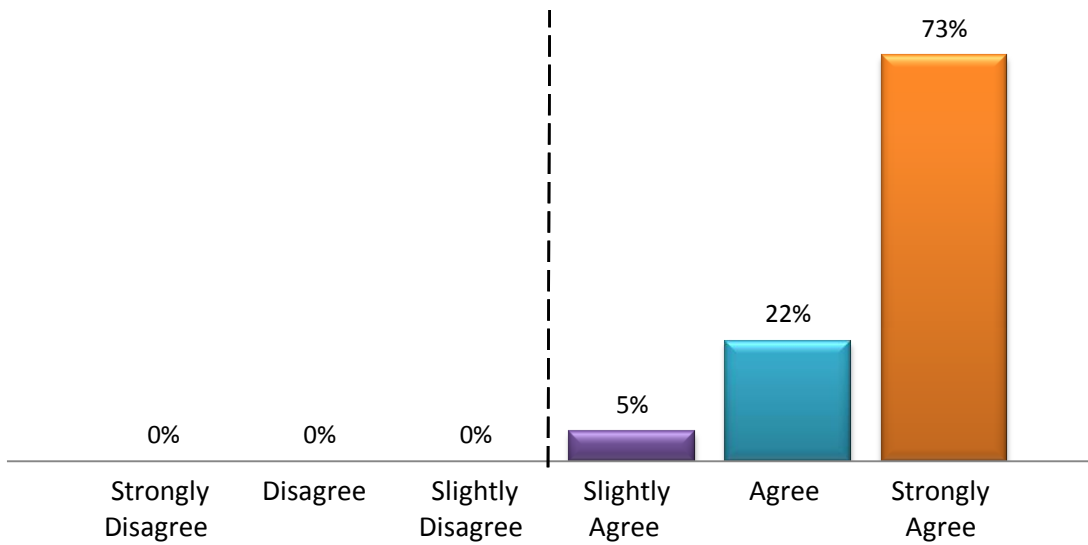
1. Nepal has made significant progress in the arena of transitional justice in the past six years.



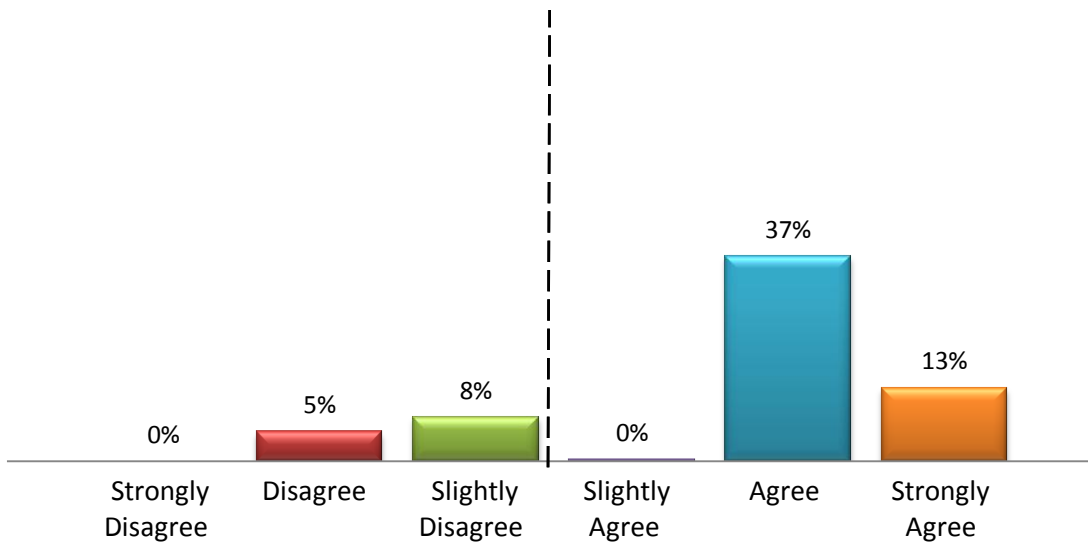
2. The international community plays an important role in Nepal's nation-building process.



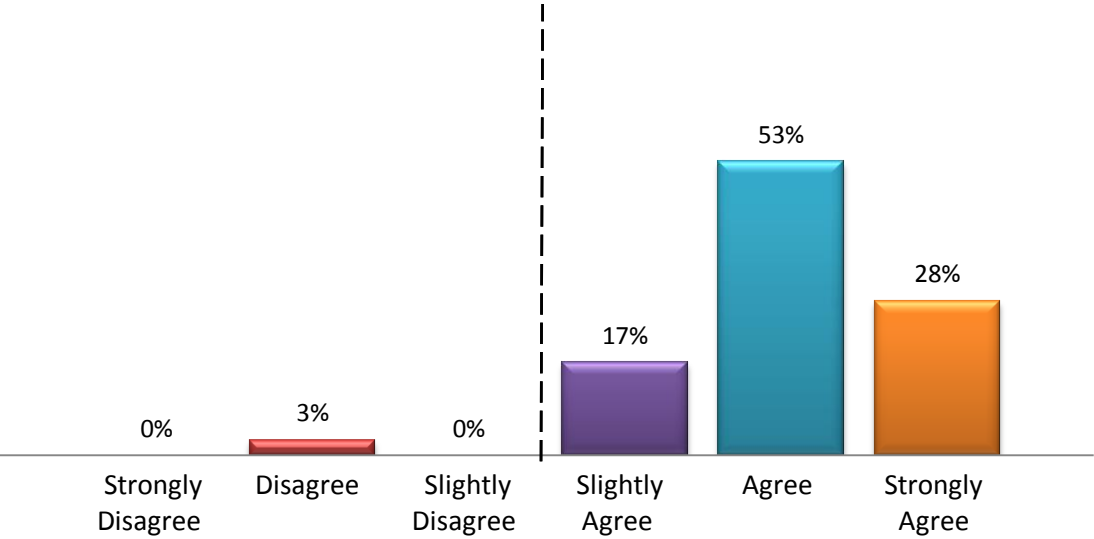
3. A truth commission is necessary to establish national unity and reconciliation in Nepal.



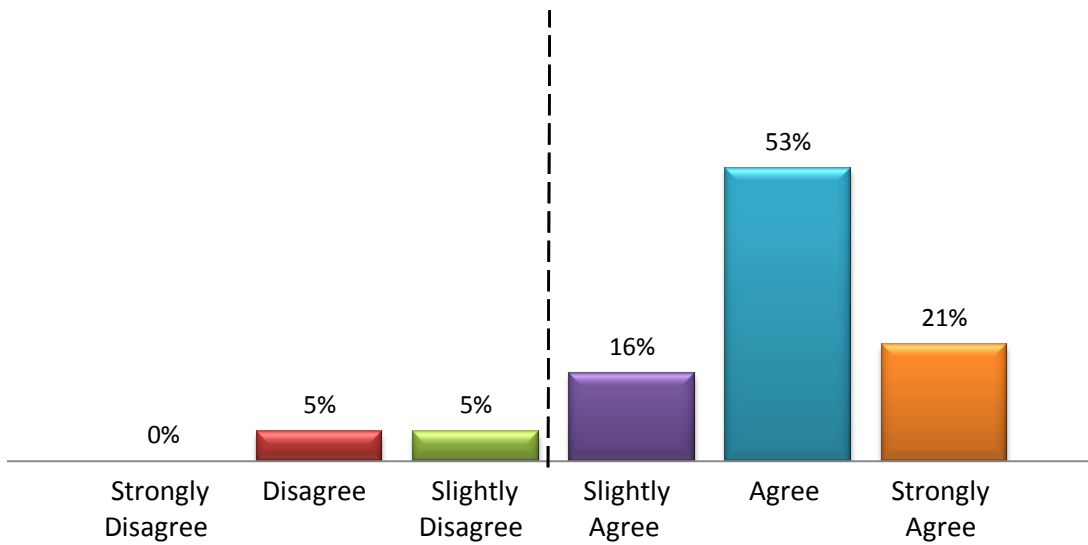
4. Nepal's constitutional deadlock is a result of the country's failure to address past human rights violations and violence through a truth commission.



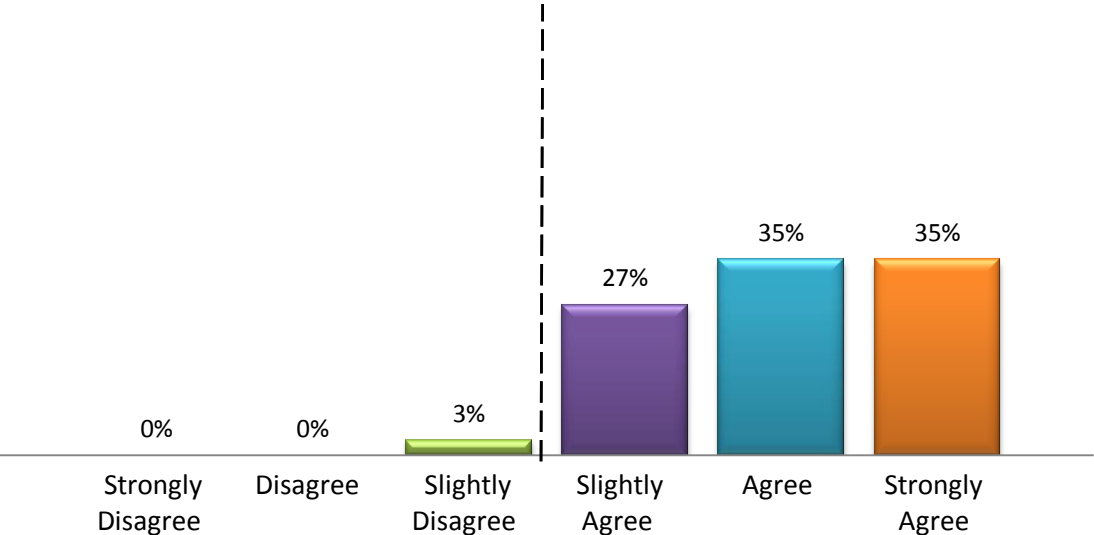
5. Perpetrators of human rights violations should be tried in courts in Nepal rather than international courts.



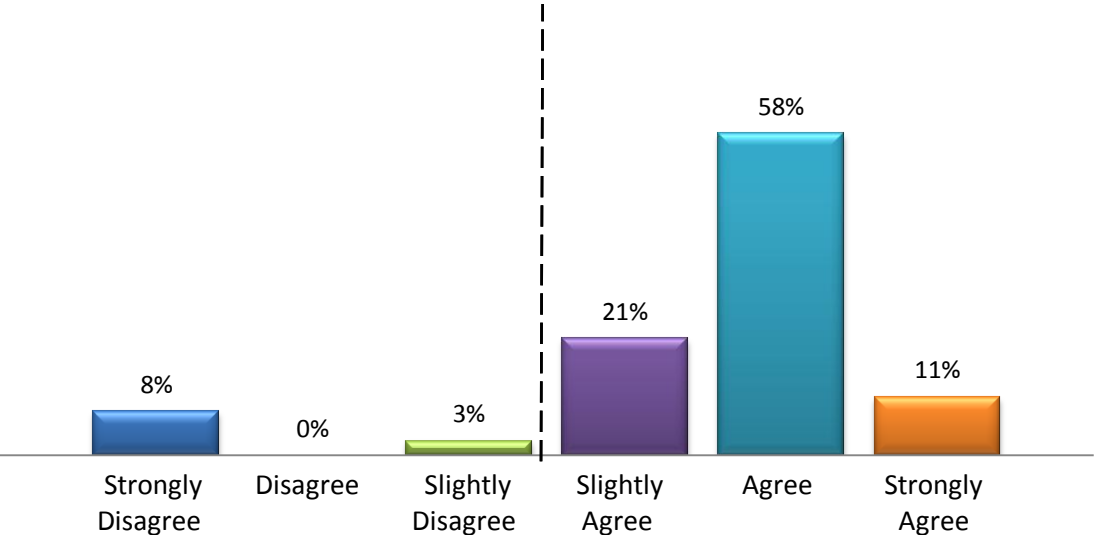
6. Unresolved past injustices prevent Nepal from making progress towards democracy.



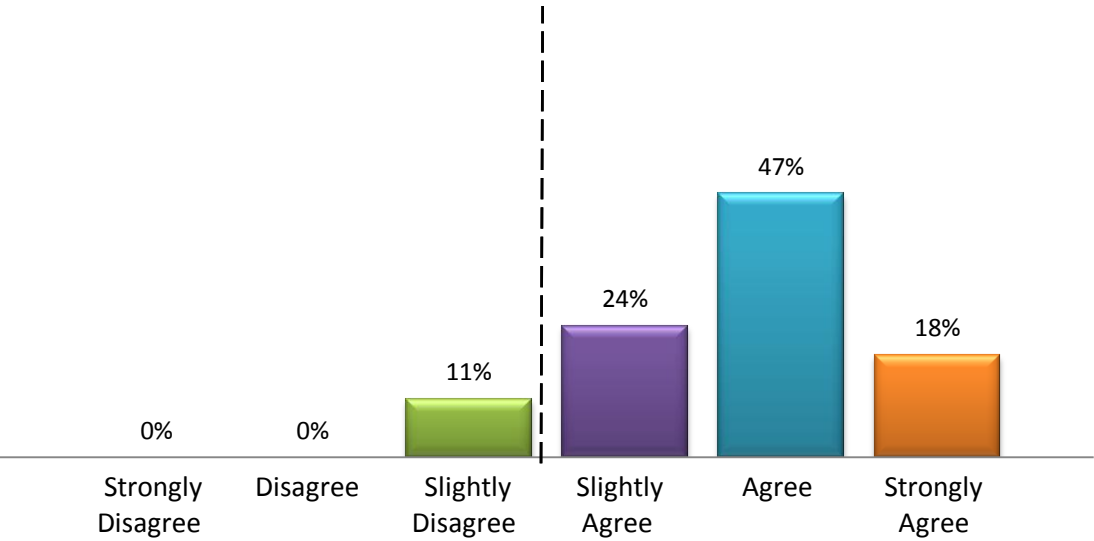
7. Political corruption prevents Nepal from moving forward more than unresolved past injustices.



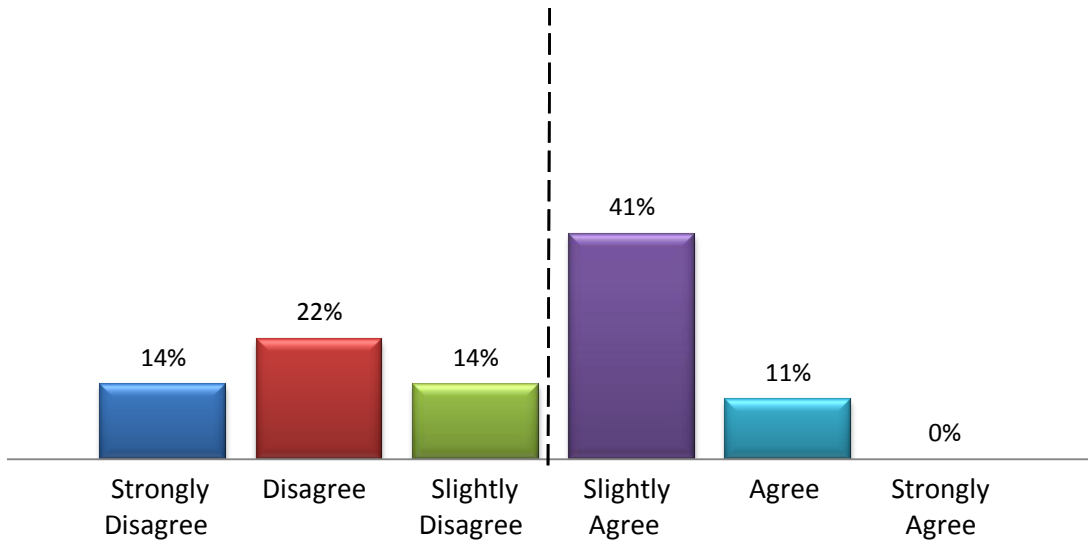
8. Non-governmental organizations such as COCAP and SWD play a significant role in the truth commission process.



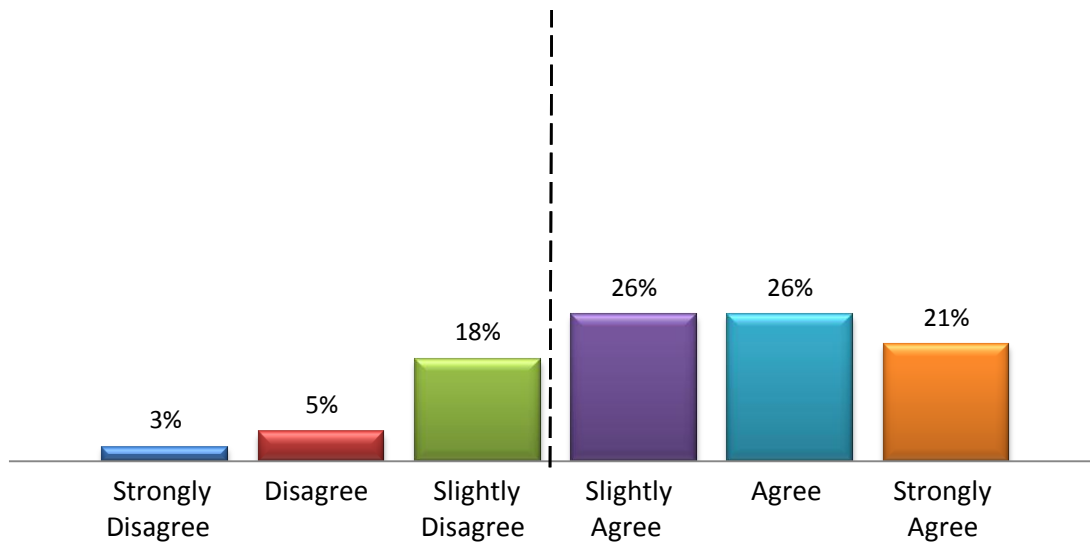
9. A truth commission will help Nepal move forward in the constitution-writing process.



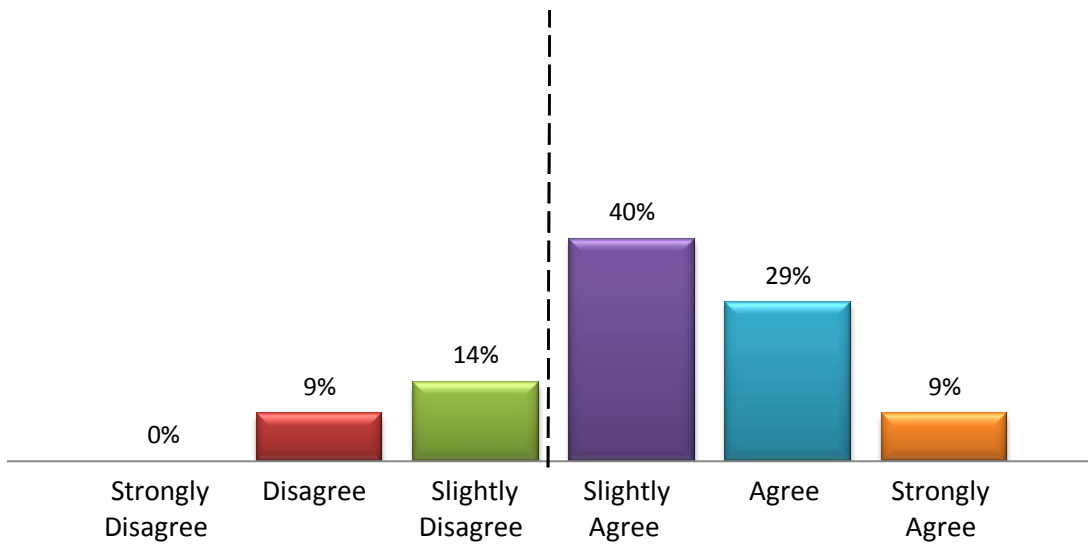
10. Perpetrators of violence during past civil conflicts should be granted amnesty in the interest of national unity.



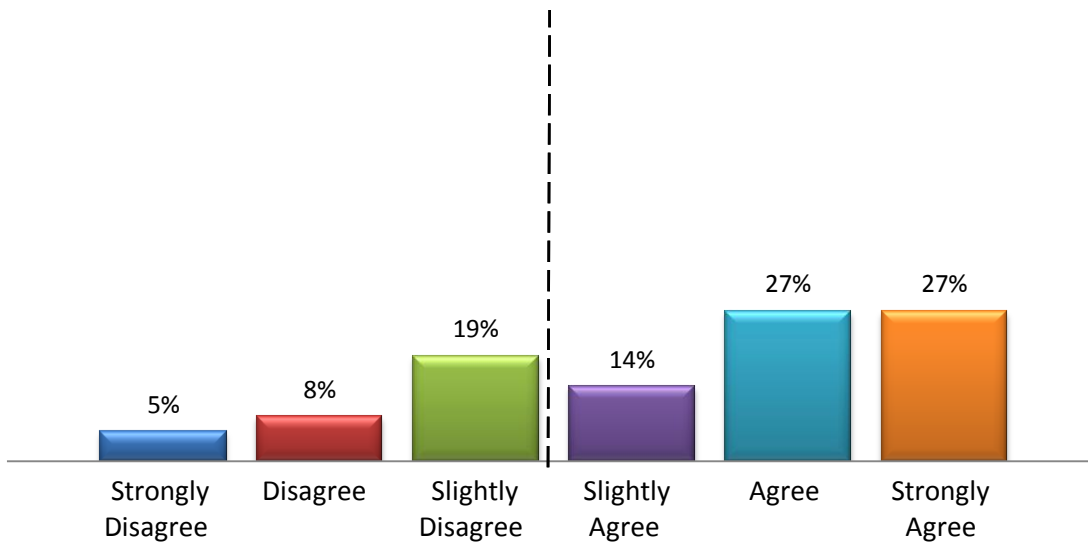
11. Perpetrators of violence during past civil conflicts should be criminally prosecuted and punished for past crimes.



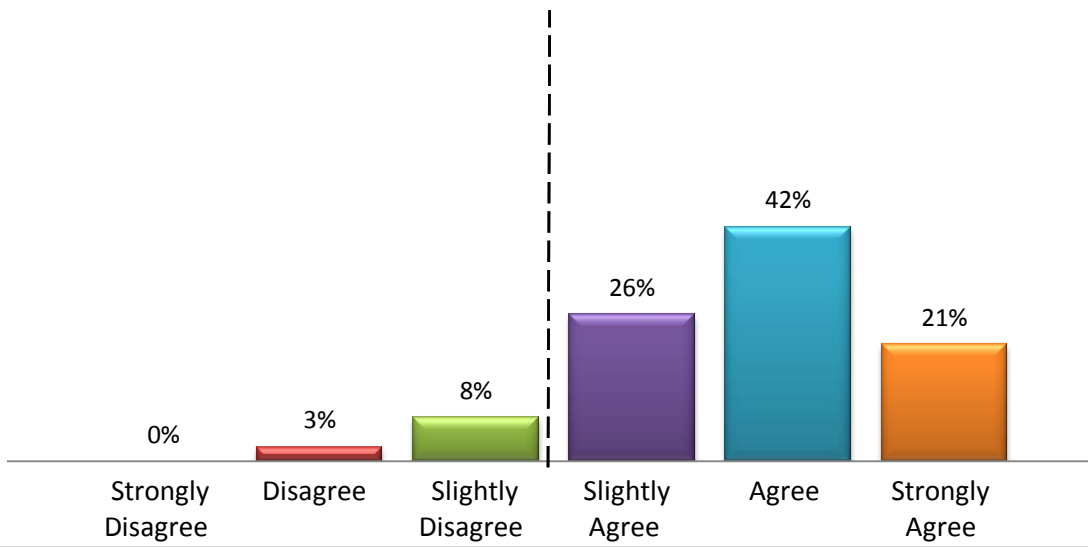
12. Testimonies from the truth commission will stir up past conflict and further stall democracy in Nepal.



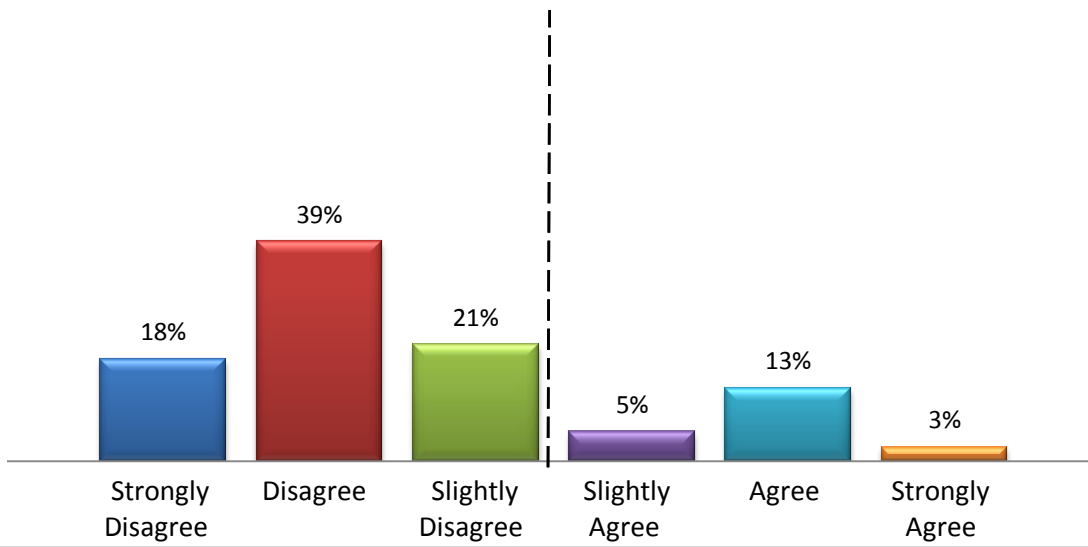
13. Compensation for the victims and their families is more important than criminally prosecuting perpetrators of violence or oppressive officials.



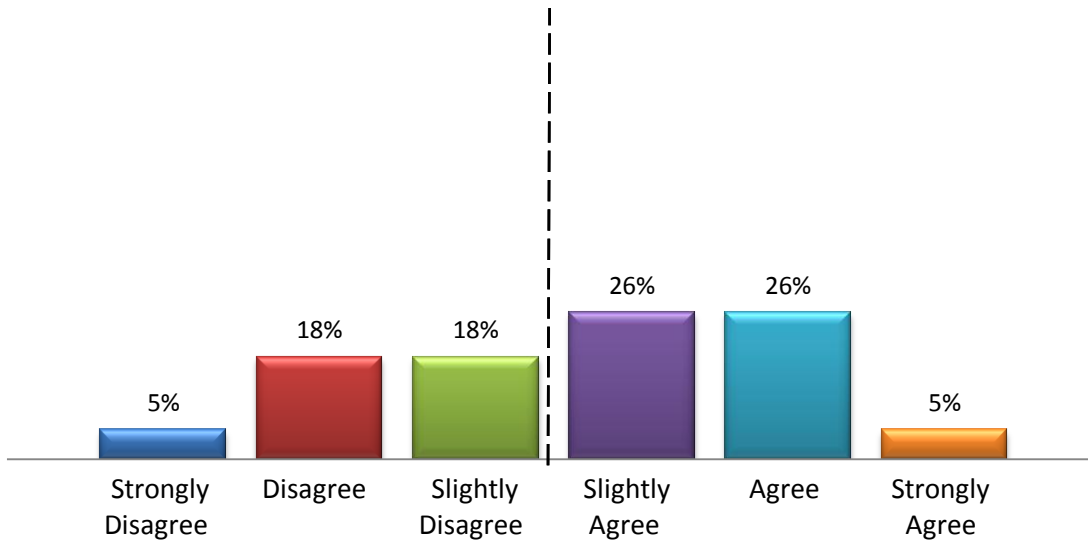
14. A truth commission is the next step in building a lasting peace in Nepal.



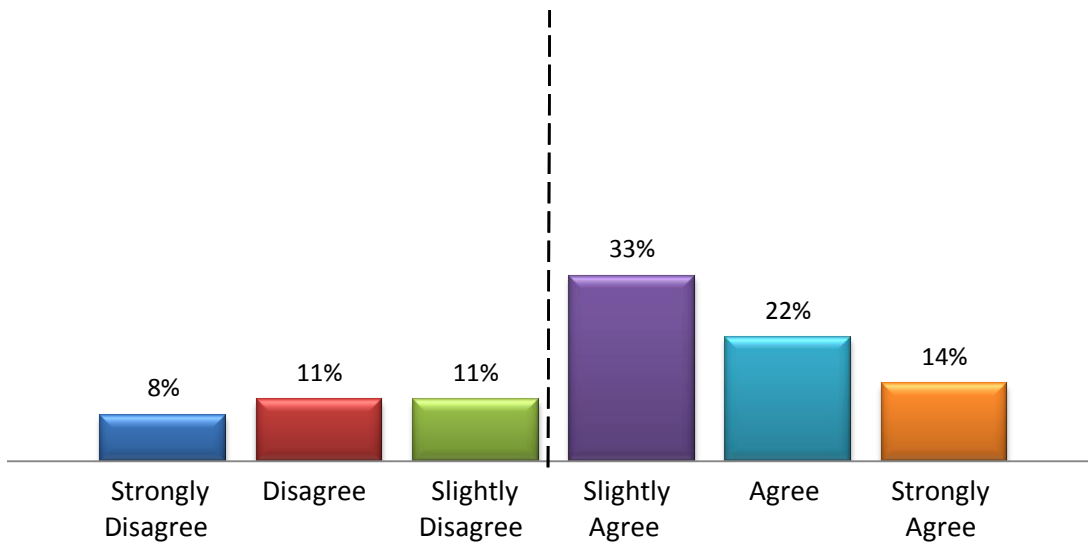
15. A truth commission will have little or no impact on the future of Nepal.



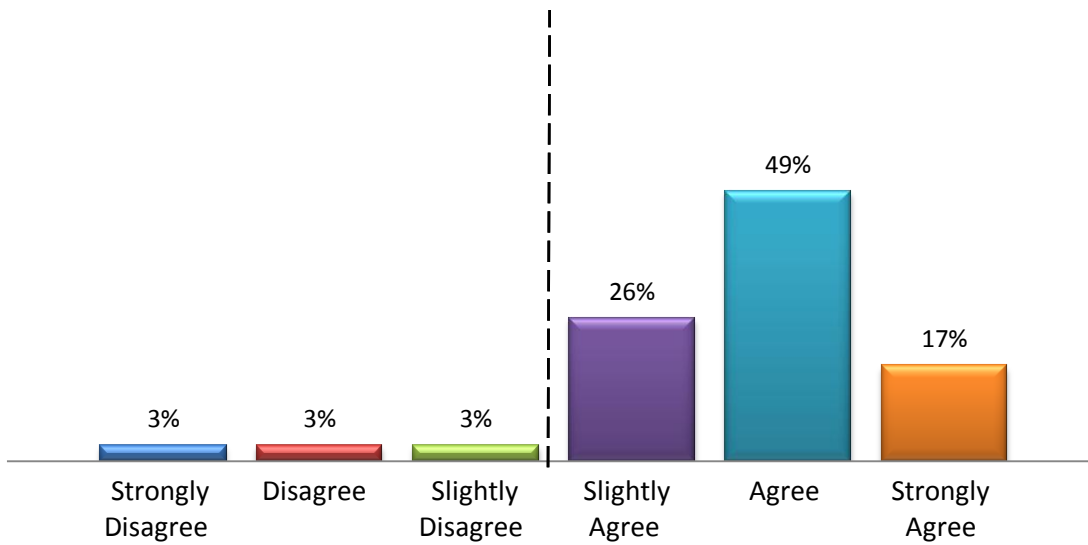
16. Revisiting the violent events of the past will only lead to more problems for Nepal.



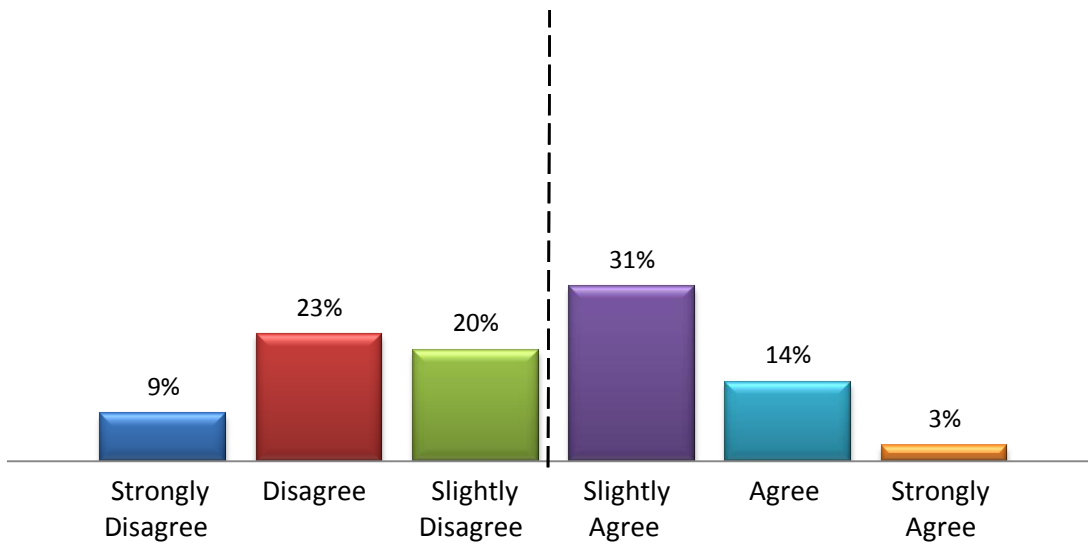
17. Holding perpetrators of past violence and formerly abusive officials accountable for human rights abuses will cause more division in Nepal.



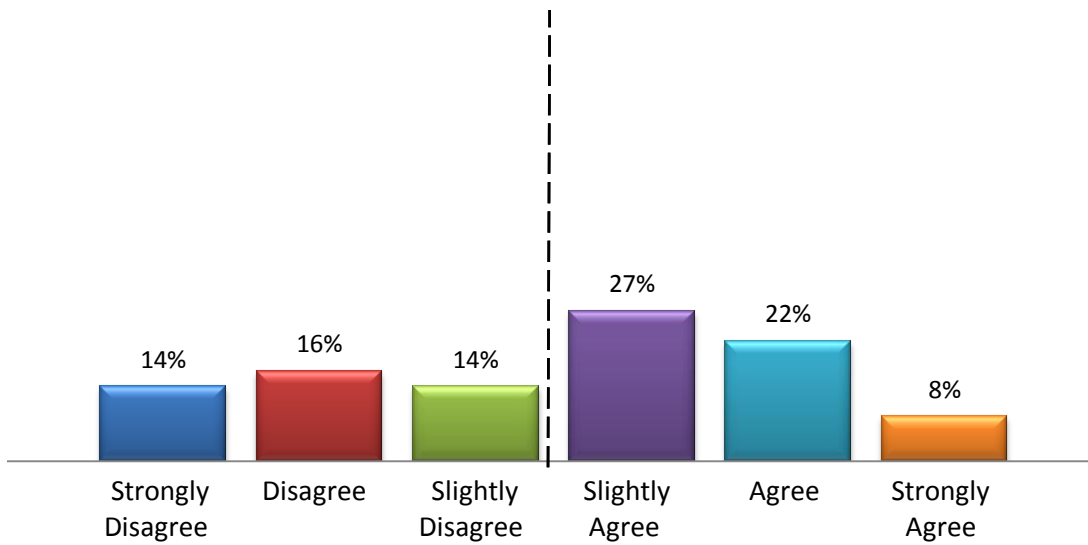
18. Creating an accurate historical record of past human rights abuses is a necessary step for lasting peace in Nepal.



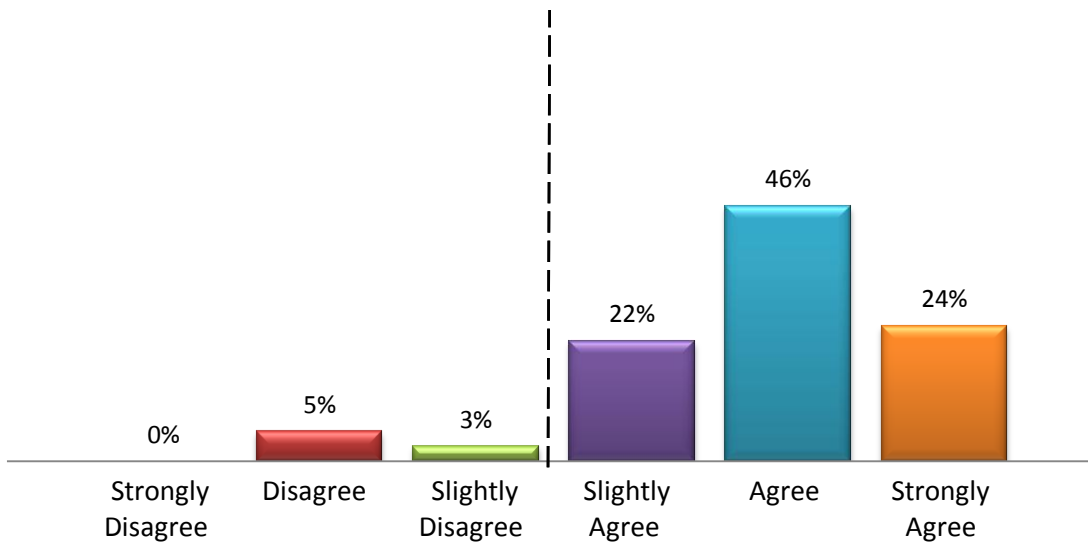
19. Those who ask for forgiveness for committing violent acts in the past should be pardoned.



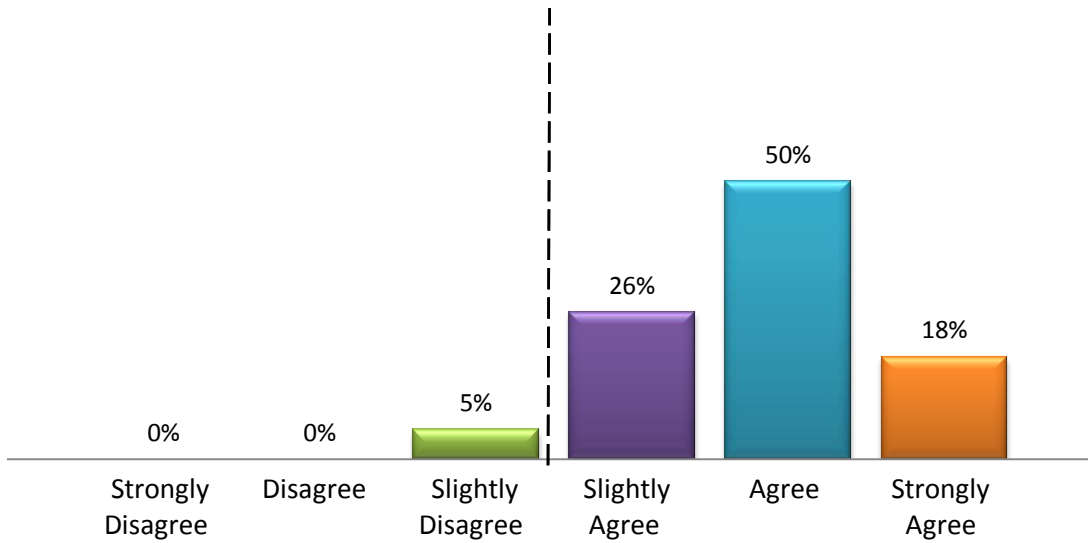
20. Perpetrators of human rights violations should be tried in international courts in order to avoid controversy in Nepal.



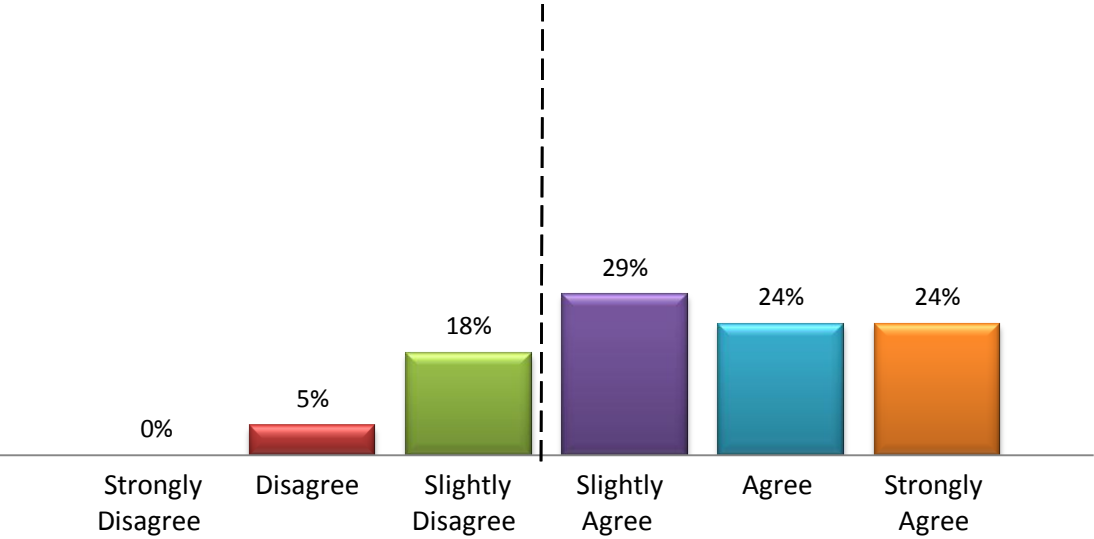
21. Political leaders and officials should be held accountable for human rights abuses, not individual combatants who were following orders.



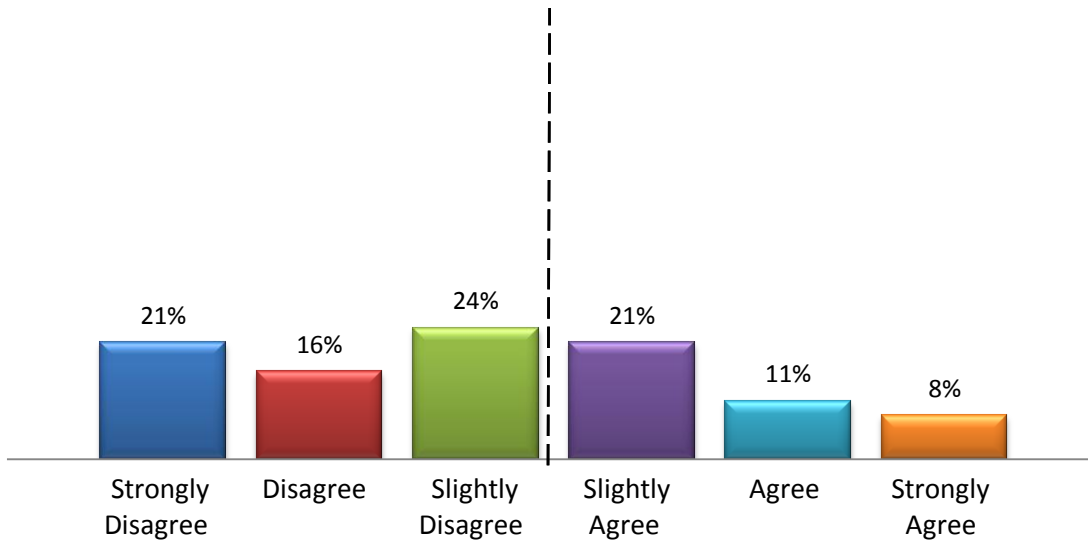
22. Creating accountability for past human rights abuses through the truth commission will strengthen Nepal in the future.



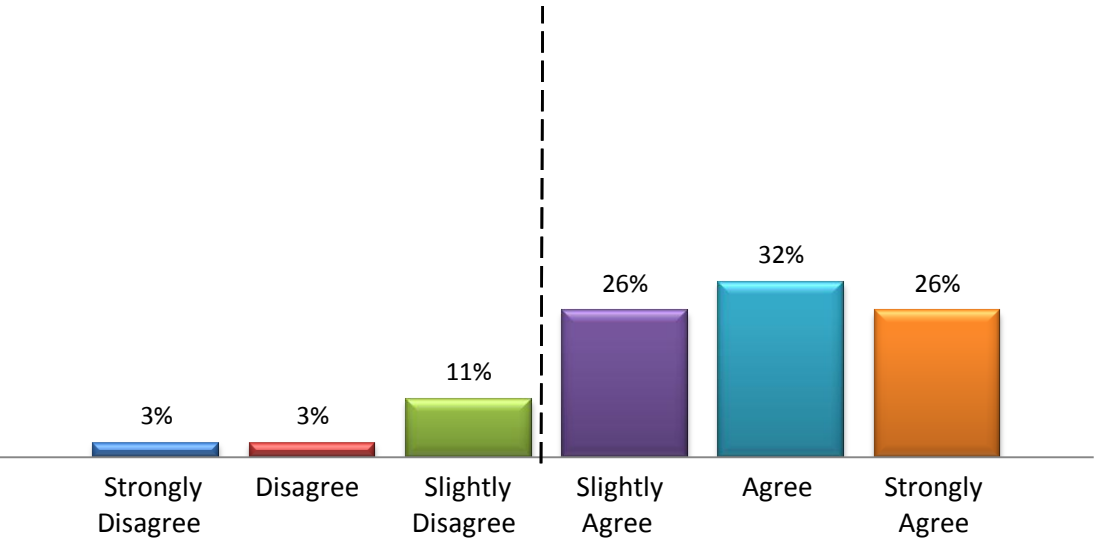
23. Economic development is more important than a truth commission in Nepal.



24. A truth commission will not work in Nepal because people will give dishonest testimonies.



25. Perpetrators of human rights violations should be required to publically apologize to their victims face-to-face in order for amnesty to be granted.



Conclusions

After centuries of political exclusion and limitation, political parties gained support as a means to democratization in Nepal, but have now become a stumbling block to progress. Each political party represents regional interests, and issue-based politics have generated a political deadlock. With more than 30 political parties, reaching consensus on major issues is problematic and time-consuming. Like most issues, the transitional justice debate has become intensely politicized. Citizens are calling for a strong Truth and Reconciliation Commission, publically opposing blanket amnesties.

Discussion

Some limitations of this research were the small sample size and population variables that may have shaped attitudes. For example, people living in particular regions may have had different perspectives on transitional justice mechanisms owing to their different experiences during the insurgency. Challenges of this field of research in general are that researchers are still looking for ways to generate and test transitional justice theories. The political situation in Nepal raises an important question about what is required to move the country beyond this lingering transition period. Further systematic research and in-depth interviews and dialogues with political leaders in Nepal would help to clarify this issue further. This research provides valuable insight into the attitudes and objectives of the next generation of leaders in Nepal. Those who participated in the nonviolence training and completed the survey are young, intelligent and motivated leaders whose influence will surely help shape the future of Nepal in a positive and peaceful direction.

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Transitional Justice Survey

To what extent do you agree or disagree that	Strongly Agree	Agree	Slightly Agree	Slightly disagree	Disagree	Strongly Disagree
1. Nepal has made significant progress in the arena of transitional justice in the past six years.						
2. The international community plays an important role in Nepal's nation-building process.						
3. A truth commission is necessary to establish national unity and reconciliation in Nepal.						
4. Nepal's constitutional deadlock is a result of the country's failure to address past human rights violations and violence through a truth commission.						
5. Perpetrators of human rights violations should be tried in courts in Nepal rather than international courts.						
6. Unresolved past injustices prevent Nepal from making progress towards democracy.						
7. Political corruption prevents Nepal from moving forward more than unresolved past injustices.						
8. Non-governmental organizations such as COCAP and SWD play a significant role in the truth commission process.						
9. A truth commission will help Nepal move forward in the constitution-writing process.						
10. Perpetrators of violence during past civil conflicts should be granted amnesty in the interest of national unity.						
11. Perpetrators of violence during past civil conflicts should be criminally prosecuted and punished for past crimes.						
12. Testimonies from the truth commission will stir up past conflict and further stall democracy in Nepal.						
13. Compensation for the victims and their families is more important than criminally prosecuting perpetrators of violence or oppressive officials.						
14. A truth commission is the next step in building a lasting peace in Nepal.						
15. A truth commission will have little or no impact on the future of Nepal.						
16. Revisiting the violent events of the past will only lead to more problems for Nepal.						
17. Holding perpetrators of past violence and formerly abusive officials accountable for human rights abuses will cause more division in Nepal.						
18. Creating an accurate historical record of past human rights abuses is a necessary step for lasting peace in Nepal.						
19. Those who ask for forgiveness for committing violent acts in the past should be pardoned.						
20. Perpetrators of human rights violations should be tried in international courts in order to avoid controversy in Nepal.						
21. Political leaders and officials should be held accountable for human rights abuses, not individual combatants who were following orders.						
22. Creating accountability for past human right abuses through the truth commission will strengthen Nepal in the future.						
23. Economic development is more important than a truth commission in Nepal.						
24. A truth commission will not work in Nepal because people will give dishonest testimonies.						
25. Perpetrators of human rights violations should be required to publically apologize to their victims face-to-face in order for amnesty to be granted.						

Appendix A

What is your level of experience in human rights advocacy? (circle one)	None	Little	Some	A lot
How many years of experience?				

Rank the top 3 human rights issues facing Nepal now (in order of priority, #1 being the highest priority).

RANK

	women's rights
	education
	health care
	employment
	poverty
	human trafficking
	caste discrimination
	voting rights
	child labor
	crime
	homelessness
	other _____

Rank the top 3 root causes of the armed conflict and violence that began in Nepal in 1996. (in order of priority, #1 being the factor that contributed most)

RANK

	poverty
	inequality
	monarchy
	caste system
	ethnic divisions
	language divisions
	religious differences
	international influences
	political corruption
	other _____

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DATE: March 15, 2012

TO: Paul Bueno de Mesquita, Ph.D.
FROM: University of Rhode Island IRB

STUDY TITLE: [308594-1] Transitional Justice and the Truth Commission in Nepal
IRB REFERENCE #: HU1112-100
SUBMISSION TYPE: New Project

ACTION: DETERMINATION OF EXEMPT STATUS
DECISION DATE: March 9, 2012

REVIEW CATEGORY: Exemption category # 2

Thank you for your submission of New Project materials for this research study. University of Rhode Island IRB has determined this project falls into the EXEMPT REVIEW category according to federal regulations. Per university policy, the project has been given an administrative review by either the IRB Chair or the Director of Compliance. Approval is valid for the duration of the project.

No changes to procedures involving human subjects may be made without prior review and approval. You must promptly notify the Office of Research Compliance of any problems that occur during the course of your work.

If you have any questions, please contact us by email at compliance@ds.uri.edu. Please include your study title and reference number in all correspondence with this office.