

नेपालमा गम्भीर प्रकृतीका मुद्दा फिर्ताको समस्या र दण्डहीनता
Withdrawal of the Serious criminal cases and Impunity in Nepal

Publish in December, 2010

फोरिड प्रकाशन संख्या - २३



FOHRID

HUMAN मानव अधिकार तथा प्रजातान्त्रिक मञ्च
RIGHTS AND DEMOCRATIC FORUM

पत्रमञ्जुषा नं.: १९१८६ काठमाडौं, नेपाल
फोन : +९७७-१-४४२३ १२५, फ्याक्स : +९७७-१-४४३८ ८१२
इमेल : fohrid@wlink.com.np
वेबसाइट : www.fohrid.org.np, www.fohridnetwork.org

Part I

Withdrawal of criminal cases: Nepal's obligations under international law

1. Introduction
 2. Nepal's obligation relating to prosecution
 - 2.1 Right to effective remedy and prosecution
 - 2.2 ICCPR and prosecution
 - 2.3 Crimes under international humanitarian law and prosecution
 - 2.4 CAT and prosecution
 3. Concept relating to pardon, amnesty and case withdrawal
- Conclusion

Part II

Law and practice of withdrawal of cases filed by government

1. Context
2. Case withdrawal and relevant laws in Nepal
3. Commencement of legislative law
4. Some observations on the Government Cases Act, 2049
5. Constitutional provision relating to case withdrawal
6. Gateway for misuse through "political ideology/revange" to "politicization"
7. Standard and procedure to withdraw cases
 - Standards
 - Procedure
8. Compliance of the Standard and procedure
 - Case withdrawn on the request of Chinese Ambassador
Balaram Yadav Vs. Nepal Government, Council of Ministers et al
9. Court and case withdrawal
 1. *His Majesty's Government Vs. Dil Bahadur Lama*
 2. *Shankar Prasad Dhakal Vs. His Majesty's Government, Secretariat of the Council of Ministers et al*
 3. *Drona Dahal Vs. His Majesty's Government, Secretariat of Council of Ministers et al*
 4. *Dev Narayan Mahato case*
 5. *Yogendra Sahani Vs. Office of Prime Minister and Council of Ministers et al*
 6. *On the FIR of Pawan Kumar Patel, Nepal Government Vs. Gagandev Raya Yadav*
 - 7 *Ahmuddin Miya Ansari Vs. His Majesty's Government, Council of Ministers et al*
- 10 Is it not required to seek consent from the agencies performing investigation and prosecution?
11. Conclusion and recommendations

Conclusion:

Recommendations:

Annex 1 Available data of cases withdrawn st of cases withdrawn at different times

Withdrawal of criminal cases: Nepal's obligations under international law¹

1 Introduction

The question of whether or not the government can withdraw cases should be viewed on the basis of the obligation of the government to prosecute against serious crimes. This is also linked to the question of how to address the incidents of serious human rights violation of the past during transitional phase. Therefore, it is necessary to analyze the general and special obligation of Nepal under international law to prosecute and take action in the serious crimes.

According to the international human rights law, the state concerned has obligation to conduct fair investigation of the charge to a person convicted of serious violation of human rights, prosecute against the convicted person according to criminal law and punish if found guilty. The state cannot escape from this responsibility in the name of national or municipal law. The state has to arrange or reform the legal, judicial and administrative mechanisms as measure and instrument for the purpose of carrying out this obligation.

Major aim of this working paper is to throw light on the provisions of international law regarding case withdrawal, and the obligation of the state for investigation and prosecution. The paper creates ground to review current Nepalese practice and procedure of withdrawing criminal cases. State obligation for investigation and prosecution of the serious violation of human rights is assessed because case withdrawal obstructs state obligation to prosecute. In other words, to withdraw case means ultimately not to prosecute. As this issue is also related to whether or not amnesty is possible in the crimes that occurred during the decade long internal armed conflict of the past, link between the practice relating to amnesty and Nepal's obligation under international law has also been discussed in this paper.

2. Nepal's obligation relating to prosecution

Under the international human rights law, a state has mainly two types of obligations for protection of human rights. First, the state has to carry out all necessary legal and instrumental measures to administer the rights guaranteed by the international law. Second, in case of human rights violation, the state should guarantee punishment to the convicted persons and reparation to the victims after fair and effective investigation of the incidents.

Above obligations have been incorporated mainly in the three types of laws. First, obligations created by the international traditional law; second, obligations created by treaty law; and third, obligations created by domestic law. As Nepal is already a state party to about two dozen international human rights and humanitarian laws including the four Geneva Conventions, ICCPR, CAT, Convention on the elimination of all forms of racial discrimination, Convention on the prevention and punishment of the crime of genocide, there is need to fulfill the obligations created by these conventions to Nepal, and at the same time, there is responsibility to address the acts prohibited by conventional international law and domestic laws of the land. Apart from the determination by the concerned laws regarding state responsibilities, jurisprudential official interpretation and analysis of the law

¹ Gobinda Sharma 'Bandi' Advocate

developed by authorized judicial and quasi judicial agencies also determine such responsibilities. Therefore, the question of whether or not Nepal should prosecute in the incidents that occurred during the past armed conflict should be viewed in light of the minute analysis of the above mentioned laws, the precedence and principles established by the Supreme Court of Nepal on various cases and the national consensus to conduct investigation of the human rights violation and crimes against humanity as set forth in the Comprehensive Peace Accord and the Interim Constitution.

2.1 Right to effective remedy and prosecution

Providing effective remedy to the victims of human rights violation is the obligation of the state under international law. The international laws guaranteeing effective remedy include Universal Declaration of Human Rights Article 2, CAT Article 13, Convention on the elimination of all forms of racial discrimination Article 6, UN Declaration on the protection of all persons from enforced disappearance Article 9 and 13, Principles on effective prevention and investigation of extra-judicial, summary and arbitrary executions, Principles 4 and 16 etc.

The right to effective remedy includes right to know the truth about the incident, right to justice and right to reparation. Prosecution is the inalienable component of right to justice, and it is regarded as an important element for protection of human rights. Therefore, various international human rights instruments have provisions and interpretation that right to effective remedy includes the duty to prosecute. These provisions are discussed below alongwith the provisions of the concerned conventions.

1. ICCPR and prosecution

Nepal has become state party to ICCPR, 1996 by ratifying it on 14 May 1991. Article 2(3) of the Covenant has the provision of right to effective remedy. Similarly, the Covenant has created several obligations to the concerned state party regarding measures and ways to be adopted by the state to ensure right to effective remedy. These obligations include the responsibility to conduct investigation and prosecute against the convicted. The UN Human Rights Committee which has the right to interpret the provisions of this covenant has stated in its General Comment no. 2 that the persons facing violations of the above rights have the right to effective remedy, and the perpetrators should be brought into the justice system and punished if found guilty.² This proves that prosecution is an inalienable element of right to effective remedy. Similarly, the Human Rights Commission has stated that the human rights related obligations are erga omnes (which means this obligation is applicable not only to the state party involved in violation but equally to the whole international community).³ Similarly, in its General Comment no. 29, the Human Rights Committee has mentioned that the right to remedy is 'a treaty based obligation under the whole convention' and emphasized that the 'state party should comply with the basic obligations to provide effective remedy under Chapter 3, Article 2 of the Convention.'⁴

Human Rights Committee, established through provision in the ICCPR, has explained in its General Comment that to prosecute in the incidents including extrajudicial killings,

² Human Rights Committee: General Comment no. 31 on Article 2 of the Covenant.

³ Human Rights Committee: General Comment no. 31 on Article 2 of the Covenant: The nature of the General Legal Obligation Imposed on States Parties to the Covenant, 21 April 2004, CCPR/C/74/CRP.4 Rev.6., Para 2.

⁴ General Comment no. 29 of 31 August 2001, CCPR/C/21/Rev.1/Add.11, Para 14

disappearance, torture that occurred through the serious violation of the rights guaranteed by the Covenant is the treaty based obligation of the state concerned. Therefore, it is the responsibility of Nepal to prosecute in such crimes.

The Inter-American Court has also mentioned about the state obligation to investigate the human rights violation and bringing the perpetrators to the justice system. The Court has stressed that the state should not ignore its obligation just because the victims do not want to take action against the perpetrators. In the case *Garrido and Baigorria v Argentina* the court has held that though the victim can pardon the person violating his rights, the state is compelled to punish such perpetrator if the incident is not of the nature to be prosecuted on behalf of individual.⁵

Similarly, in the case *McCann v United Kingdom*, the European Court of Human Rights held that whenever there was an allegation of unlawful killing by state agents, there had to be an investigation into the facts, because investigations were a procedural obligation of states under the right to life.⁶ The Court has held that the right of the victim or relatives to receive effective remedy gets violated in the absence of effective investigation.⁷

In the cases *Nydia Erika Bautista v Colombia*, *Jose Vicente y Amado Villagane Chaparro v Columbia*, and *Coronnel et al v Colombia*, the Human Rights Committee has stated that prosecution is an important aspect of ensuring human rights.⁸

2.3 Crimes under international humanitarian law and prosecution

The jurisprudence developed from Nuremberg Trial to date is evident that prosecution against war crimes and crimes against humanity is the obligation of Nepal under customary international law. Similarly, Nepal is the state party to the 4 Geneva Conventions of 1949. Violation of Geneva Conventions Common Article 3 is the violation of customary law. International Criminal Tribunal for the Former Yugoslavia formed by the UN has stated in the *Tadic* Case that the violation of Common Article 3 is the violation of customary international law. The Tribunal has made prosecution mandatory. Therefore, it is obligatory for Nepal to prosecute in the serious violation of human rights and humanitarian law during the past armed conflict.

2.4 CAT and prosecution

The CAT has made it mandatory for every nation to declare all acts relating to torture as punishable under criminal law.⁹ Torture is to be regarded as serious crime and effective legal, administrative, judicial and other similar measures should be adopted to prevent it. Article 4 of the Convention and judgment in various cases relating to torture have shown that it is the obligation of the state to punish the person inflicting torture.¹⁰ Similarly, the European Court for Human Rights has stated in its views expressed in the cases that torture is a serious crime and it harms personal dignity and prestige of a person. And this is caused

⁵ Case *Garrido and Baigorria v Argentina (Reparations)*, Judgment of 27 August 1998, Series C No 39, Para 72.

⁶ Case *McCann v United Kingdom*, Judgment of 27 September 1995, Series A No. 324, para 161.

⁷ Case *Aksoy v Turkey*, Judgment of 18 December 1996, Reports 1996-VII, paras 95-100.

⁸ Case *Nydia Erika Bautista v Colombia*, Views of 13 November 1995, CCPR/C/55/D/563/1993, paras 8.6,10; Case *Jose Vicente y Amado Villagane Chaparro v Colombia*, Views of 29 July 1997, CCPR/C/60/D/612/1995, para 8.2, Case *Coronnel et al v Colombia*, Views of 13 October 2000, CCPR/C/70/D/778/1997, para 10.

⁹ CAT, Article 4.

¹⁰ See CAT, Art. 1(1); *Dragan Dimitrijevic v Serbia and Montenegro*, Communication No. 207/2002, U.N. Doc. CAT/C/33/D/207/2002 (2004); *Jovica Dimitrov v Serbia and Montenegro*, Communication No. 171/2000, U.N. Doc. CAT/C/34/D/171/2000 (2005); *Danilo Dimitrijevic v Serbia and Montenegro*, Communication No. 172/2000, U.N. Doc. CAT/C/35/D/172/2000 (2005).

from both the state and non state sector. Apart from the public officials, the general public should be protected from this during armed conflict.¹¹ Regarding accusation of torture and ill treatment, the right not to bear torture and ill treatment points to the need to conduct investigation of the incident.¹²

As Nepal is a state party to this Convention, it has the obligation to conduct independent, fair and effective investigation of such allegations and prosecute the perpetrators for punishment to eradicate torture, ill treatment and impunity.

The basic principles passed by the UN General Assembly resolution no. 60/147, the principles developed by Human Rights Committee in the *Quinteros v Uruguay*, *Kurt v Turkey*, the decision of the Inter-American Court in the *Velasquez-Rodriguez* case and the General Comment no. 31 of the UN Human Rights Committee have clearly said that amnesty is not permissible in the serious crimes relating to violation of human rights and humanitarian law such as extra-judicial executions, disappearance, torture, rape. This means prosecution is essential in such crimes.

According to the basic principles regarding right to fundamental remedy and right to reparation passed by the UN General Assembly in 2005, every state has to conduct investigations in the serious violation of international human rights and humanitarian law, prosecute against person involved in such incident if there is adequate evidence, and punish if found guilty. According to this priniple, it is the duty of Nepal to prosecute in the incidents such as war crimes, crimes against humanity, extra-judicial executions, torture, disappearance, rape that occurred during the past armed conflict.

Besides, domestic laws of Nepal have prohibited the crimes of murder, rape, trafficking, abduction, beating, torture and made them punishable. It is the legal obligation of Nepal to prosecute against these crimes according to the national law.

The principles propounded by the Supreme Court of Nepal in the past have also stressed that it is Nepal's obligation to prosecute. In the well known case *Rajendra Dhakal v Ministry of Home* relating to enforced disappearance, the court has given clear directive order to prosecute against perpetrators involved in such incidents by formulating law on the basis of Nepal's obligations under international law, if it does not have relevant law. Similarly, on separate writ petitions filed on the cases of *Maina Sunuwar* and *Arjun Lama*, the court has ordered to prosecute murder cases against the individuals from Nepal Army and "people's army".

Prosecution is developed as a system to assist reconciliation in the context of transitional justice. It is necessary to adopt comprehensive concept of prosecution, conditional amnesty in the minor offences, adequate reparation to the victims and institutional reform to stop repetition of such incidents in the future as reconciliation without prosecution cannot ensure sustainable peace. On the basis of the above analysis, the international human rights and humanitarian law, customary international law, domestic laws of Nepal and the principles propounded by the Supreme Court have clearly directed to prosecute in the incidents such as war crimes, crimes against humanity, extrajudicial killings, torture, disappearance, rape. It is evident that prosecution after investigation is not enough, but it should also be effective.

3. Concept relating to pardon, amnesty and case withdrawal

¹¹ See, e.g., *European Court of Human Rights, HLR v France* (1997) 26 EHRR, para. 40; *A v United Kingdom* (1999) 27 EHRR 611; *Z and Others v United Kingdom* (2002) 34 EHRR 97, para. 73.)

¹² *Case Asenov v Bulgaria*, Judgment of 28 October 1998, Reports 1998-VIII, para 102.

Amnesty is a word derived from Greek language. Amnestia in Greek language means to forget. Therefore, this term is used in relation to those activities or declarations of the government by which all the old issues are wiped out legally. Later, it was used in the context of allowing immunity in the criminal charges by the sovereignty. Generally, this is practiced not to take action against anyone for taking part in the conflict, in the post conflict or post war situation. But, this does not mean that all the persons involved in criminal activities in the past should be allowed amnesty or pardon. This is further justified by the provision relating to amnesty in the Geneva Convention, Additional Protocol, 1977, Article 6(50).¹³

While looking at this provision, amnesty is conditional and is applicable for junior cadres and in the minor incidents only, and not in the heinous crimes and senior commanders. In particular, amnesty can be applied as a measure to reduce the chances of repetition of crimes after surrender of terrorist or armed groups.

Blanket amnesty has been found to be an unsuccessful concept in the course of conflict management. Prosecution has been started in South Africa, where it is believed amnesty originated, after it was felt necessary. Amnesty supports impunity, so it is an exception to the serious crimes such as genocide, war crimes and crimes against humanity.¹⁴ Similarly, there are several precedents where it is established that amnesty is inadmissible in the incidents of serious human rights violation and crimes against humanity. In the case *Roderick v Uruguay*, the Human Rights Committee has termed amnesty as inadmissible in the incidents of serious types of human rights violation and crimes against humanity.¹⁵ Similarly, the UN Security Council has called upon all the international community to prosecute against those responsible in the serious crimes and violations.¹⁶ The Security Council passed Resolution no. 1653 on 27 January 2006 calling for prosecution in the crimes under international human rights and humanitarian law.

Generally speaking, major objective of the case withdrawal and amnesty is to ensure peace and stability. Some provisions have been made in the peace process of Nepal also. Article 5.2.2 of the Comprehensive Peace Accord has the provision to withdraw cases filed for political reason. But, this cannot be interpreted to allow amnesty in all the cases of the past. The language used in this provision is explicit that only the false cases filed due to political prejudice should be withdrawn. Therefore, the discourse about general amnesty or case withdrawal should be guided on the basis of the international practice regarding concept of amnesty and pardon.

¹³ See *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 U.N.T.S. 609, entered into force 7 December, 1978.

¹⁴ See *UN Commission on Human Rights*, Resolution 2002/79, para. 2 'recognizes that amnesties should not be granted to those who commit violations of international humanitarian and human rights law that constitute serious crimes'; *The Princeton Principles on Universal Jurisdiction* (2001), Principle 7; ICC Statute, Arts. 5–8; *L. Sadat*, 'Exile, Amnesty and International Law' (2006) 81 *Notre Dame Law*

¹⁵ Communication No. 322/1988, U.N. Doc. CCPR/C/51/D/322/1988 (1994) para. 12.4. See also *HRC, Basilio Laureano Atachahua v. Peru*, Communication No. 540/1993, U.N. Doc. CCPR/C/56/D/540/1993(1996), para. 10: The HRC urged 'the State party to open a proper investigation into the disappearance of Ana Rosario Celis Laureano and her fate, to provide for appropriate compensation to the victim and her family, and to bring to justice those responsible for her disappearance, notwithstanding any domestic amnesty legislation to the contrary'.

¹⁶ SC Res. 1663 (2006), 24 March 2006, p. 2, paras 7–8.

The contemporary practice on amnesty and pardon has 3 dimensions: correction of mistakes made during justice or verdict, to wipe out the criminal stigma and to reduce severity of punishment. However, the trend of case withdrawal in Nepal is found to be just to wipe out the stigma through political influence rather than based on any subjective legal ground.

Though in different forms, amnesty, pardon and case withdrawal substantially and ultimately generate from the same seed. Therefore, as case withdrawal is a form of amnesty in one or the other ground, the act of case withdrawal by the state is against the obligation of the state to prosecute and right of victims to get effective remedy.

Conclusion

International law has created several obligations of the state against the incidents of serious violations of human rights. Major obligations include adopting legal and other measures to guarantee rights, investigation of human rights violations, providing effective remedy against violation, bringing the victims of serious human rights violation to the justice system and providing reparation to the victims.

Right to effective remedy stands for the obligation of the state to fight against impunity through speedy and effective remedy and bringing the perpetrators to the justice system. Case withdrawal or providing amnesty or pardon is against the right to effective remedy. Therefore, to prosecute is the obligation of Nepal under international law, and case withdrawal does not fulfill this obligation.

On the question of whether Nepal will be obliged to comply with that obligation when several international crimes such as torture, disappearance are not criminalized by Nepal, the Vienna Convention of Law of Treaties, 1969, Articles 26 and 27 and Nepal Treaty Act, 2047, Article 9 have clearly stated that the provisions of international law shall prevail, if there is contradiction between the domestic law of Nepal and the international law ratified by Nepal. It is the treaty based and legal obligation of Nepal to prosecute according to the obligations provided by the international law to which Nepal is a state party. Nothing against prosecution in such crimes is acceptable; therefore, such cases cannot be withdrawn.

Law and practice of withdrawal of cases filed by government¹⁷

4. Context

Case withdrawal is the right inherent in a sovereign state. The states withdraw cases against an individual on the ground of same right. Despite this, the concept that the state can withdraw any case at any time is fading away. Reasons behind this are the strengthening of the right of victims to get justice and punishment to perpetrators, emphasis in the civil sovereignty, increased international obligations of the state and constitutionalization of international law.

Therefore, the state has to take balanced step while withdrawing cases. Withdrawal of cases on arbitrary ground cannot ensure peace in the society or help protection of human

¹⁷ Madhab Kumar Basnet, Advocate

rights. The state cannot ignore its obligation to protect human rights. This study focuses increasing trend of Nepal to withdraw cases despite ratification¹⁸ of various human rights conventions.¹⁹ The study has been carried out based on available materials on this issue.

2. Case withdrawal and relevant laws in Nepal

Early trace of case withdrawal in Nepal can be found in 2007 (1950). The then King Tribhuvan declared in royal proclamation of 18 February 1951 (2007 Falgun 7) that he wishes to pardon those involved in political offence if they return to their home and engage in peaceful activities.²⁰ We cannot find any law in which this royal decree was based. In fact, it is not necessary to find such ground as it was a royal decree.

Prior to that the Rana regime was run through the law in the mouth of the rulers. In one of such instance, a rifleman complains with the Prime Minister that his wife eloped with Gumane Khawas. The Prime Minister orders to immediately execute the accused Gumane. After a while his guards inform him that the woman was a prostitute. Then he sends a horse rider to stop execution; however, the punishment was executed by the time they reach there.²¹

3. Commencement of legislative law

There was no legal provision in Nepal regarding withdrawal of cases in the Government Cases Act, 2017 (enforced on 13 April 1961). The Justice Administration (Miscellaneous Provisions) Act, 2018, Section 13 had provision relating to lawyers and public attorney. Sub-section (3) of the same had the first provision relating to case withdrawal which said,

"In the cases where the Government of Nepal has to be a plaintiff or where the Government of Nepal has filed a case or where the Government of Nepal is defendant pursuant to the prevailing laws, if there is an order of the Government of Nepal, the Government Attorney, with the consent of other parties, may make a deed of reconciliation or with the consent of the court, may withdraw the criminal case in which the Government of Nepal is plaintiff. If so happens, the following matters shall happen as following:

(a) If reconciliation is done, no one shall be charged any fee for the same.

(b) In case of withdrawal of the case, the criminal charge or the Government claim ceases and the defendant gets release from the case.

Provided that if the case has an effect on the property of any civilian, such case shall not be withdrawn from the court under this Section."

This provision of Justice Administration (Miscellaneous Provisions) Act, 2018 was repealed by the Justice Administration Reform Ordinance, 2030, Section 31(1) and Annex 4. The sub-section (2) of the same and Annex 5 added Section 9ka. to the Government Cases Act, 2017, Section 9 with following provision:

"9ka. Withdrawal of the Government case or reconciliation:

¹⁸ The term 'ratification' also denotes 'accession' in this study.

¹⁹ The term 'convention' also denotes 'covenants' in this study.

²⁰ Royal Proclamation of King Tribhuvan dated 2007.11.07, His Majesty King Tribhuvan Smriti Grantha, Tribhuvan Smarak Samiti: Kathmandu, 2047, P. 653

²¹ Kamal Dixit, Janga Geeta, Jagadamba Prakashan: Lalitpur, 2040, P.P. 104-5.

Withdrawal of the Serious crimina cases and Impunity in Nepal

In the cases where the Government of Nepal has to be a plaintiff or where the Government of Nepal has filed a case or where the Government of Nepal is defendant pursuant to the prevailing laws, if there is an order of the Government of Nepal, the Government Attorney, with the consent of other parties, may make a deed of reconciliation or with the consent of the court, may withdraw the criminal case in which the Government of Nepal is plaintiff. If so happens, the following matters shall happen as following:

(a) If reconciliation is done, no one shall be charged any fee for the same.

(b) In case of withdrawal of the case, the criminal charge or the Government claim ceases and the defendant gets release from the case.

Provided that if the case has an effect on the property of any civilian, such case shall not be withdrawn from the court under this Section."²²

After that, the Justice Administration Act, 2031 repealed the Justice Administration Reform Ordinance, 2030. However, this provision was retained in the Annex. In this amendment, Section 9ka. was added to the Section 9 of the Government Cases Act, 2017 which stated:

"9ka. Withdrawal of the Government case or reconciliation:

In the cases where the Government of Nepal has to be a plaintiff or where the Government of Nepal has filed a case or where the Government of Nepal is defendant pursuant to the prevailing laws, if there is an order of the Government of Nepal, the Government Attorney, with the consent of other parties, may make a deed of reconciliation or with the consent of the court, may withdraw the criminal case in which the Government of Nepal is plaintiff. If so happens, the following matters shall happen as following:

(a) If reconciliation is done, no one shall be charged any fee for the same.

(b) In case of withdrawal of the case, the criminal charge or the Government claim ceases and the defendant gets release from the case.

Provided that if the case has an effect on the property of any civilian, such case shall not be withdrawn from the court under this Section."²³

The Government Cases Act, 2049 adopted the provision of this Act without substantial change. Section 29 of this Act has accommodated this provision as follows:

"29. Withdrawal of the Government case or reconciliation: (1) In the cases where the Government of Nepal has to be a plaintiff or where the Government of Nepal has filed a case or where the Government of Nepal is defendant pursuant to the prevailing laws, if there is an order of the Government of Nepal, the Government Attorney, with the consent of other parties, may make a deed of reconciliation or with the consent of the court, may withdraw the criminal case in which the Government of Nepal is plaintiff. If so happens, the following matters shall happen as following:

(a) If reconciliation is done, no one shall be charged any fee for the same.

(b) In case of withdrawal of the case, the criminal charge or the Government claim ceases and the defendant gets release from the case.

(2) Notwithstanding anything contained in Sub-Section (2), if the case has an effect on the property of any civilian, such case shall not be withdrawn from the court under this Section".

Comparative assessment of 4 legal provisions

²² Nepal Gazette, Part 2, Section 23, Additional Number 75, 2030 Chaitra 20, Schedule 5, no. 11.

²³ Nepal Gazette, Part 2, Section 24, Additional Number 19, 2031 Shrawan 18, Schedule 4, no. 13.

While comparing the Government Cases Act, 2049 with the relevant past laws, only some words have been changed (in Nepali language) and the provision has been established as a separate sub-section (2). There is no other substantive change.

It explicitly shows that, we are still being governed by the law of 2018 even after ratification of almost 2 dozen human rights conventions. The law is not updated or revised in accordance with the human rights conventions. Despite enforcement of Nepal Treaty Act, 2047, the provision of law of 2018 is being continued neglecting the obligations created by the ratification and accession of international human rights conventions.

4. Some observations on the Government Cases Act, 2049

The then interim government, using the power of legislature, formulated Government Cases Act, 2049 and became state party to several international human rights conventions. But, the laws were not revised accordingly and the old provisions remained intact in the new legislations. Therefore, the provisions could not be human rights friendly. Each party and subsequent governments have been misusing them indiscriminately. The government is unable to fulfill the obligations created by the international laws.

This law has given priority to a person's property against his life. Government Cases Act, 2049, Section 29, Sub-section (1) allows government to withdraw any cases with the consent from the court. It's Sub-section (2) has recognized the cases relating to persons property as an exception. But, the protection to people's property is also not complete. For instance, the cases relating to robbery or arson involve the loss of property. As these cases are filed on behalf of the government, they can be withdrawn using this provision. One example is the case of *Yogendra Sahani Vs. Nepal government, Council of Ministers et al.*²⁴

5. Constitutional provision relating to case withdrawal

In the past, none of the Nepalese constitutions had made constitutional provision to withdraw cases. Though the Interim Constitution of Nepal, 2007 has not made any provision relating to case withdrawal, its Article 166, Clause (30) states, "The 'Comprehensive Peace Accord' concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) on Mangsir 5, 2063 (November 21, 2006), and 'Agreement on the Monitoring of the Management of Arms and Armies' reached on Mangsir 22, 2063 (December 8, 2006) are exhibited in Schedule 4". Clause 5.2.7 of the Comprehensive Peace Accord states, "Both sides guarantee to withdraw accusations, claims, complaints and cases under consideration alleged against various individuals due to political reasons and to make immediately public the state of those who are in detention and to release them immediately." Though this has been incorporated under schedule of the constitution, the Supreme Court has interpreted that this is not constitutional / legal provision but a political document.²⁵

6. Gateway for misuse through "political ideology/revenge" to "politicization"

Our past experience has shown that even the heinous crimes have been withdrawn in the name of "political reason" or "political revenge". We need to explore the history of how the evergreen logic of "political reason or revenge" evolved to withdraw the cases.

²⁴ This is further discussed in this paper in the succeeding pages.

²⁵ This is elaborated in the succeeding pages.

For the first time, the then Chief Justice Bishwanath Upadhyaya applied "political revenge" as ground for case withdrawal in the *His Majesty's Government Vs. Dil Bahadur Lama* case. The court mentioned as follows:

"In some situations, it is preferable to end such cases for the benefit of the country and society rather than continuing them. ***In the changed political context or situation, it might be necessary to withdraw the cases filed against someone on the ground of ideological faith or political revenge.***²⁶ Similarly, it is in the benefit of the nation to withdraw the cases relating to offence committed through immediate emotion and wrath in the unexpected situation created by social, religious or communal tension to establish or maintain social, religious or communal tolerance and goodwill. Sometimes, cases are withdrawn to maintain diplomatic relation or goodwill. Whatever be the cause, case withdrawal should be guided to social benefit and not in the individual prejudice, favour or interest. The use of authority to withdraw cases by undermining the impact of the grievances and loss caused by crime to the individual, family or society is an effort to misuse authority. Law does not authorize anyone to misuse it in this way. Therefore, the above legal provision has the inherent restriction that the authority of His Majesty's Government to withdraw cases should be used with good faith."²⁷

The above statement of the then Chief Justice started to be misused by the subsequent governments and the court also supported this whenever there is the term of political reason. Famous example is the withdrawal of murder case of Dang Bijauri. In the writ petition challenging government decision to withdraw this case, the court held, "the murder case of His Majesty's Government as plaintiff and 67 persons including Khum Bahadur Khadka as defendant filed in the district court is evident that ***the case is sued after an incident occurred through political cause.***"²⁸ the verdict also referred to the consent of Dang District Court to withdraw the case as decided by the government and written by the Ministry of Law and Justice as mentioned in the writ petition. The judgment further referred to the *His Majesty's Government Vs. Dil Bahadur Lama* case. To dismiss the writ, the Court stated, "The court can order to withdraw cases only if the court is satisfied to the ground and reasons of His Majesty's Government while assessing the ground and reasons forwarded. Consent of the court is a factor to control the abuse of authority in withdrawing the cases filed by His Majesty's Government. The writ shall be dismissed as the order of Dang District Court in the said case was made with the assessment of the ground and reasons after hearing of the lawyers from both plaintiff and defendant and the amicus curie before making the decision". This is being repeated in almost all subsequent cases.

The constitutionalization of this by incorporating the Comprehensive Peace Accord and Agreement on the Monitoring of the Management of Arms and Armies in the Schedule 4 of the Interim Constitution, 2007 has provided further concrete ground to the government to abuse.

In fact, the context mentioned in the *Dil Bahadur Lama* case and the provision in the constitution is not for misuse. However, it has been extensively misused. "Policy standard and procedure relating to criminal charges filed by His Majesty's Government" enforced by the then His Majesty's Government on 2055 Bhadra 1 has stated, as first standard of

²⁶ Emphasis by author.

²⁷ Nepal Kanoon Patrika 2051.

²⁸ Emphasis by author.

politically motivated case, "Only the offences under Offences against State and Punishment Act, 2046, Sections 3, 4 and 5 should be regarded as offences of political nature and the cases filed under other existing laws should be regarded as cases of general nature." This standard also shows that the government has misused its authority.

Justice Bishwanath Upadhyaya had put forth the condition to withdraw only the cases filed on the ground of political ideology and for political revenge. But, this has been manipulated to associate every crime with politics. Similarly, the restrictions in the use of this principle has been neglected. The term "only political ideology or revenge" used in the *Dil Bahadur Lama* Case has been made more liberal by using the term "political reason".

Standard and procedure to withdraw cases

Existing Nepal law have not made clear provision regarding procedure to withdraw cases. The laws have provided that the consent from the other party is required for reconciliation and consent of the court is required for case withdrawal. But the law has not clearly defined about who, from where and how to initiate process for case withdrawal? Therefore, the act of case withdrawal depends on the discretion of the government.

Though the case withdrawal was practiced from 2007 and there was written law to this effect since 2018, there was no clear standard or procedure in this regard until 2055. The "Policy standard and procedure relating to criminal charges filed by His Majesty's government"²⁹ was formulated in 2055. Till now, it has been kept as secret classified document. many cases have been filed in the Supreme Court challenging the case withdrawal, but the Court has not searched for the standard in any case. The author has found following policy standards and procedures prescribed in that document:

Standards

1. Only the offences under Offences against State and Punishment Act, 2046, Sections 3, 4 and 5 should be regarded as offences of political nature and the cases filed under other existing laws should be regarded as cases of general nature.
2. Out of the cases of general nature, if a case is sued with the ill intention to harm an individual based on the reason of prejudice against any political party, political ideology or revenge, action for case withdrawal can be taken as exception considering age, character of the person, situation during the incident, whether or not he was involved in any criminal offence, social status etc.
3. While taking action for case withdrawal under paragraph 2, efforts should be made to take decision on the basis of all political party recommendation instead of one party and the Ministry for Home should recommend as appropriate to withdraw the cases by obtaining recommendation from the local administration, and if possible from the concerned local agency.
4. While taking action for case withdrawal under paragraph 2, action should not be taken to withdraw cases that create personal benefit to the offender such as corruption, citizenship, abuse of authority, smuggling, black market, theft of natural or cultural heritage, smuggling or export import, revenue leaking, custom deception, cases under Foreign Employment Act, 2042, cases of trafficking etc. and the cases that happen due to the character of the offender such as enforced rape, drug, spy, arson, secrecy of document etc.

²⁹ This standard and procedure was approved by the Council of Ministers on 2055 Bhadra 1.

Withdrawal of the Serious crimina cases and Impunity in Nepal

5. Action should not be taken to withdraw cases that are not registered or decided by the first court or under consideration in the appellate court.
6. Legal arrangement should be made to provide adequate compensation from His Majesty's Government to the victim or victims for the grievances caused to the victim party due to case withdrawal.

Procedure

- a. Separate files should be prepared and brought to the Ministry of Law, Justice and Parliamentary Affairs with at least Secretary level decision by mentioning all the required information in the Standard, paragraph 2 showing the appropriate cause, necessity and utility.
- b. While sending file for case withdrawal, at least copies of the complaint letter, statement of the accused person and accusation letter as well as the decision of the court for imprisonment should be enclosed in the file.
- c. Clear description of the current status of the case to be withdrawn, whether the court has made any decision, whether any complaint or application is filed at the appellate level should be made while sending it.
- d. For case withdrawal, prior approval should be sought from the ministry concerned with the subject of the case.
- e. After receipt of the documents fulfilling the procedures of Sections a. to d. above, the proposal should be submitted to Nepal Government (Council of Ministers) through the decision of the Ministry of Law, Justice and Parliamentary Affairs if there is appropriate reason.
- f. If Nepal Government (Council of Ministers) decides to withdraw the case determining the proposal to be appropriate, action should be taken to implement the decision through the Ministry of Law, Justice and Parliamentary Affairs.

Compliance of the Standard and procedure

As this standard and procedure was kept as secret, we cannot say whether it was followed or not. However, if we analyze the decisions to withdraw cases after 2063, it is evident that this was not followed. This is not complied in the proposal submitted and decision to implement the provision to withdraw cases filed for political revenge according to the Clause 5.2.7 of the CPA and other cases withdrawn thereafter.

1. Only the cases filed against CPN-Maoist could be withdrawn through this provision, but the non Maoist political parties also made to withdraw cases on this ground referring to the provision in the proposal.
2. Whatever written in the standard and procedure of 2055, it is found that the cases relating to foreigners, sentenced cases, the cases filed after 2063 Mangsir 5 and the cases involving forced rape, drugs were also withdrawn. Therefore, the government has not complied with this standard.

Case withdrawn on the request of Chinese Ambassador

Tatopani Customs Office arrested a Chinese woman named Ms. Li Xiaoping on 19 August 2007 while entering into Chinese territory with US\$ 79,775. The Custom sent her to the Department of Revenue Investigation for necessary investigation. The Department filed a case in the Sindhupalchok District Court with the claim according to Foreign Exchange (Regulation) Act, 2019, Section 3, 4(1) and 17(1) on 2064.05.25. After filing of the case, Chinese Ambassador to Nepal wrote directly to Finance Minister and also through Foreign

Ministry to withdraw the case considering "bilateral relationship between the two countries". The case was withdrawn after this request. Preamble of this decision has mentioned that though the cases that do not fall under the paragraph no. 4 of the standards approved by the Council of Ministers should not be withdrawn, the Ministry of Finance has requested to submit this proposal to the Council of Ministers considering the friendly bilateral relations between Nepal and China.

Balaram Yadav Vs. Nepal Government, Council of Ministers et al³⁰

Ram Shankar Yadav, resident of Siraha district, Bhagawanpur VDC ward no. 5 shot to death Police Constable Yam Bahadur Basnet on 2058 Mangsir 8. Eye witness of the incident Sushil Kumar Yadav said during police investigation and in the court that Ram Shankar Yadav himself murdered Police Constable Yam Bahadur Basnet by shooting. The Siraha District Court decided the case on 2061 Magh 6, sentencing Ram Shankar Yadav life imprisonment with confiscation of his property. The Appellate Court agreed to this decision through its judicial review.

After that Ram Shankar Yadav, Dharmadev Yadav, Shivashankar Yadav, Bishwanath Yadav, Girdhar Yadav, Ram Autar Yadav, Kameshwor Yadav and others murdered witness Sushil Kumar Yadav by shooting on 2061.02.03. Another case was filed on this incident. Ministry for Law submitted a proposal to the Council of Ministers to withdraw the second case on 2066.06.29. After this, Ram Shankar Yadav vandalized the residence of the victims family "to eliminate enemies" and they fled to the district headquarters to save their lives. After breaking of the house, victim's elder brother filed a writ to the Supreme Court on 2066.07.11. A show cause order was issued the next day which was immediately informed to the Council of Ministers. But, the Council of Ministers withdrew this case on the same day. Another writ petition was registered to the Supreme Court on 2066.07.16, but interim order has not been issued. The case is under consideration now.³¹

Court and case withdrawal

The court is also not uniform regarding case withdrawal. The nature of each case is different, and the court has to take this seriously. The court has to be conscious on the questions such as whether or not the offender has violated human rights of any one? Is anyone victimized by this incident? How serious is the case? How was/ is the character of the offender? Is a serious crime being withdrawn with political color? What impact shall the case withdrawal make in the society? But, these issues are followed just for formality except in some exceptional cases. In fact, the court is helping the monopoly of the government.

The court made landmark decision in the *Dil Bahadur Lama* case. But the principle established by this case is not followed by the court. This section explains decisions on some emblematic cases of the Supreme Court.

7. His Majesty's Government Vs. Dil Bahadur Lama

This was a landmark case decided by a bench of 5 justice including Chief Justice. The appeal of the case relating to corruption committed by Dil Bahadur Lama was under consideration in the Supreme Court. The Council of Ministers decided to withdraw this case on 2051.01.08. The Appellate Court Patan, sought approval of the Supreme Court to publish

³⁰ This case is under consideration in the Supreme Court at the time of writing this paper.

³¹ This detail is based on the case file of the case under consideration.

this decision in the gazette stating that His Majesty King has pardoned the penalty according to the Constitution of the Kingdom of Nepal, 2047, Article 122.

The Supreme Court denied the request stating that the law does not allow to misuse the facility to withdraw cases. The authority of the government to withdraw cases is restricted to be used with good intention and it is not absolute right. The decision further clarified that the provision to seek approval of the court for case withdrawal is to check the misuse of this authority. This is not a procedural legal formality but a substantive legal provision. It also denied giving approval just because of the request from the government and stated that this is not legal treatment or system.

The decision distinguished between case withdrawal and pardon of the penalty by His Majesty the King. It stated that the case can be withdrawn before final decision and not after the decision. This is expressed in the term "the defendant gets release" in the Government Cases Act, 2047, Section 29. After sentencing from the competent court or other judicial agency by finding the accusation appropriate, the convicted person cannot be relieved from the accusation other than pardon from His Majesty King according to the Constitution. This decision of the full bench is a landmark on the withdrawal of cases. However, the government is encouraged as the subsequent decisions of the Supreme Court itself have not complied to it.

8. *Shankar Prasad Dhakal Vs. His Majesty's Government, Secretariat of the Council of Ministers et al*³²

A writ was filed in the Supreme Court challenging the decision to withdraw case of intended homicide using fatal weapons during the process of local elections of 2049 Jestha 14 through the decision of His Majesty's Government dated 2052.03.04. Referring to the provision in the Government Cases Act, 2047, Clause 29, the Court dismissed the writ petition as the decision of the case withdrawal had provided the opportunity to seek remedy pursuing it as a public case, and subsequently a case of beating was being prosecuted against the accused people.

9. *Drona Dahal Vs. His Majesty's Government, Secretariat of Council of Ministers et al*³³

This case is renowned as "Bijauri murder case". Krishna Bahadur Chaudhari, Pushpa Kumar Ghimire, Narayan Chaudhari and others died and 32 were injured in a firing amid a protest rally at Bijauri VDC, Manpurkala of Dang district on 2051 Kartik 17. A case was filed against 67 persons including Khum Bahadur Khadka. After that, Khum Bahadur Khadka became Home Minister. Then the government decided to withdraw the case on 2052.06.12 and the Dang district court agreed to it in Mangsir of same year. Advocate Drona Dahal challenged this decision in the Supreme Court. After hearing in the case Justice Indra Raj Pande decided to dismiss the case whereas Justice Harishchandra Upadhyaya stood against it. Then the full bench of the court agreed to dismiss the case as decided by Justice Indra Raj Pande. The court ruled that the court can order to withdraw case only if the court is satisfied to the "ground and reason" mentioned by the government.

10. *Dev Narayan Mahato case*³⁴

³² Nepal Kanoon Patrika 2054, Vol. 2, P.102, Decision no. 6319.

³³ Ri. Pu. I. No. 79 of the year 2055, date of decision 2056.08.01, full bench.

The government had decided to withdraw this case in 2064.03.07 and sought approval of the Supreme Court. Citing various decisions of Indian Supreme Court, the Supreme Court denied the government request. The court explained that the government files case in the incidents of serious criminal offence as the victim himself is not capable to collect testimony for prosecution in such cases. The case belongs to the victim but the case is handled by the government because it is the duty of the state to punish the criminals. The court accepted withdrawal of cases considering public interest after feeling of 'paucity of evidence' due to error in investigation. The state can withdraw case in the course of hearing or pardon after sentence on such situation. It is against the benefit of the society to forward a case despite 'paucity of evidence'. Similarly, a case can be withdrawn if it helps to avoid possible unrest from the students or workers or occupational unions. The court further stated that a case can be *nolle prosequere* due to reasons including relationship with foreign countries. But, the executive decision should prove that these grounds are genuine.³⁵

The court has stressed that it does not investigate about validity for the ground and reason of the genuine and bonafide decision to withdraw cases. The government takes such decision being accountable towards constitution and people within the executive domain. The court assumes that the activities of the government are legal and required till provided otherwise.

The court stated that the government has not clarified why it was required to withdraw the case and what larger public interest it serves. The decision made to withdraw the cases under executive function should be supported by ground and reason. It is not the intention of the Section 29 that the court should act as rubber stamp to approve the government decision. It is rather a provision for judicial check and balance of the executive function. Therefore, the court decided that the case cannot be withdrawn by the court on the ground of Government Cases Act, 2049, Section 29.

11. *Yogendra Sahani Vs. Office of Prime Minister and Council of Ministers et al*³⁶

This case is related to the complaint of Yogendra Sahani against Jayaram Yadav and Bachchela Mali et al accusing them of committing robbery of Rs. 1,010,800 and injuring his wife and sons on 2063.02.08 at his house. A robbery case was filed at Rautahat District Court on 2064.09.06. Nepal government decided to withdraw this case on 2065.07.22 and Rautahat District Court approved it on 2065.07.16. A writ was filed in the Supreme Court but the Court dismissed the writ even without ordering show cause. This decision is not published till now.

In this case the court held that "the public cases can be withdrawn for the extended benefit of the country and the society in special circumstances." The decision referred to the Clause 5.2.7 of the CPA and stated that "the cases filed on political ground might have to be withdrawn in the changed political scenario." The court concluded that the government has followed due process as mentioned in the Government Cases Act, 2049, Section 29; therefore, judicial intervention from the writ is not appropriate.

³⁴ On the FIR of Dev Narayan Mahato, Nepal Government Vs. Devendra Mandal et al. Nepal Kanoon Patrika 2064, Vol. 6.

³⁵ Decisions of the Indian Supreme Court cited in this decision are not cited in this paper.

³⁶ Writ no. WO 0293 of the year 2065. Case certiorari, deciding justice Tahir Ali Ansari, date of decision 2065 Mangsir 19.

12. On the FIR of Pawan Kumar Patel, Nepal Government Vs. Gagandev Raya Yadav³⁷

This is a landmark case as it provides extensive interpretation and description of case withdrawal on the basis of CPA Clause 5.2.7. Mother of Shambhu Patel filed complaint on 2056.10.20 that the accused persons ran away after shooting her son on 2056.10.09, and Shambhu Patel died on 2056.10.21 and a case on homicide was filed on 2056.10.22. Rautahat District Court on 2060.09.29 ordered life imprisonment with property confiscation and 6 months imprisonment and clearance to some other defendants. The Appellate Court, Hetauda ordered 10 years life imprisonment on 2061.04.25 and Gagan Dev appealed to the Supreme Court against this. Government filed a separate appeal demanding sentence to other defendants also.

While the case was being considered by the Supreme Court, Nepal Government wrote a letter on 2065.08.02 to withdraw the case and the Court ordered on 2065.08.05 that the relevance and reason for case withdrawal is not clear in the letter and the decision of the government. The government mentioned that the decision was made according to the CPA, Clause 5.2.7 as the case was filed on the basis of political revenge during Maoist people's war. After hearing in this case, the joint bench of the Supreme Court stated that the CPA, Clause 5.2.7 has an important status. The court described that the CPA is still in the process of implementation and there is no law other than Government Cases Act, 2049, Clause 29(1) to provide approval for case withdrawal by the court. The decision stated, "The court cannot describe it on the basis of the agreements of political nature, rather it must reach conclusion in accordance with the applicable principles of law and justice on the basis of the provisions in the constitution and law."

The court further explained, "The government's legal right to withdraw cases is a very important right. To accuse someone for violation of law by the government is also an important decision. Situations might create inability to prove the cases filed by itself or to proceed with the case. The state might have to withdraw the cases filed by it to resolve an emerging critical situation. It might require to withdraw the cases remaining within the standard of law and justice. It is not possible to prepare details of which is the appropriate situation to withdraw cases. It is a matter to be decided case by case on the basis of relevance. ***The court does not have the policy of unauthorized intervention if withdrawal of case required due to very serious reason and it does not affect justice. But, the court cannot make decision on case withdrawal by accepting the fabricated reasons and relevance ignoring the accusation accepted by the court and its decision on it when it is not shown through case file. The court must be serious especially on the offences relating to violation of human rights and humanitarian law, posing serious question on the social security and morality. It is not appropriate for the judicial right entrusted to the court to demand case withdrawal at any type of case and to approve it any time or at any type. The court must, in fact become the protector of justice. Such questions should be viewed seriously as only the protection of the rights of people who are weak or fall victim of crime due to inability to protect themselves can guarantee justice in the society.***"³⁸

³⁷ Nepal Kanoon Patrika 2065, Vol. 9, P.1108, Decision no. 8013.

³⁸ Emphasis of the author as it is a very important condition.

13. ***Ahmuddin Miya Ansari Vs. His Majesty's Government, Council of Ministers et al***³⁹

A case of murder of the father of plaintiff was filed in the Bara District Court. The Council of Ministers decided to withdraw the case on 2052.01.03, and accordingly an application was submitted to the Bara District Court on 2052.10.10. Then a writ petition was filed in the Supreme Court to order not to implement the above government decision. After hearing on the case, the Court also ordered not to implement the decision immediately. After final hearing, the court dismissed the writ stating, "It is found that HIs Majesty's Government has sent a letter to the primary district court by deciding to withdraw the case. The case is under consideration and not decided in the district court, so there is a situation to take decision by entry into it through writ as it may make favorable or unfavourable impact to the fact being considered in the district court." It clearly implied that one can enter into the Supreme Court only after the district court decides whether or not to give the case.

But, the Supreme Court gave entirely different decision on the ***Ramji Mahara Chamar case***.⁴⁰ The case initiated with a dispute on a water way between the houses of Subba Mahara Chamar and the plaintiff. A Panchayat was held on 2065.03.20 to settle the dispute. Subba Mahara Chamar was not satisfied with the decision of the Panchayat, and 13 people including him came to the house of plaintiff and on 2065.03.21 night and started beating them. Plaintiff's father Bharat Mahara Chamar died of injury of the day on 2065.03.24. An accusation was filed against the defendants on 2065.04.17 and they were kept under custody as ordered by the court. The Council of Ministers on 2065.07.11 decided to withdraw the case and it was decided accordingly on 2065.08.05. Therefore, a writ was filed demanding to dismiss the decision of the Council of Ministers and the approval of Parsa District Court.

The supreme Court dismissed the writ stating, "The application is found to be meaningless as the Parsa district court 'allowed'⁴¹ by law to allow withdrawal of cases by evaluating all the evidence with the conclusion that the accusation of the case is related to politics⁴² and the case is already withdrawn." In this way, the court has dismissed the writ at one occasion on the ground that the district court is yet to decide; and on other occasion because the decision has already been made. it clearly signifies that the court does not have a stable policy. We can easily assume the situation of district courts, when the Supreme Court itself is in such an awkward situation. Politics and crime are becoming inalienable due to such unstable policy of the court.

Is it not required to seek consent from the agencies performing investigation and prosecution?

Normally, the police initiates public cases⁴³ and the public attorney prosecutes on it after completion of investigation. Both these agencies are trained and professional to perform this task. Moreover, they have direct link with the victims. Both the government and the court that play legal role for case withdrawal are not directly in touch with the victims. The police

³⁹ Writ no. 2907 of the year 2052, division bench of Indraraj Pande and Harishchandra Prasad Upadhyaya, date of decision 2055 Bhadra 9.

⁴⁰ *Ramji Mahara Chamar Vs. Office of Prime Minister and Council of Ministers et al*. Writ no. 065-WO-0413 of the year 2065. Deciding justices Balam K.C. and Abadhesh Kumar Yadav, date of decision 2066 Bhadra 19

⁴¹ The term *anumati*, equivalent of allowed is used in Nepali language.

⁴² The decision has unclear language.

⁴³ Some cases are initiated by the people other than police such as case relating to forest.

being in direct contact with the victims does not participate in any phase of case withdrawal, is not informed about this process officially and knows only after the news is published. Similarly, the public attorney does not involve in any phase of case withdrawal. The office of Attorney General plays the role of informing the government about the current status of the case to be withdrawn, and to inform the office of the public attorney to withdraw the case according to the decision of the Council of Ministers.

In this way, this process itself is erroneous as the agency conducting investigation and prosecution against the offender are not involved in any phase of case withdrawal. On the other hand, the victim or their families do not get any information in this regard. They are totally ignored by the state. Therefore, the government should seek the opinion of these agencies and their opinion should play role. As nothing is mentioned about the standard and procedure to withdraw other types of cases, the procedure itself has fault.

Conclusion and recommendations:

- a. **Conclusion:** We reach the following conclusion from the above study:
 - i. Nepal has 60 years long recorded history of case withdrawal.
 - ii. Case withdrawal received legal ground from the year 2018 only.
 - iii. Current Government Cases Act, 2049, Clause 29 is the continuation of the law of 2018 and it is not human rights friendly. It cannot protect the life and property of the victims and control the uncontrolled discretionary power of the government.
 - iv. This provision is widely misused. The international obligations created by the human rights conventions ratified by Nepal have not been fulfilled.
 - v. Policy of the court is also not predictable and there are instances of "decisions (not justice) on the basis of the mood of the judge rather than justice according to law." This has made the government dominant. The court has failed to stop the abuse of authority from the government.
- b. **Recommendations:**
 - i. New human rights friendly law should be formulated by ending the continuation of the law of 2018.
 - ii. The process of case withdrawal should be incorporated in the legislative law and it should not be determined by the right of the government to formulate law or directives.
 - iii. The opinion of the Attorney General and police should be obligatory while taking decision regarding case withdrawal.
 - iv. Provision to seek consent from the victims should be made compulsory for case withdrawal.

Annex 1 Available data of cases withdrawn
st of cases withdrawn at different times⁴⁴

Sl. No.	Date of withdrawal	Defendant of the case	Type of case	Court/place of the court

⁴⁴ This list is based on the list received by the author. It is incomplete. This list includes the cases already published in the Kanoon bi-monthly of Lawyers Club.

Withdrawal of the Serious crimina cases and Impunity in Nepal

Interim government 2047/1/6 to 2048/2/11				
1	2047.1.4	Narayan Man Bijukshe et al	Homicide	Bhaktapur district court
2	2047.1.9	Khagaraj Adhikari et al 14	Attempt to murder	Kaski district court
3	"	Amar Bikram Malla	Crime against state	Narayani
4	2047.1.23	Hari Kumar Silwal et al 6	Public offence	Chitwan district court
5	"	Chandra Bahadur Kunwar	"	Lamjung district court
6	"	Govinda Karki et al 8	"	Sunsari
7	"	Nilu Pun et al 6	"	Kaski district court
8	"	M.K. Gupta	Drugs	Bagmati
9	"	Tankanath Pokhrel	Regime (Rajkaj)	"
10	"	Bheshraj Paudel	"	Rapti
11	"	Rammani Nepali et al 21	"	"
12	"	Som Prasad Luitel	"	Koshi
13	"	Khemraj Dahal	"	"
14	"	Prakash Parajuli	"	"
15	"	Laxmi Prasad Upreti	"	"
16	"	Ajambar Kangwang	"	"
17	"	Ajambar Kangwang	"	"
18	"	Ajambar Kangwang	"	"
19	"	Laxmi Prasad Upreti	"	"
20	"	Ajambar Kangwang	"	"
21	"	Laxmi Upreti	"	"
22	"	Ramesh K.C.	"	"
23	"	Narendra Rai et al 14	"	"
24	"	Hemraj Ghimire	Crime against state	"
25	"	Raghunath Adhikari et al 9	Institutions	"
26	"	Mahesh Regmi et al 11	"	"
27	2047.1.31	Ramnath Dhakal et al 3	Expression and publication	Bheri

Withdrawal of the Serious crimina cases and Impunity in Nepal

28	"	Yadav Bhandari et al	Regime	Mechi
29	"	Bhumiraj Shrestha et al 3	"	"
30	"	Laxmi Prasad Kunwar et al 2	"	"
31	"	Indradhwaj Limbu et al 13	"	"
32	"	Nanda Lal Kharel et al 19	"	"
33	"	Dev Kumar Acharya et al 12	"	"
34	"	Dharma Chandra Lawati et al 28	"	"
35	"	Madan Prasad Rai et al 13	"	"
36	"	Dhan Bahadur Gurung et al 3	"	"
37	"	Ichchha Ram et al 27	Institutions	"
38	2047.2.29	Manju Rai	Religion Conversion	Morang
39	"	Kamala Rai	"	"
40	"	Gopimaya Rai	"	"
41	"	Geeta Rai	"	"
42	"	Min Kumari Rai	"	"
43	"	Gyanu Khatri	"	"
44	"	Dhan Kumari Rai	"	"
45	"	Kumari Rai	"	"
46	"	Susmita Rai	"	"
47	"	Kamal Bahadur Khatri	"	Dhankuta
48	"	Dhan Bahadur Khatri	"	"
49	"	Govinda Rai	"	"
50	"	Dhan Kumar Rai	"	"
51	"	Chitra Rai	"	"
52	"	Ramesh Rai	"	"
53	"	Habit Miya Ansari	"	Rautahat
54	"	Karimuddhin Miya	"	Gorkha
55	"	Anarkali Devi Yadavni	"	Chitwan
56	"	Santa Kumar Rai	"	Okhaldhung a
57	"	Charles Mendis	"	Kathmandu
58	"	Dabal Bahadur Bam	"	Kailali
59	"	Bednidhi Nepal	"	Morang
60	"	Chhatra Man Karki	"	"
61	"	Ram Bahadur Magar	"	Dhankuta
62	"	Prasad Kumar Magar	"	"
63	"	Mohan Kumar Magar	"	"
64	"	Khadga Bahadur Magar	"	"
65	"	Chandra Bahadur Magar	"	"

Withdrawal of the Serious crimina cases and Impunity in Nepal

66	"	Sami Ullah Musalman	"	Rupandehi
67	"	Haribhakta Khatri	"	Okhaldhunga
68	"	Rana Bahadur Shrestha	"	"
69	2047.3.6	Raj Kumar Khatri et al 40	Regime	Sagarmatha
70	"	Gajendra Narayan Singh et al 4	"	Janakpur
71	"	Chhabilal Karki et al 13	Institutions	Sagarmatha
72	"	Shyam Bahadur Maharjan	"	Bagmati
73	"	Liladhar Acharya et al 14	"	Narayani
74	"	Bajaranga Nepali et al 12	"	Janakpur
75	"	Devi Prasad Bassal et al 8	Donation	Palpa
76	"	Khagendra Sharma et al 24	"	Sunsari
77	"	Durga Prasad Khanal et al 3	Public offence	Palpa
78	"	Bijaya Gurung et al 6	"	Kaski
79	"	Kalidash Sharma et al 26	"	"
80	"	Somnath Pyasi et al 42	"	"
81	"	Buddhi Bahadur Gharti et al 19	"	"
82	"	Nawaraj Paudel et al 13	"	"
83	"	Tikaram Pageni et al 2	"	"
84	"	Tikaram Tripathi et al 5	"	"
85	"	Chandra Mani Acharya et al 16	"	"
86	"	Mukti Regmi et al 2	"	Bardiya
87	"	Hari Rawal	Forest products	Kailali
88	"	Somnath Adhikari et al 5	Public rally	Kathmandu
89	"	Meghraj Acharya et al 5	"	"
90	"	Netra Bikram et al 13	"	"
91	"	Shiva Kumar et al 3	"	"
92	"	Naresh Bahadur et al 7	"	"
93	"	Phadindra Raj et al 5	"	"
94	"	Narayan Prasad et al 2	"	"
95	"	Govinda Kumar et al	"	"
96	"	Chetraj et al 3	"	"
97	"	Durga Prasad et al 2	"	"
98	"	Parshuram Panta et al 4	Donation	"
99	"	Ganesh Pandit	Institutions	Nuwakot
100	"	Krishna Prasad Siwakoti	Regime	Kathmandu

Withdrawal of the Serious crimina cases and Impunity in Nepal

101	"	Gyanendra Man Shrestha et al	"	"
102	"	Homnath Paudel et al	"	"
103	"	Ashok Kumar Acharya	"	"
104	"	Yadu Kumar Shrestha et al	"	"
105	"	Badre Kumal et al	"	"
106	"	Sthan Nath Baral	"	"
107	"	Nanda Prasad Acharya	"	"
108	"	Govinda Bohora et al 6	"	"
109	"	Dan Bahadur Tamang et al 2	Institutions	Dhankuta
110	"	Lila Gurung	"	"
111	"	Gayatri Prasad Kafle	"	"
112	"	Prem Bahadur Karki et al 29	"	"
113	"	Padhma Bahadur Paudel et al	"	"
114	"	Hari Prasad Adhikari et al 16	"	"
115	"	Bhim Shrestha et al 3	"	"
116	2047.3.7	Hiradatta Dahal	"	"
117	2047.3.13	Balkrishna Sharma	Weapons	Gulmi
118	"	Kamal Kumar Khawas	Corruption	Koshi
119	"	Dil Kumari Rai et al 2	Arson	Ilam
120	"	Choplal Bhusal et al 2	Robbery	Arghakhachi
121	"	Narendra Prasad Dhungel et al 4	Plane hijack	Morang
122	"	Durga Subedi et al 3	Illegal weapons	"
123	"	Lok Bahadur Gurung et al 3	Homicide	Chitwan
124	"	Rom Bahadur Basnet et al 4	Bank robbery	Gulmi
125	"	Ashta Bhakta Chitrakar	Homicide	Kathmandu
126	"	Purna Bahadur Gurung	"	Chitwan
127	"	Lokraj Thakuri	"	"
128	"	Nanda Lal Ghale	"	"
129	"	Narayan Subedi	"	"
130	"	Sitaram Bastola	"	"
131	"	Rabindra Narayan Das	"	"
132	"	Narayan Prasad Bastola	Robbery and homicide	Supreme Court
133	"	Khadga Bahadur Gurung	Robbery	Dhankuta
134	"	Bhupendra Chhetri Paudel	"	"
135	"	Chandra Datta Paudel	"	"
136	"	Phadindra Acharya et al	Bank robbery	Gulmi

Withdrawal of the Serious crimina cases and Impunity in Nepal

		4		
137	"	Prabha Krishna Paudel et al 7	Robbery	Arghakhachi
138	"	Rana Bahadur Gurung	Homicide	Chitwan
139	"	Jhalak Subedi et al 13	Attempt to murder	Gandaki
140	"	Badri Narayan Yadav	Homicide	Supreme Court
141	2047.3.25	Pushpa Prasad Upreti	"	Jhapa
142	"	Punya Prasad Sharma	"	"
143	"	Shiva Prasad Siwakoti	"	"
144	"	Til Bikram Dhakal	"	"
145	"	Mangal Sunuwar	"	"
146	"	Umakanta Sedhai	"	"
147	"	Bidur Chapagain	Attempt to murder	"
148	"	Chandra Prakash Mainali	"	"
149	"	Rajan Bangali	"	"
150	"	Mukesh Magar	"	"
151	"	Man Bahadur Tamang	Robbery	"
152	"	Jaya Prakash Rai	"	"
153	"	Ram Bahadur Tamang	"	"
154	"	Ram Bahadur Paudel	"	"
155	"	Ritthe Sarki	"	"
156	"	Shiva Prasad Siwakoti	"	"
157	"	Nil Bikram Dhakal	"	"
158	"	Mangal Sunuwar	"	"
159	"	Krishna Bahadur Karki	Homicide and robbery	"
160	"	Ambar Bahadur Baniya	"	"
161	"	Khadananda Wagle	"	"
162	"	Chandra Prakash Mainali	"	"
163	"	Khadka Prasad Pakuwal	"	"
164	"	Thrini Lal Rajbanshi	"	"
165	"	Bera Tharu	"	"
166	"	Rambat Tharu	"	"
167	"	Balu Rajbanshi	"	"
168	"	Kamal Shrestha	"	"
169	"	Ganesh Bahadur Magar	"	"
170	"	Pushpa Sharma	"	"
171	"	Padhma Prasad Prasai	"	"
172	"	Chhatra Bahadur Magar	"	"
173	"	Ramesh Kumar Magar	"	"
174	"	Mitra Prasad Luitel	"	"
175	"	Shanta Prasai	"	"
176	"	Mangal Rajbanshi	"	"

Withdrawal of the Serious crimina cases and Impunity in Nepal

177	"	Chhora Satar	"	"
178	"	Bhim Satar	"	"
179	"	Amire Magar	"	"
180	"	Rudra Subedi	"	"
181	"	Bidur Chapagain	Homicide	"
182	"	Ram Prasad	"	"
183	"	Chyapta Rajbanshi	"	"
184	"	Dinbandhu Rajbanshi	"	"
185	"	Madhuwa Jhagad	"	"
186	"	Lakhiram Bansar Satar	"	"
187	"	Ganga Prasad Kharel	"	"
188	"	Jiban Kumar Magar	Jail break	Lalitpur
189	"	Harka Bahadur Khadka Chhetri	"	"
190	"	Kameshwar Prasad Halwai	"	"
191	"	Pradip Nepal	"	"
192	"	Madhav Prasad Paudel	"	"
193	"	Bir Bahadur Lama	"	"
194	"	Gopal Raj Shakya	"	"
195	"	Chandra Prakash Mainali	"	"
196	"	Rajendra Rajbanshi	"	"
197	2047.4.1	Rajkumar Tamrakar	Public offence	Kavre
198	"	Bhaktalal Shrestha	"	"
199	"	Dilip Kumar Tamrakar	"	"
200	"	Hari Krishna Shrestha	"	"
201	"	Badri Das Sainju	"	"
202	"	Rabindra Sainju	"	"
203	"	Mansagar Shrestha	"	"
204	"	Bishnu Das Syaula	"	"
205	"	Pushpa Das Syaula	"	"
206	"	Binaya Kumar Bishta	Homicide	Siraha
207	"	Bhawani Subedi	"	Jhapa
208	"	Narendra Ghimire	"	"
209	2047.8.13	Shankar Prasad Panta et al 17	Crime against state	"
210	2947.8.17	Krishna Prasad Gautam	"	Bagmati
211	"	Ratna Nidhi Regmi	"	"
212	2047.11.17	Uddhav Bilash Panta et al 83	Homicide	"
213	"	Jagarnath Thakur et al 12	"	Mahottari
214	"	Bishwanath Prasad Chaudhari et al 19	Robbery	Rautahat
215	"	Bishwanath Prasad Chaudhari et al 15	"	"
216	"	Bishwanath Chaudhari et al 19	"	"

Withdrawal of the Serious crimina cases and Impunity in Nepal

217	"	Bishwanath Chaudhari et al 19	"	"
218	"	Bishwanath Chaudhari et al 19	"	"
219	"	Man Kumari Gurung et al 13	Homicide	Lamjung
220	"	Som Bahadur Pun et al 25	Robbery stealing	Myagdi
221	"	Hari Pun	Public offence	Narayani
222	"	Binod Kumar Shah	Expression and publication	Bheri
223	"	Dharma Raj Regmi	Corruption	"
224	"	Rakam Chemjong et al 2	Regime	Koshi
225	"	Rakam Chemjong et al 3	"	Bheri
226	2047.11.20	Ram Brichchha Ray Yadav	Stealing	Dhanusha
227	"	Ram Brichchha Ray Yadav	Homicide	"
228	"	Ram Brichchha Ray Yadav	Robbery	"
229	"	Ram Brichchha Ray Yadav 2	Attempt to murder	"
230	"	Ram Brichchha Ray Yadav et al 9	Homicide	"
231	"	Khameru Yadav et al 11	"	"
232	"	Gopal Krishna Prasai et al 14	Woods stealing export	Ilam
233	2048.1.2	Bidhan Man Shrestha	Crime against state	Lumbini
234	"	Bijay Ghimire	"	"
235	2048.1.16	Dukha Kishor Ray Yadav	Robbery homicide	Janakpur
236	"	Lokendra Bahadur Malla et al 2	Homicide	Achham
237	"	Kamal Prasad Pokhrel	Public offence	Gulmi
238	"	Uddhav Raj Gurung	Homicide	Sindhupalchok
239	"	Minarjang Karki et al 2	"	Supreme Court
240	"	Ras Bahadur Karki et al 2	Homicide robbery	Sindhuli
241	"	Md. Harun Khan	Attempt to murder	Kapilbastu
242	"	Tek Prasad Gurung et al 3	Public offence	Nawalparasi
243	2050.8.3	Rajesh Thapa et al 4	Public offence	Morang

Withdrawal of the Serious crimina cases and Impunity in Nepal

244	"	Nabin Thapa et al 6	"	"
245	"	Ram Prasad Dhakal et al 11	"	"
246	"	Uday Narayan Kafle	"	"
247	"	Gyanendra Subedi et al 11	"	"
248	"	Tara Bahadur Rai et al 11	"	"
249	"	Basanti Rai et al 2	"	"
250	"	Jagat Bahadur Shrestha et al 5	"	"
251	"	Devi Lal Khanal et al 3	"	"
252	"	Shiva Raj Paudel et al 6	"	"
253	"	Jagat Bahadur Shrestha et al 6	"	"
254	"	Chandra Bahadur Gurung et al 14	"	"
255	"	Krishna Lal Dulal at al 3	"	"
256	"	Gyan Bahadur Thapa	"	Kathmandu
257	"	Punam Maharjan et al 3	"	"
258	"	Hari Tamang et al 21	"	"
259	"	Shyam Thapa et al 3	"	"
260	"	Modini Prasad Oli et al 20	"	"
261	"	Bhakta Bhetwal et al 6	"	"
262	"	Thulo Kanchha Tamang et al 24	"	"
263	"	Raju Shrestha et al 16	"	"
264	"	Rajendra Pode	"	"
265	"	Bachchuram Pudasaini	"	"
266	"	Guna Prasad Acharya	"	"
267	"	Krishna Bahadur Khadki	"	"
268	"	Lekhnath Neupane	"	"
269	"	Khadkaraj Panta	"	"
270	"	Ram Bahadur et al 2	"	"
271	"	Kiran Shahi et al 4	"	"
272	"	Shankar Lamichhane et al 4	"	Bara
273	"	Chudamani Khanal	"	Dang
274	"	Khimananda Bhusal	"	"
275	"	Hom Narayan Ghimire	"	"
276	"	Durga Prasad Khanal	"	"
277	"	Devlal Bhandari	"	"
278	"	Srimani Acharya	"	"
279	"	Laxman Kumar Sharma	"	"
280	"	Bharat Bhandari	"	"
281	"	Lalbir Chaudhari	"	"
282	"	Kumar Chaudhari	"	"
283	"	Gangalal Chaudhari	"	"

Withdrawal of the Serious crimina cases and Impunity in Nepal

284	"	Kalakar Chaudhari	"	"
285	"	Mitho Tajpuriya	"	Jhapa
286	"	Gopalsingh Tajpuriya	"	"
287	"	Tilak Budhathoki	"	"
288	"	Gajendra Pokhrel	"	"
289	"	Rup Narayan Shrestha	Homicide	Lalitpur
290	"	Dhamendra Kumar Gupta	"	Rautahat
291	"	Shubha Chandra Rai	Attempt to murder	Khotang
292	"	Phul Mohammad Khan	Homicide	Saptari
293	"	Jit Bahadur Tamang	"	Sindhupalchok
294	"	Kajilal Waiba	"	Siraha
295	"	Bali Ullah	"	Rautahat
296	2052.2.8	Kashinath Dahal et al 9	Homicide	Sankhuwasabha
297	"	Adam Rain Kawari et al 7	"	Dhanusha
298	"	Chandra Mohan Niraula	"	Morang
299	"	Ananda Ram Ghimire et al 6	Corruption	Myagdi
300	"	Basudev Shakya et al 6	Weapons	Sankhuwasabha
301	"	Basudev Shakya et al	Homicide robbery	"
302	"	Basudev Shakya et al 2	Homicide	"
303	"	Janga Bahadur Magar et al 7	Public offence	Rupandehi
304	"	Man Bahadur Gole et al 4	"	Makwanpur
305	"	Jedu Giri et al 20	Homicide	Pyuthan
306	"	Panche Dhalan et al 6	Attempt to murder	Makwanpur
307	"	Lok Bahadur Garbuja et al 9	Homicide	Myagdi
308	"	Tikaram Khanal et al 8	"	Arghakhachi
309	2052.3.19	Raju Thapa et al 10	"	Baglung
310	"	Jawaharlal Yadav et al 20	Public offence	Saptari
311	"	Dilliram Parajuli et al 11	"	Nawalparasi
312	"	Mandhwaj Giri et al 2	"	Pyuthan
313	"	Ram Bahadur Sapkota (Sarki) et al 2	"	"
314	"	Begam Bahadur Budhathoki et al 2	"	"
315	"	Surya Bahadur Gurung et al 22	"	"
316	"	Shiva Lakhani Sahu Teli	"	Saptari

Withdrawal of the Serious crimina cases and Impunity in Nepal

		et al 4		
317	"	Dayal Ray Yadav	"	Bara
318	"	Ramdev Sah Kanu et al 11	"	"
319	"	Pasang Ghising et al 15	Homicide	Ilam
320	"	Indra Prasad Sharma et al 5	Public offence	Baglung
321	"	Bhagwat Yadav et al 8	"	Saptari
322	"	Ganesh Timilsena	"	Parbat
323	"	Tej Bahadur Karki et al 2	"	Sindhuli
324	"	Raju Thakuri et al 13	Attempt to murder	"
325	"	Jhalak Bahadur Thapa et al 10	Public offence	Rupandehi
326	"	Yamlal Neupane et al 3	"	"
327	"	Thage Tharu et al 4	"	"
328	"	Bal Kumar Shrestha et al 27	"	"
329	"	Moti Chaudhari et al 6	"	"
330	"	Laxmi Prasad Sharma	"	"
331	"	Lal Bahadur Khawas et al 4	"	"
332	"	Megh Bahadur Kunwar et al 4	"	"
333	"	Yam Bahadur Kunwar	"	"
334	"	Bhesh Raj Dhakal et al 8	"	Nuwakot
335	"	Yam Bahadur Darmali et al 18	"	Palpa
336	"	Diwakar Joshi	"	Chitwan
337	"	Pushpa Prasad Khatiwada et al 6	"	Tehrathum
338	"	Bhuminandan Aryal et al	Woods stealing	Makwanpur
339	"	Balendra Rai	Public offence	Dhankuta
340	"	Setulal Tamang	"	"
341	"	Baburam Acharya et al 11	"	Kaski
342	"	Ishwari Prasad Pokhrel	"	Gulmi
343	"	Ramanandan Ray Yadav et al 7	Public offence	Mahottari
344	"	Karna Bahadur Shrestha et al 4	"	"
345	"	Janardan Regmi et al 7	"	Udaypur
346	"	Lal Bahadur K.C.	Homicide	Rukum
347	"	Phuleshwar Nayak Sudi et al 27	"	Siraha
348	"	Raj Autar Paswan et al	"	Dhanusha

Withdrawal of the Serious crimina cases and Impunity in Nepal

349	"	Mahantha Ray Yadav	Public offence	Sarlahi
350	"	Mahantha Ray Yadav	Arms and ammunitions	"
351	"	Mahantha Chaudhari	Homicide	Bara
352	"	Binod Ray Yadav et al	Public offence	Mahottari
353	"	Nanda Bahadur Rana et al	Arms and ammunitions	Salyan
354	"	Chandra Prakash Chaudhari et al 8	Public offence	Kailali
355	"	Tejendra Bikram Kunwar et al	Attempt to murder	Baglung
356	"	Lhakpa Rinji Sherpa	Public offence	Solukhumbu
357	"	Birendra Malla et al	"	Kailali
358	"	Tek Bahadur Malla	"	"
359	"	Pitambar Bhandari et al 19	Homicide	Sindhupalchok
360	2052.3.19	Amrit Bahadur Tamang	Public offence	Bhojpur
361	"	Bhim Bahadur Khadka et al	Attempt to murder	"
362	"	Dilli Sher Rai et al	Public offence	"
363	"	Hari Rai et al	"	"
364	"	Mekh Bahadur Khadka et al	"	Okhaldhunga
365	"	Hari Bahadur Rokaya Magar et al	"	Gulmi
366	"	Dandibir Rana et al	"	Jajarkot
367	"	Bhoj Bahadur Thapa Magar	"	Makwanpur
368	"	Dhan Kumar Hangsarumba	"	Pachthar
369	"	Dansingh Dhami et al	"	Darchula
370	"	Akbar Bahadur Bam et al	"	"
371	"	Oj Khadka et al	"	Rolpa
372	"	Bishnulal Shah et al	Homicide	Siraha
373	"	Sanjaya Singh Thapa et al	Attempt to murder	Kathmandu
374	"	Janukadevi Dahal et al	Trafficking of persons	Sunsari
375	"	Geeta Shahi et al	Attempt to murder	Kavre
376	"	Chet Bahadur Tamang	Public offence	Ramechhap
377	"	Jamuna Sahani et al 4	"	Bara
378	"	Omnath Koirala et al	"	Pachthar
379	2052.4.24	Bhuwanjit Limbu	"	Tehrathum
380	"	Jagatram Tumrok	"	Pachthar
381	"	Mohan Gopal Khetan	Foreign exchange	Kathmandu
382	"	Ramasingh Rai et al	Homicide	Bhojpur

Withdrawal of the Serious crimina cases and Impunity in Nepal

383	"	Gaju Rai et al	"	"
384	"	Kashinath Dahal et al	"	Sankhuwas abha
385	"	Jogeshwar Mandal et al 15	"	Mahottari
386	"	Arjun Bahadur Shahi et al 11	Tree cutting	Surkhet
387	"	Uday Tamrakar et al	Public offence	Arghakhachi
388	"	Mukti Prasad Timilsena	Corruption	Nepalganj
389	"	Jay Prasad Dahal et al 10	Homicide	Sankhuwas abha
390	"	Neel Raj Joshi et al 10	Public offence	Ramechhap
391	"	Gopal Prasad Dhakal	Homicide	Morang
392	"	Dambar Bahadur Khatri et al	"	Myagdi
393	"	Kashiram Upadhyaya (Paudel) et al	Public offence	Kapilbastu
394	"	Bhingwar Syangbo Lama et al	Attempt to murder	Kathmandu
395	"	Tanka Prasad Prasai et al	Public offence	Kailali
396	"	Surath Singh Lama et al	"	Kavre
397	"	Ashok Lama et al	"	Rupandehi
398	"	Dandapani Bhattarai et al	"	"
399	"	Padma Paudel et al	"	Jhapa
400	"	Indra Bahadur Tamang et al	Attempt to murder	Ramechhap
401	"	Laxman Puri	Public offence	Parbat
402	"	Karna Bahadur Aryal	Homicide	Jhapa
403	"	Padhma Bahadur Thapa	Public offence	Pyuthan
404	"	Ramraja Prasad Singh Rajput et al	Drugs	Siraha
405	"	Ra Su Gadhi et al	Public offence	Rupandehi
406	"	Prem Bahadur K.C.	"	Baglung
407	"	Lal Bahadur Tamang	"	Kathmandu
408	"	Shankar Pokhrel et al 12	Homicide	Dang
409	"	Upendra Kumar Singh et al	Homicide robbery	Siraha
410	"	Krishna Kumar Karna	Corruption	Bara
411	"	Badri Prasad Bhattarai et al	Attempt to murder	Syangja
412	"	Hem Bahadur Ghising	Woods stealing	Sindhuli
413	"	Raghunandan Sah Sudi et al	Attempt to murder	Dhanusha
414	"	Chandreshwar Mandal	Homicide	"

Withdrawal of the Serious crimina cases and Impunity in Nepal

		et al		
415	"	Kamal Jung Rai et al	Public offence	Sindhuli
416	"	Lila Bahadur Shrestha et al	Woods stealing	"
417	"	Lila Bahadur Shrestha et al	Public offence	"
418	"	Ganesh Bahadur Adhikari et al	"	Tanahu
419	"	Ganesh Bahadur Rana et al	"	"
420	2052.4.24	Jogendra Sah Sudi et al	"	Dhanusha
421	"	Prabhu Thakur Birahi et al	Weapons	"
422	"	Lilanath Gautam et al 8	Public offence	Kavre
423	"	Mehar Singh Pajja et al 10	"	Baglung
424	"	Om Bahadur Thapa et al	Attempt to murder	Tanahu
425	"	Amrit Bahadur Kafle et al	"	"
426	2052.5.24	Ram Bishwas Yadav	Robbery	Sarlahi
427	"	Shiva Chandra Koiri Mahato et al	Homicide	Bara
428	"	Angdorjee Sherpa	Attempt to murder	Solukhumbu
429	"	Ganesh Kunwar et al	"	Parbat
430	"	Prem Narayan Paudel et al	"	"
431	"	Moti Prasad Paudel et al	"	"
432	"	Ashok Patel	Homicide	Dhanusha
433	"	Madhu Mandal	"	Siraha
434	"	Dandapani Gautam et al	Attempt to murder	Tanahu
435	"	Shiva Dayal Ray Yadav et al	Homicide	Bara
436	"	Basudev Shakya et al	"	"
437	"	Ram Bharosa Sah et al	"	Siraha
438	"	Lalit Bahadur Rana et al	Attempt to murder	Tanahu
439	"	Khemraj Bhandari et al	"	"
440	2052.6.12	Khum Bahadur Khadka et al 67	Homicide	Dang
441	2052.7.16	Kumar Aryal et al 34	Public offence	Kathmandu
List of cases withdrawn according to the decision of 2064 Asar 29				
1		Bhagamlal Pun et al 7	Explosive material	
2		Sire Roka et al 23	"	
3		Bhim Bahadur Roka, Prasad Roka	"	
4		Krishna Bahadur Mahara et al 11	"	

Withdrawal of the Serious crimina cases and Impunity in Nepal

5		Kuman Budha Magar et al 2	"	
6		Rajelal Budha et al 11	"	
7		Krishna Bahadur Mahara et al 36	"	
8		Ome Pun, Narbir Pun et al 14	Necessary goods protection Act	
9		Kule Roka Magar et al 49	Arms and ammunitions	
10		Dipesh Kumar Budha	"	
11		Pipala Budha Magar et al 2	"	
12		Kamal Singh Oli	"	
13		Dil Bahadur Kakarel	"	
14		Sita Gurung alias Amrita et al 8	"	
15		Dal Bahadur Budha et al 3	"	
16		Nanda Kishor Pun et al 4	"	
17		Rajen Roka Magar et al 4	"	
18		Nanda Kishor Pun et al 7	"	
19		Krishna Bahadur Mahara et al 35	"	
20		Rajelal Budha et al 11	"	
21		Mukta Bahadur Gurung et al 7	"	
22		Santabir Gharti	"	
23		Karna Bahadur Budha	"	
24		Ramesh Budha et al 16	Some public offence	
25		Tulbir Gharti et al 16	"	
26		Kamara Roka et al 60	"	
27		Anaram Pun et al 14	"	
28		Gana Bahadur Budha et al 8	"	
29		Nanda Bahadur Pun et al 55	"	
30		Bhaj Budhathoki et al 13	"	
31		Bhim Prakash Pun et al 14	"	
32		Tulsi Ram Budha et al 6	"	
33		Dal Bahadur Gharti et al 1 ⁴⁵	"	
34		Chunamani Oli et al 26	"	
35		Nande Mahara	"	
36		Bikram Budha et al 5	"	
37		Devraj Oli et al 8	"	
38		Udiram Gharti et al 12	"	
39		Maniman Roka	"	
40		Jansingh Pun et al 7	"	
41		Shir Gharti Magar et al 12	"	
42		Oj Bahadur Dangi	"	
43		Bal Bahadur Dangi et al 12	"	
44		Mohan Kami	"	
45		Deuram Sunar	"	

⁴⁵ It is mentioned like this in the list of letter no. 063.64, Cha. No. 582 dated 2064.3.31 written by the Ministry of Home to recommend case withdrawal.

Withdrawal of the Serious crimina cases and Impunity in Nepal

46		Kaman Singh Pun Magar et al 8	"	
47		Dhan Singh Roka et al 11	"	
48		Kul Bahadur Gharti Magar	"	
49		Tek Bahadur Budha et al 2	"	
50		Mahendra Gharti et al 20	"	
51		Sun Kumar Budha et al 7	"	
52		Balaram Budhathoki	"	
53		Hikmat Gharti et al 7	"	
54		Gore Bahadur Gharti et al 2	"	
55		Pase Roka et al 6	"	
56		Bhanubhakta Roka et al 10	"	
57		Birendra Rana	"	
Cases withdrawn after 2064 Kartik 11				
1	Decision of Council of Ministers dated 2066.7.12	Government of Nepal by the FIR of Balaram Yadav Vs. Dharma Dev Yadav et al 7	Homicide	Saptari
2		Government of Nepal by the FIR of Rudra Kumar Pun Vs. Ratna Adhikari et al 13	Attempt to murder with arson	Surkhet
3		Government of Nepal by the FIR of Nirmala Banem Vs. Dambar Bahadur Limbu et al 20	Homicide	Taplejung
4		Government of Nepal by the FIR of Narayan Kumar Chapai Vs. Ratna Adhikari et al 22	Arson	Surkhet
5		Government of Nepal by the FIR of Chandra Giri Vs. Ratna Adhikari et al 19	"	"
6		Government of Nepal by the FIR of Sharada Khadka Vs. Ratna Adhikari et al 22	"	"
7		Government of Nepal by the FIR of Devendra Kumar Khadka Vs. Keshar Bahadur Gurung et al 6	"	"
8		Government of Nepal by the FIR of Dhruva Thapa Vs. Ratna Adhikari et al 22	"	"
9		Government of Nepal by the FIR of Tekbir Basnet Vs. Mohan Khatri et al 5	"	"
10		Government of Nepal by the FIR of Hukum Bahadur Sunar Vs. Janak Budha et al 7	"	"
11		Government of Nepal by the FIR of Kiran Oli Vs. Chokendra Rakhali	"	"

Withdrawal of the Serious crimina cases and Impunity in Nepal

		13		
12		Government of Nepal by the FIR of Himraj D.C. Vs. Janga Bahadur Pun et al 15	"	"
13		Government of Nepal by the FIR of Nara Bahadur Sunar Vs. Janak Budha et al 7	"	"
14		Government of Nepal by the FIR of Tej Bahadur Khatri Vs. Chokendra Rakhhal et al 9	"	"
15		Government of Nepal by the FIR of Bir Bahadur Soni Vs. Janak Budha et al 6	"	"
16		Government of Nepal by the FIR of Dhak Bahadur Oli Vs. Tulasi Oli et al 4	"	"
17		Government of Nepal by the FIR of Naresh Bikram Dhakal Vs. Keshar Bahadur Gaha et al 6	"	"
18		Government of Nepal by the FIR of Lilaram Pande Vs. Keshar Bahadur Gaha et al 12	"	"
19		Government of Nepal by the FIR of Nanda Lal Sharma Vs. Hemanta Sharma et al 4	"	"
20		Government of Nepal by the FIR of Khadga Bahadur Malla Vs. Sita Sharma et al 32	"	"
21		Government of Nepal by the FIR of Man Bahadur Budha Magar Vs. Nandaram Acharya et al 26	"	"
22		Government of Nepal by the FIR of Bal Bahadur Oli Vs. Nandaram Aharya et al 15	"	"
23		Government of Nepal by the FIR of Mandhari Chand Vs. Nandaram Acharya et al 33	"	"
24		Government of Nepal by the FIR of Bal Bahadur Khadka Vs. Nandaram Acharya et al 9	"	"
		Cases withdrawn by the decision of Council of Ministers dated 2066.12.17		
25		Government of Nepal Vs. Keshav Raj Neupane et al 89	Homicide	Pyuthan
26		Government of Nepal Vs. Raj Kumar Sudi et al 10	"	Sarlahi
27		Government of Nepal Vs. Kahnaiya Prasad Gupta et al 12	"	Siraha
28		Government of Nepal Vs.	"	Parsa

Withdrawal of the Serious crimina cases and Impunity in Nepal

		Ashweshwar Yadav et al 3		
29		Government of Nepal Vs. Shree Prasad Banem et al 16	"	Taplejung
30		Government of Nepal Vs. Jayamangal Ray Yadav et al 19	"	Rautahat
31	2067.2.26	Government of Nepal by the FIR of Ram Mahato Vs. Arjun Paudel et al 22	"	Nawalparasi
32	2067.3.16	Government of Nepal by the FIR of Sukdev Ray Yadav Vs. Raj Kishor Prasad Yadav	"	Bara