

# ILF-Nepal

The International Legal Foundation – Nepal

## CASE NOTES – APRIL 2009

*Editor's notes: This issue of the Case Notes is limited to cases showing significant progress in the areas of juvenile justice and pretrial discovery of investigative materials.*

### **Government of Nepal v. Deepak Magar (ILF No. 195) (Adv. Pawan Kumar Jaisawal and Shyam Bishwakarma)**

*The Supreme Court of Nepal recognized that juveniles should not be detained with adults even when the juvenile center is full.*

A 14 year-old client was charged with theft of property with a value of 81,000 rupees. Bail was set at 20,000 rupees which he could not pay and he was remanded to the juvenile correction center. Because there was no space at the juvenile center, the district judge remanded him to adult custody. A habeas petition was filed in Supreme Court. The Court found that Section 15 of the Children's Act – stating that no child should be confined with an adult – was unequivocal and ordered that our client be released and handed over to the custody of his father, mother, or guardian. The child had other relatives and the court deferred his release for seven days so his uncle could come to Kathmandu and take charge of the child. In its oral decision, the court stated that it was in the interest of justice that the matter proceed expeditiously. The ILF-Nepal paralegal contacted the client's uncle in the Bara District and he was able to take custody of our client 48 hours later.

### **Government of Nepal v. Rupar Magar et. al. ((ILF Case No. 173) (Adv. Bimala Yadav)**

*The Lalitpur District Court is following the lead, recognizing that juveniles should be treated differently and should not be held in detention when they can safely be released to a guardian.*

Our client, along with five other girls, was charged with theft. One of the co-defendants was actually living in the house where the incident took place. All the girls were arrested and detained. At a remand hearing, ILF-Nepal argued that the girl should be released and the court agreed, finding that the girls "...had taken the property because of their immature mental situation as they are young and not aware of its consequence."

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**Bishnu Century v. Lalitpur District Court (ILF No. 170) (Adv. Pawan Kumar Jaisawal and Shyam Kumar Bishwokarma)**

*This is the first statement by an appellate court recognizing a defendant's right to have access to documents in the investigative file before the charge sheet is filed.*

Our client was charged with possession of a controlled substance. ILF-Nepal entered the case before the charge sheet was filed and moved immediately for disclosure of the investigative documents. The request was denied and ILF-Nepal appealed. In a brief ruling the Court stated the following:

A petition was filed to gain access to the documents that were prepared during the investigation of the charges filed against the accused. Even though it is the legal right of the concerned person to gain access to a copy of the files, since the charge-sheet has already been filed at the court, there is no need to deliberate regarding this petition.

In so stating, however, the Court recognized a defendant's right to pre-charge sheet discovery.

**Government of Nepal v. Raj Kumar Karki (ILF No. 180) (Adv. Bimala Yadav)**

*After months of arguing for access to information in the investigative file before the filing of the charge sheet, ILF-Nepal is seeing results in court but also with law enforcement authorities.*

In this case, two ILF advocates went to the Police station in Balaju in order to meet prospective clients. The police officer in charge allowed the advocates to review the police investigation file.

**Natalie Rea, ILF-Nepal Director**  
**ILF-Nepal**  
**April 2009**

*ILF-Nepal wants to welcome Kesha Louis, a public defender from New York City, who will be in KTM until August. The ILF also wants to thank Kenneth Plotz, who has returned to Colorado, for his great contribution to the office.*

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