

ILF-Nepal

The International Legal Foundation – Nepal

CASE NOTES – MAY 2009

Editor's notes: This issue is limited to the translation of one important decision by the Patan appellate court holding that a defendant has a right to the investigative file before the charge sheet is filed under the Interim Constitution and the ICCPR. For the past six months, ILF-Nepal has been filing, and losing, innumerable applications seeking this information. Finally, the Supreme Court agreed. ILF-Nepal also wants announce that after nine months in adult custody, , our juvenile client, Bipin Sutiari, discussed in virtually every prior Case Note, has finally been placed in juvenile custody.

Yogesh Pun v. Government of Nepal (ILF-Nepal 209)(Adv. Surya Pandey)

Honorable Justices Shree Gopal Parajuli, Shree Ishwor Prasad Khatiwada

“A petition was filed seeking the dismissal of the Lalitpur District Court's order, where the petitioner stated that the court's order not to handover a copy of the files prepared during investigation of the case and to hold him in custody during trial, which violated his right to individual liberty, was improper and therefore, must be dismissed. Learned Advocate Shree **Surya Bahadur Pandey** argued on behalf of the petitioner and Learned Section Officer Shree **Achyut Mani Neupane** argued on behalf of the Nepal Government.

The main request here is that a copy of the investigation file wasn't handed over to the defence and must be done so. Nepal's Interim Constitution 2063, Article 24 (2) states that an arrested person has a right to counsel. Sub-article 8 states that every person has a right to information about the charges against him. Sub-article 9 has the provision for a right to fair trial. ICCPR 1966, including human rights related treaties ratified by Nepal, has the provision for right to information of the charges against oneself, right to defense and right to fair trial. **In this case, since the defendant has been mentioned as being a 15-year-old juvenile**, Child Rights Treaty 1989's article 37 and 40 should also be considered. It is obvious that meaningful defence is not possible without factual information. When the written documents prepared during the investigation are not handed over to the defence, it creates an obstacle to meaningful defence during investigation period, and fair hearing will not be guaranteed. As a result, when written documents prepared during investigation are not disclosed to the defence, it will create an

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obstacle to the implementation of the provisions guaranteed by the constitution's Article 24 (2), (8), (9) including others. Therefore, the defence should get the written documents prepared during investigation within a proper and reasonable period of time and at the same time, it is important to manage this so that this process will not unnecessarily hamper the investigation work. Deliberating on this regard, the Lalitpur District Court's 2066/1/15 order stating that "there is no specific legal basis to handover a copy of the documents prepared during investigation of the case" is seen as improper and must be dismissed. Do according to law.

Order: 2066 Jestha 8 (May 22, 2009) Report No. 564

Natalie Rea, ILF-Nepal Director
June 15, 2009

For a scanned copy of the decision please contact Pawan Jaisawal, Deputy Director,
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