

An Ordinance Made to Make Arrangements in relation to Disappearance of Persons

Preamble: Whereas it is expedient to immediately make legal arrangements with regard to punishing persons involved in acts of disappearances, providing for reparations to the victims and finding out truth and facts by examining into the persons made to disappear and those involved in such acts; and whereas the session of Legislature-Parliament is now in recess, This Ordinance has been issued by the President in accordance with Clause (1) of Article 88 of the Interim Constitution of Nepal, 2007.

Chapter - 1 Preliminary

1. Short Title, Extension and Commencement:

- (1) This Ordinance may be cited as the " Disappearance of Persons (Crime and Punishment) Ordinance, 2009 (2065 B.S.)."
- (2) This Ordinance shall be applied throughout the State of Nepal and shall also be applicable to all Nepali citizens wherever they are staying outside the State of Nepal and also to non-Nepali citizens who have committed an act deemed as offence under this Ordinance and are living in a foreign country.
- (3) This Ordinance shall come into effect immediately.

2. Definitions:

Unless the subject or context otherwise requires, in this Ordinance:

- (a) "Disappearance of Persons" means the following:
- (1) The act of not allowing the person arrested, taken into custody or taken control in whatever way, by a person or a security official authorized to arrest, investigate or prosecute in accordance with law or to implement the law, to meet the concerned persons even after the expiry of the stipulated time to present the arrested person before the person authorized to look into such cases in accordance with the existing laws or not providing information on the fate or whereabouts such person;
 - (2) The act of not giving information to the concerned persons on the fate or whereabouts of the a person by arresting or kidnapping; taking into hostage or control in the name of an organization or an organized or unorganized group; or depriving of his/her personal liberty in whatever way or not furnishing the reason of such deprivation even after the expiry of twenty-four hours of such control or deprivation.
- (b) "Victim" means the person subjected to disappearance and the word also refers to the members of his/her family.
- (c) "Reparation" means the facilities to be made available to the victim as referred to in Section 22.
- (d) "Family" means the husband, wife, sons, daughters, father, mother, mother-in-law, father-in-law; grandfather, grandmother, grandsons, granddaughters of the victim or victim's brothers and sisters living together.

- (e) "Commission" means the commission constituted pursuant to Section 10.

Chapter - 2

Not to Carry Out to Cause to Carry Out the Act of Disappearance of Person

3. Not to Carry Out or Cause to Carry Out the Act of Disappearance of Person:

- (1) No one shall commit or cause to commit an act of disappearance.
- (2) No one shall be an accomplice in an act of disappearance, trick by any means or assist in such act in any manner.

4. The Person Committing an Act of Disappearance to be Deemed Principal Offender:

- (1) In case of being involved more than one person collectively in an act of disappearance of a person, all persons involved in the act of disappearance shall be deemed as principal offenders.
- (2) Unless proved otherwise, the person responsible for giving order to take into custody, make arrests or take control of the person(s) made to disappear shall be deemed as the principal offender.
- (3) If an act of disappearance is found to have been committed as ordered or directed by a person holding a public office or an organization or a responsible person of an organized or unorganized group, the person giving such order or directive shall be deemed as the principal offender.

5 Deemed to Have Committed Offence:

- (1) If any person commits or causes to commit an act of disappearance of person pursuant to Section 3, such person shall be deemed to have committed an offence pursuant to this Ordinance.
- (2) Any person ignoring or failing to take up necessary measures to prevent an act of disappearance of person knowing well that his or her subordinate official, agency or group is committing or causing to commit such act, he or she shall also be deemed to have committed an offence pursuant to this Ordinance.
- (3) Notwithstanding anything contained in the prevailing laws, an act of disappearance of person committed or caused to have committed prior to the commencement of this Ordinance shall be deemed as an offence pursuant to this Ordinance.

6. Punishment:

- (1) Any person committing an offence pursuant to this Ordinance shall be subjected to punishment as follows:
 - (a) An imprisonment of up to five years and a fine of up to Rs. 300,000/- to the principal offender bearing in mind the period and condition of the disappearance in case of disappearance of a person by someone.
 - (b) Half of the penalty to be imposed on the principal offender for such person who makes an attempt to commit or becomes an accomplice or renders support in the act of disappearance.

- (2) If any person commits an act against a woman or minor considered as an offence in accordance with this Ordinance, an additional two years' imprisonment shall be imposed against the offender.
- (3) If any person has committed an offence punishable pursuant to the existing laws during the period of disappearance of a person, he or she shall be subjected to additional punishment in accordance with this Ordinance.
- (4) Notwithstanding anything contained elsewhere in this Section, if any offender other than the principal offender involved in an act of disappearance extends his or her cooperation to the Commission, investigating officer, the prosecutor or the court to establish truth during an investigation by the Commission or in a hearing of the case, the litigating authority may, if the condition so desires, reduce or fully waive off the punishment to be imposed against him/her in accordance with this Ordinance.

Provided that if the testimony or evidence provided to the court is contrary to the testimony or evidence given to the Commission, a charge-sheet may be filed again against him/her.

7. Goods Relating to Offence to be Confiscated:

Buildings, vehicles, arms and ammunition and all other materials used with the consent of the owner while committing an offence punishable under this Ordinance shall be confiscated.

8. Entitlement to Compensation:

- (1) If the disappeared person appears in public later, he/she shall be entitled to receive reasonable compensation from the person held responsible for the disappearance of such person.

- (2) In case of the death of the disappeared person, the nearest member of his/her family shall be entitled to receive the amount due to such disappeared person.

9. Property to be Returned:

If proven that the property of the disappeared person was taken away while he/she was subjected to disappearance, the person held responsible for causing such disappearance shall have to return the property or the amount worth the property, if such property remains non-existent.

Chapter - 3

Formation of the Commission

10. Commission May Be Formed:

- (1) Notwithstanding anything contained elsewhere in this Ordinance, the Government of Nepal may, by publishing a notice in the Nepal Gazette, form a high level independent commission in order to carry out investigations on the disappeared persons and persons involved in such acts of disappearance of persons in course of the armed conflict during the period from the 1st day of the month of Falgun, 2052 V. S. to the 5th day of the month of Mangsir, 2063. (February 13, 1996 to November 22, 2006).

(2) The Commission to be formed in accordance with the Sub-section (1) shall comprise of the members not exceeding five persons including the Chairperson.

- (3) In order to make recommendations for the appointment of the Chairperson and Members of the Commission to be formed in accordance with Sub-section (1), there shall be a Recommendation Committee as follows:
- (a) Chairperson, International Relations and Human Rights Committee, Legislature-Parliament -Chairperson
 - (b) Two persons nominated by the Government of Nepal from amongst the human right activists, psychologists, lawyers, forensic experts, conflict experts and sociologists or persons involved in the peace process or others -Member
- (4) The Recommendation Committee as referred to in Sub-section (3) shall make recommendations for the appointment of the Chairperson and Members, including representation of at least one woman from amongst the human rights activists, psychologists, lawyers, forensic experts, conflicts experts, sociologists or persons involved in the peace process with at least ten years of experience in the relevant field.
- (5) The working procedures of the Recommendation Committee as referred to in Sub-section (3) shall be as determined by the Committee itself.

11. Conditions of Services for the Chairperson and Members:

The remunerations, conditions of services and benefits of the Chairperson and Members shall be as determined by the Government of Nepal.

12. Meetings and Decisions of the Commission:

- (1) The meeting of the Commission may be held upon necessity on such place, date and time as designated by the Chairperson.
- (2) The quorum for the meeting of the Commission shall be deemed fulfilled, if more than fifty percent of the total members of the Commission are present.
- (3) The meeting of the Commission shall be chaired by the Chairperson; and in his/her absence the senior-most Member present in the meeting shall chair the meeting.
- (4) The decision of the Commission shall be made with consensus; and in case of failure to make a decision by consensus, a decision by majority shall prevail in the meeting of the Commission. In case of a tie, the person chairing the meeting shall cast the deciding vote.
- (5) The Secretary of the Commission shall function as the secretary of the meeting as well.
- (6) The minutes of the meeting of the Commission shall be certified by the Chairperson.
- (7) The Commission may, if so desires, invite experts on matters related to the activities of the Commission in the meeting of the Commission as observers.
- (8) Other procedures related to the meeting of the Commission shall be as determined by the Commission itself.

13. Personnel and Experts of the Commission:

- (1) The Government of Nepal shall, in consultation with the Commission, make available the personnel required for it.
- (2) A person designated by the Commission from amongst its personnel shall act as the Secretary of the Commission.
- (3) The Commission may obtain any specialized service from any expert or specialized agency in course of carrying out its activities, if necessary.
- (4) The remunerations and other benefits of the expert from whom the specialized services are to be obtained in accordance with Sub-section (3), shall be as determined by the Government of Nepal as per the recommendation of the Commission.
- (5) The personnel working in the Commission in accordance with Sub-section (1) shall receive benefits as determined by the Government of Nepal.

14. Resources, Means and Expenditures of the Commission:

The Government of Nepal shall arrange the physical resources, means and expenditures required for the Commission.

Chapter – 4

Functions, Duties and Powers of the Commission

15. Functions, Duties and Powers of the Commission:

In addition to the functions, duties and powers mentioned elsewhere in this ordinance, the functions, duties and powers of the Commission shall be as follows:

- (a) To conduct investigations as to the persons subjected to disappearance and find out the truth and facts;
- (b) To determine the persons found guilty of involvement in disappearance of persons;
- (c) To make recommendations as to the reparations to be made available to the disappeared person and/or his/her family.

16. Power to investigate complaints:

- (1) The Commission may, on the following bases, investigate the cases of forced disappearance of persons:
 - (a) If a complaint is lodged to the Commission by, or, on behalf of, the victim;
 - (b) If the Commission receives any information on such matter through any source;
 - (c) If the Commission deems appropriate to inquire and investigate on such matter.
- (2) Notwithstanding anything contained in Sub-section (1), the Commission shall investigate as directed by the court on the cases of disappearances at the time of the enactment of this Ordinance.

17. Powers of the Commission Relating to Examination:

- (1) The Commission may, in relation to carrying out following acts in course of investigations pursuant to Section 16, exercise the same powers as conferred to courts in accordance with existing laws:
 - (a) To acquire information or record testimonies by making someone present before the Commission;
 - (b) To examine witnesses and record their statements;

- (c) To pass orders for the submission of any document or paper;
 - (d) To avail any document or a copy thereof from any government or public office or court;
 - (e) To examine the evidences;
 - (f) To carry out or cause to be carried out on-the-spot-inspections or to pass orders for the submission of evidences.
- (2) The Commission may, if it deems appropriate, prescribe a reasonable time period relating to make anyone present or submission of any document, paper or evidence pursuant to Sub-section (1).
- (3) The Commission may, while carrying out investigation in accordance with this Ordinance, if it deems that any article or document is in possession of anyone or is in a specific location, carry out or cause to be carried out search of such person or location without any information and take into or cause to be taken into possession of such article or document or cause to be taken the duplicate or copy of such document either fully or partially.
- (4) In case there is a need to conduct investigation in accordance with on a person holding public position and, if there is a possibility of evidence being destroyed him/her if he/she is allowed to function in the same position, the Commission may write to the body concerned to suspend him/her; and in case such a written request is received, the concerned body shall suspend him/her as per the provisions of the law applicable for terms and

conditions of his/her services or if there are no clear provisions made in this regard, for a period not exceeding three months.

- (5) If the Commission is convinced that a disappeared person has been killed and buried in a particular place, the Commission may exhume the body and find out the reality.
- (6) Other matters relating to investigation of complaints and information received by the Commission may be as determined by the Commission itself.

18. To Render Support in Functioning of the Commission:

- (1) It shall be the duty of the concerned person, institution or agency to submit the documents, papers or evidences as demanded by the Commission and/or to submit information or statements by being present at the Commission pursuant to Section 17.
- (2) It shall be the duty of the local administration to cooperate with the Commission if the Commission, in the course of carrying out examination in accordance with this Ordinance, asks for cooperation of the local administration to search a place or secure the presence of a person before the Commission.
- (3) If the person, institution or agency having duty pursuant to Sub-section (1) or (2) fails to render support in the functioning of the Commission, the Commission may impose a fine of up to fifteen thousand rupees on each instance to such person, institution or the chief of such institution or agency.
- (4) In case a person having duty pursuant to Sub-section (1) or (2) being an office-bearer or an employee of any government agency or public corporation, the Commission may forward in writing to the concerned agency to take departmental action or to

take other necessary actions in accordance with existing laws against such office-bearer or employee on charge of failing to assume positional responsibilities.

- (5) If any one causes hindrances in the functioning of the Commission, the Commission may impose a fine of up to fifteen thousand rupees on each instance to such person.

19. Protection of Witness and Other Persons:

- (1) If any person, being present before the Commission for statement or providing information requests the Commission of his/her security, and if, upon inquiry, it is deemed necessary to provide security to such person, the Commission shall make necessary arrangements for his/her security.
- (2) The Commission may, upon necessity, take help of the Government of Nepal for the security of any person pursuant to Sub-section (1).
- (3) No case shall be filed nor shall any legal action shall be taken against any person only because of making statements or providing information to the Commission.
- (4) If anyone being present to the Commission demands for reimbursement of the actual costs incurred for traveling to and from the Commission and for fooding and lodging during the course of making statements or providing information to the Commission, the Commission may provide reasonable expenses to such person.
- (5) If any one, who provides any information, notice or evidence to the Commission, wishes to keep his/her name confidential, the Commission shall keep his/her name confidential.

(6) In the event that women or children are to be present in the Commission for giving information or statement or testimony, the Commission shall make special arrangements ensuring their dignity and security.

20. Commission's Proceedings May be Confidential:

The Commission may keep its activities confidential.

21. Closing of the Files:

The Commission may, if it finds out that, upon investigation, the complaints lodged were baseless, close the files by assigning reasons.

22. Recommendations for Reparations May Be Made:

(1) The Commission shall, if it is found necessary through examination carried out in accordance with this Ordinance, to return the captured or seized property to victims or to provide any compensation or any other facility as reparation to the victim, make recommendations to the Government of Nepal therefor.

(2) In addition to matters contained in Sub-section (1), the Commission may, if it deems appropriate, make recommendations to the Government of Nepal to provide concessions and facilities in the form of reparations to the victim or if the condition so desires, any member of his/her family as follows:

- (a) Free education and health-care facilities;
- (b) Skill-oriented training;
- (c) Loan facilities without or with concessional interests;
- (d) Arrangements of habitation;
- (e) Employment facilities;

- (f) Other facilities and concessions as deemed appropriate by the Commission.
- (3) The Commission shall make such recommendations pursuant to the Sub-sections (1) and (2) through the report pursuant to Section 24.

23. To Send in Writing for Actions:

- (1) In case any person is found to have been involved in any other offence punishable by the existing laws while carrying out examinations by the Commission in accordance with this Ordinance, the Commission shall forward in writing, along with evidences received, to the concerned agency for action against such person by carrying out investigation in accordance with the existing laws.
- (2) The concerned agency shall, upon receipt of request in writing pursuant to Sub-section (1), carry out investigation in accordance with the existing laws.
- (3) In case any person, while carrying out an investigation in accordance with this Ordinance, is found guilty of committing an act of disappearance, the Commission may, before submitting its report pursuant to Section 24, write to the Office of the Attorney General to lodge a case against such person in accordance with existing laws.
- (4) In case any person holding public office is found to be guilty while carrying out an investigation in accordance with this Ordinance, the Commission may write to the authority concerned to take departmental action against such person. The authority

concerned, upon receiving such notification, shall propose an appropriate punishment and take departmental action as per the existing laws within three months and inform the Commission thereof.

24. Report to Be Submitted:

- (1) The Commission shall, upon the completion of its examination in accordance with this Ordinance, submit its Report, by mentioning details on following matters, to the Government of Nepal:
 - (a) Details relating to the complaints inquired and investigated and closed by the Commission;
 - (b) Details relating to actual truth and fact found as a result of inquiry and investigation;
 - (c) Matters relating to cases being referred to the concerned body prior to the submission of a final report for investigation or for filing a lawsuit;
 - (d) Matters relating to recommendations for taking actions against those found guilty upon completion of examinations;
 - (e) Necessary legal, institutional, administrative and practical reforms in order to prevent such incidents from happening again
 - (f) Other matters deemed appropriate by the Commission.
- (2) Notwithstanding anything contained in Sub-section (1), the Commission may submit interim reports from time to time on the matters examined by it in accordance with this Ordinance, to the Government of Nepal.

- (3) The Government of Nepal shall present the Report received pursuant to Sub-section (1) to the Constituent Assembly.

Chapter-5

Miscellaneous

25. Provisions Relating to Filing the Lawsuit:

- (1) In case of referral in writing for filing a lawsuit by the Commission against a person found guilty through the investigation of the Commission pursuant to Sub-section (3) of Section 23 or by the Government of Nepal on the basis of the report of the Commission, the Attorney General or a public prosecutor designated by him or her shall, after necessary examinations, make a decision whether a lawsuit can be filed against such person or not.
- (2) In case the decision has been taken to file a lawsuit against such a person pursuant to Sub-section (1), the government attorney shall file a lawsuit at a court as determined by the Government of Nepal by publishing a notice in the Nepal Gazette.
- (3) Matters relating to making complaints, investigation and filing a lawsuit on the acts relating to disappearances of persons except in cases of lawsuits filed pursuant to Sub-section (2) shall be in accordance with the existing Government Prosecution Act.

26. Time-limits:

- (1) A complaint shall have to be lodged within six months from the date when the act of disappearance of a person is known or the disappeared person is made public.
- (2) Notwithstanding anything contained in Sub-section (1), in cases of the persons subjected to the act of disappearance prior to the commencement of this Ordinance, a complaint shall have to be lodged within six months from the date of commencement of this Ordinance.
- (3) Notwithstanding anything contained in Sub-section (2), the time limit for filing complaints in matters to be examined by the Commission shall be as determined by the Commission.

27. The Government of Nepal to Be the Plaintiff:

The Government of Nepal shall be the plaintiff in lawsuits filed under this Ordinance and such lawsuits shall be considered to have been incorporated in the Schedule – 1 of the Government Prosecutions Act, 1992 (2049 V. S.).

28. Burden of the Proof:

Notwithstanding anything contained in the existing laws, in case of disappearance of a person arrested or taken control by someone, the burden to prove that he or she did not disappear the person lies on the person who had arrested or taken the person under control.

29. Task Forces May be Formed:

- (1) The Commission may, in order to function its activities smoothly, form various task forces by incorporating experts of concerned field, if necessary.
- (2) The functions, duties and rights; term of office; the benefits to be received by the members of such task forces and other arrangements of task forces formed pursuant to Sub-section (1) shall be as determined by the Government of Nepal upon the recommendation of the Commission.

30. No Hindrance May Be Occurred:

There shall be no hindrance to carry out its activities by the Commission merely on the ground of any post of the Member being vacant.

31. Delegation of Power:

The Commission may, as per necessity, delegate some of its powers conferred to it in accordance with this Ordinance to the Chairperson, Member, the task force constituted pursuant to Section 29 or the officer level staff of the Commission.

32. Informants May Be Awarded:

The Commission may award such person, organization, body or association assisting it in the task of finding out truth and facts in cases the Commission has carried out investigations in accordance with this Ordinance.

35. Oath of Office:

The Chairperson and Members shall take the oath of office in a format as prescribed in the Annex with the Chief Justice and the Chairperson respectively prior to the assumption of their duties.

36. **Power to Remove Difficulties:**

If any difficulty arises in connection with the implementation of this Ordinance, the Government of Nepal may, in consultation with the Commission, issue necessary order to remove such difficulty by publishing a notice in the Nepal Gazette.

37. **Term of Office of the Commission:**

The term of office of the Commission shall be as prescribed by the Government of Nepal at the time of its formation.

38. **Dissolution of the Commission:**

(1) The Commission shall *ipso facto* be dissolved in cases if the term of office of the Commission is over pursuant to the Section 37 or if the Commission submits its report pursuant to Sub-section (1) of Section 24 prior to the expiry of its term of office.

(2) In case the Commission is constituted to investigate the cases of disappearance of persons in accordance with this Ordinance, no commissions shall be constituted again in future to investigate cases relating to such persons.

39. **Applicability of This Ordinance:**

For matters as provided for in this Ordinance, this very Ordinance shall prevail while for matters not provided in this Ordinance, the prevailing laws shall govern.

40. **Information of Death:**

In case that the Commission finds out while carrying out its investigation that the disappeared person has already died, the Commission will inform the nearest member of the family of the deceased accordingly.

41. Liaison With the Government of Nepal:

The Commission shall liaise with the Government of Nepal through the Ministry of Peace and Reconstruction.

42. Power to Frame Rules:

The Government of Nepal may, in consultation with the Commission, frame necessary rules to carry out the objectives of this Ordinance.

Annex
(Pertaining to Section 35)

Oath of Office

I,, being honest to the Country and People, hereby solemnly affirm/ swear in the name of the God that I will bear full loyalty to the Nepali people and existing constitution and other laws and that I will faithfully discharge the duties and responsibilities as a Chairperson/ Member of the Commission without fear or favor, affection, ill-will or greed of or unto none and that I will not disclose any matter, in any condition whether or not being in any position, being known in course of discharging duties except in cases of abiding by the existing laws.

Date:

Signature:

Name and Surname:

Date of Certification: 2065/10/28 B.S.

(February 10, 2009)