

(Translator's Note: New or amended provisions are underlined.)

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Terrorist and Disruptive Activities (Control and Punishment) Ordinance, 2006

Ordinance no. 71 of the year 2005/2006

Ordinance designed to provide for control and punishment of terrorist and disruptive activities

Preamble:

Whereas it is expedient to provide for legal arrangements on the immediate prevention of terrorist and disruptive activities for the maintenance of peace and order in the Kingdom of Nepal and for the security of the general public, and at present the parliament is not in session;

Be the Ordinance promulgated by His Majesty, the King Gyanendra Bir Bikram Shaha Dev in accordance with Article 72 of the Constitution of the Kingdom of Nepal, 1990.

1. Short title and commencement:

- 1) This Ordinance shall be called the "Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2006".
- 2) This Ordinance shall enter into force at once.

2. Definitions:

In this Ordinance, unless the subject or context otherwise requires:

- (a) **"Arms"** means any rifle, gun, cannon, pistol, revolver, machine gun, rocket, rocket-launcher or other similar means or machine or spear, knife, *khukuri* or other dangerous weapon harmful to human bodies with or without sharp edge.
- (b) **"Ammunition"** includes fog signals, fuses, gunpowder, cap, mortars, shrapnel, detonators, cartridges and other similar ammunitions.
- (c) **"Bomb"** means grenade or landmine made of any substance or means to be used for military or non-military purposes which explodes automatically or with the help of other devices, or any other weapon containing explosives or any materials that may explode it or cause explosion.
- (d) **"Explosive substance"** means tri-nitro-toluene (TNT), Amatol barotol, Pentolite, RDX, Torpekus, plastic explosives, dynamites, gunpowder, nitro-glycerin, gelignite, stemite, sellsite, guncotton, blasting powder, mercury or other metal flunite that cause damage when exploded and any other substances

manufactured or used with the objective of causing an explosion whether or not such substance is as explosive as the abovementioned.

- (e) **"Poisonous Substance"** means any type of poison or substances in solid or liquid form mixed with such poison and the term also includes poisonous smoke or gas of any type.
- (f) **"Security Personnel"** means the police or the armed police or the Royal Nepal Army or persons deployed by His Majesty's Government for the prevention and control of terrorist and disruptive activities.
- (g) **"Terrorist and Disruptive Activities"** means the terrorist and disruptive activities referred to in Section 3.
- (h) **"Terrorist"** means a person or a group involved in terrorist and disruptive activities referred to in Section 3.
- (i) **"Accessory"** means the following persons:
 - 1) A person who is in contact with any person or group involved in terrorist and disruptive activities and thereby assists them;
 - 2) A person who supplies information to persons or groups involved in terrorist and disruptive activities or who imparts information from those involved in terrorist and disruptive activities;
 - 3) Except in the case of coercion, a person who intentionally provides, directly or indirectly, financial or material support or shelter to persons or groups involved in terrorist and disruptive activities.
- (j) **"Property"** means any Governmental or public or private property, movable or immovable, situated within or outside the Kingdom of Nepal.
- (k) **"Informant"** means a person who supplies or helps to supply information to Security Personnel and His Majesty's Government about terrorist and disruptive activities and explosive substances.
- (l) **"Security Official"** means the Chief District Officer or any gazetted officer of His Majesty's Government designated by His Majesty's Government by publishing a notification on Nepal Gazette.
- (m) **"Order"** means an order issued by His Majesty's Government or the Security Official.

3. Terrorist and disruptive offences:

- 1) Whoever commits any of the following acts shall be deemed to have committed a terrorist and disruptive offence:
 - (a) With intent to jeopardize or undermine the sovereignty, integrity or security or peace and order of the Kingdom of Nepal or any part thereof, or the safety of the property of Nepal or diplomatic missions located abroad;

commits any act which causes damage or destroys property at any place by using any kind of arms, bombs, explosive substances or other equipment or goods, or makes such plan or activities to cause the loss of lives, mutilation or injury to any person or sets fires; or activities to cause loss of lives, mutilation or any kind of harm by spreading poisonous substances on consumer goods or public places; or any act of terrorizing ordinary people or persons while in movement or assembly by committing any of the abovementioned activities; or

- (b) With intent as referred to in Clause (a) commits any act to coerce any person in any place or in any kind of vehicle or to terrorize them or abduct anyone from such place with or without vehicle, or an act of terrorizing people by using or threatening to use the substances as mentioned in the same clause or by using or threatening to use other substances or devices other than such substances, and by threatening to cause the loss of lives, mutilation or injury or any kind of harm; or
 - (c) With intent as referred to in Clause (a) or (b), commits acts of producing, distributing, stockpiling, transporting, importing, exporting, selling, carrying or installing any kind of arms or bombs or explosive substances or poisonous substances, or intentionally abets in committing in such acts; or
 - (d) With intent as referred to in Clause (a) or (b), commits acts such as organizing people and providing them with training;
 - (e) With intent as referred to in this Sub-section, commits acts of extorting money or goods or donations, looting property, forcibly taking another person's property, depriving another person's use of his property, abducting persons, or acts of abetting, knowingly and directly or indirectly, persons or groups involved in terrorist and disruptive activities by providing financial or material support or shelter;
 - (f) Acts of being an accessory as defined under Clause (i) of Section 2.
- 2) Whoever attempts or conspires to commit a terrorist and disruptive act, or induces or compels anyone to commit such acts, or gathers more than one person to commit or cause the commission of such acts, or establishes any gang or group to commit such acts, or makes arrangements to commit such acts or participates in such acts with or without receiving remuneration, or publicizes or causes to publicize such acts or obstructs the Government communication system, shall be deemed to have committed a terrorist and disruptive offence.
- Provided that the aforementioned acts committed under coercion shall not be deemed as a terrorist and disruptive offence.
- 3) Persons who commit any of the acts referred to in Sub-sections (1) or (2) shall be subjected to action and punishment in accordance with this Ordinance.

- 4) The filing of a separate case¹ on the charge of abetting to any offences mentioned in Sub-section (3) or of participation as an accessory shall not be prohibited.

4. Extra-territorial application of the ordinance:

Any person involved in terrorist and disruptive acts who has committed an offence targeting the Kingdom of Nepal or Nepalese citizens or any property of the Kingdom of Nepal even while outside the territory of the Kingdom of Nepal, shall be deemed to have committed an offence and shall be subjected to action and punishment under this Ordinance as if such person committed the offence within the Kingdom of Nepal.

5. Special powers to prevent terrorist and disruptive acts:

Notwithstanding anything provided by prevailing law, His Majesty's Government, in any or all parts of the Kingdom of Nepal, and the Security Official, in the area within his jurisdiction, may in order to prevent a terrorist and disruptive offence, issue orders for undertaking all or any of the following acts:

- (a) To arrest anyone on the grounds of sufficient and reasonable suspicion of involvement in terrorist and disruptive activities and furnish information with reasons for such arrests without delay.
- (b) To search with notice,² at any time, a residence, shop, warehouse, means of transport of any person or any other places suspected of stockpiling illegal arms and ammunition, bombs or explosives or in which any suspicious person affiliated with terrorists is hiding, and issue receipts of goods seized, if any, in the course of the search.
- (c) To conduct search of the body of a person or his/her luggage or his/her vehicle at any place and at any time for the purpose of preventing terrorist and disruptive acts.
- (d) To use force if necessary in case anyone obstructs or opposes the act of being placed under arrest in accordance with Clause (a) or conducting search or taking any other actions under Clause (b) or (c) or use weapons in case anyone obstructs or opposes such acts with weapons.
- (e) To use force or weapons if necessary on a person who is committing or has committed a terrorist and disruptive act if it appears that he is likely to flee or escape or in circumstances that he cannot be arrested.
- (f) To use force or weapons if necessary in the course of securing the evacuation of any place or vehicle or aircraft or ship or any other means of transport that is forcibly captured by persons involved in terrorist and disruptive acts, or

¹ Translator's note: Generally, the filing of a separate criminal case against an accessory to an offence is not allowed if a case is not filed against the principal to an offence. This provision is, therefore, exceptional.

² Translator's note: The term 'notice' used in this clause does not state whether it is written or verbal notice but it generally means 'written notice' in practice.

evacuation of the persons held hostage by them in such means in order to protect them from any harm or risks or other losses likely to be suffered by them.

- (g) To use force or weapons if necessary in case any person or group attacks any Security Personnel with or without weapons while on duty.
- (h) To use force or weapons if necessary in case any person or group threatens or seeks to threaten by carrying any weapon with intent to harm the life and property of Security Personnel working in a specific place.
- (i) To use force or weapons if necessary in case any person or group attacks persons who are to be provided security by Security Personnel or ordinary people for whom the Security Personnel are providing security, employees assigned to governmental duty or governmental goods or Security Personnel himself with a view to physically harming them.
- (j) To use force or weapons if necessary in the event of an encounter with any armed person or group or in the event of obstruction to security personnel by any armed or unarmed person or group while performing the prescribed functions.
- (k) To use force or weapons if necessary by Security Personnel against persons or groups carrying arms or in areas where arms are stored or trainings conducted with intent to commit terrorist and disruptive activities.
- (l) To take in control and possession of, if necessary, the weapons of any armed person or group, or to disarm them by Security Personnel.
- (m) To conduct surveillance of any suspicious person or place, and, if required, arrest such person or lock out or blockade suspicious places.
- (n) To seize, for a specified period, on sufficient and reasonable grounds, the bank accounts or passports of any persons suspected of terrorist and disruptive acts.

6. Power to take property:

His Majesty's Government or the Security Official may take any private or Governmental vehicle, foodstuff or other goods or property as may be required in the course of control and prevention of terrorist and disruptive acts, on condition of providing proper compensation or returning such taken things subsequently.

7. Power to declare terror-affected areas and terrorists:

- 1) His Majesty's Government may declare any area affected or likely to be affected by terrorist and disruptive activities as a terror-affected area.
- 2) His Majesty's Government may declare any person, association, institution, organization or group involved in crimes punishable under this Ordinance as terrorist.
- 3) Notwithstanding anything provided by this Section, in cases when a state of emergency is declared or ordered under the Constitution of the Kingdom of Nepal

1990, the declaration of terror-affected areas shall be deemed to have been made *ipso facto*.

8. Power to prohibit on carrying of arms or ammunition:

- 1) Notwithstanding anything contained in the prevailing law, His Majesty's Government may issue an order to prohibit any person from carrying any arms or ammunition licensed under prevailing law in a terror affected area declared under Section 7, or to require persons to stockpile arms or ammunition in a specified place for a specified period of time.
- 2) Arms or ammunition held by a person who violates the order referred to in Sub-section (1) shall be confiscated.

9. Power to hold under preventive detention:

- 1) If there are reasonable grounds to believe that any person must be prevented from committing any acts that could result in a terrorist and disruptive act, the Security Official may issue an order to hold such person under preventive detention in a humane place for a period not exceeding 6 months. If there are grounds to believe that the person held under preventive detention must be prevented from committing any terrorist activities for an additional period, the Security Official, having approval of His Majesty's Government Ministry of Home Affairs, may, under this Section, issue an order to hold him under preventive detention for another six months.
- 2) For the purpose of issuing a detention order in accordance with Sub-Section (1), information received from any individual, institution or agency in respect of such person, his activities, acts performed by him in his capacity as a member or official of any terrorist organization or any act as prescribed or ordered by such organization or any responsibility as has been assigned to him or as accepted by him or other similar acts that may indicate his involvement in terrorist and disruptive acts shall be considered "reasonable grounds".

10. Punishment:

- 1) Whoever commits a terrorist and disruptive acts punishable under this Ordinance or caused commission of or conspired to commit such an offence, the principal who has committed, and any person who has ordered to commit such an offence shall be punished with imprisonment for life, with confiscation of his entire property if such acts resulted in the loss of life of any person.
- 2) If an offence defined in this Ordinance has been committed but it has not resulted in the loss of life of any person, the principal who has committed, or caused commission of, or conspired to commit, such an offence and any person who has ordered to commit such an offence shall be punished with imprisonment for life.
- 3) Whoever attempts to commit or induces or compels anyone to commit, or gathers more than one person or establishes a group to commit, an offence under this Ordinance or makes arrangements to commit or cause to commit such acts or is involved in such acts with or without taking remuneration or produces

or distributes or stockpiles or transports or imports or exports or otherwise exchanges arms, bombs, explosive substances or poisonous substances with intent to commit such acts or publicizes such activities shall be punished with imprisonment for a term of five to ten years depending on the gravity of the offence.

- 4) Whoever having committed a terrorist and disruptive act has caused loss of, or damage to, any property, such loss or damage shall be recovered from the proceeds from confiscation of the partition share of the property that belongs to such person. If the amount of compensation to be paid cannot be fully recovered from his property, the offender shall undergo imprisonment for the period imposed as if the remaining amount was the amount of an unrealized fine, in accordance with the prevailing law.
- 5) Whoever commits an offence mentioned in Clause (e) of Sub-section (1) of Section 3 shall be punished with imprisonment for a term of five years to ten years depending on the gravity of the offence.
- 6) Amongst the accessories to an offence punishable under this Ordinance, the accessories as defined in Sub-clause (2) or (3) of Clause (i) of Section 2 shall be punished with imprisonment for a term of one year to three years or a fine of ten thousand rupees to fifty thousand rupees or both and other accessories shall be punished with half of the punishment that may be imposed on the principal.
- 7) Whoever knowingly obstructs the conduct of a search under Clause (b) or (c) of Section 5, shall be punished with imprisonment for a term not exceeding one month or with a fine of up to five hundred rupees or with both.

11. To hold in custody for trial:

Person accused of committing an offence under this Ordinance shall generally be remanded in custody for trial, as required by the gravity of the offence.

12. No restriction to hold meeting and conference and to exercise freedom of opinion and expression:

The holding of assemblies peacefully and without arms, the exercise of the freedom of opinion and expression or the moving about in any terror-affected areas in any part of the Kingdom of Nepal declared under Section 7, in a manner not contrary to this Ordinance, shall not be restricted.

13. Provision relating to monitoring and coordination:

- 1) Any person who feels aggrieved by the actions taken or functions performed by the competent authority in the course of conducting investigations of terrorist and disruptive offences in the exercise of the powers as provided by this Ordinance, may himself or a person on his behalf submit a petition to the Monitoring Committee comprising the chairman and members as follows:
 - (a) A person designated by His Majesty's Government from among retired justices of the Supreme Court - Chairman

- (b) Secretary, Ministry of Defense – Member
 - (c) Secretary, Ministry of Home Affairs – Member
 - (d) Secretary, Ministry of Law, Justice and Parliamentary Affairs – Member
 - (e) Deputy Attorney General, Office of the Attorney General of the Kingdom of Nepal - Member
- 2) The Monitoring Committee shall establish its own rule of procedures.
 - 3) If the Monitoring Committee finds, upon hearing a petition lodged under Sub-section (1), that the petitioner has actually suffered, it may give necessary advice to the relevant agency to provide redress and also offer necessary suggestions to His Majesty's Government about the problem and measures to resolve it.
 - 4) Information about the actions being taken by the Monitoring Committee under Sub-section (3) shall be furnished to the Committee on State Affairs, House of Representatives.
 - 5) There shall be a Coordination Committee comprising the relevant Regional Administrator or Chief District Officer as co-coordinator and chief of the Royal Nepal Army, the Nepal Police, the Armed Police Force, the National Investigation,³ and other Government bodies as required in order to coordinate the Royal Nepal Army, the Nepal Police, the Armed Police Force and other Government agencies as required to prevent or control terrorist and disruptive activities within the areas under their jurisdiction.
 - 6) The Coordination Committee mentioned in Sub-section (1) shall establish its own rule of procedures.

14. Confiscation:

- 1) If any person has committed an offence punishable under this Ordinance, and used any property, equipment or vehicle for the commission of such crime, such property, equipment or vehicle shall be confiscated.

Provided that such property, equipment or means of transport, if used without the consent of owner, shall not be confiscated.
- 2) The means of communication, weapons, cash money and goods willfully used in commission of an act deemed to be an offence under Section 3, or for assisting commission of that act shall be confiscated.
- 3) If any person is proved to have committed any act deemed to be an offence under this Ordinance from any place outside the Kingdom of Nepal, his partition share of any property situated in Nepal shall also be confiscated in addition to the imposition of the punishment referred to in Section 10.

³ Translator's note: The term "National Investigation" means the "Department of National Investigation".

15. Adjudicating authority and appeals:

- 1) A court constituted or designated by His Majesty's Government by publishing a notification in the Nepal *Rajpatra* (gazette) shall have jurisdiction to hear cases relating to offences under this Ordinance.
- 2) The Court mentioned in Sub-section (1) shall follow the procedures as provided by the Special Court Act, 2002 for the trial and adjudication of cases under this Ordinance.
- 3) An appeal against the decision or the final orders issued by the court referred to in Sub-section (1) may be submitted to the Supreme Court.
- 4) Cases relating to offences under this Ordinance shall be heard in closed session.
- 5) The relevant legal practitioners,⁴ the Government Attorney, the accused, and the police personnel permitted by the court and court employees can be present at a hearing in closed session in accordance with Sub-section (4). No one except the Government Attorney, the defendant or his legal practitioner shall be allowed to take copies of the documents related to a case heard in closed session.

16. Government as claimant:

Cases under this Ordinance shall proceed with His Majesty's Government as Claimant, and such cases shall be deemed to have been included in Schedule 1 of the State Cases Act 1992.

17. Burden of proof:

If weapons, ammunition, bombs, explosives or toxic materials or any documents, things or items relating to terrorist and disruptive acts are found on the body of any person, he shall be required to produce evidence proving that such documents, things or items are not meant for the purpose of conducting terrorist and disruptive activities. The failure to produce such evidence and unless proved otherwise, he shall be deemed to have committed offences under this Ordinance.

18. Special procedures:

- 1) Notwithstanding anything contained in prevailing law, a 15-days warrant shall be issued mentioning, so far as possible, particulars about the identification of a person to be arrested in case the person who has committed a terrorist and disruptive offence under this Ordinance could not be arrested and has absconded. The proceeding against such person under this Ordinance shall not otherwise be affected in case such person is not found within the same limitation.
- 2) Any person, employee or Security Personnel from a group engaged in terrorist and disruptive activities may be used as an informant. No such person, employee or security personnel shall be subjected to any punishment under that prevailing law for his involvement in that group.

⁴ Translator's note: The term "legal practitioner" means here "defense lawyer".

- 3) The identity of an informant shall be kept confidential.
- 4) Notwithstanding anything contained in prevailing law, if the accused⁵ being investigated under this Ordinance reveals any important matter or evidence or directly helps in identifying the principal offender actually leading the commission of the offence in such a manner as to convince His Majesty's Government, police personnel or any other official, he may be considered as a Government witness, and he, if so considered, shall not be subjected to any punishment under prevailing law.

Provided that in case such person provides false information or submits artificial evidence, or is found to have acted out of fury or revenge without any reason, if a charge sheet is filed requesting punishment against such person as an accused, the authority hearing the case may impose punishment on him.

- 5) Notwithstanding anything contained in prevailing law, the person accused of an offence under this Ordinance may be held in police custody for a period not exceeding 60 days from the date of arrest for the purpose of investigation as per the order of the judicial authority.

19. Control over means of communication:

His Majesty's Government may exercise control over such means of communications such as correspondence, telephones and faxes that belongs to a persons or group involved in terrorist and disruptive activities.

20. Provision relating to medical expenses and compensation:

- 1) If any police or Security Personnel deployed to control or investigate terrorist and disruptive acts is mutilated or killed, His Majesty's Government shall provide reasonable medical expenditure and compensation.
- 2) His Majesty's Government shall make arrangements relating to necessary medical treatment of persons affected by or victimized by terrorist and disruptive activities and on relief to be granted to such persons.
- 3) His Majesty's Government shall provide due compensation to the dependant family member of an innocent civilian killed as a result of the action of a person involved in terrorist and disruptive activities or of Security Personnel.
- 4) If this Ordinance is proved to have been applied with *mala fide* intention, the victim in the course of seeking a judgment shall be provided with due compensation.

21. Case not to be proceeded:

- 1) Notwithstanding anything contained in this Ordinance, no charge of an offence punishable under this Ordinance shall be filed against a person who has provided

⁵ Translator's note: The term "accused person" used in this Section means "suspected person".

financial, material support or shelter to a person or group involved in terrorist and disruptive activities because of coercion inflicted on him, or against a person who has surrendered after committing terrorist and disruptive activities.

- 2) If a person who has surrendered in accordance with Sub-section (1) commits again an offence punishable under this Ordinance, he shall be subjected to prosecution for such offence and the offence previously committed by him.
 - 3) No official or any other person shall be punished for any act or work performed or attempted to be performed in good faith under this Ordinance or Rules framed under it.
- 22. No Statute of limitations for action:** No statute of limitations shall be applied to the filing of cases under this Ordinance.
- 23. Power to give rewards:** His Majesty's Government may provide reasonable reward to any persons who arrest or assist in arresting a person playing a principal role in the commission of terrorist and disruptive acts.
- 24. Delegation of powers:** His Majesty's Government may, if necessary, delegate some of the powers vested in it under this Ordinance to any authority or withdraw the power so delegated to any authority.
- 25. Power to frame rules:** His Majesty's Government may frame necessary rules pursuant to the objectives of this Ordinance.
- 26. To be in accordance with this Ordinance:** Matters covered by the provision of this Ordinance shall be dealt in accordance with this Ordinance and the matters not covered by this Ordinance shall be dealt in accordance with other prevailing laws.
- 27. Saving:** Actions taken in accordance with the Terrorist and Disruptive Activities (Control and Punishment) Ordinance issued on 2 October 2005 (1) shall be considered to have been carried out under this Ordinance.

Date of Royal Seal: 27/03/2006

By Order,
Dr. Kul Ratna Bhurtel
Secretary of His Majesty's
Government
