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ORDINANCE NO. LXX OF 2007

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ORDINANCE

*to provide for the constitution and establishment of National Command
Authority*

WHEREAS it is necessary and expedient to establish an Authority for complete command and control over research, development, production and use of nuclear and space technologies and other related applications in various fields and to provide for the safety and security of all personnel, facilities, information, installations or organizations and other activities or matters connected therewith or ancillary thereto;

AND WHEREAS, the National Assembly stands dissolved and the President is satisfied that circumstances exist which render it necessary to take immediate action:

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title, commencement, application and extent.**—(1) This Ordinance may be called the National Command Authority Ordinance, 2007.

(2) This Ordinance shall come into force at once.

(3) It extends to the whole of Pakistan and shall apply to any person who commits any offence under this Ordinance, wherever, he may be.

2. **Definitions.**—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “Authority” means the National Command Authority established under section 3 of this Ordinance;

(b) “Chairman” means the President of the Islamic Republic of Pakistan;

(c) “employee” means any official, employee etc., whether in the service of the Authority or the Strategic Organizations, serving or retired and includes those on deputation or secondment within Pakistan or abroad, and those studying abroad;

(d) “Strategic Organization” means such body notified by the Authority to be a Strategic Organisation and includes Pakistan Atomic Energy Commission, Dr. A.Q.Khan Research Laboratories (KRL) and Space and Upper Atmosphere Research Commission; and

(e) “prescribed” means prescribed by rules under the Ordinance.

3. **Establishment of the Authority.**—(1) The National Command Authority already established by the competent authority shall deem to be the Authority established under this Ordinance.

(2) The authority shall be having perpetual succession and a common seal with powers, subject to the provisions of this Ordinance, to hold and dispose of the property both movable and immovable and shall by the said name sue and be sued.

- (3) The Chairman of the Authority shall be the President of Pakistan.
- (4) The Vice-Chairman of the Authority shall be the Prime Minister of Pakistan.
- (5) The other *ex-officio* members of the Authority shall be the.—
 - (a) Minister for Foreign Affairs;
 - (b) Minister for Defence;
 - (c) Minister for Finance;
 - (d) Minister for Interior;
 - (e) Chairman Joint Chiefs of Staff Committee;
 - (f) Chief of Army Staff;
 - (g) Chief of Naval Staff;
 - (h) Chief of Air Staff; and
 - (i) Director General Strategic Plans Division.
- (6) The Director General Strategic Plans Division shall act as the Secretary of the Authority.
- (7) The National Command Authority shall form such committees and entities as it may deem fit in order to regulate matters relating to the objects and purposes of this Ordinance.
- (8) The National Command Authority shall supervise the functions and administration of all the Strategic Organizations.

4. **Powers of the Chairman.**—All the powers and functions of the Authority shall vest in the Chairman who may, subject to such limitation as he may specify, delegate all or any of these powers and functions to Director General Strategic Plans Division or such other person as he may deem appropriate.

5. **Secretariat of the Authority.**—The Strategic Plans Division shall function as the Secretariat of the Authority and shall be headed by a Director General to be appointed by the Chairman.

6. **Meetings of the Authority.**—(1) The Authority shall meet at such time and place and in such manner as may be prescribed .

(2) The Authority may, if required, invite any head of the Strategic Organization, or any person or an expert etc., to participate in its meetings.

7. **Powers and functions of the Authority.**—The Authority shall have the powers to perform all such functions that are necessary to implement the objects and purposes of this Ordinance which include, without being limited, to the following, namely:—

- (a) to exercise complete command and control over all nuclear and space related technologies, systems and matters;
- (b) to supervise, manage and coordinate the administration, management, control and audit of budget, programmes and projects etc., of the Strategic Organizations;
- (c) to authorize undertaking of specialized scientific and technological work;
- (d) to prescribe specific terms and conditions of the employees including but not limited to, appointments, removals, promotions, transfers, integrity and reliability assessment and other related matters;
- (e) to create classification amongst employees based on the sensitivity of the functions, nature of assignment, security considerations and in the interest of security of Pakistan;
- (f) to take measures regarding employees in respect of their movement, communication, privacy, assembly or association, in the public interest or in the interest of integrity, security or defence of Pakistan or friendly relations with foreign states and public order;
- (g) to place such restrictions and limitation on the employees that are necessary in the interest of the confidentiality of the functions, assignments, jobs etc., being performed by the said employees or the class of employees;
- (h) to ensure security and safety of nuclear establishments, nuclear materials and to safeguard all information and technology relating to said matters;
- (i) to ensure security and safety of establishments and facilities etc., of the Strategic Organization;

- (j) to render security and ensure safety of serving or retired employees or any other person;
- (k) authorize possession and use of firearms to security force personnel who are in the service of the Authority;
- (l) to take actions, issue appropriate orders and instructions as it may deem fit or in order to advance or achieve the purposes of its establishment and in order to facilitate the performance of actions or functions that are incidental and ancillary thereto;
- (m) take implementing measures and assist the Federal Government pursuant to any obligation on Pakistan relating to non-proliferation, safety, security, accidents, terrorism and any other related matters;
- (n) to take measures in respect of the movement, communication and interaction etc., of any employee or person who is suspected of an attempt to commit an offence under this Ordinance;
- (o) to carry out the functions of fact finding, inquiry, investigation, prosecution etc., of offences under the Ordinance and to that end authorize any official of the Authority or entrust any or all of the said function to any official outside the Authority partly or fully, as the case may be;
- (p) to declare application of any other existing law, provisions of law, rules, regulations etc., to its employees, procedures, establishment, sites, building, lands, assets, equipments, partly or fully, as the case may be;
- (q) to acquire property movable or immovable in its own name or in the name of a designated official or a Strategic Organization ; and
- (r) to enter into agreements, contracts and other like transactions.

8. **Strategic Organizations.**—All the Organizations working under the control, regulations and directions of the Authority and such bodies as may be notified by the Authority shall be the Strategic Organizations under this Ordinance.

9. **Employees of Authority.**—(1) Notwithstanding anything contained in any other law, judgment of any court or tribunal for the time being in force or any procedure etc., hitherto followed by the Authority, all employees and officials working in the Strategic Organizations, upon notification of the said Organizations under section 7, shall with immediate effect be deemed to be the employees in the service of the Authority:

Provided that no employee shall be treated on terms and conditions less favorable to the ones which he was availing as per his terms and conditions of employment.

(2) The Authority shall regulate all the matters relating to terms and conditions of the service of the employees in the service of the Authority, including their appointment and removal, promotion, transfer, integrity assessment, reliability, security clearance, and other related matters:

Provided that the employees working in the service of the Authority who are subject to the Pakistan Army Act, 1952 (XXXIX of 1952), Pakistan Air Force Act, 1953 (VI of 1953) and Pakistan Navy Ordinance 1963 (XXXV of 1963), shall also be governed by this Ordinance and rules made thereunder:

Provided further that the Pakistan Army Act, 1952 (XXXIX of 1952) shall be made applicable in respect of employees in the service of the Authority to whom section 2 of the said Act applies or employees in the service of the Authority for whom a notification under section 7 of the aforesaid Act is issued.

(3) The Authority shall categorize the nature of service of the employees on the basis of the sensitivity of the functions and then shall frame rules, criterion, assessment basis for each set of employees and no employee shall have a vested right for any post, assignment, emoluments, promotion, privileges, transfer, deputation etc.

10. Powers of inquiry and investigation etc.—(1) The Director General Strategic Plans Division or any official authorized by him may order fact finding inquiry or investigation of any suspicious conduct or violation of any rule, regulation, procedures, direction or orders issued pursuant to this Ordinance.

(2) During the said inquiry or investigation, Director General Strategic Plans Division shall have the power to order any measure or step that may be necessary in the interest of national security or to prevent the consequences of the violation etc.

(3) The Director General Strategic Plans Division may upon receiving the report of the said inquiry or investigation may recommend to the Authority to impose any penalty or penalties under the service rules.

11. Appellate Authority.—(1) Any employee if aggrieved by any order, action or inaction in respect of his terms and conditions of service in the Authority may in accordance with the prescribed rules, prefer an appeal to the prescribed Appellate Authority.

(2) The Appellate Authority may provide personal hearing to the applicant and pass appropriate orders within ninety days of the receipt of application.

12. Offences and trial.—(1) Whosoever commits, attempts, abets or continues the breach of national security shall deem to have committed an offence under this Ordinance and shall be liable to punishment of imprisonment of either description for a term which may extend upto twenty-five years.

Explanation.—For the purposes of this section breach of national security means if any person including an employee in the service of the Authority or the Strategic Organizations acts in a manner which is prejudicial to the security or integrity or stability of Pakistan or attempts or commits or continues the breach of confidentiality or leakage of secured information directly or indirectly or in any way acts or conducts himself that endangers the security or secrecy of any aspect of the programmes or projects or activities under the Authority.

(2) If any employee of the Authority or the Strategic Organisations, commits any offence listed in the Schedule I of the Ordinance, he shall deem to have committed an offence under the Ordinance:

Provided that nothing herein shall prevent the criminal or other proceedings against an employee under the Pakistan Army Act, 1952 (XXXIX of 1952), Pakistan Navy Ordinance 1963 (XXXV of 1963) and the Pakistan Air Force Act, 1953 (VI of 1953), to whom the concerned Act or the Ordinance, as the case may be, is applicable:—

(3) - The investigation and prosecution of the offences under the Ordinance, wherever appropriate, shall be carried out under the authority of Director General Strategic Plans Division or by any official duly designated by him or by any other person or agency under any other law, authorised to do so and such person shall have all the powers of an official incharge of the police station as are entrusted under the Code of Criminal Procedure, 1898 (Act V of 1898).

13. jurisdiction.—(1) A District and Session Judge notified by the Federal Government shall have the jurisdiction to try offences under this Ordinance.

14. Industrial Relations Ordinance 2002 (XCI of 2002) not to apply to employees of Authority.—Nothing contained in the Industrial Relations Ordinance 2002 (XCI of 2002) shall apply to or in relation to the employees in the service of the Authority and the Strategic Organizations.

15. Power to make Rules.—The Authority may make rules for carrying out the objectives of this Ordinance.

16. **Amendments in the Schedule.**—On the recommendation of the Authority, the Federal Government, may by notification in the official Gazette, amend the Schedule to this Ordinance.

17. **Funds of the Authority.**—Ministry of Finance shall ensure provision of funds in local and foreign currencies to the Authority through Strategic Plans Division.

18. **Declaration of fidelity and secrecy.**—All officers, employees, advisors, consultants and any other person appointed by the Authority in connection with the affairs of the Authority and affairs of the Strategic Organizations coming under the control and management of the Authority shall execute declaration of fidelity and secrecy in a prescribed manner.

19. **Savings.**—(1) All orders and directions issued, proceedings taken, appointments made including secondments and deputations, and acts done by the Authority, or by any person, authorized by the Authority and taken in respect of employees in the service of the Authority and Strategic Organizations, which were made, taken or done since the establishment of the Authority, shall be deemed to be and always to have been validly made, taken or done and shall not be called in question in any court or forum on any ground whatsoever.

(2) All inquiries undertaken, authorized, carried out, or continuing, shall deem to have been validly carried out and those continuing shall deem to be carried out under the present Ordinance.

(3) All rules, regulations, procedures made and already applicable to the employees, establishments, installations and sites etc., of the Authority and the Strategic Organisations shall deem to have been validly made and shall continue as the rules, regulations and procedures made under the Ordinance.

20. **Indemnity.**—No suit, prosecution or other legal proceedings shall lie against the Authority, the Chairman, Members, and employees in respect of anything which is done in good faith or intended to be done under this Ordinance or the rules, instruction or directions made or issued there under.

21. **Ordinance to override other Laws.**—The provision of this Ordinance shall have effect notwithstanding anything to the contrary contained in any law for the time being in force particularly the Civil Servants Act, 1973 (LXXI of 1973) or Pakistan Atomic Energy Commission Ordinance, 1965 (XVII of 1965), or the Pakistan Space and Upper Atmosphere Research Commission Ordinance, 1981 (XX of 1981) or any other law or rules made there under for the time being in force and applicable to Strategic Organizations.

22. **Jurisdiction barred.**—Save as provided under this Ordinance, no order made or proceeding taken under this Ordinance, rules or regulations made there under by the Competent Authority or any officer or Authority authorized by it shall be called in question in any court or administrative tribunal and no injunction shall be granted by such court or tribunal in respect of any decision made or proceedings taken in pursuance of any power conferred by or under this Ordinance, rules or regulations made there under.

23. **Removal of Difficulties.**—If any difficulty arises in giving effect to the provisions of this Ordinance, the Chairman may make such orders, as may be deemed necessary for the purpose of removing the difficulty.

SCHEDULE I

UNDER SECTION 12(2) OF THE NCA ORDINANCE:

1. Offences under the Pakistan Penal Code, 1860 (XLV of 1860).
2. Offences under the Import Export and (Control) Act, 1950 (XXXIX of 1950).
3. Offences under the Pakistan Nuclear Regulatory Authority Ordinance, 2001 (III of 2001).
4. Offences under the Export Control on Goods, Technologies, Material and Equipment Related to Nuclear and Biological Weapons and Their Delivery Systems Act, 2004 (V of 2004).
5. Offences under the Pakistan Arms Ordinance, 1965 (XX of 1965).
6. Offences under the Official Secrets Act, 1923 (XIX of 1923).
7. Offences under the Explosive Substances Act, 1908 (VI of 1908).
8. Offences under the Defense of Pakistan Ordinance, 1971.
9. Offences under the High Treason Punishment Act, 1973 (LXVIII of 1973).
10. Offences under the Prevention of Anti-National Activities Act, 1974 (VII of 1974).
11. Offences under the National Accountability Ordinance, 1999 (XVIII of 1999).

12. Offences under the Prevention of Corruption Act, 1947 (II of 1947).
13. Offences under the Customs Act, 1969 (IV of 1969).
14. Offences under the Anti-Money Laundering Ordinance, 2007.
15. Offences under the Anti Terrorism Act, 1997 (XXVII of 1997).
16. Offences under the Explosives Act, 1884 (IV of 1884).
17. Offences under the Security of Pakistan Act, 1952 (XXXV of 1952).
18. Offences under the Surrender Illicit Arm Act, 1991 (XXI of 1991).
19. Offences under the Arms Act, 1878 (XI of 1878).
20. Offences under the Pakistan Space and Upper Atmosphere Research Commission Ordinance, 1981 (XX of 1981).
21. Offences the Pakistan Atomic Energy Commission Ordinance, 1965 (XVII of 1965).

Statement of Objects and Reasons

Whereas, After the successful nuclear tests the National Command Authority was established in year 2000.

And Whereas, National Command Authority was conferred a wide mandate in respect of all issues relating to Nuclear and Space technologies and related matters including the jurisdiction to regulate and administer the affairs of the strategic organizations and it is necessary that such organizations that are working in the strategic areas within the jurisdiction of the National Command Authority, should be formally linked, controlled and managed by the National Command Authority in the larger national interest to ensure uniformity, confidentiality, security and strategic efficiency.

Accordingly, it is also necessary and proper to create a separate and distinct service of the employees who shall work under the National Command Authority and in the linked strategic organizations. Under the National Command Authority Ordinance, the National Command Authority shall be authorized to determine and settle the terms and conditions of their service and several other procedural matters.

In recognition of the highly sensitive and classified areas of work falling within the domain of the National Command Authority, it is necessary in national interest, to confer certain special powers to the National Command Authority in order to exercise proper control over the employees, materials and information and take proper, comprehensive, very strict measures to prevent any breach of national security or any action prejudicial to the interest of Pakistan.

And whereas, it is also necessary to ensure effective penalties under the law to deter any possibility of negligence, attempted proliferation, violation of rules etc and therefore the proposed law provides for penalties under the service rules and also creates offences under the law with the right to exercise control over the investigation and prosecution etc.

Also being mindful of Pakistan as a responsible state and considering the obligations under international law particularly under UNSC Resolution 1540, it is in order to re- demonstrate through the present law the resolve of the Government of Pakistan to continue to exercise full and complete control and security and safety measures over all matters concerning nuclear and space technologies, nuclear establishments, nuclear systems, nuclear materials, relevant personnel and related information etc.

And therefore given the significance of the matters that the law administers, it is being given wide jurisdiction.

And Accordingly the National Command Authority Ordinance provides comprehensive legal basis for the functions and powers of the National Command Authority, persons working under it, and other matters ancillary thereto.

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Minister for Parliamentary Affairs
Member-in-Charge