

Major legislation of the Hong Kong Special Administrative Region regarding the subject of this subparagraph includes Article 22 of the law on associations, which criminalizes incitement, enticement or invitation of others to become members of illicit mass organizations or to assist in the management of such organizations. The maximum penalty for the foregoing offences is HK\$ 50,000 and a term of imprisonment of two years. This category can also be applied to the recruitment of members for terrorist organizations.

Moreover, the United Nations (Anti-Terrorism Measures) Ordinance of the Hong Kong Special Administrative Region provides that the authorities may freeze funds that have been used for, or are intended to be diverted to, the financing of terrorist acts, and that rules and regulations may be developed with a view to freezing other property held by terrorists or terrorist associates.

XXI. COLOMBIA⁵³

SUMMARY OF LEGISLATION OF COLOMBIA RELATED TO TERRORISM

(a) Penal Code

Title XII of the Penal Code (Act No. 599 of 2000), entitled “Crimes against public safety”, defines criminal offences related to terrorism, starting with their planning through the offences of conspiracy to commit an offence, detailed above, and training for terrorist activities.

Among the statutory offences against persons and property protected under international humanitarian law, article 144 of the Penal Code defines acts of terrorism as follows:

Article 144. Acts of terrorism.

Any person who, on the occasion of or in the course of, an armed conflict, engages in, or orders the commission of, indiscriminate or excessive attacks or makes the civilian population a target of attacks, reprisals or acts or threats of violence with the principal objective of terrorizing the civilian population, shall be liable, by that act alone, to a term of imprisonment of between fifteen (15) and twenty-five (25) years,

⁵³ Transmitted to the Secretariat on 12 December 2001 (S/2001/1318, enclosure), on 16 September 2002 (S/2002/1084, appendix) and on 14 July 2003 (S/2003/776, appendix). Information was also provided in respect of the Statute on the Determination of Refugee Status, Financial Institutions Statute, the Organic Statute of the Financial System, and the Anti-corruption Statute.

a fine of between two thousand (2,000) and forty thousand (40,000) times the minimum statutory monthly wage, and loss of rights and public functions for a period of between fifteen (15) and twenty (20) years.

Article 182 of the Penal Code provides for a term of imprisonment of between one and two years for anyone who forces another person to do, condone or fail to do anything, a penalty that will be increased by between one third and one half (article 183) when the objective pursued by the perpetrator is of a terrorist nature.

Article 184. Compulsion to commit an offence.

Any person who compels another person to commit a punishable act, provided that such act does not constitute an offence entailing a higher degree of punishment, shall be liable to a term of imprisonment of between one (1) and three (3) years.

Article 185. Aggravating circumstance.

The penalty shall be increased by between one third and one half when:

1. The objective of the act is to induce persons to become members of terrorist groups, groups of hired murderers, death squads or private justice groups;
2. The persons who are the objects of the act are minors under eighteen (18) years of age or active or retired law enforcement officers or members of State security bodies.

Article 197. Illicit use of transmitting or receiving equipment.

Any person who, for illicit purposes, possesses or makes use of wireless or television equipment or any electronic means designed or adapted for transmitting or receiving signals shall, for that act alone, be liable to a term of imprisonment of between one (1) and three (3) years.

The penalty shall be increased by between one third and one half when the act described in the preceding paragraph is carried out for terrorist purposes.

Article 340. Conspiracy to commit an offence.

When a number of persons conspire for the purpose of committing offences, each of them shall, for that act alone, be liable to a term of imprisonment of between three (3) and six (6) years.

When the conspiracy involves the commission of the crimes of genocide, enforced disappearance, torture, forcible displacement, homicide, terrorism, trafficking in toxic or narcotic drugs and psychotropic substances, kidnapping, extortive kidnapping, extortion, unlawful enrichment, money laundering or fronting and related crimes, or the organization, promotion or financing of illegal armed groups, the penalty shall be a term of imprisonment of between six (6) and twelve (12) years and a fine of between two thousand (2,000) and twenty thousand (20,000) times the minimum statutory monthly wage.

The penalty of deprivation of liberty shall be increased by one half for any person who organizes, encourages, promotes, directs, heads, establishes or finances a conspiracy for the purpose of committing an offence.

Article 341. Training for illicit activities.

Any person who organizes, instructs, trains or equips persons in military tactics, techniques or procedures for the purpose of conducting terrorist activities or operating death squads, private justice groups or gangs of hired murderers, or who recruits them, shall be liable to a term of imprisonment of between fifteen (15) and twenty (20) years and a fine of between one thousand (1,000) and twenty thousand (20,000) times the minimum statutory monthly wage.

Article 342. Aggravating circumstance.

When the acts described in the preceding articles are committed by active or retired law enforcement officers or members of State security bodies, the penalty shall be increased by between one third and one half.

With regard to the financial aspect of the crime of terrorism, the Penal Code provides for the offence of “management of resources linked to terrorist activities”

Article 343. Terrorism.

Any person who provokes or maintains the population, or a segment of the population, in a state of anxiety or terror through acts that endanger the lives, physical integrity or the freedom of the persons or buildings or means of communication, transport, processing or conveyance of fluids or motive power, making use of means capable of causing destruction, shall be liable to a term of imprisonment of between ten (10) and fifteen (15) years and a fine of between one thousand (1,000) and ten thousand times the minimum statutory monthly wage, without prejudice to the penalty to which he or she is liable for the other offences committed in connection with such conduct.

If the state of anxiety or terror is caused by a telephone call, a magnetic tape, a video, a cassette or an anonymous letter, the punishment shall be from between two (2) and five (5) years and a fine of between one hundred (100) and five hundred (500) times the minimum statutory monthly wage.

Article 344. Aggravating circumstances.

The penalties indicated in the first paragraph of the preceding article shall be a term of imprisonment of between twelve (12) and twenty (20) years and a fine of between five thousand (5,000) and thirty thousand (30,000) times the minimum statutory monthly wage when:

1. A minor under eighteen (18) years of age is forced to participate in the commission of the offence;
2. Police premises, State security units or diplomatic or consular posts are attacked or taken;
3. The act was committed in order to hinder or alter the normal conduct of democratic contests;
4. The perpetrator or participant is a law enforcement agent or a member of a State security body;
5. When the act affects an internationally protected person other than those indicated in section II of this Book, or diplomatic agents, in accordance with the international treaties and conventions ratified by Colombia, or when buildings of friendly countries are affected or when international relations are disrupted.

Article 345. Management of resources linked to terrorist activities.

Any person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between six (6) and twelve (12) years and a fine of between two hundred (200) and ten thousand (10,000) times the minimum statutory monthly wage.”

Instigation to commit an offence for terrorist purposes is also penalized:

Article 348. Instigation to commit an offence.

Any person who publicly and directly incites another person or persons to commit a specific offence or type of offence shall be liable to a fine.

If the act is engaged in for the purpose of committing the crimes of genocide, enforced disappearance, extortive kidnapping, torture, forcible displacement or homicide or for terrorist purposes, the penalty shall be a term of imprisonment of between five (5) and ten (10) years and a fine of between five hundred (500) and one thousand (1,000) times the minimum statutory monthly wage.

It is also worth noting, in this respect, that the offence of “compulsion to commit an offence” includes among the aggravating circumstances the objective of inciting persons to become members of terrorist groups.

As a way of ensuring that persons involved in acts of terrorism are prosecuted, article 449 of the Penal Code, provides for severe penalties imprisonment from five to eight years - for a public servant responsible for the surveillance, custody or transport of a detainee or convict, who enables or facilitates the escape of the detainee or convict. The second paragraph of article 449 increases the penalty by up to one third when the person is deprived of liberty for more serious offences, including terrorism.

Furthermore, in December 2002 the Congress of the Republic adopted Act No. 793 derogating from Act No. 333 of 1996 and establishing rules governing termination of ownership rights, under which, by means of a simple procedure, ownership of assets used in or derived from the commission of punishable acts may be terminated in favour of the State.

Territorial application of penal law

The competence of the Colombian criminal courts to investigate criminal acts such as those cited in this question is defined in the following articles of the Penal Code:

Article 14. Territoriality.

Colombian penal law shall apply to all persons that infringe it in the national territory, with the exceptions established in international law.

The punishable conduct is deemed to have occurred:

1. In the place where the action took place in whole or in part.
2. In the place where the action should have taken place but did not.
3. In the place where the result occurred or should have occurred.

Article 15. Territoriality by extension.

Colombian penal law shall apply to any person who engages in punishable conduct on board a ship or aircraft belonging to the State while it is away from the national territory, with the exceptions

established in international treaties or agreements ratified by Colombia. It shall also apply to any person who engages in the conduct on board any other Colombian ship or aircraft while on the high seas, unless criminal proceedings have been initiated abroad.

Article 16. Extraterritoriality.

Colombian penal law shall apply:

1. To any person who commits a crime abroad against the existence or security of the State, against the constitutional regime, against the economic and social order with the exception of the conduct defined in article 323 of this Code, or against the public administration, or who counterfeits the national currency or forges a public credit document or official seal, even if he has been acquitted or convicted abroad and given a lesser sentence than is provided for under Colombian law.

Time already served in prison shall, however, be deducted from the sentence.

2. To any person who is in the service of the Colombian State, enjoys immunity under international law, and commits the crime abroad.

3. To any person who is in the service of the Colombian State, does not enjoy immunity under international law, and commits abroad a crime other than those cited in paragraph 1, unless he has been tried abroad.

4. To any national to whom the preceding paragraphs do not apply and who is present in Colombia after having committed a crime on foreign soil, provided that the penalty under Colombian penal law is a term of imprisonment of at least two (2) years and that he has not been tried abroad.

In the case of a lesser penalty, prosecution must be initiated by, or at the request of, the Attorney-General.

5. To any foreigner to whom paragraphs 1, 2 and 3 do not apply and who is present in Colombia after having committed on foreign soil a crime against the State or against a Colombian national that Colombian law punishes with a term of imprisonment of at least two (2) years, unless he has been tried abroad.

In such a case, prosecution must be initiated by, or at the request of, the Attorney-General.

6. To any foreigner who has committed on foreign soil a crime against a foreigner, if the following conditions apply:

- (a) He is present on Colombian soil.
- (b) In Colombia the crime is punishable by a term of imprisonment of at least three (3) years;
- (c) The crime is not political, and
- (d) A request for extradition has not been granted by the Colombian Government. If the extradition is not approved, a criminal trial shall be conducted.

In the case referred to in this paragraph, prosecution shall be initiated solely by, or at the request of, the Attorney-General and only if the case has not been prosecuted abroad.

Article 17. Foreign sentence.

An acquittal or conviction pronounced abroad shall be considered *res judicata* for all legal purposes.

Sentences handed down abroad for the crimes dealt with in article 15 and article 16, paragraphs 1 and 2, shall not be deemed *res judicata* under Colombian law.

The penalty or part thereof that the convicted person has served under such sentences shall be deducted from any sentence imposed under Colombian law, if both are equal in nature. If not, the applicable conversions shall be calculated, by comparing the relevant legislation and consulting the guidelines for setting the penalty contained in this Code.

(b) Code of Criminal Procedure

In accordance with the provisions of article 357 of the Code of Criminal Procedure (Act No. 600 of 2000), the custodial measure of prevention is applied “1. When the offence entails the penalty of imprisonment of at least, or exceeding, four (4) years”, a provision which, in cases of terrorism, makes it possible to deprive those involved of their liberty. The purpose of that measure is to ensure that the accused appears for trial and the penalty of deprivation of liberty is executed, or to prevent him from escaping, continuing his criminal activity or impeding the collection of evidence.

It should be mentioned that, pursuant to Act No. 504 of 1999, the investigation and prosecution of offences, such as terrorism, that cause great social alarm, is carried out by the specialized justice system.

Article 356 of the Code of Criminal Procedure provides that the time limits established for provisional release, in paragraphs 4 and 5, will be doubled when cases are heard by the specialized justice system. This is an important measure, since it enables officials to have a more suitable time-limit for conducting judicial proceedings – bearing in mind the difficulty encountered in such cases, which generally deal with accused persons who belong to powerful criminal organizations – as well as in the submission of evidence.

XXII. COSTA RICA⁵⁴

SUMMARY OF LEGISLATION OF COSTA RICA RELATED TO TERRORISM

The Costa Rican Penal Code contains a number of definitions of offences which, although scattered throughout the Code rather than compiled under a specific section on terrorism, correspond to various acts which may constitute typical acts of terrorism.

Some articles refer to offences expressly linked to terrorism, for instance:

Article 374, defining international crimes, imposes 10 to 15 years' imprisonment on leaders and members of international groups, one of whose aims is to commit terrorist acts. It states:

A sentence of 10 to 15 years' imprisonment shall be imposed on anyone heading or participating in international organizations that engage in trafficking of slaves, women, children or drugs or in acts of terrorism, or that violate provisions of human rights treaties to which Costa Rica is a party.

⁵⁴ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1279, appendix), on 12 July 2002 (S/2002/864, enclosure) and on 31 March 2003 (S/2003/453, enclosure). Information was also provided in respect of Act No. 8204 amending the Act on narcotic drugs, psychotropic substances, unauthorized drugs and related activities, the Civil Aviation Act No. 5150 of 14 May 1973 and the Associations Act.