

CXIX. TONGA¹⁹⁷

SUMMARY OF LEGISLATION OF TONGA RELATED TO TERRORISM

The Criminal Offences (Amendment) Act 2002 makes the act of terrorism an offence.

An “act of terrorism” is defined as an act which “may seriously damage a country or an international organisation”; and also includes an act intended or can be reasonably regarded as having been intended to seriously intimidate a population; involves or causes an attack upon a person’s life which causes death; an attack upon the physical integrity of a person; the kidnapping of a person; extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss; the seizure of an aircraft, a ship or other means of public or goods transport; the release of dangerous substances, or causing of fires, explosions or floods, the effect of which is to endanger human life; or interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life.

The reference to “a country” includes the Kingdom of Tonga, and any country outside of Tonga.

Section 78B defines an act of terrorism to include:

(a) involves or causes:

(vi) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons as well as research into, and development of biological and chemical weapons.

Section 78B(c) provides that an “act of terrorism” means an act which involves or causes (i) an attack upon a person’s life which causes death; (ii) an attack upon the physical integrity of a person; or (iii) the kidnapping of a person.

Under Section 78C of the Act, the Court may in addition to any penalty imposed under section 78A, (i.e. liable upon conviction to imprisonment not exceeding 25 years), order the forfeiture of:

¹⁹⁷ Transmitted to the Secretariat by that Government on 9 December 2002 (S/2002/1363, annex) and on 20 June 2003 (S/2003/676, annex). Information was also provided in respect of the following: Mutual Assistance in Criminal Matters Act, 2000; Money laundering and Proceeds of Crime Act, 2000; Extradition Act, Cap.22; Arms and Ammunition Act (Cap.39); Shipping Act, Cap.139; Passport Act, Cap.61; Immigration Act, Cap.62; Nationality Act, Cap.5; Charitable Trusts Act, 1993; Companies Act, 1995.

- (a) any cash, with any accrued interest or terrorist property;
- (b) any article, substance, device or material by means of which the offence was committed; and
- (c) any vehicle used in the commission of the offence.

Section 78A, covers “[e]very person who does an act of terrorism or threatens to or to further an act of terrorism commits an offence”.

The Criminal Offences (Amendment) Act 2002 provides for punishment for the offence of an act of terrorism if found liable upon conviction to a term of imprisonment not to exceed 25 years. This is the maximum term of imprisonment under this Act whereas the maximum term of imprisonment for other criminal offences is one that is not to exceed 15 years.

Part II of the Criminal Offences Act (Cap. 18) deals with, *inter alia*, abetment, harbouring criminals and conspiracy.

Section 8 of the Act reads as follows:

Every person who directly or indirectly commands, incites, encourages or procures the commission of an offence by any other person and every person who knowingly does any act for the purpose of facilitating the commission of an offence by any other person is an abettor and shall (unless otherwise expressly specified by any enactment)

(a) where the offence is actually committed in pursuance or during the continuance of such abetment be liable to the same punishment as if he himself had actually committed that offence; and

(b) where the offence is not actually committed shall be liable where the offence abetted was murder to imprisonment for life or any less period and in the case of abetment of any other offence to imprisonment for a period not exceeding one half of the longest period to which a person committing that offence might be sentenced or to a fine not exceeding one half of the maximum fine which a person committing that offence might be sentenced to pay.

Section 12 of the Act reads as follows:

Every person who counsels, incites or procures another to commit an offence is a party to every offence which that other commits in consequence of such counselling, inciting or procuring and which the person counselling, inciting or procuring knew or ought to have known would be likely to be committed in consequence of such counselling, inciting or procuring.

Section 13 of the Act reads as follows:

Every person who knowing or having reason to believe that any person has:

- (a) committed an offence; or**
- (b) been charged by an prosecuting authority with any offence; or**
- (c) been issued with a summons by any court in respect of any offence; or**
- (d) been remanded for or is awaiting trial in any court in respect of any offence; or**
- (e) been convicted of any offence;**

does without lawful authority or reasonable excuse any act with intent to impede his apprehension, prosecution or the execution of the sentence is guilty of an offence and is liable on conviction to indictment to imprisonment for any period not exceeding 3 years.

Section 15 of the Act reads as follows:

- (1) If 2 or more persons agree to act together with a common purpose in order to commit or abet an offence whether with or without any previous concert or deliberation each of them is guilty of conspiracy to commit or abet that offence as the case may be.**
- (2) If 2 or more persons are guilty of conspiracy to commit or abet any offence each of them shall in case the offence is committed be liable to be punished as if he had actually committed that offence or shall in case the offence is not committed be punished as if he had abetted that offence.**