

COUNTER-TERRORISM ACT, 2014

No. 24



of 2014

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An Act to provide for measures to prevent and combat acts of terrorism including financing of terrorism; to establish the Counter-Terrorism Analysis and Fusion Agency and to provide for matters related thereto.

Date of Assent: 27.08.2014

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

1. This Act may be cited as the Counter-Terrorism Act, 2014 and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. (1) In this Act, unless the context otherwise requires –
“act of terrorism” means any act or omission in or outside Botswana which is intended to advance a political, ideological or religious cause, or by its nature or context, may reasonably be regarded as being intended to intimidate or threaten the public or a section of the public, or compel a government or an international organisation to do or abstain from doing any act, or to adopt or abandon a particular position, and which –

Interpretation

- (a) endangers or is likely to endanger the life, physical integrity or freedom of any person, any number or group of persons;
- (b) causes or is likely to cause serious injury or death to any person;
- (c) causes or is likely to cause damage to property, natural resources, environmental or cultural heritage;
- (d) disrupts any public service, the delivery of any essential service to the public or creates a public emergency, including –
 - (i) disrupting the provision of police services, civil defence and medical services,
 - (ii) disrupting or causing damage or destroying any computer system or the provision of services directly related to communication infrastructure, banking and financial services, utilities, transportation or key infrastructure;
- (e) creates a general insurrection in Botswana;
- (f) involves the use of explosives or other lethal devices;
- (g) involves the use of, or transportation of NBC weapons;
- (h) involves the handling of, or use of radioactive or nuclear material;
- (i) interferes with the operation of, damages a nuclear facility, or does anything directed against the nuclear facility, in a manner which releases or risks to release radioactive material;
- (j) causes damage to a ship or vehicle, or is likely to endanger the safe navigation of a ship on inland or international waters;
- (k) causes damage to a fixed platform or is likely to endanger the safety of the fixed platform;

- (l) causes damage to any aircraft or aerodrome, or is intended to or is likely to cause damage to any air navigation facility or endanger the safety and lives of persons and property, affect the operations of air services or undermine the confidence of the public in the safety of civil aviation; or
- (m) involves prejudice to public security or national defence; and includes —
 - (i) seizure of property, natural resources, environmental or cultural heritage,
 - (ii) hijacking of an aircraft, ship or vehicle,
 - (iii) taking of hostages,
 - (iv) the intentional murder or kidnap of an internationally protected person, or the execution of a violent attack upon the official premises, the private accommodation or the means of transport of that person, which attack is likely to endanger his or her person or liberty, or
 - (v) any promotion, sponsorship, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraphs (a) to (m) (iv);

For the purposes of paragraph 2 (1) (d) any advocacy, protest, dissent demonstration or industrial action shall not be considered as an act of terrorism if it is not intended to damage property, result in any serious bodily harm to a person or endanger a person's life, or create a risk to human health, or to public safety;

Cap. 71:01

“aerodrome” has the same meaning assigned to it under the Civil Aviation Act;

“aircraft” has the same meaning assigned to it under the Civil Aviation Act;

“NBC weapon” means —

- (a) nuclear weapons and other nuclear explosive devices;
- (b) “biological weapons” which are —
 - (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes, or
 - (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict;
- (c) “chemical weapons” which are, together or separately —
 - (i) toxic chemicals and their precursors, except where intended for —
 - (aa) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes,
 - (bb) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons,

- (cc) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare, or
 - (dd) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes,
- (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (i) which would be released as a result of the employment of such munitions and devices, or
 - (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii);
- “essential service” means a service which is essential to the life and well-being of a community;
- “explosive or other lethal device” means —
- (a) an explosive or incendiary weapon or device that is designed, or has the capability to cause death, serious bodily injury or substantial material damage; or
 - (b) a weapon or device that is designed, or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;
- “fixed platform” means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration of resources or for other economic purposes;
- “internationally protected person” means —
- (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for foreign affairs, whenever any such person is in Botswana, as well as members of his or her family accompanying him or her; or
 - (b) any representative or official of a State or any official or other agent of an international organisation or intergovernmental organisation or of an intergovernmental character who, at the time when and in the place where a crime against him or her or his or her official premises, his or her private accommodation or his or her means of transport is committed, is entitled, pursuant to international law to special protection from any attack on his or her person, freedom or dignity;
- “investigating officer” means —
- (a) a member of the Botswana Police Service;
 - (b) a member of the Botswana Defence Force; and
 - (c) an officer of the Directorate of Intelligence and Security;
- “nuclear facility” means —

- (a) any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose; or
- (b) any plant or conveyance being used for the production, storage, processing or transport of radioactive material;

“nuclear material” means —

- (a) plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238;
- (b) uranium-233;
- (c) uranium enriched in the isotope 235 or 233;
- (d) uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-side; or
- (e) any material containing one or more of the materials provided under paragraphs (a) to (d);

“property” means money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest in such property, and all proceeds thereof, as well as —

- (a) any currency, whether or not the currency is legal tender in Botswana, and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated which is payable to bearer or endorsed payable to bearer, whether expressed in Botswana currency or otherwise;
- (b) any balance held in Botswana currency or in any other currency in accounts with any bank which carries on business in Botswana or elsewhere;
- (c) any balance held in any currency with a bank outside Botswana;
- (d) vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value; and
- (e) any right or interest in property; and
- (f) funds or other assets including all property and any interest, dividends or income on or value accruing or generated by such funds or assets;

“radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

“ship” means a vessel of any type, which is not permanently attached to the seabed, and includes a dynamical supported craft, submersible, or any other floating craft;

“structured group” means a group, whether or not randomly formed for the immediate commission of an offence, and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

“terrorist” means a person who commits an act of terrorism or is a member of a terrorist group;

“terrorist group” means a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing acts of terrorism, which is declared as a terrorist group under Part III;

“toxic chemical” means any chemical which through its chemical action on life processes can cause —

- (a) death, temporary incapacitation or permanent harm to humans or animals; or
- (b) damage to property, natural resources, the environment or cultural heritage,

and includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

“uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; and

“vehicle” means any conveyance or structure which is designed to be propelled or drawn on land, and includes a motor vehicle, a train and a trailer designed to be drawn by a vehicle, and an animal drawn cart.

(2) Any protest, demonstration or stoppage of work shall not be considered as an act of terrorism if it is not intended to, cause a person’s death or endanger a person’s life or result in any serious bodily harm, damage to property, natural resources, environmental or cultural heritage; or create a risk to human health, or to public safety.

PART II – *Terrorism Offences and Support Offences*

3. (1) A person shall not commit an act of terrorism.

Prohibition of terrorism

(2) A person who contravenes subsection (1) commits an offence and is liable to —

- (a) the death penalty, where the act results in death; or
- (b) a term of imprisonment for life, where the act does not result in death.

4. (1) A person who —

Offences Associated with or connected to acts of terrorism

- (a) does anything which will, or is likely to enhance the ability of another person to commit an act of terrorism, including to provide or offer to provide a skill or an expertise; or
- (b) makes himself or herself available, for the benefit of, at the direction of, or in association with another person or any terrorist group, and who knows or ought reasonably to have known or suspected, that such act was done for the purpose of enhancing the ability of such person or group to commit an act of terrorism,

commits an offence and is liable to imprisonment for a term not exceeding 30 years.

(2) A person who for purposes of or in connection with an act of terrorism —

- (a) provides or offers to provide any weapon to another person for use by or for the benefit of a terrorist or terrorist group;
- (b) provides training in the making and use of explosives or lethal devices;
- (c) provides training in the practice of military exercise or movement;
- (d) receives or participates in training or instruction;
- (e) recruits another person or terrorist group to receive training or instruction, including training or providing training in the making or use of an explosive or lethal device;
- (f) collects, makes or transmits a record of information; or
- (g) possesses a document, record or thing,

and who knows or ought reasonably to have known or suspected that such weapon, training or instruction, recruitment, transmission, document, record or thing is so connected, commits an offence and is liable to imprisonment for a term not exceeding 30 years.

(3) A person who coordinates or directs the activities of a terrorist or terrorist group commits an offence and is liable to a term of imprisonment for life.

(4) In this section “transmit” includes —

- (a) sending by magnetic, radio or other electronic waves, optical or electromagnetic system such as telephone, electronic mail, voicemail, or other related method; or
- (b) making available on the Internet.

5. (1) A person who, directly or indirectly, in whole or in part, and by any means or method —

- (a) acquires property;
- (b) collects property;
- (c) uses property;
- (d) possesses property;
- (e) owns property;
- (f) provides or makes available, or invites another person to provide or make available —
 - (i) any property,
 - (ii) any financial or other service, or
 - (iii) economic support; or
- (g) facilitates the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support,

intending that the property, financial or other service or economic support, as the case may be, be used, or while such person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part —

- (i) to commit or facilitate the commission of an act of terrorism, or
 - (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of a terrorist group,
- commits an offence and is liable to a term of imprisonment for life.
- (2) A person who, directly or indirectly, in whole or in part, and by any means or method —
- (a) deals with, enters into or facilitates any transaction or performs any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, collected, used, possessed, owned or provided —
 - (i) to commit or facilitate the commission of an act of terrorism, or
 - (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of a terrorist group; or
 - (b) provides financial or other services in respect of property referred to in paragraph (a),
- commits an offence and is liable to a term of imprisonment for life.
- (3) A person who knows or ought reasonably to have known or suspected that property is to be used for purposes referred to in subsection (2) (a), who enters into, or becomes involved in an arrangement which in any way has or is likely to have the effect of —
- (a) facilitating the retention or control of the property by or on behalf of a terrorist group;
 - (b) converting the property;
 - (c) concealing or disguising the nature, source, location, disposition or movement of the property, its ownership, or any interest anyone may have in such property;
 - (d) removing the property from a jurisdiction; or
 - (e) transferring the property to a nominee,
- commits an offence and is liable to a term of imprisonment for life.
- (4) For an act to constitute an offence under this section, it is not necessary that the property was actually used, in full or in part to carry out an act of terrorism.
- (5) A person charged with an offence under this section may raise as a defence —
- (a) that the act he or she performed, allowed or facilitated in connection with the property in question, was solely for the purpose of preserving the value of that property; or
 - (b) that he or she acted in good faith and reported his or her suspicion in accordance with section 11.
- (6) A person who takes reasonable steps or omits to take measures to comply with subsection (2) shall not be liable in any civil action that may arise from taking or omitting to take such measures, if that person proves that he or she took all reasonable steps to satisfy himself or herself that the relevant property was not owned, controlled or possessed by, or on behalf of or for the benefit of or at the direction of a group referred to under subsection (2).

Harbouring or concealment of a person committing an act of terrorism

6. A person who harbours or conceals another person, whom he or she knows, or ought reasonably to have known or suspected, to be a person —
(a) who has committed an act of terrorism or who is likely to commit an offence under this Act; or
(b) who is a member of a terrorist group,
commits an offence and is liable to imprisonment for a term not exceeding 20 years.

Transportation of certain offenders on board a ship

7. A person who transports another person on board a ship, knowing that the other person has committed an act of terrorism, with the intention of assisting that person to evade criminal prosecution commits an offence and is liable to imprisonment for a term not exceeding 20 years.

Attempt and conspiring to commit offence

8. A person who attempts to or conspires with another to commit an offence under this Act commits an offence and is liable to imprisonment for a term not exceeding 30 years.

Aiding, conspiracy, incitement, etc. to commit offence

9. (1) A person who —
(a) aids and abets, incites, instructs or commands, counsels or procures another person to commit an offence under this Act; or
(b) threatens another person to commit an offence under this Act, commits an offence of the same kind as the person whom he or she aided, abetted, incited, instructed or commanded, counseled or procured, or threatened, and is liable to the same penalty as if he or she had done that offence.
(2) For the purposes of subsection (1), it is immaterial whether or not —
(a) the person incited is in Botswana at the time of the incitement; or
(b) the person has any particular person in mind as the person in whom he or she intends to incite.

Hoaxes

10. (1) A person who, with the intention of inducing another person anywhere in the world, with a false belief that a substance, thing or device is, or contains, or is likely to be, or contains a noxious substance or thing or an explosive or other lethal device, who —
(a) places that substance, thing or device in any place; or
(b) sends that substance, thing or device from one place to another, by post, rail or any other means whatsoever,
commits an offence and is liable to imprisonment for a term not exceeding 15 years.
(2) A person who, directly or indirectly, communicates any information, which he or she knows, or ought reasonably to have known or suspected, or believes to be false, with the intention of inducing in a person anywhere in the world, a belief that a noxious substance or thing or an explosive or other lethal device is likely to be present, whether at the time the information is communicated or later, in or at any place, commits an offence and is liable to imprisonment for a term not exceeding 10 years.
(3) For the purposes of this section “substance” includes any biological agent and any other natural or artificial substance, whatever its form, origin or method of production.

11. (1) A person who —

- (a) has reason to suspect that another person intends to commit or has committed an offence under this Act; or
- (b) is aware of the presence at any place, of a person who is suspected to have committed an act of terrorism,

shall, as soon as reasonably practicable, report such suspicion or presence, as the case may be, or cause such suspicion or presence to be reported to an investigating officer.

(2) A person who makes the report in good faith is —

- (a) not liable to civil action on the basis of the report; and
- (b) entitled to have his or her identity kept confidential if his or her safety is at risk as a result of a report made under subsection (1), unless the interest of justice require otherwise.

(3) A person who fails to comply with subsection (1) commits an offence and is liable to imprisonment for a term not exceeding five years.

Report suspect
of terrorism
offence

PART III — *Terrorist Groups*

12. (1) The President may —

- (a) where he or she has reasonable grounds to believe that a structured group is engaged in terrorism; or
- (b) a person has been convicted of an offence under this Act,

declare the person or group as a terrorist or terrorist group, whichever is the case.

(2) A declaration made under subsection (1) shall be published by Order published in the *Gazette*.

(3) For purposes of subsection (1), a structured group is engaged in terrorism if that group commits an act of terrorism.

(4) A court shall not question the adequacy of the grounds of declaring a person or structured group as a terrorist or terrorist group, whichever is the case, and an appeal shall not lie against an Order issued under this section.

(5) Notwithstanding subsection (1), a terrorist group declared under this section may include a group that has been declared a terrorist group by —

- (a) the Security Council of the United Nations;
- (b) the African Union; or
- (c) the Secretariat of the Southern African Development Community.

(6) A terrorist group declared in terms of subsection (5), refers to the list that exists in the respective organisations at the commencement of this Act, and any other reviews and subsequent amendments made to the list by the respective organisations.

Declaration
of terrorist
group

Membership
to terrorist
group

- 13.** (1) A person who —
- (a) knowingly forms, owns, becomes a member or professes to be a member of a terrorist group; or
 - (b) invites or solicits another person to become a member of a terrorist group,
- commits an offence and is liable to a term of imprisonment for life.
- (2) It is a defence for a person charged with an offence under subsection (1) to satisfy the court —
- (a) that the group was not declared as a terrorist group under this Act on the last or only occasion on which the person became a member, began to profess to be a member or invited or solicited another person to become a member;
 - (b) that the person has not taken part in the activities of the group at any time after it was declared as a terrorist group; and
 - (c) that the person took all reasonable steps to cease to be a member of the terrorist group as soon as practicable after the person knew that the group was declared a terrorist group.

Support for
terrorist group

- 14.** (1) A person who solicits or invites support for a terrorist group commits an offence.
- (2) A person who arranges or manages, or assists in arranging or managing a meeting, which the person knows is to —
- (a) support a terrorist group;
 - (b) further the activities of a terrorist group; or
 - (c) be addressed by a person who is a member or professes to be a member of a terrorist group, commits an offence.
- (3) A person who addresses a meeting, if the purpose of that person's address is to encourage support for a terrorist group or to further its activities, commits an offence.
- (4) It is a defence for a person charged with an offence under subsection (2) (c) to satisfy the court that he or she had no reasonable cause to believe that the address mentioned in that paragraph would support a terrorist group or further its activities.
- (5) A person who commits an offence under this section is liable to a term of imprisonment for life.

PART IV — *Investigative Powers and Courts Orders*

Arrest without
warrant

- 15.** (1) An investigating officer may arrest without warrant, any person who has committed or is committing or whom the investigating officer has reasonable grounds to suspect is likely to commit, or to have committed or to be committing an offence under this Act.

Cap.08:02

- (2) An arrest under subsection (1) shall be subject to the conditions of power of arrest without warrant provided under the Criminal Procedure and Evidence Act, except that a person detained under this section shall be detained for a period not exceeding 30 days.

16. (1) Notwithstanding section 37 of the Criminal Procedure and Evidence Act, an investigating officer may, in order to —

Arrest with
warrant

- (a) prevent the commission of an offence under this Act; or
- (b) prevent interference in the investigation of an offence under this Act,

apply *ex parte* to a magistrate court or the High Court for a detention order.

(2) An order granted under this section shall be for a period not exceeding 90 days in the first instance and may, on application made by an investigating officer, be extended for a further period, provided that the maximum period of detention under the order does not exceed 120 days.

(3) An order granted under this section shall specify —

- (a) the place at which the person named in the order is to be detained; and
- (b) the conditions subject to which the person is to be detained, including —
 - (i) conditions relating to access to a government medical officer, and
 - (ii) the video recording of the person in detention, so as to constitute an accurate continuous and uninterrupted record of the whole period the person is detained.

17. An investigating officer or the Director of Public Prosecutions, whichever is the case, shall, on an *ex parte* application made to a magistrate court or the High Court, request for an order to freeze without delay, funds of persons to whom there are reasonable grounds to believe that the person is likely to commit, is committing or attempting to commit, or participating in, or facilitating the commission of an offence under this Act.

Freezing
without delay

18. (1) A magistrate court or the High Court may, on an *ex parte* application by an investigating officer or the Director of Public Prosecutions, whichever is the case, make an order to prohibit any person from engaging in any conduct, or oblige any person to cease any conduct which concerns property in respect of which there are reasonable grounds to believe that the property is owned or controlled by or on behalf of, or at the direction of a terrorist or any terrorist group.

Freezing order

(2) An order made under subsection (1) may include an order to freeze any such property.

(3) A magistrate court or the High Court may make an interim order under subsection (1) pending its final determination of an application for such an order.

19. Notwithstanding the provisions of the Criminal Procedure and Evidence Act, an investigating officer, may, where it appears to him or her to be necessary in order to prevent an act of terrorism or any related activity, cordon off an area, stop and search any person, property, ship, aircraft or vehicle for an article or thing which could be used or have been used for or in connection with the preparation for or the commission or instigation of an act of terrorism or related activity.

Cordoning off,
stop and
search of
vehicle and
person

20. (1) Subject to subsection (2), an investigating officer may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply *ex parte* to a magistrate court or the High Court, for an order to intercept communications.

(2) A magistrate or judge to whom an application is made under subsection (1), if satisfied that there are reasonable grounds to believe that material information relating to —

- (a) the commission of an offence under this Act; or
- (b) the whereabouts of a person suspected to have committed an offence, is contained in the communication, may make an order —
 - (i) requiring a communication service provider to intercept and retain specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communication service provider, or
 - (ii) authorising an investigating officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication or other communication of a specified description, and to remove and retain such device; or
 - (iii) authorising an investigating officer to use any other method of interception.

(3) An order made in subsection (2) shall be for a period not exceeding 90 days in the first instance and may, on application made by the investigating officer, be extended for a further period, provided that the judge is satisfied that the grounds of suspicion still exist, and the maximum period of extension does not exceed 180 days.

(4) Any information contained in a communication —

- (a) intercepted and retained pursuant to an order made under subsection (2); or
- (b) intercepted and retained in a foreign State in accordance with the law of that foreign State and certified by a judge of that foreign State to have been so intercepted and retained,

shall be admissible as evidence in proceedings for an offence under this Act.

(5) Notwithstanding section 225 of the Criminal Procedure and Evidence Act, any evidence given by a witness called to disclose or explain the contents of communication admitted as evidence in subsection (4) shall, in proceedings for an offence under this Act, be admissible as evidence of the truth of its contents.

21. (1) Where an investigating officer has reasonable grounds to suspect that a person has committed, is likely to commit, is committing or is about to commit an offence under this Act, or is in possession of property which is to be used for purposes of terrorism, the investigating officer may, for the purpose of investigating an offence under this Act, apply to the High Court for an order to —

Property tracking

- (a) compel the person to hand over any document or record relevant to identify, locate or quantify any property which belongs to that person or is in that person's possession or control; or
- (b) instruct a bank or any other financial institution or financial service provider, trustee or custodian to produce all information and hand over all documents and records regarding any business transaction conducted by or on behalf of that person.

(2) An order made under this section may authorise an investigating officer to enter any premises, including a bank or other financial institution or financial service provider, and search the premises and confiscate any documents or records for the purpose of executing the order.

22. Where a person has been convicted of an offence under this Act, or where the President is satisfied that a person —

Exclusion order

- (a) is or has been involved in the commission, preparation or instigation of an act of terrorism in Botswana; or
- (b) is attempting or may attempt to enter Botswana with the intention to be involved in the commission, preparation or instigation of an act of terrorism,

the President may make an exclusion order in terms of the provisions relating to prohibited immigrants under the Immigration Act.

Cap. 25:02

23. The provisions of the Immigration Act relating to the exclusion of prohibited immigrants shall, with the necessary modifications, apply to persons excluded under this Act.

Application of Immigration Act

24. A person who —

Offences in connection with exclusion order

- (a) knowingly secures or facilitates the entry into Botswana of another person whom the person knows, or has reasonable grounds to believe is the subject of an exclusion order; or
- (b) harbours a person who is the subject of an exclusion order, commits an offence and is liable to imprisonment for a term not exceeding 20 years.

Disclosure
of information,
etc.

25. (1) A person who, knowing or having reasonable cause to suspect that an investigating officer is conducting an investigation under this Act, which person —

- (a) discloses to another person anything which is likely to prejudice the investigation; or
- (b) interferes with anything which is likely to be relevant to the investigation,

commits an offence and is liable to a fine not exceeding P150 000 or to imprisonment for a term not exceeding five years, or to both.

(2) A person who, knowing or having reasonable cause to suspect that a disclosure has been or will be made —

- (a) discloses to another person anything which is likely to prejudice an investigation resulting from the disclosure; or
- (b) interferes with anything which is likely to be relevant to an investigation resulting from the disclosure,

commits an offence and is liable to a fine not exceeding P150 000 or to imprisonment for a term not exceeding five years, or to both.

PART V — *Jurisdiction and Court Proceedings*

Jurisdiction
of offences

26. The High Court shall have jurisdiction to try an offence under this Act —

- (a) where the offence was committed or attempted to be committed within the jurisdiction of Botswana, if the offence was committed or attempted to be committed —
 - (i) in the territory of Botswana,
 - (ii) on board an aircraft or against an aircraft registered in Botswana,
 - (iii) on a ship flying the flag of Botswana or on a fixed platform of which Botswana has a right to, or
 - (iii) on board an aircraft leased to a lessee —
 - (a) who has his or her principal place of business in Botswana, or
 - (b) if the lessee has no such place of business, his or her permanent residence is in Botswana; or
- (b) where the offence was committed or attempted to be committed outside Botswana, if —
 - (i) the offence was committed by a national or citizen of Botswana, or by a person ordinarily resident in Botswana,
 - (ii) the alleged perpetrator is found in Botswana and is not extradited to any State requesting extradition for the same offence,
 - (iii) in the case of an offence that involves an aircraft, the offence was committed on board an aircraft, and if that aircraft lands in the territory of Botswana, with the alleged perpetrator still on board the aircraft, or
 - (iv) the offence is committed in order to compel the Government of Botswana to do or abstain from doing any act.

27. (1) A magistrate court or the High Court may whenever it deems fit or it appears to the court, or on motion by the Director of Public Prosecutions, to be in the interest of defence, public safety, public order, national security, or the administration of justice order that —

- (a) a trial for an offence under this Act shall be held within closed doors;
- (b) all or any persons, not being members or officers of the court or parties to the case, their legal representatives, or persons otherwise directly concerned be excluded from the court during trial; and
- (c) a person shall not publish, for a trial held in accordance with paragraph (a) —
 - (i) the names, address, or photograph of any victim or witness, or
 - (ii) any evidence or any other classified information calculated to lead to the identification of the victim or witness.

(2) Notwithstanding anything contained in section 178 (4) of the Criminal Procedure and Evidence Act, for a trial held in accordance with subsection (1) (a) —

Cap. 08:02

- (a) at the close of a trial the record of proceedings of the trial shall be sealed and preserved for use in the event of an appeal; and
- (b) the record shall not be published in any law report unless redactions have been made from the record of all information or material that would in the opinion of the court or the state prejudice the interest of defence, public safety, public order, national security and the administration of justice.

(3) A person who discloses any classified information without authorisation, in a trial held in accordance with paragraph (a) commits an offence and is liable to a fine not exceeding P150 000 or to imprisonment for a term not exceeding five years, or to both.

(4) In this section, “classified information” means information or material whose unauthorised disclosure is or may be injurious to national security, the interests of defence, public safety, public order and the administration of justice.

(5) If in any proceedings under this Act any question arises as to whether or not a person is an internationally protected person, or is, pursuant to international law entitled to special protection from any attack on his or her person, freedom or dignity, a certificate under the hand or issued under the authority of the Minister responsible for foreign affairs and international cooperation, stating any fact relating to that question, shall be *prima facie* evidence of that fact.

PART VI – *Border Controls*

Interpretation
of Part VI

28. For the purposes of this Part –
“control area” means an area designated in a point of entry for purpose of disembarkation of passengers under this Part, and for purposes of an examination;
“examining officer” means an immigration officer, a customs officer, and includes an investigating officer; and
“point of entry” has the same meaning ascribed to it under the Immigration Act and the Immigration (Points of Entry) Order; and to “place of entry” under the Customs and Excise Duty Act;
“port manager” means any person having custody, control or management of a point of entry.

Cap. 25:02
(Sub. Leg.)
Cap. 50:01

Examination

29. (1) An examining officer may question a person who has arrived in or who is seeking to leave Botswana for the purpose of determining –
(a) whether there is any reasonable cause to suspect that the person is a terrorist; or
(b) whether the person is subject to an exclusion order.
(2) For the purposes of exercising a power under this section an examining officer may –
(a) stop a person, ship, vehicle or an aircraft; or
(b) detain a person, ship, vehicle or an aircraft.
(3) In order to detain a person under subsection (2), an examining officer may authorise the person’s removal from a ship, vehicle or aircraft.
(4) A person detained under this section shall, unless detained under any other power be released not later than seven days.

Disclosure

30. An examining officer, when questioning a person under section 29, shall request the person to –
(a) give to the examining officer, any information in his or her possession;
(b) produce either a valid passport which includes a photograph, or another document which establishes the person’s identity and citizenship;
(c) declare whether he or she has any document of a kind specified by the examining officer; and
(d) produce any document which the person has and which is of a kind specified by the examining officer.

Examination
of goods

31. (1) An examining officer may examine goods to which this section applies for the purpose of determining whether the goods have been used in the commission, preparation or instigation of an act of terrorism.
(2) This section applies to goods which have arrived in or are about to leave Botswana on a ship, vehicle or aircraft.
(3) In this section, “goods” includes –
(a) property of any description; and
(b) containers.
(4) An examining officer may board a ship or aircraft, or enter a vehicle for the purpose of exercising any of the officer’s powers under this section.

32. An examining officer may search a ship, vehicle or aircraft, which the officer has reasonable grounds to believe is carrying or harbouring any terrorist or thing likely to be used for committing an act of terrorism. Search of ship, vehicle and aircraft

33. An examining officer who questions a person under section 29 may, for the purpose of determining whether the person is a terrorist — Search of person

- (a) search the person;
- (b) search anything which the person has or which belongs to the person and which is on a ship, vehicle or aircraft; and
- (c) search anything which the person has, or which belongs to the person and which the examining officer reasonably believes has been, or is about to be on a ship, vehicle or aircraft.

34. (1) The provisions of this section shall apply to anything which — Seizure of property

- (a) is examined under section 29;
 - (b) is given to an examining officer in accordance with section 30; or
 - (c) is searched or found on a search under section 32 or 34 (2).
- (2) An examining officer may seize any article or thing —
- (a) for the purpose of examination; or
 - (b) which may be required for use in any criminal proceedings.

35. (1) The Minister may, by notice in writing to an owner or agent of a ship, vehicle or aircraft — Designation of control areas

- (a) designate control areas in any point of entry into Botswana; and
- (b) specify conditions for or restrictions on the embarkation or disembarkation of passengers in a control area.

(2) Where an owner or agent of a ship, vehicle or aircraft receives a notice under subsection (1) in relation to a point of entry, the owner or agent shall take all reasonable steps to ensure, for a ship, vehicle or aircraft —

- (a) that passengers do not embark or disembark at the point of entry outside a control area; and
- (b) that any specified conditions are met and any specified restrictions are complied with.

(3) For the purposes of this section “agent of a ship, vehicle or aircraft” includes a person in control of the ship, vehicle or aircraft.

36. (1) The Minister may, by notice in writing to a port manager — Control area

- (a) designate control areas in the point of entry;
- (b) require the port manager to provide specified facilities in a control area for the purposes of the embarkation or disembarkation of passengers for examination under this Part;
- (c) require conditions of the embarkation or disembarkation of passengers in a control area to be met and restrictions to be complied with; and
- (d) require the port manager to display, in a specified location in a control area, a notice which contains specified information about the provisions of this Part, in such form as may be prescribed.

(2) Where a port manager receives notice under subsection (1), the port manager shall take all reasonable steps to comply with any requirement set out in the notice.

Information of
owner of
vessel or
aircraft

37. (1) The provisions of this section shall apply to a ship, vehicle or aircraft which arrives or is expected to arrive in Botswana.

(2) An examining officer may require an owner or agent of a ship, vehicle or aircraft to provide such information as the officer may require for the purposes of this Act.

(3) An owner or agent shall comply with a request made under subsection (2) within such period as may be prescribed.

(4) A request to an owner or agent may be in connection with —

- (a) a particular ship, vehicle or aircraft;
- (b) any passenger or member of the crew;
- (c) all ships, vehicles or aircraft of the owner or agent; or
- (d) a specified ship, vehicle or aircraft.

(5) A passenger or member of the crew on a ship, vehicle or aircraft, as the case may be, shall give the captain of the ship or aircraft, or the driver of a vehicle, any information required in order to enable the owner or agent to comply with a request under this section.

(6) This section shall not apply to information which is required to be provided under or by virtue of any provision made by or under the Immigration Act.

Offences
and penalties
under Part VI

38. A person who —

- (a) fails to comply with a duty imposed under or by virtue of this Part; or
- (b) contravenes a prohibition imposed under or by virtue of this Part,

commits an offence and is liable to a fine not exceeding P80 000 or imprisonment for a term not exceeding two years, or to both.

PART VII — Establishment of the Counter-Terrorism Analysis and Fusion Agency

Interpretation
of Part VII

39. For the purpose of this part —

- “Agency” means the Counter-Terrorism Analysis and Fusion Agency;
- “Coordinator” means the Coordinator of the Agency;
- “investigating authority” means the Botswana Defence Force, the Botswana Police and the Directorate of Intelligence and Security; and
- “strategic operational planning” includes the mission, objectives to be achieved, tasks to be performed, inter investigating authority coordination of operational activities and the assignment of roles and responsibilities.

40. (1) There is hereby established, the Counter-Terrorism Analysis and Fusion Agency.

Establishment of Agency

(2) The Agency shall comprise of —

- (a) a Coordinator;
- (b) officers from Botswana Police Service;
- (c) officers from Botswana Defence Force;
- (d) officers from the Directorate of Intelligence and Security;
- (e) officers from the Financial Intelligence Agency; and
- (f) officers from any other department assigned to deal with counterterrorism activities.

41. The functions of the Agency shall be to —

Functions of Agency

- (a) provide intelligence for the formulation of strategic operational plans for the civilian and military counterterrorism efforts of the Botswana Government and for the effective integration of counterterrorism intelligence and operations across investigating authorities;
- (b) develop strategies for combining terrorist travel intelligence operations and law enforcement planning and operations, into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility;
- (c) have primary responsibility within Botswana for conducting net assessments of terrorist threats:

Provided that the conduct of net assessments of terrorist threats by the Agency shall not limit the powers of an investigating authority to conduct its own net assessments of terrorist threats; and

- (d) conduct strategic operational planning for counterterrorism activities and to assign roles and responsibilities to investigating authorities, as appropriate, but shall not direct the execution of any operations carried out by an investigating authority.

42. (1) There shall be a Coordinator for the Agency who shall be responsible for the direction, control, administration and expenditure of the Agency.

Appointment of the Coordinator

(2) The Coordinator shall be appointed by the President on such terms and conditions as the President may determine.

43. The Coordinator of the Agency shall —

Powers and functions of Coordinator

- (a) serve as the principal adviser to the President on intelligence operations relating to counterterrorism;
- (b) advise the President on the extent to which the counterterrorism program recommendations and budget proposals of investigating authorities conform to the priorities established by the National Security Policy;
- (c) integrate all intelligence possessed or acquired by Government pertaining to terrorism and counterterrorism;
- (d) disseminate all relevant information acquired in terms of paragraph (c) to the relevant national or international bodies;
- (e) ensure that investigating authorities have access to and receive intelligence support needed to execute their counterterrorism plans;

- (f) monitor the implementation of strategic operational plans and obtain information from each investigating authority relevant for the monitoring of progress of such authority in implementing strategic operational plans;
- (g) coordinate the sharing of information amongst the investigating authorities regarding investigations of terrorism cases to ensure effective response to counterterrorism;
- (h) maintain a comprehensive data base of terrorists and terrorist groups, and to serve as a central and shared knowledge bank on known and suspected terrorists and terrorists groups;
- (i) disseminate terrorism information, including current terrorism threat levels;
- (j) support investigating authorities in the fulfillment of their responsibilities to disseminate terrorism intelligence or information, and coordinate dissemination of terrorism intelligence to foreign governments as approved by the President; and
- (k) develop a strategy for combining terrorist travel intelligence operations and law enforcement planning and operations, into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.

PART VIII – *Miscellaneous Provisions*

Offences
and penalties

44. (1) A person who contravenes an Order issued under this Act commits an offence and is liable to a fine not exceeding P80 000 or to imprisonment for a term not exceeding two years, or to both.

(2) A person who delays, interferes with or wilfully obstructs an examining officer in the exercise of the powers conferred under this Act, commits an offence and is liable to a term of imprisonment for a period not exceeding 20 years.

Regulations

45. The Minister may make regulations prescribing anything under this Act which is to be prescribed, or which is necessary or convenient to be prescribed, for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Transitional
Cap. 23:02

46. The Director General of the Directorate of Intelligence and Security established under the Intelligence and Security Service Act shall, pending the appointment of the Coordinator of the Counter-Terrorism Analysis and Fusion Agency under section 42,

- (a) be deemed to be the Coordinator of the Counter-Terrorism Analysis and Fusion Agency; and
- (b) discharge the functions set out in Part VII of the Act.

PASSED by the National Assembly this 30th day of July, 2014.

BARBARA N. DITHAPO,
Clerk of the National Assembly.