

COUNTER-TERRORISM (AMENDMENT) ACT, 2018

No. 9



of 2018

ARRANGEMENT OF SECTIONS

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An Act to amend the Counter-Terrorism Act.

Date of Assent: 29.06.2018

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Counter-Terrorism (Amendment) Act, 2018, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. Section 2 (1) of the Counter-Terrorism Act (hereinafter referred to as “the Act”) is amended —

Amendment of section 2 of Cap. 08:08

(a) by inserting immediately after paragraph (a) the following new paragraph —

“(aa) causes or is likely to cause serious bodily injury to a person not taking an active part in hostilities in a situation of armed conflict”;

(b) by substituting for paragraph (g), the following new paragraph —

“(g) involves the use, manufacture, acquisition, possession, development, export, transshipment, brokering, transportation, transfer or stockpiling of NBC weapons;

(c) by inserting immediately after the word “material” which appears in paragraph (h) the words “or toxic chemicals, biological agents or toxins”; and

(d) by inserting immediately after the word “facility” wherever it appears in paragraph (i) the words “or facility used or intended for use for production of biological or toxin weapons or a chemical facility;

(e) by substituting for subsection (1) (m) (iii) the following new subsection —

“(m)(iii) taking of hostage whether or not for ransom”;

(f) by inserting in its correct alphabetical order the following new definitions —

““armed conflict” means a conflict involving the use of arms and ammunitions, NBC weapons, explosives or other lethal devices;

“arms of war” has the same meaning assigned to it under the Arms and Ammunitions Act;

“Committee” means the National Counter-Terrorism Committee established under section 12A of the Act;

“funds” means assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired and legal documents in any form, including electronic or digital evidencing title to or interest in such assets;

“international armed conflict” means a conflict involving two or more states; and

“non international armed conflict” means a conflict between government forces and non government armed group and includes an armed conflict between two non government groups.”; and

(g) substituting for definitions of “NBC weapon”, “nuclear material” and “toxic material”, the following new definitions —

““NBC weapon” means —

(a) nuclear explosive device as defined in the Nuclear Weapons (Prohibition) Act;

(b) biological or toxin weapons as defined in the Biological and Toxin Weapons (Prohibition) Act; and

(c) chemical weapons as defined in the Chemical Weapons (Prohibition) Act;

“nuclear material” has the same meaning assigned to it under the Nuclear Weapons (Prohibition) Act; and

“toxic chemical” has the same meaning assigned to it under the Chemical Weapons (Prohibition) Act.”.

3. Section 4 of the Act is amended —

(a) in subsection (1) (b) by substituting for the words “terrorist group”, the words “terrorist or terrorist group”; and

Cap. 24:01

Act No. 17 of
2018

Act No. 27 of
2018

Cap. 24:04

Amendment
of section 4
of the Act

(b) by inserting immediately after section 4, the following new section —

“Taking of
hostages

4A. Any person who takes any other person as a hostage in order to compel the government, international organisation or a person to do or abstain from doing any act, threatens to kill, or injure or continue to detain the hostage whether or not for ransom, commits an offence and is liable to imprisonment for life or to a fine of P5 000 000.00 or to both.”

4. Section 5 of the Act is amended —

Amendment
of section 5
of the Act

(a) in subsection (1) —

(i) by substituting for the words “terrorist group” the words “terrorist or terrorist group,” and

(ii) by inserting immediately after the words “imprisonment for life” the words “or to a fine of P5 000 000.00 or to both”;

(b) in subsection (2) —

(i) (a) (ii), by substituting for the words “terrorist group” the words “terrorist or terrorist group”;

(ii) by inserting immediately after the words “imprisonment for life” the words “or to a fine of P5 000 000.00 or to both”;

(c) in subsection (3) —

(i) by substituting for the words “terrorist group” the words “terrorist or terrorist group”, and

(ii) by inserting immediately after the words “imprisonment for life” the words “or to a fine of P5 000 000.00 or to both”;

(d) by substituting for subsection (5), the following new subsection —

“(5) For an act or omission 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 or that an act of terrorism has been committed.”; and

(e) by inserting immediately after subsection (6), the following new subsection —

“(7) A court convicting a legal person for an offence under this section shall, in addition cancel or order the cancellation of the registration of the legal person, and the cancellation of any licence, grant, permit or authorisation issued in the name of such legal person.”.

5. Section 6 of the Act is amended by substituting for that section, the following new section —

Amendment
of section 6
of the Act

“Harbouring or
concealment of
person committing
an act of terrorism

6. A person who harbours or conceals another person, whom he or she knows, or ought to have reasonably 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 terrorist or is a member of a terrorist group, commits an offence and is liable to imprisonment for a term not exceeding 20 years or to a fine of P5 000 000.00 or to both.”.

Amendment
of section 7
of the Act

6. Section 7 of the Act is amended by substituting for that section, the following new section —

“Transportation
of offenders 7. A person who transports another on board a ship, aircraft or vehicle knowing that the other person has committed an act of terrorism, and with the intention of assisting that other person to evade criminal prosecution commits an offence and is liable to imprisonment for a term not exceeding 20 years or to a fine of P5 000 000.00 or to both.”.

Amendment
of section 10
of the Act

6A. Section 10 of the Act is amended —

(a) in subsection (2) by inserting immediately after the words “not exceeding 10 years”, the words “or to a fine of P30 000 or to both.”; and

(b) in subsection (3) by inserting immediately after the word “biological”, the words “, chemical or nuclear”.

Amendment
of section 12
of the Act

7. Section 12 of the Act is amended —

(a) by substituting for section 12, the following new section —

“Declaration
of terrorist or
terrorist group 12. (1) The Minister may, on the recommendation of the Committee declare a person or structured group as a terrorist or terrorist group, whichever is the case —

(a) where there are reasonable grounds to believe that a person or structured group is engaged in terrorism; or

(b) where a person or structured group has been convicted of an offence under this Act.

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

(3) For purposes of subsection (1), a person or structured group is engaged in terrorism if the person or structured group commits an act of terrorism or commits any offence under this Act.

(4) Notwithstanding subsection (1), a terrorist or terrorist group declared as such under this section may include an individual or entity on the United Nations Security Council Sanctions list on the suppression of terrorism or financing of terrorism and the prevention and disruption of financing of the proliferation of arms of war or NBC weapons.

(5) A terrorist or terrorist group designated as such by the United Nations Security Council referred to in subsection (4) —

(a) includes the list that exists at the commencement of this Act, and any other reviews and subsequent amendments made to the list;

(b) extend to a person or group notwithstanding any rights granted to or obligations imposed under an existing contract made prior to the designation.;

(b) by inserting immediately after section 12, the following new section —

“Establishment
of National
Counter-
Terrorism
Committee

12A. (1) There is hereby established a National Counter-Terrorism Committee.

(2) The Committee shall consist of the following —

- (a) the Permanent Secretary to the President who shall be the Chairperson;
- (b) the Commander, Botswana Defence Force who shall be the Deputy Chairperson;
- (c) the Director General of the Agency;
- (d) the Permanent Secretary, Ministry of Finance and Economic Development;
- (e) Commissioner-General, Botswana Unified Revenue Service;
- (f) Attorney-General;
- (g) Director-General, Directorate on Corruption and Economic Crime;
- (h) the Permanent Secretary, Ministry of International Affairs and Cooperation;
- (i) the Permanent Secretary, Ministry of Nationality, Immigration and Gender Affairs;
- (j) the Permanent Secretary, Ministry of Defence, Justice and Security;
- (k) the Permanent Secretary, Ministry of Transport and Communications;
- (l) Governor, Bank of Botswana;
- (m) Director General, Directorate of Intelligence and Security; and
- (n) Director, Financial Intelligence Agency.

(3) The Agency shall provide secretarial services to the Committee.

(4) The function of the Committee shall be to implement the United Nations Security Council Resolutions relating to the suppression of financing of terrorism and the prevention and disruption of the financing of the proliferation of arms of war or NBC weapons and successor resolutions.

(5) Subject to the provisions of this Act, the Committee may regulate its own proceedings.

(6) Meetings of the Committee shall be held at such places and times as the Chairperson may determine.

(7) There shall preside at the meeting of the Committee —

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Deputy Chairperson; or

(c) or in the absence of the Chairperson and the Deputy Chairperson, a member of the Committee selected for the purpose of that meeting by the members present.

(8) At any meeting of the Committee, a quorum shall be constituted by not less than two thirds of the members.”

Amendment
of section 13
of the Act

8. Section 13 of the Act is amended by substituting for that section, the following new section —

“Terrorist or
member of
terrorist
group

13. (1) A person who —

- (a) knowingly forms, owns, becomes a member of or professes to be a member of a terrorist group;
- (b) professes to be a terrorist;
- (c) 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, or to a fine of P5 000 000.00 or to both.

(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 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 to become a member;
- (b) that the person has not taken part in the activities of the group at anytime after it was declared as a terrorist group; or
- (c) that the person took all the 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.”

Amendment of
of section 14
of the Act

9. Section 14 of the Act is amended by substituting for that section, the following new section —

“Support for
terrorists and
terrorist
group

14. (1) A person who solicits or invites support for a terrorist or terrorist group commits an offence.

(2) A person who arranges or manages or assists in arranging or managing a meeting which the person knows the meeting is to —

- (a) support a terrorist or terrorist group;
 - (b) further the activities of a terrorist or a terrorist group;
 - (c) be addressed by a terrorist, member of a terrorist group;
- or
- (d) be addressed by a person who professes to be a terrorist or member of a terrorist group,

commits an offence.

(3) A person who addresses a meeting, if the purpose of the person’s address is to encourage support for a terrorist or terrorist group or to further the activities of a terrorist group commits an offence.

(4) It is a defence for a person charged with an offence under subsection (2) (c) or (d) to satisfy the court that he or she had no reasonable cause to believe that the address would support a terrorist or terrorist group or further activities of a terrorist or terrorist group.

(5) A person who commits an offence under this section is liable to a term of imprisonment for life or to a fine of P5 000 000.00 or to both.

10. Part VII of the Act is amended by —

(a) substituting for the definition of “Coordinator” the following new definition —

“Director General” means the Director General of the Agency;

(b) substituting for the word “Coordinator” wherever it appears in this Part, the words “Director General”;

(c) substituting for sections 41 and 43 the following new sections —

“Functions of
Agency

41. The functions of the Agency shall be to —

- (a) provide intelligence for the formulation of strategic operational plans for the civilian and military counter-terrorism efforts of the Botswana Government and for the effective integration of counter-terrorism 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;
- (d) conduct strategic operational planning for counter-terrorism 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;
- (e) integrate all intelligence possessed or acquired by the Government pertaining to terrorism and counter-terrorism;
- (f) 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 terrorist groups;

Amendment
of Part VII
of the Act

Powers and
functions of
Director
General

- (g) disseminate terrorism information, including current terrorism threat levels;
- (h) develop and implement a national approach to counter-terrorism within a broad regional and international strategy;
- (i) contribute to National, Regional and International security through cooperation framework to counter acts of terrorism;
- (j) advise Government on the ratification and implementation of agreements, protocols or conventions related to counter-terrorism to which Botswana is a state party; and
- (k) advise the Government on the reviewing of counter-terrorism legislation.

43. The Director General of the Agency shall —

- (a) serve as the principal advisor to the President and the Government on terrorism and counter-terrorism intelligence operations;
- (b) advise the President and the Government on the extent to which the counter-terrorism programme recommendations and budget proposals of investigating authorities conform to the priorities established by the National Security Policy;
- (c) disseminate intelligence information on terrorism and counter-terrorism to the relevant national bodies;
- (d) ensure that investigating authorities have access to and receive intelligence support needed to execute their counter-terrorism plans;
- (e) 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;
- (f) coordinate the sharing of information amongst investigating authorities regarding investigations of terrorism cases to ensure effective response to counter-terrorism;
- (g) support investigating authorities in the fulfilment of their responsibilities to disseminate terrorism intelligence or information;
- (h) coordinate dissemination of terrorism intelligence to a comparable body in a foreign country for purposes of assisting it in exercising functions corresponding to those of the Agency; and
- (i) regard and deal with as confidential, all terrorism intelligence information shared in terms of paragraph (h).”.

11. The Act is amended by substituting for Part VII, the following new Part —

Substitution
of Part VIII
of the Act

“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 for the better carrying out of the purposes and provisions of this Act, and without derogation from the generality of the foregoing such regulations may provide for —

- (a) the procedure for the freezing of funds, financial assets or other economic resources of a designated person or entity;
- (b) for the prohibition of making frozen funds or other property available to a designated person or entity;
- (c) conditions and procedure for accessing frozen funds of a designated person or entity;
- (d) measures to prevent entry into, transit through or exit from Botswana ports by a designated person; and
- (e) the prevention of direct or indirect supply, sale or transfer of arms or military equipment with a designated person or entity.”.

PASSED by the National Assembly this 11th day of June 2018.

BARBARAN. DITHAPO,
Clerk of the National Assembly.