

# Botswana passes legislation to combat terrorism

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The government of the Republic of Botswana has seen it fit to pass legislation which will provide measures to prevent and combat terrorism, provide for offences, including financing of terrorism, with the incorporation of offences provided in the Conventions and Protocols, relating to the prevention and suppression of terrorism.



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The Counter Terrorism Act was passed by Parliament on 27 August 2014 and the date of commencement is yet to be notified.

The Act makes provision for terrorism and related offences, provides for declaration of terrorist groups, makes provision for investigative powers and court orders, gives jurisdiction to the courts of the Republic of Botswana in the trying of terrorism offences and proceedings therewith, deals with the controls and points of entry into the Republic of Botswana and the powers of examining officers at the points of entry.

The Act also makes provision for establishing a counter terrorism analysis and fusion agency whose mandate is the coordination of intelligence operations relating to counter terrorism and lastly creates miscellaneous provisions for regulations to be made by the Minister of Defence, Justice and Security and includes a provision mandating the Director General of Intelligence and Security to act as the coordinator of the counter terrorism analysis and the fusion agency pending the appointment of the coordinator of the agency.

## Aim of Act

The aim and purpose of the Act is to provide for the combating of all acts of terrorism and suppression of terrorist acts and also to punish those who participate in acts of terrorism. Acts of terrorism are defined as "...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".

The acts of terrorism as defined above can manifest themselves in so many different and varied ways which are all spelt out in the Act. Possible defences are also spelt out in the Act, but the burden of proof still remains with the State to prove its case beyond reasonable doubt. Punishment for acts of terrorism upon conviction range from life imprisonment to a death penalty. A death penalty shall be imposed where the act of terrorism has resulted in death.

## Powers of President

The Act also empowers the President of the Republic of Botswana where he or she has reasonable grounds to believe that

a structured group is engaged in terrorism or a person has been convicted of an offence under the Act to declare the person or group as a terrorist or terrorist group whichever would be the case.

Where such a declaration has been made, this shall be published in the Government Gazette. In terms of the Act, a court shall not question the adequacy of the grounds of declaring a person or a structured group as a terrorist or terrorist group, whichever is the case, and an appeal shall not lie against an order issued under the Act.

A terrorist group declared by the President may also include a group that has been declared a terrorist group by the Security Council of United Nations, the African Union and or the Secretariat of the Southern African Development Committee.

In terms of the Act, during the course of investigations, an ex parte application can be made to the court for the seizure and freezing of properties belonging to the people under investigation for activities of terrorism and such orders can be granted. The High Court also has jurisdiction to try any offences committed under the Act.

## ABOUT THABISO T. TAFILA

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