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Act 24, 2014,
S.I. 53, 2015,
Act 9, 2018,
S.I. 85, 2018,
S.I. 110, 2018.

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 Commencement: *1st May, 2015*]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Counter-Terrorism Act.

2. Interpretation

(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-

- (a) endangers or is likely to endanger the life, physical integrity or freedom of any person, any number or group of persons;
- (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) 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, manufacture, acquisition, possession, development, export, transshipment, brokering, transportation, transfer or stockpiling of NBC weapons;
- (h) involves the handling of, or use of radioactive or nuclear material or toxic chemicals, biological agents or toxins;
- (i) interferes with the operation of, damages a nuclear facility or facility used or intended for use for production of biological or toxin weapons or a chemical facility, or does anything directed against the nuclear facility or facility used or intended for use for production of biological or toxin weapons or a chemical 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 whether or not for ransom,
 - (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;

"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;

"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;

"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;

"funds" means assets of any kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments 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;

"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;

"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;

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

"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;

"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" has the same meaning assigned to it under the Nuclear Weapons (Prohibition) Act;

"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" has the same meaning assigned to it under the Chemical Weapons (Prohibition) Act;

"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.

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