

BOTSWANA

Country Report: Anti-terrorism laws & policing

1. Country summary

- a. **Government:** Parliamentary Republic
- b. **Population and size:** 1 640 115
- c. **Size:** 600 370 sq km
- d. **Region:** Southern Africa

e. General

Botswana attained independence from its British protectorate in 1966, since when it has experienced relative political stability and economic prosperity. The Memorial Institute for the Prevention of Terrorism reports that in Botswana, “[f]our decades of uninterrupted civilian leadership, progressive social policies, and significant capital investment have created one of the most dynamic economies in Africa. Mineral extraction, principally diamond mining, dominates economic activity, though tourism is a growing sector due to the country's conservation practices and extensive nature preserves.”¹ The main problem faced by the country is AIDS, with the world's highest known rate of HIV.

Since its independence Botswana has confronted two significant terrorist attacks.² In 1974, a parcel bomb killed the permanent organiser of the South African Students' Organisation (SASO), Abraham Onkgopotse Tiro, and in 1985 a South African political refugee was killed in a terrorist bomb blast in Gaborone.

2. Relevant legislation

Botswana has no specific anti-terrorism legislation however there are a range of other security laws.

- *Penal Code*
- *Botswana National Security Act 1986* – proscribes any conduct intended to assist persons from aiding any foreign power to the detriment of the security and safety of Botswana. It has come under criticism from human rights organisations.
- *Aviation Security Act 1993* – incorporates the main UN aviation security conventions.
- *Foreign Enlistment Act* – prevents any national or resident of Botswana to prepare or to join an expedition against any country without the permission of the president.

- 
- *Criminal Procedure and Evidence Act*
 - *Arms and Ammunitions Act* – limits the access to firearms by persons other than police forces.

Financing of Terrorism:

- *Proceeds of Serious Crimes Act 1990*
- *Corruption and Economic Crime Act 1994* – charges a directory to investigate and prosecute serious economic crime, corruption and money-laundering offences.
- *Banking Act 1995* – among other things, governs police access to information on bank accounts and obliges banks to report suspicious transactions to the central bank and law enforcement agencies.
- *Custom and Exercise Duty Act 1970* (Amended in 2001 and 2004) – empowers Botswana to impose restrictions on importations of certain material.
- *Drugs and Related Substances Act 1992*,

International cooperation:

- *Mutual Assistance in Criminal Matters Act 1990*
- *Extradition Act 1990* (amended in 1997)

3. Law summary

Botswana does not have any specific terrorist legislation. Nevertheless, other existing legislation could be used to prosecute terrorists or to prevent terrorist groups and the financing of terrorism. These laws will not be subject to a thorough analysis in this report. Botswana's most controversial piece of legislation is the Botswana National Security Act 1986, adopted in 1986 in response to the South African government's aggressive policies towards Botswana and other neighboring countries.³ Although widely denounced as draconian in hindering public access to information and press freedom, Botswana's ruling party have rejected calls for its abolition, arguing that it would be unwise to repeal the act in the present context of the "global fight against terrorism".⁴

4. Provisions

a. Definition

Botswana has no specific definition of terrorism in its legislation.

b. Arrest

There are no specific provisions relating to terrorism.



Police officers must produce an arrest warrant except in certain cases, for example when an officer witnesses a crime being committed or discovers that a suspect is in possession of a controlled substance⁵

The Botswana National Security Act 1986, Section 12, provides for arrest without warrant as the basic rule for arrests:

- (1) Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or having attempted to commit or being about to commit such an offence may be arrested without warrant by any police officer and detained.
- (2) Any person arrested under the provisions of this section shall, whether or not the police inquiries are completed, be brought before a magistrate as soon as is reasonably practicable within 96 hours.

c. Detention/custody

There are no provisions relating specifically to terrorism.

On arrest, police must inform suspects of their rights, including the right to remain silent, and suspects must be charged before a magistrate within 48 hours. A magistrate may order a suspect be held for 14 days by issuing a writ of detention, which may be renewed every 14 days. There is functioning bail system, and detention without bail is unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and to hire attorneys of their choice.⁶

d. Search and Seizure Powers

There are no provisions relating specifically to terrorism.

Proceeds of Serious Crimes Act 1990 – Section 2(3)(c) enables for the seizure of assets. Furthermore, Section 20 provides for mutual assistance in relation to confiscation and restraining orders.

Custom and Excise Duty Act 1970 – permits police to stop and search any vehicle or aircraft to see whether they are transporting any prohibited goods.

Botswana National Security Act 1986 – Section 11 provides for search warrants, granted by a Magistrate. As an exception, in the case of an emergency, a policeman above the rank of sergeant can search without warrant. A seized item does not have to be presented before a court.

e. Immunity

There are no specific provisions relating to terrorism.

f. General

The Penal Code provides a certain number of general offences (although not terrorism specific). These include:

- Treason (Section 34), instigating invasion (Section 35), treasonable offences (Section 37), promoting war or warlike undertaking (section 38),



prohibited publication (and their seizure) (Section 47-49), sedition (Section 50-51), alarming publication (Section 59)

- Conspiracies in Botswana relating to the commission of acts of violence abroad (Section 61); piracy (if committed by a citizen of Botswana, with a death penalty) (Section 64(1)(c)); hijacking and related offences (Section 65).
- “Unlawful societies” are prohibited under Sections 66-69. Prohibited societies are those who engage in subversive activities including levying war on the government or any inhabitants of Botswana, subverting or promoting subversion of government or its officials and disturbing or inciting disturbance of peace and order. Furthermore, the President has the power to declare some societies unlawful.
- Subversive activities (Section 73), possession of firearms (Section 85), expression of hatred of person because of race (Section 92), threatening breach of peace or violence (Section 95), incitement to violence and disobedience (Section 96), offences relating to religion (Section 136), fouling air (Section 189), unlawful wounding and poisoning (Section 233) are also infractions.
- Furthermore, the more basic offences that usually constitute the objective part of the terrorism definition are punished as well, such as murder, threat to kill, attempting to injure by explosives, abduction and kidnapping, sabotage.

Section 3 of the Botswana *National Security Act 1986* proscribes offences defined as “Acts Prejudicial to Botswana”. Under this expansive title, the section aims to prevent the collection of information that could be of any use for a foreign country or disaffected person. It includes to approach, inspect, pass the vicinity of or enter any prohibited places (the definition of this is very large);⁷ to make a sketch, plan, obtain, collect, record or publish any document, article or information that could be useful (even indirectly) to a foreign power or disaffected person; or “hinders on interfere with or does any act which is likely to damage, hinder or interfere with any necessary service or the carrying on thereof.” In application, this very wide offence can easily be applied to restrict legitimate freedom of expression. It is punishable by up to 30 years imprisonment.

Pursuant to Section 4, the “wrongful communication of certain information” is an offence: “A person who is given information in his or her role as a government agent must not:

- (a) use the information in his possession for the benefit of any foreign power or in any other manner or for any purpose prejudicial to the safety or interests of Botswana;
- (b) communicates the codes, password, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate with, or to a person to whom it is in the interest of Botswana his duty to communicate it;
- (c) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official codes, password or information; or
- (d) retains the sketch, plan, model, note, document or article in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any lawful directions issued with regard to the return or disposal thereof, shall be



guilty of an offence and liable on conviction to imprisonment for a term not exceeding 30 years.”

Furthermore, communication to anyone regarding munitions of war is liable of an offence punishable of 30 years imprisonment.

Section 5 relates to the protection of classified information

Section 6 relates to the unauthorised use of uniforms, passes, use of a government vehicle, or false number plates, makes a false statement orally or in writing, forges or alters an official document, pretending to be a person having access, or having in his possession any dye, seal or stamp looking alike the official ones, for the purpose of gaining admission to a prohibited place, or for any purpose prejudicial to the interest of Botswana, is liable to 25 years imprisonment.

Anyone that allows another person to have possession of any official document issued for his use alone is liable of a 15 years imprisonment.

Section 10 of the *National Security Act* reverses the presumption of innocence against the accused by presuming guilt and requiring an accused to disprove the charge leveled against them.⁸ Additionally, to be guilty of the crime of “any particular act tending to show a purpose prejudicial to the safety or interests of Botswana”, the prosecution need only show that the accused through his “conduct” or “known character” showed purpose, “notwithstanding that no such act is proved”.⁹

5. Examples

The Media Institute of Southern Africa (MISA) has expressed grave concerns relating to the *National Security Act* 1986. MISA criticises the NSA as being: “draconian, as it stifles press freedom and public access to information”.

Link: <http://www.ifex.org/fr/content/view/full/66242/>

Trials under the *National Security Act* 1986 are reportedly held in secret. The government deported two journalists whose reporting has been critical of government activities. The only explanation provided was that such reporting could be an anti-state and serious threat to national security. On 27 July 2005 the Botswana Government deported Rodrick Mukumbira (a Zimbabwean journalist), even though his work and residence permits were valid until October 2007. On August 5, the government barred a Zimbabwean journalist from entering the country. National security concerns were the only reasons cited in both the cases and the government refused to discuss any further details.

Link: <http://www.state.gov/g/drl/rls/hrrpt/2005/61555.htm>.

The government has also reportedly suppressed academic freedom. On 31 May 2005, the Government deported a professor at the University of Botswana. National security concerns were the only reason given for Dr. Good’s deportation.¹

Link: <http://www.state.gov/g/drl/rls/hrrpt/2005/61555.htm>.

¹ Ibid.



¹ Memorial Institute for the Prevention of Terrorism: Terrorism Knowledge Base, *Botswana*: <http://www.tkb.org/Country.jsp?countryCd=BC> as on 22 February 2007.

² In the absence of internationally accepted definitions of the terms “terrorism”, “terrorist” and “terrorist act”, in this report these terms refer to either the definition as enshrined in the country’s legislation, or the common use of the term. The use and meaning of these terms is addressed in CHRI’s report “Stamping Out Rights: The impact of anti-terrorism laws on policing” (2007).

³ Modise Maphanyane, director of Media Institute of Southern Africa (MISA) Botswana, states that the act was introduced “under duress”, when Botswana was a target for military raids against African National Congress activists and that those circumstances which no longer apply: See International Freedom of Expression Exchange, *Botswana: Misa Slams ‘Draconian’ Security Law*: <http://www.ifex.org/en/content/view/full/66242/> as on 8 January 2007.

⁴ International Freedom of Expression Exchange, *Botswana: Misa Slams ‘Draconian’ Security Law*: <http://www.ifex.org/en/content/view/full/66242/> as on 8 January 2007.

⁵ United States Department of State (2005) *Botswana Country Report*, <http://www.state.gov/g/drl/rls/hrrpt/2005/61555.htm> as on 10 January 2007.

⁶ Ibid.

⁷ “prohibited place” means –

(a) any work of defence belonging to or occupied or used by or on behalf of Botswana including arsenals, naval, army or air force establishments or stations, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and places used for the purpose of building, repairing, making or storing any munitions of war or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil or minerals for use in time of war;

(b) any place that is for the time being declared by statutory instrument made by the President to be either a protected place or area under the Protected Places and Areas Act on the ground that information with respect thereto or damage thereto would be useful to a foreign power.

⁸ Section 10(1), *National Security Act 1986* (Botswana).

⁹ Section 10(4), *National Security Act 1986* (Botswana).