

CHAPTER 23:01
NATIONAL SECURITY
ARRANGEMENT OF SECTIONS

SECTION

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Act 11, 1986,
Act 14, 2005.

An Act to make provision for National Security, and other activities prejudicial to the interests of the Nation, and other matters incidental to or connected therewith.

[Date of Commencement: 23rd May, 1986]

1. Short title

This Act may be cited as the National Security Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"authorized officer", in relation to any provision of this Act, means a person authorized by the person responsible for the administration of this Act to exercise the powers or perform the duties conferred or imposed by such provision;

"classified matter" means any information or thing declared to be confidential or secret by an authorized officer;

"Defence Force" has the meaning assigned to it under section 4 of the Botswana Defence Force Act;

"disaffected person" includes any person carrying on a seditious activity, that is to say, an activity constituting an offence under section 51 of the Penal Code;

"foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act whether within or without Botswana prejudicial to the safety or interests of Botswana, or who has or is reasonably suspected of having either within or without Botswana committed, or attempted to commit such an act in the interest of a foreign power;

"model" includes a design, pattern or specimen;

"munition of war" means an article, material, or device, including military stores, or any part thereof, whether actual or proposed, intended or adapted for use in war or the defence of

Botswana or capable of being adapted for such use, or any article used, or capable of being used or converted or adapted for use, in the production thereof;

"necessary service" includes-

- (a) any service relating to the generation, supply or distribution of electricity;
- (b) any fire brigade or fire service;
- (c) any sewerage, rubbish disposal or other sanitation service;
- (d) any health, hospital or ambulance service;
- (e) any service relating to the supply or distribution of water;
- (f) any service relating to the production, supply, delivery or distribution of food or fuel;
- (g) mining;
- (h) any communications service;
- (i) any transport service;
- (j) any road, railway, bridge, ferry, pontoon, airfield, harbour or dock;
- (k) any other service or facility, whether or not of a kind similar to the foregoing, declared by the President to be a necessary service for the purposes of this Act;

"officer in charge of a police station" means an officer, not below the rank of sub-inspector, appointed by the Commissioner of Police to be in charge of any police station, and includes, when the officer in charge of the police station, is absent therefrom or unable, from illness or other cause, to perform his duties, the police officer present at the police station who is next in rank to such officer;

"official document" includes a passport, any pass of the Defence Force, any police or other official pass, permit, identity card, certificate, licence or other similar document;

"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;

"sketch" includes any photographic or other copy or representation of any place or thing;

"telegram" includes telephone, telex, data facsimile and leased circuit services, together with appropriate terminal equipment.

(2) For the purposes of this Act-

- (a) expressions referring to communicating or receiving, include any communicating or receiving whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself, or the substance, effect, or description thereof only is communicated or received;
- (b) expressions referring to obtaining or retaining any sketch, plan, models, note, or document or article, include the copying or causing to be copied the whole or any part thereof;
- (c) expressions referring to the communication of any sketch, plan, model, note, document, or article include the transfer or transmission thereof.

3. Acts prejudicial to Botswana

Any person who, for any purpose prejudicial to the safety or interests of Botswana-

- (a) approaches, inspects, passes over, is in the vicinity of or enters any prohibited place;
- (b) makes any sketch, plan, model or note that is calculated to be or might be or is

- (c) intended to be directly or indirectly useful to a foreign power or disaffected person; obtains, collects, records, publishes or communicates in whatever manner to any other person any secret official codes, password, sketch, plan, model, note, document, article or information that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person;
- (d) without lawful excuse damages, hinders or interferes with, or does any act which is likely to damage, hinder or interfere with, any necessary service or the carrying on thereof,

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

4. Wrongful communication of certain information

(1) Any person who, having in his possession, or control, any secret official codes, password, sketch, plan, model, note, document, article or information that relates to or is used in a prohibited place or anything in such a place, or that has been made or obtained in contravention of this Act, or that has been entrusted in confidence to him by any person holding office under the Government, or owing to his position as a person who holds or has held office under the Government, or as a person who is or was party to a contract with the Government or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed by or under a person who holds or has held such an office or is or was a party to such a contract-

- (a) uses 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.

(2) Any person who, having in his possession or control any sketch, plan, model, note, document, article or information that relates to munitions of war communicates it directly or indirectly to any person in any manner for any purpose prejudicial to the safety or interests of Botswana shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 30 years.

(3) Any person who receives any secret official codes, password, sketch, plan, model, note, document, article or information, knowing or having reasonable grounds to believe, at the time when he receives it, that the codes, password, sketch, plan, model, article, note, document or information is communicated to him in contravention of the provisions of this Act shall, unless he proves that the communication to him of the codes, password, sketch, plan, model, article, note, document or information was against his wish, be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 30 years.

(4) Any person who communicates any information relating to the defence or security of Botswana to any person, other than a person to whom he is authorized by an authorized officer to communicate it or to whom it is in the interests of Botswana his duty to communicate it shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 25 years.

(5) For the purposes of subsection (4), "information relating to the defence or security of Botswana" includes (but without derogation from the generality or the ordinary meaning of that expression) information relating to the movements or locations of the Defence Force or Police Force, the steps taken to protect any vital installations or prohibited places, and the acquisition or disposal of munitions of war.

5. Protection of classified information

(1) Any person who communicates any classified matter to any person other than a person to whom he is authorized to communicate it or to whom it is in the interests of Botswana his duty to communicate it shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 25 years.

(2) In a prosecution for a contravention of subsection (1) it shall be no defence for the accused person to prove that when he communicated the matter he did not know and could not reasonably have known that it was a classified matter.

6. Unauthorized use of uniforms, passes, etc.

(1) Any person who, for the purpose of gaining admission or assisting any other person to gain admission to a prohibited place, or for any other purpose prejudicial to the safety or interests of Botswana-

- (a) without lawful authority, uses, wears, has in his possession, imports or manufactures any uniform of the Defence Force or of the Police Force or other official uniform of Botswana or any uniform so closely resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform;
- (b) without lawful authority uses any vehicle belonging to the Government or any branch thereof, or any vehicle which because of false number-plates or other reason so closely resembles such a vehicle as to be calculated to deceive, or falsely represents himself to be a person who is entitled to use such a vehicle;
- (c) orally, or in writing in any declaration or application or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission;
- (d) forges, alters or tampers with any official document or uses or has in his possession any forged, altered or irregular official document;
- (e) personates or falsely represents himself to be a person holding, or in the employ of a person holding, office under the Government, or to be or not to be a person to whom an official document or a secret official codes or password has been duly issued or communicated, or, with intent to obtain, whether for himself or for any other person, an official document or any secret official codes, password, makes any statement which in any material particular he knows to be false or does not believe to be true; or
- (f) without lawful authority uses or has in his possession or control any die, seal or stamp of or belonging to or used, made or provided by any Government department or by any diplomatic, naval, army or air force authority appointed by or acting under the authority of the Government, or any die, seal or stamp so closely resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp or uses or has in his possession or control any such counterfeit die, seal or stamp,

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 25 years.

(2) Any person who-

- (a) allows any other person to have possession of any official document issued for his use alone, or communicates to any person any secret official codes or password so issued, or without lawful authority or excuse has in his possession any official document or secret official codes, password issued for the use of some person other than himself, or on obtaining possession of any document, whether by finding or otherwise, neglects or

fails to hand it over to the person or authority by whom or for whose use it was issued or to a police officer; or

- (b) without lawful authority or excuse manufactures or sells, or has in his possession for sale, any such die, seal or stamp,

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 15 years.

(3) Any person who retains any official document, whether or not completed or issued for use, when he has no right or when it is contrary to his duty to do so, 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 10 years.

7. Interfering with persons on guard at prohibited places

Any person who, in the vicinity of any prohibited place, knowingly obstructs, misleads or otherwise interferes with any person engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 10 years.

8. Harbours

Any person who knowingly harbours or conceals any person whom he knows, or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, and every person who, having harboured or concealed any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to a police officer any information that is in his power to give in relation to any such person, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 25 years.

9. Attempts, etc.

Any person who attempts to commit any offence under this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets or does any act preparatory to the commission of an offence under this Act, shall be guilty of an offence and liable on conviction to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

10. Presumption

(1) If in any prosecution against any person for an offence under section 3, it is proved that he has been in communication with or attempted to communicate with, a foreign agent, whether within or without Botswana, it shall, unless the contrary is proved, be presumed that he has, for a purpose prejudicial to the safety or interests of Botswana, obtained or attempted to obtain or passed or attempted to pass information which might be or is intended to be directly or indirectly useful to a foreign power.

(2) For the purposes of subsection (1), but without prejudice to the generality of that subsection, a person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if-

- (a) he has, either within or without Botswana, visited the address of a foreign agent or addressed any communication to the address of such agent, or consorted or associated with such an agent; or
- (b) either within or without Botswana, the name or address of, or any other information regarding, such an agent has been found in his possession or control, or has been supplied by him to any other person, or has been obtained by him from any other person.

(3) Any address, whether within or without Botswana, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which such an agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of

a foreign agent, and communications addressed to the address to be communication with the agent.

(4) It shall not be necessary, on a prosecution under this Act, to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of Botswana, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of Botswana.

(5) Where any sketch, plan, model, article, note, document or information relating to or used in any prohibited place, or anything in such a place, or any secret official codes or password is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of Botswana unless the contrary is proved by the person accused.

(6) Where the lack of lawful authority or excuse is an ingredient of an offence under this Act, the burden of proving such authority or excuse shall lie on the accused and the burden shall not be on the prosecution to prove such lack.

11. Search warrants

(1) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant in the form set out in the Schedule authorizing any police officer named therein of or above the rank of sergeant, together with such other police officers and other persons who may be authorized by such named police officer, to enter, at any time, any premises, place, aircraft, ship, boat, train or other vehicle, or receptacle, as the case may be, named or described in the warrant, and to search the premises or place named in the warrant and every person or vehicle found thereon or therein or in the vicinity thereof, and to seize anything which he may find in the course of such search which is or may be evidence of an offence under this Act having been or being about to be committed or with regard to or in connection with which he has reasonable grounds for suspecting that an offence has been or is about to be committed.

(2) Where it appears to a police officer of or above the rank of sergeant or to an officer in charge of a police station that the case is one of great emergency that in the interest of Botswana immediate action is necessary, he may search without a warrant.

(3) Notwithstanding anything contained in any other law, it shall not be necessary for anything found in the course of any search conducted in terms of a warrant or authority issued or given under this section to be brought before any court.

(4) If at the conclusion of any proceedings, including proceedings on appeal, before any court against any person for an offence under this Act application is made by the prosecution, on the ground that the return of such article would be prejudicial to the safety or interests of Botswana, that any article seized in the course of a search conducted in terms of a warrant or authority issued or given under this section shall become the property of the State, the court shall make an order to that effect.

12. Arrest without warrant

(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.

13. Duty to give information as to commission of offences (1) Where the Director of Public Prosecutions is satisfied that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed and for believing that some person is able

to furnish information with regard thereto, he may by writing under his hand authorize a named police officer to require that person to give any information in his possession relating to such suspected offence or anticipated offence and, if so required, to attend at such reasonable time and place as may be specified by such police officer.

(2) Any person who, having been required in terms of subsection (1) to give information or to attend at a specified time and place, wilfully fails to comply with such requirement or knowingly gives false information shall be guilty of an offence.

14. Production of telegrams (1) Where it appears to the Director of Public Prosecutions that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of Botswana to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent to or received from any place out of Botswana by means of any such cable, wire, or apparatus and all other papers relating to any such telegrams.

(2) Any person who, on being required to produce any such original or transcript or paper, refuses or neglects to do so shall be guilty of an offence.

15. Consent of Director of Public Prosecutions to prosecution (1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(2) A person charged with an offence under this Act may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained but no further or other proceedings shall be taken until that consent has been obtained.

16. Trials of offences committed outside Botswana

An act, omission or thing that would, by reason of this Act, be punishable as an offence if committed in Botswana, shall, if committed outside Botswana be an offence against this Act, triable and punishable in Botswana, in the following cases-

- (a) where the offender at the time of the commission was a citizen of Botswana within the meaning of the Citizenship Act;
- (b) where any codes, password, sketch, plan, model, article, note, document, information or other thing whatsoever in respect of which an offender is charged was obtained by him, or depends upon information that he obtained, while owing allegiance to the Republic of Botswana.

17. Place of offence

(1) For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed either at the place in which the offence actually was committed, or at any place in Botswana in which the offender may be found.

(2) In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings if, in the course of the proceedings before the court against any person for an offence under this Act or the proceedings on appeal, application is made by the Attorney-General, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the interests of Botswana, that all or any portion of the public shall be excluded during any part of the hearing, the court shall make an order to that effect, but the passing of sentence shall in any case take place in public.

(3) Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or

consent.

18. Penalties

Where no specific penalty is provided in this Act, any person who is guilty of an offence under this Act shall be liable on conviction to imprisonment for a term not exceeding 12 years.

**SCHEDULE
SEARCH WARRANT**

(s. 11)

REPUBLIC OF BOTSWANA
NATIONAL SECURITY ACT

IN THE MAGISTRATE'S COURT DISTRICT

Holden at

To: Police Officer

WHEREAS

of

has this day given information on oath that there is reasonable ground for suspecting that an offence under the National Security Act has been or is about to be committed;

NOW THEREFORE you are hereby authorized and commanded in the name of the President to enter at any time, with such other police officers and other persons as may be authorized by you,, and search the same and any persons or vehicles found therein or thereon or in the vicinity thereof and to seize anything which may be found on such search which is or may be evidence of an offence under the said Act having been or being about to be committed or with regard to or in connection with which you have reasonable grounds for suspecting that an offence under the said Act has been or is about to be committed.

Issued at on this day of 20

.....
Magistrate