



Original Research Article

The review of Ghana's legislative preparedness to critical national risks: Terrorism and money laundering

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We examined if the legal framework of Ghana and the Sub-region provided the mandate, finance and other resources to implement national policies against drug trafficking, money-laundering and terrorism. This study consisted of literature and documentary review of cases, legal writings from Ghana and other jurisdictions on the issue. To review respective nations law, the legislation from the different nations were disaggregated as national and international depending on the thrust of the law and the type of social conduct it purported to address. We also reviewed newspaper reports on substantiated cases involving trials for criminal wrongdoing to foster terrorism, drug trafficking or money laundering. We conducted the analyses of the pertinent material based on our skills. We found that the national and regional legal preparedness against drug-trafficking and money-laundering were ill-defined. Most especially, the legislative preparedness against terrorism is weaker. The new anti-terrorism legislation of Ghana and the sub-region also revealed another troubling observation: that the continent's readiness to combat terrorism and money-laundering may not even exist on paper. The legislative framework provides little linkage of terrorism and narcotics threats to national security, national development and overall national emergency preparedness. Our recommendations would help inform policy.

Key words: National Security, Narcotics Drug Trafficking, Terrorism, Money-laundering, Legislation, Crisis Management, Ghana

INTRODUCTION

In the last decade, drug traffickers have used the West African sub-region as a trans-shipment port for massive amounts of cocaine from South America into Europe and other parts of Africa because they could (Levi, 2010; Luna, 2008). As the more industrialized markets of Europe and America become more successful at frustrating the efforts of the traffickers, through enhanced surveillance and successful prosecution, the traffickers looked for safe havens for trans-shipment of their goods. West Africa presented such opportunities due to a combination of factors which this paper investigated (Bjorn and Sandler 2008; Tanielian et al., 2006).

In reaction to the growing concern over the use of West African sea and air space as transit routes, in 2008 Ghana passed an anti-money laundering and anti-terrorism

legislation as a disruptive measure on the finances of the drug traffickers. This was due in part to the perceived and real threat posed by the effects of the narcotics drug trade and distribution on the national economy, society and central planning at both micro- and macro-economic levels (Bjorn and Sandler 2008; UNODCCP 2002). It was also meant to provide the legal platform for combating the twin problems of narcotics drugs and terrorism. The problem with this scenario is that Ghana's legal preparedness for mundane criminal investigations such as murder or non-exotic health emergencies such as malaria and cholera is vulnerable. Often the linkage between victim, suspect, crime scene and evidence is interrupted by the lack of professionalism, a good police work ethic and outright corruption. Forensic crime investigation is

almost completely non-existent except in a few instances such as documentary fraud cases where with the assistance of the Netherlands Embassy in Ghana and in collaboration with the government of Ghana, the Ghana Immigration Service has been resourced with state of the art forensic documentation equipment to prevent passport and visa fraud and to apprehend offenders (Bjorn and Sandler 2008; Justice Department/GAO-03-266, 2003; Shawn 2006; Schaefer 2003; Tiefenbrun, 2003; Record 2003; The 9/11 Commission Report on Terrorism 2002; The Chronicle Newspaper 2007). The average police officer or crime scene technician has skills deficit in identifying what could be the evidence with high probative value, processing such evidence, and preserving it (Hersman and Carus 1999; Belasco 2005; Brodeur, 2007). Operating a criminal investigation system with practitioners who possess under-developed skills-set within a weak legal framework appears, therefore, unreasonable to expect such an insipid legal framework to offer the modalities for credible surveillance, interception, arrest and prosecution of the more sophisticated and resourced drug traffickers and terrorists (Record 2003; Brodeur 2007).

Examples of Regional attempts to strengthen the legislative framework against the drug trade

In similar fashion, since 2008, the Gambia, Nigeria, Liberia, and even South Africa and other nations in Africa have also passed Anti-Terrorism legislation. It is rather interesting to note that the majority of these nations passed or produced drafts of anti-terrorism legislation together with anti-money laundering laws in 2008.

South Africa

Prior to this development, South Africa had the Anti-Terrorism Act No. 83 (1967) which has since been repealed. But during the apartheid era, the 1967 Act on terrorism provided the police with sweeping powers against the civil rights and liberties of the then government's political opponents, the African National Congress. In South Africa today, domestic terrorism is not a major public health concern, although it remains an existential threat to all nations, including South Africa. Despite this observation, South Africa has the Anti-Terrorism Act of 2002, which together with the National Strategic Intelligence Act, (Act 94-39) 1994 provides the modalities for decisive exercise of state powers against significant national threats. The Disaster Management Act of 2002 in consonance with the Constitution of South Africa, No. 108 (1996) provides additional legal modalities for preparedness and interventions against national risks.

- i South Africa Anti-Terrorism of 1967, (Act No. 83) repealed
- ii South Africa National Strategic Intelligence Act, (Act 94-39) (1994)
- iii The Constitution of South Africa, 1996 (Act No. 108)
- iv South Africa Disaster Management Act, (2002)

Ghana

The current legal framework of Ghana against critical national risks consists of the Anti-Terrorism Act, 2008, (Act 762). Ghana also has the National Disaster Management Organization Act, 1996, (Act 517); The Criminal and other offenses Act, 1960 (Act 29) as amended in (1973), The Anti-Money Laundering Act, 2008, (Act 749), The Emergency Powers Act, 1994, (742), and the 1992 Constitution. Despite these pieces of legislations, it appears Ghana is still lacking important additional legislation that would firm up the legal framework and improve the national preparedness against critical national risks posed by the transshipment of narcotics drugs and money laundering.

Gambia

Another of the nations in our examples is Gambia. As part of its legislative framework for terrorism and money laundering, Gambia has the National Disaster Emergency Relief and Resettlement Committee, the Capacity Building for Sustainable Development, (CAP 2015), the Gambia Disaster Management Bill, 2008, and the Gambia Anti-Terrorism Bill, 2008.

- v. The Ghana Anti-Terrorism Act, 2008 (Act 762)
- vi. South Africa Anti-Terrorism Act of, (2002)
- vii. The Gambia Anti-Terrorism Bill, (2008).

Nigeria

Nigeria has a Draft Anti-Terrorism, Economic and Financial Crimes Act, the Banks and other Financial Institutions Act No. 25, 1991, (section 30), and the National Drug Law Enforcement Act (NDLEA) Section 35.

Liberia

Liberia has the Anti-Corruption Commission, 2008, and the National Disaster Relief Commission 2008. This fact underscores the novelty of the terrorism laws in Africa, although South Africa has had an anti-terrorism Act since the 1960's.

- viii. Nigeria Draft Anti-Terrorism Economic and Financial Crimes Act, (2008)
- x. Liberia Anti-Corruption Commission, (2008)
- xi. Nigeria: Anti-Terrorism, Economic and Financial Act
- xii. Nigeria: The Banks and other Financial Institutions Act No. 25, 1991, (section 30)
- xiii. The National Drug Law Enforcement Act (NDLEA) Section 35.
- xiv. Liberia National Disaster Relief Commission (2008)

Perceived adequacy of legal preparedness of the respective nations

The passage of the several law on terrorism and on money-laundering by the respective nations also creates the

impression that each of the nations in the sub-region has attained a high level of public health legal preparedness for these emergencies and threats to sovereignty. However, a critical look at the laws themselves reveals the vacuous legislative environment within which the laws were borne and meant to operate (Luna 2008; Tanielian et al., 2006).

In this paper, we would review the literature on Ghana's public health legal preparedness, the situation with the Ghana borders and the effectiveness of the national security apparatus in combating the menace of drug-trafficking, money laundering and potentially, terrorism. In the subsequent pages, the vulnerabilities of the legal framework would be considered, as well as the central government's preparedness for crisis and consequence management against threats from terrorism, narcotic drug trafficking, and money-laundering.

For example: On 15th December, 2011, the FBI filed civil suit against the Ellissa Exchange to recover more than \$480 million dollars for drug trafficking and money laundering. The Ellissa Exchange, Ellissa Shipping Company, and Ellissa Car Park in Cotonou: The Ellissa Holding Company owns or controls approximately nine companies in Lebanon, Benin and the DRC, including the Ellissa Exchange, a money exchange based in Sarafand, Lebanon; Ellissa Group SA, which owns a car park in Cotonou, Benin, for receiving and selling used cars imported to the Cotonou port; and Ellissa Shipping, which is principally engaged in shipping used cars to Benin through the Cotonou port. They were discovered to be carrying over \$6.5 million in United States currency and €48,500. These funds were not declared. One of the individuals was carrying a business card for Ellissa Megastore, Ellissa's car lot in Cotonou, Benin. Cash is also commonly transported out of Benin through the airport in Accra, Ghana, approximately 210 miles from Cotonou, Benin. The route from Cotonou to Accra passes through Togo and its capital, Lome, on the Ghana border. The Ghanaian Customs, Excise, and Preventive Services recorded approximately \$1.2 billion in declared United States currency imported across the Lome border crossing in 2007 and 2008. Approximately \$845 million of this was declared by Lebanese nationals. From Accra, the cash is often flown to Beirut.

xv.U.S District Court, S. D., New York, v. Lebanese Canadian Bank SAL, Ellissa Holding Company, Hassan Ayash Exchange Company, Cybamar Swiss GMBH, LLC Ste, 2011. Dated: New York, New York, December 15, 2011 (<http://www.fbi.gov/newyork/press-releases/2011/civil-suit>)

Defining Public Health Legal Preparedness

Public Health legal preparedness “includes the essential role law plays in public health in protecting the public from terrorism and other potentially catastrophic health threats” (Tanielian et al., 2006). For there to be public health legal preparedness, the following should be in place: There should be laws, statutes, ordinances, regulations and implementing measures. There should also be the competencies of those who make, implement and interpret

the laws. There should be information critical to those multidisciplinary practitioners on the issues involved. And there should be coordination across sectors and jurisdictions. “Public health legal preparedness is a term born in the ferment, beginning in the late 1990’s” and it is part of the general preparedness for emergencies (Tanielian et al., 2006). Another definition of public health legal preparedness is borrowed from Tanielian et al, (2006). They defined legal preparedness to include the existence of a legislative framework as well as policy, plans, protocol and procedures. They extended their definition to cover both education and, or, training of professionals and the public in this discipline and in the conduct of evaluative exercises. To achieve exemplary practices in public health, they also suggested that there should be new and improved programs for monitoring preparedness measures (Tanielian et al., 2006). The general legal preparedness levels of Ghana and other nations in the sub-region for emergencies point to a national, regional and continental system of emergency intervention which is barely functioning. Generally, the public health legal preparedness for the known emergencies in many countries in Africa is poor (Luna 2008; UNODCCP 2002; Shawn 2006; Record 2003).

Defining Terrorism in this paper

In this paper, we would rely on the definition of terrorism as articulated by the UN Policy Paper (2002). We would also borrow from (Tanielian et al., 2006) to broaden the definition of public health Legal Preparedness against terrorism. First, public health legal preparedness for terrorism: It includes the formulation of counterterrorism laws, statutes, policy and regulations to cover not only terrorism and concomitant activities of terrorists' organizations as well as crisis and consequence management. Public Health legal preparedness also covers tactical and operational readiness, the conduct of government, communities and individuals in emergencies resulting from terrorists' acts, the protections of civil liberties, the rights of the perpetrators, and ensuring general Constitutional guarantees.

Universal definition of what terrorism is difficult to obtain. The United Nations Policy Working Group on Terrorism defines terrorism loosely that, “terrorism is, in most cases, essentially a political act. It is meant to inflict dramatic and deadly injury on civilians and to create an atmosphere of fear, generally for a political or ideological (whether secular or religious) purpose”. Some researchers consider terrorism as a criminal act (UNODCCP 2002). However; terrorism is more than mere criminality. The United Nations cautions that “to overcome the definitional problem of terrorism, it is necessary to understand its political nature as well as its basic criminality and psychology”. In disagreement, Shawn, (2006) argued that terrorism is not an esoteric subject which the United Nations cannot define. Added to the task of defining what terrorism is or ought to be, is the conflation of different

threat agents, actors and issues as a monolithic entity or cause such as the United States' conflation of al Qaeda with Saddam Hussein's Iraq coupled with the allegation that Iraq possessed Weapons of Mass Destruction, which led to the occupation of Iraq (Record, 2003).

However, Tiefenbrun, (2003) wrote in agreement with the UN's position that, there was no 'coordinated position on the meaning of the term' by even the US government or Congress. Tiefenbrun added that 'the absence of a generally accepted definition of terrorism in the United States allows the government to craft variant or vague definitions which could result in an erosion of civil rights and the possible abuse of power by the state in the name of fighting terrorism and ensuring national security'(Record 2003; The 9/11 Commission Report 2002; Hersman and Carus 1999; Belasco 2005).

The loose definitions found in the literature on the subject, shows the uncertainty the international community faces in labeling what "The 9/11 Commission Report" (2002), termed the "new terrorism".

Conclusion from the Literature review

The conclusion from the literature review is that resolving the definitional difficulty surrounding the word 'terrorism' is important in the case of many African nations in view of human rights abuses under traditional police powers in the past. The new Anti-Terrorism legislation may contribute to additional restrictions on the liberties of the populations.

METHOD AND PROCEDURE

Literature Review for legal preparedness

We adopted the national laws on terrorism and money laundering from Ghana, Liberia, Nigeria and the Gambia for analyses. Due to the paucity of literature on these legislations from Liberia, Nigeria and Gambia, we did not subject those to deep analyses. The legislation from the different nations were disaggregated into their national groups, as domestic, national and international depending on the thrust of the law and the type of social conduct it purported to address. We also reviewed newspaper reports on substantiated cases involving trials of either criminal wrongdoing to foster terrorism or money laundering.

Internet search

We also carried out documentary search on the internet using carefully designed phrases like, "terrorism and money laundering, Accra, only," "risk communication, Ghana," "examples of national risk communication, Ghana, only," "terrorism risk reduction apropos risk communication," "Insurance claims arising out of terror acts, Ghana, only", "Cause and effect of money laundering, Ghana" "Incidence and Prevalence of money laundering, Ghana only".

We summarized the findings into their respective units, and interpreted them based upon our skills, knowledge and specialization in law, risk communication, public health and in disaster risk reduction.

Desk Top Review of National Preparedness plan

We also conducted an overview of existing emergency preparedness plan of the nation to determine whether it was adequate. In this analysis, we used Accra City as a case study. In order to assess the preparedness plans of Accra City, we evaluated the available "National Disaster Management Plans" on the basis of national best practices.

RESULTS

Ghana Anti-Terrorism Act, 2008, (Act 762)

Perambulatory nature of the Act undermines Due process

It was found that the Ghana Anti-Terrorism Act's definition of terrorism is perambulatory and overly broad in its reach. It defines terrorism as:

1. (1) An act is a terrorist act if it is performed in furtherance of a political, ideological, religious, racial or ethnic cause and:
 - a. Causes serious bodily harm to a person
 - b. Causes serious damage to property;
 - c. Endangers a person's life;
 - d. Creates a serious risk to the health or safety of the public;
 - e. Involves the use of firearms or explosives.

Drawing on the last sub-clauses of (d) and (e), it appears to suggest that a thief of Caucasian extraction fleeing from a bank robbery and exchanging gunshots with the police in a predominantly Black nation like Ghana would be considered a terrorist. The words "political", "ideological", "religious" or "racial" as qualifiers for the ensuring act appears to render the definition of terrorism nebulous or pedestrian. It seems even those who claim to be apolitical, are indeed, political in their abstention from politics. It is in its perambulatory nature that the Act poses immense threat to human rights, the abuse of Due Process and the Civil Rights of the people as revealed below.

Curtailed of the right to peaceful assemble

The Terrorism Act of 2008 appears to curtail the right of the people of Ghana to peacefully assemble as guaranteed by the 1992 Constitution of Ghana, Article 21 (1) (a) through (e):

- (1) All persons shall have the right to –
 - (a) Freedom of speech and expression, which shall include freedom of the press and other media;
 - (b) Freedom of thought, conscience and belief, which shall include academic freedom;

(c) Freedom to practice any religion and to manifest such practice

(d) Freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interests;

Although the constitution guarantees the right of workers to belong to a Trade Union, an industrial action undertaken by the Union that results in any of the following as articulated under the Terrorism Act may lead to the charge of terrorism:

- a. Causes serious bodily harm to a person
- b. Causes serious damage to property;
- c. Endangers a person's life;
- d. Creates a serious risk to the health or safety of the public;
- e. Involves the use of firearms or explosives.

Section 40 of the Anti-Terrorism Act, 2008 defines "Property" to mean

An asset of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and legal documents or instruments in any form including electronic or digital, evidencing title to, or interests in such assets including but not limited to bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letter of credit;

The section further defines "ideological cause" to include racial or ethnic cause. Such a definition is simply too broad for the purposes of the administration of justice. The word "firearm" is defined to:

Include any gun, rifle, machine gun, cap-gun, flint lock gun or pistol, revolver, cannon or other firearms, any gun air rifle or air pistol whether whole or in attached pieces,

xvi. The Ghana National Disaster Management Organization Act, 1996, (Act 517)

xvii. The Ghana Criminal and other offenses Act, 1960 (Act 29) as amended in (1973)

xviii. The Ghana Anti-Money Laundering Act, 2008, (Act 749)

xix. The Ghana Emergency Powers Act, 1994, (742)

xx. The 1992 Constitution of Ghana.

We find the definition of firearm to be a limitation on the right of the farmer or hunter to carry hunting rifles and guns. While it is understandable to charge one who discharges firearms and explosives in public and without authority or permit to do so with a criminal offense, it is doubtful when a criminal act such as the illegal possession of a gun or guns and bullets, for example, becomes a terrorist act.

Arbitrariness in determination of culpable acts

The Act maintains that certain conduct is not a terrorist act such as:

2. A protest, demonstration or stoppage of work which disrupts an essential service shall not be considered to be a terrorist act within the meaning of this Act, if the act does not result in the harm referred to in paragraphs (a)

through (d) of subsection (1) of section 2.

That is to say, the determination of whether a resulting harm to a third person during an industrial action, for example, would be made by potentially, a court of competent jurisdiction, which may or may not be independent from political pressure and machinations.

Wrong assumptions contained in the act

The Ghana Anti-Terrorism Act of 2008 makes assumptions that do not appear to be based on the contextual rationality that the Act was meant to provide to the practitioner and law enforcement.

Section 5 (2) The High Court shall order the funds of

- a. A terrorist;
- b. Financiers or terrorism, or
- c. a terrorist organization as designated by the United Nations Security Council in accordance with Chapter VII of the United Nations Charter

to be frozen and any person holding the funds shall immediately freeze them.

Apart from the obvious jurisdiction issues implicated in applying the United Nations Security Council's prescriptions to purely municipal or local criminal activity that falls under the municipal police powers of the state, it seems to ignore the fluidity within which terrorists operate. To mention but a few of the assumptions that appear to be in the law are that:

1. The enemy would be readily identifiable and would not attempt to disappear and,
2. The enemy would take responsibility for terrorist deeds which would lead to his/her capture,
3. There would be time to address the problem through appropriate authorities and command centers already in existence hence no provision was made for proactive, pre-crime investigations, espionage and infiltration.

It was also assumed that:

4. The attack would take traditional form as in conventional war and,
5. It would not involve targeting civilians and there would be no suicide attacks.
6. The Act is overly concerned about the seizure of terrorist properties as if terrorists the world over have historically left vast amounts of wealth behind.

None of the 9/11 terrorists left any meaningful asset behind even though they came from middle class families of their respective nations. It is therefore unreasonable to expect that a terror group would leave meaningful asset behind to be seized by the government as, perhaps, drug dealers do. The Ghana Act on terrorism is so porous that it has inadvertently brought the legitimacy of industrial unrest, political speech, mining and industrial operations as prohibited offenses in its catchment. Although such an outcome is clearly unintended, it has created an opportunity to assault freedoms of the people of Ghana provided for in the 1992 Constitution. During the review of the Terrorism Act 762, we also identified additional weaknesses as delineated below.

Failure to name a responsible, implementing Agency

The Act failed to vest its mandate in a specific Ministry, Agency or Department for implementation, although the word Minister is used at least twelve times. "Minister" is defined in section 40 of the Act to mean *'the Attorney-General and Minister responsible for Justice'*. In various parts of the Act, the control mandate appears to be vested with the Police Command, other times it is in the High Court and at times, it is vested in the Attorney General or the Minister of Justice. The failure to vest the duties enunciated in the Act in any specific agency or department has far reaching consequences.

xxii. *ibid*, The Ghana National Disaster Management Organization Act, 1996, (Act 517)

xxiii. *ibid*, The Ghana Criminal and other offenses Act, 1960 (Act 29) as amended in (1973)

xxiv. *ibid*, The Ghana Anti-Money Laundering Act, 2008, (Act 749)

xxv. *ibid*, The Ghana Emergency Powers Act, 1994, (742)

xxvi. *ibid*, The 1992 Constitution of Ghana.

Lapses in the Legislative Framework of Ghana

The new anti-terrorism legislation of Ghana and those of the nations in the sub-region also reveal another troubling observation. It appears that the continent's readiness to combat terrorism and money-laundering with the level of vigor similar to that of the US and EU since September 11, 2001, perhaps, conceals the reality that the continent is indeed soft on crime, money-laundering and on terrorism (Bjorn and Sandler 2008; Schaefer 2003). For example, the laxity in the nation's security at the airport is generally believed to have resulted in making Ghana a breeding ground for drug barons. There is a great deal of empirical evidence to show that drug trafficking undermines security and safety at many critical points of entry such as airports, harbors and coast line as well as at border crossings. Such activities tend to sabotage the fiscal policy of the nations affected due to money-laundering. In 2006, the Ghana government in collaboration with the British Government mounted what was nick-named *'Operation West-bridge'*, to assess the incidence of drug trafficking through the Kotoka International Airport (KIA), Accra, which is Ghana's only international airport. The secondary goal was to curb the drug trade between Ghana and the UK. It was discovered that from November 2006 to September 2007, 2,540 kg of drugs had been intercepted at Ghana's main airport, while at the same time some 2,300 kg of narcotics passed through the security system of the same airport to the United Kingdom and was intercepted there. The quantity and frequency with which drugs depart from KIA, is the direct result of how well the baggage and passenger scanners and screeners do their jobs. With such volume of drugs being transited at the Ghana airport, it is possible for one to even suggest official collaboration, even though such may not be the case (Schaefer 2003; The Chronicle Newspaper 2007).

In recognition of the difficult encountered by Ghana and other nations in combating the drug trade, and as corollary to counter terrorism and money-laundering activities in the sub-region, the U.S. military expanded the reach of the "Pan Sahel Initiative of 2003". The "Pan Sahel Initiative of 2003", initially began with Chad, Mali and Niger but was expanded to include many of the nations of Sub-Sahara region. Currently, the "Pan Sahel Initiative" conducts counterterrorism training exercises, where military personnel from Chad, Mali, Niger and Mauritania, Morocco, Algeria, Tunisia, Senegal and Nigeria as well as Ghana are trained (Hersman and Carus 1999; Brodeur 2007, Belasco, 2005).

The reaction of human rights organizations and researchers on this issue argue that African governments' cry against terrorism is not all about terrorism. That, African governments take advantage of the desert's secrecy to cry out terrorism to receive money for their under-funded militaries with aging vehicles, tattered uniforms and low salaries. Today the word (terrorism) is inappropriately used to describe any incident that is anti-government, causes problems of one sort or another, which may be genuine expression of the people's right to free speech, freedom of association and peaceful assemble (Tanielian et al., 2006; UNODCCP 2002; Belasco 2005).

The Lack of Financial Resources hampers war on Terror and Drugs

The apparent lack of coordinated front on the part of governments in the sub-region against money-laundering and terrorism has been blamed on the lack of financial resources. Since the mandate of the Act is not vested to a specific ministry, department or agency, the enforcement of the Act cannot be financed. Ghana is a centrally planned administrative unit, where finance for sub-vented institutions and ministries, agencies and departments are done through annual budgeting process presented to the Parliament for oversight.

A sub-vented institution is defined by the Public Procurement Act, 2003 (Act 663) as 'an agency set up by Government to provide public service and financed from public funds allocated by Parliament in the annual appropriation'. The Act also defines 'national interest' to mean 'a condition where the nation attaches high value, returns, benefit and consideration to the matter in question'. Although anti-terrorism measures are of high national interest, the drafters of the 1992 Constitution or the successive governments have not considered it high enough a priority to provide for its support and promotion through statute law and the judiciary has not provided for it through the common-law. Where there is no specific ministry in charge of a public program, that program does not simply get funded. This appears to be the impression one gets from the Terrorism Act.

xxiii. Public Procurement Act, 2003 (Act 663)

DISCUSSION

Arguments in favor of strengthening the legislative framework and leadership in counter-terrorism

The present legal preparedness framework of the police system in Ghana and in many nations of the sub-region does not lend to effective intelligence gathering or law enforcement policing culture, let alone counterterrorism work.

This weakness came to the attention of the World Bank and the International Monetary Fund later in 2003 during a video-conference of select nations in West Africa, namely Gambia, Ghana, Nigeria and Sierra Leone on the preparedness of the region for terrorism. At this meeting, the World Bank/IMF recognized that “training the region’s security and banking personnel was needed”. This situation creates doubts about the rationale behind the rush to pass counter terrorism laws when the underlying socio-political and economic system cannot perform under the requirements of the law.

Terrorism detection, prevention and prosecution and management are not inexpensive undertakings. This is particularly so when such nations are already unable to provide the most basic of social amenities and infrastructure to most of its inhabitants such as potable water, housing, and the supply of continuous running electricity to hospitals, schools, business and commercial facilities (Luna, 2008; Record, 2003; Belasco, 2005).

There is also the issue of the lack of legislative mandate to strengthen institutional capacities in terms of crisis management on one hand and consequence management on the other. Law Enforcement Agencies define ‘crisis management’ as measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism. Crisis management is predominantly a law enforcement response mechanism. ‘Consequence management’ refers to measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses, and individuals affected by the consequences of terrorism. Consequence management is generally a multifunction response coordinated by emergency management. Although the concept was originally developed by US Presidential Directive PDD-39 in 1995 and by the U. S Department of Defense for mitigating the effects of chemical and biological attacks, it has been applied to terrorist attacks as well. Despite, there are difficulties with the implementation of these two concepts even within the Department of Defense (Hersman and Carus, 1999).

Hersman and Carus (1999) wrote that “effective consequence management is constrained by the presence of arbitrary conceptual and organizational divisions that inadvertently define response according to the nature, location, and target of the attack”. But whereas the U. S. laws are attempting to iron out the creases in the system, the new counterterrorism laws of Ghana and the rest of the sub-region do not even touch on the concept (Brodeur,

2003, and Belasco, 2005).

The time of putting the new anti-terrorism legislation together was the opportunity for the government to use the Act to create a National Counter-Terrorist Agency to be responsible for the enforcement of the concerns of the Act but failed.

The gaps in overall anti-terror legislation of the Sub-region

Additionally, each one of the sub-region’s new anti-terrorism legislation lacks one or more of the following features, which should have been present in the law as the basic foundational blueprint:

- (i) Coordination and emergency management under the Act,
- (ii) responsible agency for the administrative interpretation of the law,
- (iii) responsible field agency for the enforcement of the Act,
- (iv) protection of individual rights and liberties in the enforcement of the Act,
- (v) the need to conduct research, investigations, and prosecutions of potential terrorists acts.

There should have been sections of the Act detailing the conduct of “technical operations” by the security agencies, but those are also absent. These would “include actions to identify, assess, dismantle, transfer, dispose of, or decontaminate personnel and property exposed to explosive ordnance”.

Effective law enforcement Policing and Counterterrorism

There cannot be an effective anti-terrorism program in any nation without an effective, well trained police force that has criminologist, forensic investigators including high accuracy documentation and material detection equipment (Brodeur, 2007). In many of these nations, the Police administration and facilities are neglected and, in the case of Ghana, the bulk of the force lives and works in squalor. The police stations in Ghana are decrepit and congested. The personnel receive low salaries. Due to the low salaries and poor living standards, they are thus susceptible to bribes as little as US\$0.30 particularly during ad hoc road blocks and intermittent traffic checks. As a general perception the Ghana national police is considered corrupt. For example, in 2008, over 70 parcels of seized cocaine in the custody of the Ghana Bureau of National Investigations, BNI went missing from police custody. The BNI offices, (BNI is apparently equivalent to the FBI in the US in terms of its duties), were under the electronic and live watch of both CCTV cameras and guards at the time the cocaine was stored there. These parcels of cocaine have never been found. This led to the creation of the Georgina Woods Commission of Inquiry. It was charged with the responsibility of finding out how the cocaine got missing from the BNI offices and custody. The commission

completed its investigation into the missing parcels of cocaine but was unable to trace the whereabouts of the cocaine (The Chronicle Newspaper, 2007).

It has also been argued by some researchers that more money is needed for effective intervention against terrorism activities and other criminal activities such as money laundering. There is also argument to the contrary that the availability of financial resources does not necessarily lead to a better counterterrorism or anti-drug trafficking program per se (Luna, 2008; Bjorn and Sandler 2008). Bjorn and Sandler (2008) put forward the argument that "increased counterterrorism measures simply transfer terrorists' attention elsewhere. For example, installing metal detectors in airports in 1973 decreased skyjackings but increased kidnappings; fortifying American embassies reduced the number of attacks on embassies but increased the number of assassinations of diplomatic officials. Since counterterrorism measures were increased in Europe, the United States, and Canada, there has been a clear shift in attacks against US interests to the Middle East and Asia. Spending ever-more money making targets "harder" is actually a poor choice. Increasing defensive measures worldwide by 25 per cent would cost at least US\$75 billion over five years. Terrorists will inevitably shift to softer targets. In the unlikely scenario that terrorist attacks would drop by 25 per cent, the world would save about US\$22 billion. Even then, the cost is three times higher than the benefits". The assertion by Bjorn and Sandler and others is debatable. There are many factors internal to particular regions that account for increase in terrorists' activities. For instance, in the West African sub-region, and in particular, Nigeria, there have been increased counter terrorism measures by the Nigeria government in terms of training and interventions. Despite these measures, terrorist attacks have persisted due to the deepening of the socio-economic issues of high adult unemployment, environmental degradation, social exclusion, factors which tend to instigate the occurrence of terrorist attacks.

In the United States, between September 11, 2001 and May, 2005, the US Department of Defense reported that it had obligated \$191 billion in the fight against terrorism. Compare the amount of money the United States spent on terrorism in four short years with this: "between 1980 and 2002, the World Bank's International Bank for Reconstruction and Development and International Development Association, along with the African Development Bank, provided \$77.5 billion (in 1995 dollars) in development assistance to the 48 countries in sub-Saharan Africa-nearly \$1.5 billion per country-to spur development in the region. This is a huge investment, particularly when the relatively small sizes of the recipient countries' economies are taken into account. To put this into perspective, the total gross domestic product (GDP) in constant 1995 U.S. dollars for those 48 countries in 2002 was \$296.6 billion (approximately the same GDP as the US state of Michigan) (Schaefer, 2003). Using constant dollars, multilateral development assistance to the region from 1980 to 2002 was over 26 percent of the region's total GDP

in 2002" (Schaefer, 2003). Such a snapshot suggests that the rush by African nations to enact anti-terror legislation is yet another avenue for these nations to rake in bilateral and budgetary support from the usual sources, as articulated by Schaefer's (2003), and also use such laws to entrench political power and control over the populace. The research provided by Bjorn and Sandler, Tiefenbrun, Schaefer and others, lead to the conclusion that the nascent state of anti-terror laws in Africa underlines the lack of mature skills and sophisticated personnel formation and equipment in the fight against terrorism, making Africa ever more an attractive safe haven for terrorists and traffickers.

Conclusion and Recommendation

There is the need to address legislation to terrorism in a way that enables the workers in the field to adapt the law to the challenges they may face.

To the legislative drafters:

Additional weaknesses identified in the Act

These weaknesses apply to the anti-terror legislation of the nations in the sub-region as well:

- (i) the role of the executive in the declaration of the state of national, regional and district emergency is not clearly articulated,
- (ii) consequence management of the impacted area or the nation after the declaration was not mentioned,
- (iii) the constitutional limitations on the declarative process was left hanging,
- (iv) the conflict of laws and the management of emergencies seemed not to have been considered,
- (v) revamping the laws on disasters and emergencies to bring them to the current need level of the respective societies and in fighting terrorism was ignored,
- (vi) conducting quality improvement measures on the organizational and administrative framework of emergency intervention agencies to assess capabilities was not done and,
- (vii) introducing new programs like protecting first responders against third party liabilities and, empowering first responders with knowledge, skills and abilities in emergency matters were left out,
- (viii) designing comprehensive evacuation and resettlement programs for the community has never been considered in any of the laws of Ghana,
- (ix) providing the modalities for disaster assistance to businesses and individuals to ensure business continuity as well as limiting societal suffering after a major disaster, providing repetitive flood insurance to riparian communities, and
- (x) enhancing the laws to address specific disasters that confront the nation were all ignored as perhaps,

unnecessary cost. It was important through such a review process to also highlight the causes for the incremental losses in disasters and emergencies to both critical and socio-economic assets as well as human settlements vis-à-vis terrorism.

It is imperative to develop a comprehensive counter-terrorism law that clearly shows the responsible agency that should operationalize the mandate. Additionally, the concepts of Crisis Management and Consequence Management should be prerequisites for the construction of counterterrorism laws.

The legislature may consider the creation of a National Counter-terrorism Agency to focus on surveillance and interception techniques on terrorism and narcotics drugs on transit through Ghana.

We also recommend the following to fill the gaps in the national response regime as an over-arching measure: the Ghana Uniform Disaster Management and Emergency Response Code, UDMER-RC. It would form the legal framework or basis for the existence and operation of a National Platform on Disaster Risk Reduction, (DRR) including terrorism and other criminal activities against the state's interests. Within the proposed legal framework to enhance disaster and emergency management, UDME-RC also calls for the creation of a National Response Agency, to be charged with specific duties of emergency response of all kinds. This is necessitated by the reality that both the Anti-Terror Act of 2008, (Act 762) and NADMO's Act 517 of 1996 do not address many of the potential threats articulated in this paper. It would also reduce legal and administrative confusion at the organizational and at the operational levels within the stakeholders to national security as reported in this paper.

The Central Bank may design stringent standards for bank and other transfers of money from Ghana without upsetting business confidence and thus driving away investors.

The police agencies should be able to assess the flaws in the system as well as the reasons why its personnel may be susceptible to bribes and other compromises, particularly in such areas as white-collar and narcotic drug crimes.

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