

National Case Study: Ghana

Hon. Freddie Blay, First Deputy Speaker of Parliament, Ghana

I thank the organisers of this Seminar for giving me the opportunity to share a few thoughts with you on the very important topical issue of terrorism.

On receipt of the invitation to participate in this Seminar to discuss the Ghanaian situation, my immediate reaction was to conclude that compared with some African countries where anti terrorism legislations have already been enacted and made operational, Ghana, honestly, has not much to share in terms of experiences. However, a careful reflection on the topic reveals that our limited experience notwithstanding, we in Ghana face the threat of terrorism just like any other country. Indeed, while composing this paper, the United States announced a decision to put Ghana on its list of terrorism alert countries, thereby urging American citizens living in the country to be extra vigilant in my country which has been known to be peaceful and free from such attacks.

For lawyers and legislators terrorism is an awkward phenomenon. We appear to agree on what it is, but we invariably do not agree on its definition. Our first challenge therefore is to define it. For example, the U.S. State Department defines terrorism as “premeditated, politically motivated violence perpetuated against non-combatant targets, usually intended to influence an audience”. In India terrorism is defined under the Prevention of Terrorism Ordinance (POTO) as “acts of violence and disruption of essential services carried out with the intent to threaten the unity and integrity of India or to strike terror in any part of the people”. Underlying these, and indeed most other definitions, is the belief that resort to violence to achieve a political objective is unjustifiable.

In contrast, some commentators particularly from the Islamic world would go further to define terrorism as “an act carried out to achieve an inhuman and corrupt (mufsid) objective and involving threat to security of any kind, and violation of rights acknowledged by religion and mankind”. Such commentators exclude from the definition of terrorism:

- Acts of national resistance exercised against occupying forces, colonizers and usurpers;
- Resistance of people against cliques imposed on them by the force of arms;
- Rejection of dictatorship and other forms of despotism and efforts to undermine their institution;
- Resistance against racial discrimination and attacks on the latter’s strongholds;
- Retaliation against any aggression if there is no other alternative.

It is sometimes difficult to distinguish between acts of terrorism and the legitimate struggle of a people in pursuit of their acknowledged national cause and the liberation of their territories. For instance, the IRA has resorted to terrorism as a means of political struggle, while the African National Congress (ANC) adopted similar tactics during the struggle against apartheid.

These differences in definition graphically illustrate the dilemma we face in defining the phenomenon. The list of examples that fit in with the suggested definitions is almost endless. Unfortunately, the UN does not seem to have a clear definition of terrorism, and this compounds the situation even further. The key point about terrorism on which everyone agrees, however, is that it is politically motivated and must certainly be prohibited.

Terrorism in Africa: Ghanaian perspectives

Terrorist activities, until very recently, were unknown in most parts of Africa and where there have been such acts, the targets have been mainly interests of the United States and its allies. In West Africa, and for that matter Ghana, there has been no incidence of terrorism, but the events of September 11 have re-awakened the sub-region to the realities of terrorism and the need for anti-terrorism legislation.

In Ghana, we have decided to tread cautiously in enacting anti-terrorism legislations. At the moment the Ministry of Justice is in the process of drafting a proposed anti-terror Bill to be laid before Parliament after Cabinet approval. The contents of the Bill are not yet public, however, it can be said without doubt that the provisions will be informed by the need to protect fundamental human rights.

Cementing the safeguards against laws that could adversely impact on the rights of Ghanaians, Article 1(2) declares the Constitution to be the “Supreme” law of the land and any other law found to be inconsistent, with any provision of the Constitution, shall to the extent of that inconsistency, be void. Clearly, therefore, September 11 calls for the enactment of laws that tighten the noose against terrorism while ensuring that such laws do not contravene any of the provisions of the Constitution. In other words, any anti-terrorism legislation will have to be tested against express Constitutional provisions safeguarding the human rights of our people which are entrenched in our Constitution.

One would then ask what Ghana has done, in the face of these Constitutional constraints, in fulfilment of our international obligation pursuant to UN Resolution 1373 (2001) to take concrete steps to combat terrorism following the events of September 11. Soon after the horrific incidents, the Ghana

Government set up a committee against terrorism in the country. Among other things, the committee was charged with the responsibility to closely monitor, in collaboration with the security agencies, international developments and any possible national skirmishes orchestrated by terrorists. The Committee was thus mandated to advise the government on steps to be taken to combat the menace.

In Parliament, we quickly ratified three international conventions on terrorism. These are:

(a) International Convention for the Suppression of the Financing of Terrorism:

The object of this legislation is to make it an offence for a person who by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used, in full or in part to carry out acts of terrorism.

(b) International Convention for the Suppression of Terrorist Bombing:

This legislation makes it an offence for a person to unlawfully and intentionally deliver, place, discharge or detonate an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transportation system or an infrastructure facility with the intention of carrying out acts of terrorism.

(c) OAU Convention on the prevention and combating of Terrorism:

Determined to eliminate terrorism in all its forms and manifestations, this convention seeks to review the national laws of all state parties in order to establish criminal offences for terrorist acts and make such acts punishable by appropriate penalties that take into account the grave nature of such offences.

Thus, the ratification of these conventions has effectively empowered law enforcement agencies in Ghana to fight terrorism within the framework of existing criminal legislations.

The conventions were ratified in the House on 11th July 2002, barely a month after they had been laid and referred for Committee consideration. It is pertinent to note that in their reports to the House, the Joint Committees of Foreign Affairs and Constitutional, Legal and Parliamentary Affairs bemoaned the apparent lack of a clear-cut definition of what constitutes terrorism.

Ghana, and indeed all other states have the right and duty to protect themselves and their neighbours against this international crime. However, this must be done within the framework of internationally accepted laws, which take into consideration the fundamental human rights of suspects. Clearly, framers of anti-terrorism legislation have not been oblivious of the need to protect the fundamental human rights of individuals vis-à-vis the safety of the population. Also, human rights activists have never relented in their efforts to ensure that the rights of individuals are not unduly abused. In spite of these, anti-terrorism legislations around the world have impacted or are likely to impact negatively on the rights of the people.

As already mentioned, there has not been any act of terrorism either in Ghana or against Ghanaian interests abroad. However, the events of 11th September, 2001 have made it imperative for Ghana to take preventive measures against any eventuality. This led to the adoption of the resolutions to ratify the International Conventions on Terrorism on 11th July, 2002. The potential negative effects of these legislations on the liberties and rights of residents of Ghana can be enormous. Articles 12-31 of the 1992 Constitution of Ghana spell out in no uncertain terms, the fundamental human rights of all persons living in the country but these rights can be abused in many respects in the

name of terrorism prevention. Yet it must be done: we have adopted these laws in the awareness that there are risks for human rights – this demonstrates the gravity of the threat in our eyes. A few examples will suffice here.

The use of lethal force by the security agencies in anti-terrorist operations cannot be ruled out. Given that the security and safety of the nation at large is paramount and the fact that such force may be permitted under the laws of Ghana under certain circumstances such as self-defence, overzealous security agents are more likely to use excessive force in such operations, which can lead to the death of a suspect. This would clearly breach the suspected terrorist's right to life as enshrined in Article 13 Clause 1 of the 1992 Constitution. Clause 2 of the same Article spells out the conditions under which a person may not be held liable for causing the death of another person. It states that 'a person shall not be held to have deprived another person of his life in contravention of clause 1 of this Article if that other person dies as a result of a lawful act of war or if that other person dies as a result of the use of force to such an extent as is reasonably justifiable in the particular circumstances-

- a) for the defence of any person from violence or the defence of property, or
- b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, or
- c) for the purposes of suppressing a riot, insurrection or mutiny, or
- d) in order to prevent the commission of a crime by that person.

Thus, the security agents would quickly justify their action by reference to this clause of Article 13, when such breaches occur. Indeed, such breaches have been recorded in Ghana in the course of fighting crime. A typical

example is the shooting of 4 members of a neighbourhood watchdog in a suburb of Accra by a joint army-police taskforce during a night patrol to combat armed robbery in the city.

Under Article 14 of the 1992 Constitution, no suspect may be detained without charge for more than 48 hours except under a state of emergency declared by the President and ratified by Parliament. This is based on the fact that the legality of depriving an individual of his/her liberty must be ascertained without delay by a court of law. This provision contains the right to trial without undue delay. This fundamental right to liberty and to be free from arbitrary arrest and detention of suspected terrorists and their accomplices is likely to be trampled upon. The suspects are likely to be held without charge or access to a lawyer for protracted periods. Persons suspected to have committed or planning to commit heinous crimes against the citizenry are not likely to have public sympathy. So even where the suspected terrorist is charged and arraigned before court within the 48-hour period, he is unlikely to have his right to liberty upheld by the court because public opinion would be so much against him that the court would be more likely to accept pleas from the prosecution to remand the suspect in custody than to grant him bail. In some circumstances, it would be in the interest of the suspect to be kept in custody to save him from 'instant justice' from the public.

Closely associated with the rights of the suspect, when arrested, is the right to humane treatment. In the context of state response to terrorist violence, interrogation of suspected terrorists during and after their capture by state agents must be humane, as guaranteed by international humanitarian laws. The laws of Ghana prohibit the use of torture and inhumane methods during interrogation. This is of course consistent with Ghana's obligations under international law. However, the right to humane treatment also entails the detention of the suspect under acceptable conditions. These include the separation of suspects from convicted criminals, keeping male and female

suspects separately and the right to be kept under hygienic conditions. More important, this involves specific logistics and infrastructure, which sometimes impose considerable burden on developing countries, such as Ghana.

Lack of adequate logistics for the security agents to carry out effective investigations would serve as an incentive for the use of unorthodox methods to obtain confessions from suspected terrorists. It must also be admitted that unfortunately, the level of professionalism of some of the security agents falls below expectation with the result that the rights of suspects are abused by such officers due to professional incompetence.

Article 19 (1) of the 1992 Constitution of Ghana guarantees the suspect's right to fair hearing in a competent court of law. A major component of the right to fair trial is the elimination of ambiguities in the law with regard to the offence with which a suspect is charged. Given that no specific anti-terrorism legislation has been enacted by the Parliament of Ghana, suspected terrorists would be charged under the existing criminal law. Some of these laws may be unambiguous vis-à-vis the combating of terrorism. Thus, the suspected terrorist's right to a fair trial may be compromised. Again, public opinion may tend to influence the trial of suspected terrorists.

Terrorism is a serious problem affecting public order and in some cases, national security. Therefore, some limitations on the freedom of expression or access to information relating to fighting terrorism may be justified as measures that are necessary to protect the public order or national security. Censorship of publications relating to terrorist activities or anti-terrorist strategies and the reportage thereof is likely to be imposed in the fight against terrorism. This means that Article 21 (1) on a citizens right to information and free expression, may be contravened in the name of national security. Limitations on the right of journalists to protect their sources of information

in order to assist law enforcement agencies may also be imposed. A classic example is the censorship imposed by the Ministry of Information following the declaration of a state of emergency in the Dagbon Traditional Area in March 2002, as a result of violent clashes in the area.

Human Rights and Terrorism: The Challenges

The world today is confronted with an increasing threat of international terrorism. Although the main targets appear to be major Western nations, let us make no mistake about it; the events in Kenya, Tanzania, Algeria and Morocco easily demonstrate that terrorism knows no boundaries and it is a concern, as it must be for Ghana and Africa as much as the rest of the world. Terrorism is a menace that requires a global response and since September 11, the world has focused unprecedented attention on terrorism and the means of combating it. In addition to enhanced vigilance and more concerted efforts, the problem of terrorism will require sustained long term action if it is to be addressed successfully.

The question of Balance

In our fight against terrorism, there are some important challenges that we must address if we are to deal with terrorism successfully as law makers. First, there is a challenge of balance. Of immediate concern for all countries including Ghana is the need to develop efficient and practical legislative means of dealing with terrorists. In combating terrorism, the challenge not just for Ghana but the international community as a whole, is how to draw the important and delicate balance between the need for national security and the need to protect human rights. There is an important correlation between human rights abuse and terrorism. Human rights and security are not mutually exclusive. On the contrary, a clampdown on human rights breeds terrorism.

Let us remember that states where human rights are blatantly abused provide fertile breeding grounds for the promotion of terrorism. It is thus imperative that we do not sacrifice the human rights of our peoples in our quest to root out terrorism. We need to protect and improve upon the human rights standards in our countries, as a simple but effective starting point in dealing with terrorism and its causes. The most effective way, therefore, of dealing with terrorism would be to tackle the problem from the root cause. This brings me to the second challenge.

The Challenge of Root Causes:

Evidence from all over the world indicates that people resort to terrorism as a means to 'liberate' themselves when all other avenues appear to be ineffective. In short, terrorism feeds and breeds on injustice, poverty and situations of desperation. Terrorists exploit those who are marginalized in societies and those who believe they have nothing to lose. If we have to fight terrorism successfully, it is not enough to pass laws in the lofty confines of our legislative chambers. We must first deal with the challenge of the root causes because no amount of law, no complex machinery of security or indeed the most vigilant of security or intelligence machinery can deal with the desperate terrorist who believes he or she has nothing to lose.

The Challenge of the Rule of Law

It should be remembered that in dealing with the problem of terrorism, it is necessary for the law enforcement agencies to operate within the framework of international law, human rights and indeed the rule of law. The need to ensure public safety should not overshadow the rights of suspected terrorists. Indeed, there is the possibility of infringing on the rights of innocent persons in an attempt to flush out suspected terrorists. In as much as this may be inevitable, efforts must be made to minimise such breaches. This would require specially trained security agents with the requisite logistics for them

to perform their duties professionally. In this regard, it would be useful for the advanced nations to offer some assistance to developing countries.

Effectively dealing with the problem would require international collaboration both in intelligence information sharing and co-operation in handling suspected terrorists. Full meaning must be given to the International Convention for the Suppression of the Financing of Terrorism by the international community by blocking all possible sources of finance for the terrorist organisations. This would include effectively checking cross-border money laundering while taking care not to deny the flow of genuine funds to innocent residents. As a consequence, diplomatic isolation of nations proven to support terrorism should be enforced through the UN.

Requests for the extradition of suspected terrorists must be expeditiously handled while upholding the rights of the suspects. A dilemma in such situations arises when the domestic laws of the country requesting for extradition imposes punishments which may be unconstitutional in the country where the suspect is being held. For example, countries that oppose the death penalty may be reluctant to extradite a suspect to a country where the suspect is likely to be executed on conviction. There is therefore a need for international consensus under the auspices of the UN on what constitutes terrorism and the penalties for such crimes.

Conclusion

I would like to conclude this presentation by urging international support for a dual struggle as was advocated at the 10th International Freedom of Exchange (IFEX) general meeting in Dakar on September 11, 2002, where participants condemned “acts of terror and crimes against humanity, such as the attacks on the United States...”, but also did not hesitate to criticise anti terrorism laws passed in many countries that “include provisions that

undermine civil liberties and in some cases severely restrict the right to freedom of expression and freedom of information”.

As I noted earlier, in Ghana, any such express provisions in anti-terrorism legislation that conflict with our Bill of Rights, risk being declared null and void by the Supreme Court. It is perhaps for this reason, coupled with intense lobbying by human rights organisations and activists, that the proposed anti terrorism Bill aimed at harmonising our laws with the recently ratified International Conventions, is still the object of intense scrutiny regarding the fine print.

It has, indeed, been contended by some groups and individuals that sections of the Ghanaian Criminal Code (Act 29) that deal with causing unlawful harm, and the possession of explosives, firearms and ammunitions, without lawful excuse (s.192) adequately address the issue of terrorism. Nonetheless, the government of Ghana has no option but to amend our criminal code to take account of new internationally recognised rules such as those relating to the financing of terrorism.

Against this backdrop, assurances from the Ministry of Justice that due consideration is being given to the proposed bill are welcome. As I noted earlier, the fight against terrorism entails some important challenges to law makers all over the world. The good news is that I believe Ghana, like most other nations represented here today, has the democratic culture and the will to rise up to this challenge.

Thank you for your attention.