

DITCHING THE LAWS AND FREEING TERRORISTS: AN UNSAFE APPROACH IN COMBATING TERRORISM IN NIGERIA

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Abstract

Terrorism remains one of the serious crimes perpetrated by terrorists worldwide with despicable consequences. Existing laws on terrorism insist on the punishment of terrorists. However, the Nigerian State habitually loses many terrorists and sometimes reintegrates them into society, instead of punishing them according to the law. This work examines the Nigerian State's approach of ditching the laws and freeing terrorists in dealing with terrorism. Using the doctrinal methodology, the work found that this approach is unsafe in that it weakens the laws on terrorism, emboldens existing terrorist groups, frustrates the efforts of security officials in the prosecution of the terror war, and weakens increasing collaborations with other countries of the world against terrorism in Nigeria. Therefore, the work recommends an increasingly uncompromised punishment of terrorists according to the law and the avoidance of the habitual release of terrorists under any guise.

Key words: Approach, Combating, Ditching the Laws, Freeing Terrorists, Terrorism, Unsafe

1. Introduction

Terrorism has been a severe crime for ages (Hanson, 2015:107). In its evolution, acts constituting terrorism have been associated with states, organisations, and individuals. However, only those acts identified with organisations and individuals currently constitute terrorism in international and domestic laws (Hanson, 2020:135). Many international legal instruments on terrorism, particularly the United Nations (UN) treaties on terrorism, condemn terrorism and insist that terrorists be punished. Accordingly, these instruments demand that activities of organisations or individuals constituting acts of terrorism be prohibited within domestic laws of member states and perpetrators be punished according to the nature of the offence (Akani, 2013:218). The instruments further provide that where a state in custody of a terrorist is not willing or able to prosecute such terrorist, the terrorist should be extradited to another state for prosecution if such other state demands such extradition.

Following the demands of the existing international legal instruments on terrorism, many member states of the UN, including Nigeria, have domesticated these instruments in their national laws. Others have established national laws on terrorism for use in combating terrorism within their jurisdictions. The Nigerian State has not only incorporated these instruments into its national laws, but has also enacted other national laws. Notwithstanding these efforts, the Nigerian State, usually jettison these laws, sets terrorists free and sometimes reintegrates them into society with handsome rewards and attending unjustifiable treatment, instead of punishing them according to law. This approach has taken many dimensions with different nomenclatures, including amnesty and Operation Safe Corridor (OSC). The use of this approach in combating terrorism instead of punishing them according to the law is examined in this work. Accordingly, the work is divided into five parts. Part one is the introduction. Part two examines the nature of the legal norms on terrorism. Part three deals with the approach used by the Nigerian State to set terrorists free, while part four deals with the dangers of the approach. Lastly, part five puts forward the conclusions and recommendations.

2. The Nature of Legal Norms on Terrorism

The nature of existing laws on terrorism in the world today is punitive. These laws were particularly activated following the UN response against terrorism. The history of this response is traceable to the establishment of the UN at the end of the Second World War to ensure world peace and security (Agbebaku, 2006:53). This is because terrorists' violence was shown to constitute a threat to world peace and security, as conventional wars (Agbebaku, 2006:137). Thus, the UN brought into existence many conventions and protocols, amongst other legal instruments, to help member states combat terrorism. These legal instruments condemn terrorism as a crime, and insist that terrorists be punished suitably to the severity of the act. For example, the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft condemns all acts of terrorism affecting in-flight safety. It authorises the imposition of reasonable punishment measures on any person committing the offence (20 U.S.T. 941, 704 U.N.T.S. 219). The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft requires member states to make hijacking punishable with severe penalties. This is also the

demand of the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (24 U.S.T. 565, 974 U.N.T.S. 177).

Similarly, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, demands punishment for terrorists who attack internationally protected persons, including senior government officials and diplomats (28 U.S.T. 1975, 1035 U.N.T.S. 167). In the 1979 International Convention against the Taking of Hostages, member states agreed to prohibit and punish hostage-taking (T.I.A.S. No. 11081, 1316 U.N.T.S. 205). The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation demands punishment for terrorists involved in unlawful acts against Maritime Navigation (1678 U.N.T.S. 222). The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection demands punishment for persons involved in the manufacture, storage, transportation, sales and use of unmarked plastic explosives (2122 U.N.T.S. 374; Adedayo, 2013:11). The 1999 International Convention for the Suppression of the Financing of Terrorism commits states to hold those who finance terrorism criminally, civilly or administratively liable for such acts and to identify, freeze and seize funds allocated for terrorist activities (2178 U.N.T.S. 197). The 2005 International Convention for the Suppression of Acts of Nuclear Terrorism also demands the punishment of persons involved in acts of nuclear terrorism (2445 U.N.T.S. 137). In addition, the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation demands the punishment of persons using civil aircrafts as a weapon to cause death, injury or damage.

In all these identified Conventions, states are obliged to either prosecute an offender or send the individual to another state that requests their extradition for prosecution and punishment. In addition, these instruments exist as evolving codes of terrorist offences, which establish and place responsibilities on states to domestic the treaties into their criminal laws and make them punishable by sentences that reflect the gravity of the offence. Nigeria is a signatory to, and has ratified or acceded to, all these instruments and has domesticated them (Adedayo, 2013:10). Accordingly, these treaties are binding and in force in Nigeria. Therefore, the basic demand of these treaties is the prosecution and punishment of terrorists according to law. There is

undoubtedly no substitute for the prosecution and punishment of terrorism offenders by any of these treaties.

Apart from the demand for punishment of terrorists in these conventions, the UN has also, in many Resolutions, solemnly reaffirmed its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and committed by whoever (Akani, 2011:219). The resolutions demand that terrorism be punished as a crime. By UN Resolution 1373 of September 28, 2001, all member states of the UN and all peace-loving nations of the world are enjoined to enact new legislation or amend existing ones to criminalise all acts of terrorism and prescribe appropriate punishment (S/RES/1373/2001). Other resolutions used by the UN, which insist that terrorists be punished, include Resolutions 1267 of 1999 and 1333 of 2000, used against Osama Bin Laden, Al-Qaeda and the Taliban, which affected Iran, Iraq and Afghanistan [S/RES/1333(2000)] and Resolutions 1368 and 1377 all of 2001(S/RES/1368/2001). Compliance with these UN Resolutions and Conventions on terrorism by the Nigerian State resulted in the enactment of the Economic and Financial Crimes Commission (Establishment, etc.) Act (EFCC Act) 2002 as amended, now EFCC (Establishment) Act 2004 (Cap E 1 LFN 2004); Terrorism Prevention Act, 2011 as amended in 2013 (TPA 2011 as amended); and Money Laundering Act 2012 (Cap M18 LFN 2004). Other laws which accommodate acts constituting terrorism include Criminal Code Act (Cap C. 81 LFN 2004), Penal Code Act, Explosives Act (Cap E17 LFN 2004), Firearms Act (Cap F28 LFN 2004), Immigrations Act (Cap I11 LFN), Customs and Excise Act, and Public Orders Acts (Cap P42 LFN 2004). All these laws provide punishment for various acts constituting the offence of terrorism in Nigeria.

The Terrorism Prevention Act 2011, as amended, is the principal Act that deals with terrorism in Nigeria. This Act prohibits all acts of terrorism and financing terrorism, and Section 1(2) (h) of the Act insists on the punishment of offenders upon conviction to a maximum sentence of death. Section 1A (2) of the Act makes the Attorney General of the Federation, the authority for the effective implementation and administration of the Act in order to strengthen and enhance the existing legal framework to ensure conformity of Nigeria's counter-terrorism laws and policies

with international standards and the UN Conventions on Terrorism. In addition, he is required to maintain international co-operation, as required, for preventing and combating international acts of terrorism and to ensure the effective prosecution of terrorism matters for the punishment of culprits. The Act has, in item 19 of the amended section 40 of the Act, by referrals, made 12 of the UN Conventions on terrorism, of which Nigeria is a signatory, part of the Act. It also incorporates many provisions of the UN Conventions on specific acts of terrorism. Although the Nigerian State has domesticated these conventions and notwithstanding the presence of other existing laws on terrorism, terrorists are usually freed from punishment, compensated and reintegrated into society.

3. The Approach to Freeing Terrorists in Nigeria

Although the Nigerian State has arrested and prosecuted some terrorists, others have been released without prosecution and punishment, even when they have been shown to have committed the crime. The approaches under which guise the Nigerian State has so far used in freeing terrorists have come with different nomenclatures, including amnesty and OSC. Although Boko Haram, Indigenous People of Biafra (IPOB) and Islamic Movement of Nigeria (IMN) have all been proscribed as terrorist organisations in Nigeria, only members of Boko Haram are beneficiaries of the amnesty offer and OSC. In the beginning, this group started hostilities in the north-eastern part of Nigeria in 2009. During this period, the leader, Mohammed Yusuf, and the group, who were in opposition to western culture, which they condemned as polluting the Islamic religion, came into conflict with the Police. This conflict resulted in the death of many police officers and members of the sect (Ukpe, 2013:2). The group then acknowledged that the establishment of a fully Islamic State in Nigeria, including the implementation of criminal Sharia Courts across the country, is its goal (Ukpe, 2013:2). With this goal, the group has continuously carried out several attacks in Nigeria and beyond, leading to the destruction of many lives and property since 2009 to date. The group has been involved in the use of Improvised Explosive Devices (IEDs), suicide bombers, and sophisticated weapons to commit mass murder, kidnapping, hostage-taking, arson, torture and displacement of many Nigerians from their homes. Today, the Boko Haram terrorism cuts across the entire country up to other parts of the world, such as Cameroon, Chad and Niger Republic, with increasing

statistics of the destruction of human lives and property (Chiedozie, 2014:18). According to the 2020 Global Terrorism Index, the terrorism of Boko Haram has led to over 37, 000 combat-related deaths and over 19,000 deaths from terrorism since 2011, mainly in Nigeria. Similarly, the manifestations of their activities have earned Nigeria a notorious position and the worst ranking on the Global Terrorism Index as the country emerges as the third country affected most by terrorism in the globe according to the Ranking in Global Terrorism Index in 2020 (Sule & Gombe, 2020:39).

In response to Boko Haram terrorism, the Nigerian State, after failing to defeat the sect and end their terrorist acts, contemplated an amnesty offer for the sect after much pressure from northern leaders (Adigbuo, 2014:483). They argued that since it was granted to Niger Delta Militants, the same should be extended to Boko Haram members (Ekannem, Dada & Ejue, 2012:232). This is because, in the Niger Delta region of Nigeria, where militants held sway in 2006, state response via amnesty was used for the benefit of the militants instead of punishment in line with the philosophy of criminal law (Hanson, 2014:36). Following this pressure, President Jonathan, seemingly going under S. 175 of the Constitution of the Federal Republic of Nigeria 1999 as amended, then set up a Committee on Granting Amnesty to Boko Haram in 2013. The mandate of the Committee included: working out modalities for granting amnesty to members of the sect and a framework through which disarmament could take place within a 60-day timeframe (Adigbuo, 2014:483). It has been maintained that in practice, the mandate was interpreted as giving the committee three months to persuade Boko Haram to lay down their arms in exchange for a state pardon and social reintegration (Felbab-Brown, 2018:85). Although this Committee ultimately submitted its reports, it failed to succeed in getting Boko Haram to accept the amnesty offer as it was rejected by the sect, who maintained that they could not enter into any agreement with the Nigerian State (Felbab-Brown, 2018:83).

Although Boko Haram rejected the amnesty offer, the call for it met opposition demands by many, particularly on the ground that there was no wisdom in granting amnesty to a group responsible for killing people (Adigbuo, 2014:483). It was also argued that while consistent with the Nigerian Constitution, the amnesty was illegal under international law. This is because it failed to investigate and prosecute gross human rights violations, undermined the rule of law, and

violated the norms of justice, truth, judicial protection, reparations, access to court, and other rights of victims (Felbab-Brown, 2018:84). Many also opposed the offer as being unconstitutional in Nigeria, in that amnesty though sometimes used interchangeably with pardon, which is provided for in section 175 of the Constitution of the Federal Republic of Nigeria 1999 as amended, does not accommodate criminals such as the Boko Haram members (Hanson, 2019:121). However, despite these arguments, the Nigerian State went ahead to pressurise the sect with the offer and even set free some members of the sect in many cases, including detainees' swaps between hostages in the custody of the sects and members of the sects in government charge (Sule & Gombe, 2020:39). Accordingly, sometime in February 2020, the Nigerian State released 1400 Boko Haram members for reintegration into society (Jideofor, 2020).

While the clamour for the impropriety or otherwise of freeing Boko Haram terrorists in the name of amnesty continued and coupled with the fact of outright rejection of the amnesty offer by the sect, the Nigerian State introduced OSC in 2016 (Felbab-Brown, 2018:86). This came after the Nigerian State adopted the Policy Framework and National Action Plan for Preventing and Countering Violent Extremism (Policy Framework) in 2017. This approach provides the conduit through which the Nigerian State used, in recent times, to set Boko Haram members free and absolve them from prosecution and punishment. Therefore, since the Nigerian State failed to get Boko Haram, as a group, to accept the amnesty offer and stop their hostilities, a corridor was opened through this approach to grant freedom from punishment to Boko Haram terrorists that can defect, abscond and surrender to the Nigerian security forces. Accordingly, through the Defence Headquarters, the Federal government of Nigeria inaugurated OSC in 2016. It aimed to rehabilitate low-risk repentant Boko Haram fighters and re integrate them back into society. It involves vocational training, access to deradicalisation and civic programmes, which would make them useful members of society. Following this and in 2018, 244 Boko Haram members were announced to have been released after being de-radicalised, rehabilitated and reintegrated into Nigeria's society (BBC NEWS, 16 January, 2018). However, it is shown that the yardstick to determine people's eligibility for deradicalisation, rehabilitation and reintegration in Nigeria appears unclear. This remains the case because it was arranged that high-risk members; including senior commanders, were sent to a pre-trial detention centre; moderates, including foot soldiers

and mid-level commanders, go to OSC for rehabilitation; most civilians arrested during military operations, which are proven innocent released to the state for rehabilitation (Akum & Samuel, 2020). However, this arrangement is different from what is being done in practice as there is no clear-cut procedure.

4. The Peril of the Approach of Freeing Terrorists in Nigeria

Although freeing terrorists through amnesty or OSC, together with what they represent, may be considered a way out of conflict, it is undoubtedly dangerous in dealing with terrorism in Nigeria. The dangers of this approach find expression in widespread condemnations made against the government's efforts to free the terrorists and reintegrate them into society. One such condemnation is that the approach weakens the laws on terrorism because terrorists are not being punished but released with rewards. This is so because all international instruments on terrorism domesticated by the Nigerian State and domestic legislation on terrorism in Nigeria, provide for punishment for terrorists. They demand that punishments ascribed to different acts of terrorism should reflect the seriousness of the offence committed by the terrorists.

On the other hand, other countries of the world, including the United States of America (USA), France and Britain, deal with terrorism in accordance with the law. These countries have established firm State Policy in accordance with their laws – never to negotiate with terrorists or yield to terrorists' demands. Accordingly, terrorists are punished with decisive military actions and prosecution. The message of these countries to terrorists has always been to fight on and be killed or surrender and be prosecuted according to law. Sadly, the Nigerian State has no such state policy despite the plethora of legislation on terrorism. There also seems to be a lack of political will to establish such a policy and back it by law. This explains why the country usually jettisons the laws and frees terrorists in an irrepressible manner. This attitude reflects Nigerian authorities' growing recognition that they cannot deal with Boko Haram in accordance with the law as done by other countries of the world.

The approach is also dangerous in that it emboldens existing terrorist groups and situates them as heroes in Nigeria. This is so because, under this approach, terrorists are rewarded while victims

are abandoned. Terrorists who successfully defect are made to undergo vocational training and training in Islamic education before being rehabilitated and reintegrated into society, together with a payment of undisclosed amounts. On the contrary, victims of the Boko Haram insurgency still suffer the harsh realities of the conflict; humanitarian crisis, loss of relatives' lives and means of livelihoods. Many are still refugees in grimy displacement camps in Nigeria and other countries, including Niger and Chad. It is no news that thousands of people have died due to the ongoing conflict perpetrated by the Boko Haram, while property worth million have been destroyed. The anguish is still fresh as terrorist attacks continue now in almost all parts of northern Nigeria. Yet, what the Nigerian State does is free the terrorists from punishment, compensate them and re integrate them into society. At the same time, the victims watch on and are expected to receive them and continue to live with them peacefully. This creates a situation where there are fears that a social principle is being established in Nigeria whereby the victims of violence are neglected while criminals are rewarded (Barkindo, 2013).

The approach also operates to frustrate the efforts of security officials in the prosecution of the terror war. While fighting the terror war, the morale of the military personnel is usually high and encouraging at every success made, particularly when terrorists surrender or are captured, prosecuted, convicted or killed. The expectation is that the terror group is decimated and that such a number cannot return to the battlefield to help continue the war. However, this security personnel usually get frustrated when captured, or surrendered terrorist members are freed by the Nigerian State and reintegrated into society. This was the case in 2020 when soldiers cried out that the federal government was setting their killers free (Awolabi, 2020). This is dangerous because there is no guarantee that none of these freed terrorists would turn around and radicalise other members of society or later operate as an informant to the terrorist.

Given that many defectors keep in touch with those who continue with terrorism, it is critical that those who find their way into OSC can operate as a source of information leakages to the group, thereby frustrating the efforts of the security personnel in the prosecution of the terror war. Similarly, Nigeria's terror war has undoubtedly claimed many lives of members of the security forces in Nigeria. Accordingly, many members of the security forces have been captured and beheaded, while others have been killed in the line of duty (Aljazeera, 24 March, 2020). It

becomes frustrating to the security forces when perpetrators of these killings are captured or surrendered; instead of being made to face the law, they are freed and compensated. This usually frustrates the military more in the terror war and inhibits their morale, particularly as it happened in February 2020, when 1,400 terrorists that ought to have been prosecuted in accordance with the law were released by the President (Owolabi, 2020).

Furthermore, the approach is undeniably dangerous in that it weakens increasing collaborations with other countries of the world against terrorism in Nigeria. This is so because many countries of the world do not regard Nigeria as serious in dealing with terrorism. Accordingly, we have situations where groups are proscribed as a terrorist and prohibited with accompanying punishments. Yet, these groups are celebrated and allowed to operate freely in other countries. This is the case with IPOB, in which members have been offered the right of asylum in Britain and other countries (Vanguard, 21 April, 2021). Similarly, the Nigerian State continues to pay ransom to terrorists instead of arresting, prosecuting and convicting them in accordance with the law. The country, disappointingly, continues to negotiate with terrorists and other common criminals using some clerics like Shiek Gumi and ex-Presidents like Olusegun Obasanjo (Opejobi, 2021). The country has failed to establish and operate a firm anti-terrorism policy (never to negotiate with terrorists or yield to their demands); thus, it is not being taken seriously by other countries concerning collaboration regarding terrorism.

Moreover, this approach is dangerous in that it cannot operate to end terrorism in Nigeria effectively. This is because the low-rank combatants form the majority of the defectors who are finally freed and reintegrated into society. Leading high-ranking members of the group who are in charge of the perpetration of terrorism are not captured in this arrangement. Since the group has not been firstly defeated militarily, any conflict resolution strategy, such as OSC, is dangerous and cannot be successfully implemented. Additionally, the leaders of the group who are not captured in the arrangement and who have already allied with the Islamic State in West Africa (ISWAP) and ISIS, and therefore extremely radicalised, cannot stop their acts of terrorism because they are at times the mandate of the allied bodies. Accordingly, the deradicalisation

process, such as OSC, that lasts for a few months and does not accommodate these concerns is dangerous and ineffective in dealing with terrorism in Nigeria (Ogunleye, 2020).

Undoubtedly, OSC, which comprises disengagement, deradicalisation and reintegration (DDR), is a time-tested strategy employed by the UN in its peacekeeping operations. It is also no news that one of the requirements for DDR to take place is that there must be the signing of a negotiated peace agreement at the ending of hostilities or after parties have reached a comprehensive peace agreement that provides a legal framework in that regard. This strategy is generally employed to restore communities after civil wars and other forms of violent conflict (not while the conflict is ongoing, as in the case of Boko Haram in Nigeria). It has been shown that from 2005-2007, Indonesia employed a supportive deradicalisation approach, similar to the one used by the Nigerian State in dealing with terrorism (Ogunleye, 2020). However, the process failed due to many factors, including ineffective institutions for regular financial mechanisms, the nonchalant attitude of officials, and a lack of in-depth counter-ideologic procedures (Ogunleye, 2020). Other countries, including Somalia, have also employed deradicalisation programmes, which have failed. In Somalia, it is shown that the Serendi Rehabilitation Centre in Mogadishu offers support to ‘low-risk’ former members of Al-Shabaab (Jideofor, 2020). Notwithstanding this support, attacks by the group continue in Somalia to date, as Al Shabab attacked military bases in Southern Somalia in April 2021 (Maruf, 2021).

5. Conclusion and Recommendations

The Nigeria State has not been able to wrestle itself free from the grip of terrorism, particularly those perpetrated by Boko Haram, since 2009. The destruction accompanying various acts of terrorism in Nigeria is enormous. In its response, the Nigerian State has adopted many strategies, sometimes in line with the UN recommendations in various conventions and resolutions on terrorism. Accordingly, the Nigerian State has complied with the demands of the UN resolutions on terrorism and has domesticated all conventions on terrorism and made them part of its national legislation used in dealing with terrorism. However, these legislations have been jettisoned by the Nigerian State, which usually sets terrorists free instead of punishing them in

accordance with the law. This approach of ditching the laws and setting terrorists free instead of punishing them in accordance with the law has been shown in this work as being dangerous in dealing with terrorism in Nigeria.

Accordingly, this work recommends an increasingly uncompromised punishment of terrorists in accordance with the law. Since all existing legal instruments on terrorism demand that terrorism be punished, contrary decisions by the Nigerian State without justification cannot be celebrated or supported. The jurisprudence of punishment shows that punishment serves as a deterrence to the offender and other persons from further commission of the offence (Iwe, 2001:254). This punishment contributes to raising the cost of the commission of crimes and thereby discourages perpetrators. According to the Game Theory of terrorism, if the cost of using terrorism to achieve political goals in society remains high or costly without any corresponding incentive, people would not resort to it (Ochoche, 2013:777). Thus, where the cost of terrorism is high, it will be difficult for people to get involved in it, and to continue the perpetration of acts of terrorism will be discouraging (Ochoche, 2013:777). Negotiations between terrorists and governments, instead of punishment of the terrorists, help provide healthier grounds for terrorism to thrive. Thus, concern should be on making a resort to terrorism costly by denying terrorists any form of incentive and ensuring that even the environment is uncomfortable for perpetrators and their sponsors to be accommodated by insisting on uncompromised and unbiased punishment of terrorists.

The work also recommends avoidance of the habitual release of terrorists under any guise. The OSC has led to the release of many Boko Haram terrorists. However, the manner of selection of those freed has not been flawless. Apart from those released under OSC, others have been released as a condition for the release of hostages held by the terrorists. While prisoner swap is recognised and usually practised in war situations between countries or legitimate warring parties, it is typically done at the end of the war. Again, the release of terrorists in Nigeria is at times accompanied by a payment of a certain undisclosed amount of money to the terrorists, although the government usually denies this. Many of these terrorists who are released take part in the perpetration of terrorism at later dates. Similarly, the money paid to them as ransom is at

times used in the perpetration of terrorism at later dates. This is not promising and combating terrorism in this manner is dangerous and should be discontinued.

The work also recommends avoidance of negotiation with terrorists for any offer of money or freedom from prosecution. Instead, the Nigerian State's demands should be surrendered, prosecuted, or fought on and killed. This is what is obtainable in other countries that are serious about combating terrorism. Accordingly, the Nigerian State should create and operate a firm anti-terrorism policy to never negotiate with terrorists or yield to terrorist demands. This policy should be backed by law to ensure enforcement against individuals and institutions. The absence of this state policy gives individuals and the government a field day in actively getting involved in negotiations with terrorists, which leads to their release without prosecution. This situation is what contributes to fuelling terrorism in Nigeria.

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