

# Insecurity in Nigeria and Correctional Staff and Inmates Safety: A Looming Danger

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The Nigerian Correctional Services Act states that inmates are under the custody of the correctional centers. Despite this protocol, it is worrisome that we are observing recent increase in the break in of external gangs into some Nigerian correctional facilities and freeing of inmates in the country. This has led to incidents of violence and death among correctional staff and inmates. Hence, the research gears to examine the rising insecurity in Nigeria and correctional inmates' safety. The doctrinal research methodology is deployed with reliance on primary and secondary materials. The paper finds that safety of prisoners and prosecution, correctional staff are in jeopardy. The study also finds that most prisons are old dilapidated structures without strong security. Correctional facilities are constitutional responsibilities of the Federal Government. The research recognizes the parlous state of the Nigerian economy and therefore recommends outsourcing of secure modern prisons to private firms who will build, operate, and manage. It further recommends linking of correctional centers via communication gadgets to military barracks for immediate back up in the event of an attack.

*Keywords:* insecurity, correctional facility, external gang, jail break, inmate's safety

## Introduction

Correctional centers hold awaiting trials persons (ATPs) and convicts who have been found guilty of crimes. It was previously known as the Nigerian Prisons Service (Cap P29, LFN). A convict is one who has been adjudged guilty of a crime and is serving a sentence as a result of such conviction (Garner, 2009, p. 333). The Nigerian Correctional Service Act 2019<sup>1</sup> addresses new issues that were not covered under the repealed Act and provides clear rules setting out obligations of the Nigerian Correctional Services. Correctional centers holding inmates have come under vicious attacks by gangs of well-armed groups from outside of the prison aside from prison breaks orchestrated from within. What are the implications for the inmates, staff, criminal justice system, and the citizenry? These issues will be addressed in this paper.

### The Prisons

A prison is defined as a State or federal facility of confinement for convicted criminals (Garner, 2009, p. 1314). Imprisonment punishes, it deters the imprisoned from offending again, it deters others from offending

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<sup>1</sup> Nigerian Correctional Service Act, 2019, is headquartered in Abuja. It has eight Directorates: Finance & Accounts; Health & Welfare; Human Resources; Inmates Training and Productivity; Non-custodial sentences; Operations; Staff Training and Development; Works and Logistics.

and thus sharing the prisoners fate. A prison is also an institution which keeps convicts from offending again, in a sense, from infecting society (T. Alabi & S. O. Alabi, 2011). It is the darkest region of the apparatus of the justice system in Nigeria (Dambazau, 2007, p. 201). The organized prison system was introduced to Nigeria by the establishment of the first prison located at Faji, Lagos Island with 300 inmates. It was a “common goal”—a temporary building of mud and thatch without drainage, baths, lavatories, or urinals (Lagos Blue Book, 1862). The prisoners were comparatively well fed and well treated thus escapees were low. Prisoners were engaged on road repairs, conservancy and hours of work were from 6 am to 4 pm with one hour break (Ogunleye, 2007, pp. 31-34). By 1910, government had established prisons in Calabar, Onitsha, Benin, Ibadan, Jebba, Lokoja, and Degema and in 1914, the prisons in the Northern and Southern territories merged to form the Nigerian Prison Service. In 2012, a nation-wide prison audit was founded as follows (National Prison Audit, 2012, pp. 2-12):

1. Most of the prisons especially in the North East were old and dilapidated, some having been built as far back as 1820 with no major renovation since for example Warri prison was built in 1805, Azare in 1816, and Degema prison in 1855.

2. Detainees kept surroundings and cells clean but most prisons lacked basic toiletries like soap and disinfectants. Overcrowding is a major problem affecting sanitation. Some prisons had pit toilets which were often over-filled, there were bucket toilets in Gassol and Serti prisons in Taraba state and in Otukpo in Benue state. Few prisons had water cistern toilets while Serti prison had no toilet, bathroom, or drainage.

3. Some had no transport facility necessary to convey Awaiting Trial Persons (ATPs) to courts and kitchen facilities were old and obsolete.

4. Most prisons had vocational facilities but no workshops and inadequate tools. In a particular prison, there was only one sewing machine to 300 detainees.

5. Most custodial centers had access to educational opportunities. In MSP Wukari, Gembu, Takum, Lau prisons, there was poor access to educational studies except for Nguru, Gashua, Tula prisons. There has been a marked improvement in rehabilitation measures of the custodial centers across agricultural facilities, educational access, vocational skills acquisition, and so forth (Shajobi-Ibikunle, 2022).

### **Nigerian Correctional Service (NCoS)**

In Nigeria, Corrections fall under the Federal Exclusive List of the 1999 Constitution (Item 48, Exclusive Legislative List, 1999 Constitution). Therefore, there is no State owned or privately run prison. A convict is held in the custody of the Nigerian Correctional Service (NCoS). It was previously, known as the Nigerian Prison Service (NPS), and its aims were not really exclusively based on reforming the offender. However, on 31st July, 2019, the new NCoS Act was signed into law. The name was changed to Nigeria Correctional Service but it appears not much else has changed. The service is now responsible for custodial and non-custodial sentences (section 1(1)). Of importance is section 2; sub-section 1 states that the Service will: (a) ensure compliance with international human rights standards and good correctional practices; (b) provide enabling platform for implementation of non-custodial measures; (c) enhance the focus on corrections and promotion of reformation, rehabilitation, and reintegration of offenders; and (d) establish institutional, systemic, and sustainable mechanisms to address the high number of persons awaiting trial. As of 2021, there were 240 establishments in the Nigerian correctional system, with an inmate population of 70,797 against the official capacity of 50,153 (Nigerian Prison Population 2021).

Table 1

*2021 Nigerian Prison Information\**

Nigerian prison information 2021	
Prison population total (including pre-trial detainees/remand prisoners)	70,797 on 24.01.2022 (national prison administration)
Number of establishments/institutions	240 (2021)
Official capacity of prison system	50,153 (26.07.2021)
Occupancy level (based on official capacity)	136.7% (26.07.2021)

*Note.* \* How many prisons in Nigeria, <https://www.google.com/search?client=firefox-b-d>.

**Classification of Prisons**

Generally, prisons are categorized as maxi-maxi security, maximum security medium security, minimum security, and women prisons. Maxi-maxi security prisons house the most dangerous prisoners. A good example was Alcatraz prison in the United States. Maximum security prisons focus almost exclusively on security, preventing escapes and hurting each other or prison staff (Samaha, 2003, pp. 203-210). They are characterized by fortress—like perimeter walls, multiple fences with cyclone wire, internal security, and operating procedures rigid in curtailing movement, providing maximum control over inmates (Dambazau, 2007, pp. 203-205). For medium security prisons, although security is important, inmates are exposed to a variety of programmes to assist them become productive citizens upon release. Thus they are exposed to various educational and vocational skills. Minimum security prisons inmates are usually non-violent, white-collar, first time, and younger offenders, more or less like “country clubs”. It houses drug addict rehabilitation facilities, farm centers, juvenile homes, etc. Women prisons cater for women convicts. However, classification may differ from country to country.

**Causes of Prison Attacks**

Prison attacks whether from inside or external attacks are successful mostly because of the weaknesses of custodial incarceration in Nigeria. It is said that the prison system operates on certain characteristics namely: the deprivation of liberty, discipline, isolation, segregation, and work. Psychologically, a convict is subjected to overwhelming feelings of low esteem by the processes he goes through on arrival in prison. Stripping him naked represents dominance over him, making him emotionally and physically vulnerable; shaving his head symbolizes “emasculatation”; replacing his real name with a number delivers a powerful blow on his ego; depriving him of his material possession strips him of an “integral part of self” constant surveillance feelings of inadequacy (Silverman, 1980). Denied the rudimentary choices of everyday life, including choice as to heterosexual or otherwise sexuality, he is condemned to what Sykes calls “involuntary celibacy”.

Overcrowding is a major issue in the nation’s correctional centers. As of 2021, rate of overcrowding was 41%. However, the over-crowding is also due principally to the huge population of Awaiting Trial Persons (ATPs). As of 2019, convict population was only 31% of the total prison population in the nations’ correctional system (Prison Population 2000-2018). The huge population of ATP’s continues to rise despite efforts by government and non-governmental organisations to decongest prisons. The Nigerian Correctional Services Act also addresses overcrowding by advocating increased use of non-custodial penal sanctions such as community service, probation, parole, and mediation between the offender and the offended (ACJA, 2015).

Table 2

*\*Nigerian Prison Population 2000-2018*

S/N	Year	Total population	Prison population rate (%)
1.	2000	44,450	36
2	2002	40,048	31
3.	2004	38,999	29
4	2006	40,953	29
5	2008	41,143	27
6	2010	46,586	29
7	2012	51,560	31
8	2014	56,785	32
9	2016	63,142	34
10	2018	71,522	36

*Note.* \* Nigeria/World Prison Brief, <https://www.prisonstudies.org/country/nigeria>.

Living conditions are generally poor. Concern has been expressed by visiting Chief Judges and other functionaries to the prisons about the poor state of available facilities and the resultant inadequacies (Onadeko, 1998). The conditions of inmates in Nigeria's prisons are pitiable. The living conditions are appalling and damaging to the physical and mental wellbeing of the inmates. Inmates live with poor sanitation, lack of food, lack of medication, over-crowding, poor clothing and sleep two or three on the bed/bare cold floor (Shajobi-Ibikunle, 2014, p. 97). The prisons have also been described as "human cages" with no facilities for correction, reformation, and vocational training (Alemika, 1983). The windows are small and there is no ventilation (Adelaja, 2009). Cases of death arising from communicable diseases due to difficulty in adequate feeding and health care arises also (Prison Annual Report, 1989).

There have been loud complaints over the years on the need for improvement in feeding of prisoners and improved transparency in contracting for prison services. In August, 2019, about 50 inmates at the Keffi prison tried to escape, complaining of being poorly fed, being forced to live in unsanitary conditions, and not receiving medical attention. The prison also had a problem with sewage disposal and a severe shortage of drinking water (Oduah, 2019).

Monies are budgeted for feeding. Monies are budgeted for drugs, so why are inmates not getting the food that they need to get? Who is getting these contracts to feed these inmates? Can we know the people and how much is involved. (Oduah, 2019)

Harsh prison conditions can cause tension to build up among inmates until it breaks out in the form of mass violence as in the Keffi prison riot of 2019 (Gaines et al., 2001). The foregoing is a contravention of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. It states that all persons under any form of detention or imprisonment are to be treated in a humane manner and with respect for the inherent dignity of the human person (Principle 1). Section 34 of the 1999 constitution also states that every person is entitled to respect for the dignity of his person and should not be subjected to inhuman or degrading treatment.

Quality of Corrections Staff is a germane issue also and is important to ensure effective prison management and humane treatment of inmates. Samaha opined that they were previously known as prison guards due to a mistaken notion that they were to protect the public by ensuring non-escape of convicts and

controlling the prison prisoners by keeping order. Rehabilitation is an essential part of corrections today but guarding and watching prisoners is their main task and it is dangerous work. This is evidenced by increasing number of staff brutalized in prison breaks in the nation. Insider connivance is also a worrisome factor. The Senate President alluded to this in his visit to Kuje custodial center after the July 2022 attack (This Day, 2022). Violence in prisons is an aspect that receives considerable attention when riots occur, but little attention is given to the internal violence of inmates against each other or against themselves (Reid, 2012, pp. 532-538). Working conditions of custodial staff are important. The 2012 Prison Audit had recommended a complete overhaul of officers' residential accommodation whilst their emoluments should be periodically reviewed upwards, office accommodation was to be well-furnished and improved upon. The Mandela Rules state that so far as possible, prison staff shall include a sufficient number of specialists such as psychiatrist, psychologists, social workers, teachers, and trade instructors. The services of the latter three category are to be on permanent basis as much as possible (Rule 78(1) & (2)).

### **Overview of Prison Breaks (2008-Till Date)**

A prison escape (or prison break, bust out, breakout, jail break) is the act of an inmate leaving prison through unofficial or illegal ways (Prison Escape, 2022). Escape from prison is a criminal offence in most countries including Nigeria. The Nigerian Correctional Service has been grappling with increasing number of prison breaks. Due to the pervasive lack of security in and around custodial centers nationwide, prison breaks have so far resulted in the escape of over 7,000 prisoners from Nigerian prisons since 2015, with over 5,000 recorded in just one year 2020 (This Day, 2022). Although prison break is a worldwide phenomenon, it is assuming a worrisome dimension due to its increased number and attendant consequences in the nations (Shajobi-Ibikunle, 2020, p. 8). It is estimated that a total number of 2,255 prisoners escaped across Nigerian prisons as of 2014 (Daily hunt, 2015). Consider a few of such recent events (Nigeria Prison Break, 2019):

1. Onitsha prison break on June 2008—out of 280 inmates that escaped, only 195 were caught (All Africa.com, June 2008).

2. Enugu prison on June 3, 2009—a massive jail break in which out of 987 prisoners 724 were ATPs. 150 prisoners all awaiting trial cases escaped in a daring midnight break. They overpowered the security officials, broke through the roof ceiling and locks to facilitate their escape (Planet Data, 2009). They attacked prison officials, beating them into coma before making good their escape (Francis, 2009). 130 were later recaptured (Daily Champion, June 2009).

3. Bauchi prison break on September 7th 2010 was allegedly orchestrated by the Boko Haram terrorist group in which 721 inmates escaped, five deaths were recorded, and six injured.

4. Koton-karfe, Kogi State prison break—2nd November 2014. Gunmen suspected to be Boko Haram attacked Koton karfe federal minimum security prison; 144 prisoners were freed and one inmate killed. Most ATPs were being held on robbery charges. 12 inmates returned to serve out their sentence whilst 45 were recaptured.

5. Ado-Ekiti, Ekiti State prison break—30th November 2014. 60 gunmen attacked Ado-Ekiti prison and 341 prisoners escaped. One warder and 20 dogs were killed. 67 were re-arrested and one inmate returned to serve out his sentence.

6. Olokuta, Akure, Ondo State prison break—30th June 2013 involved an attack by about 50 unknown gun men on the Olokuta Medium Security Prison, Akure. 175 prisoners escaped, two inmates died with one warder injured. 54 escaped inmates were rearrested but 121 escaped.

7. Kirikiri, Lagos State maximum security prison break—this occurred on 10 October, 2014 though unsuccessful. In this case the attack was by the inmates, which resulted in the death of 20 inmates, 80 sustained injuries, but 12 prisoners escaped.

8. Sagamu, Ogun State prison break occurred on 4th January 2013. 20 inmates escaped. There were no deaths but officials and inmates were injured. Four escapees were re-arrested by the armed squad of the Corrections service and one escapee returned to serve out his sentence.

9. Minna prison break—on 6 December, 2014 about a week after the Ekiti prison break, Minna medium security prison was again attacked by three unknown gunmen suspected to be armed robbers. This resulted in the escape of 270 prisoners leaving one official injured but no deaths.

There have been other attacks since then.

1. September 3, 2015—Sokoto remand home break occurred. 13 inmates escaped.

2. Kuje Custodial center on 24 June, 2016—There was a jail break in Kuje prison. Two high profile inmates escaped (The Nation, 2022).

3. October 7th 2017, Enugu custodial center had a jail break and two inmates escaped.

4. December 27th 2017—Ikot Ekpene prison was attacked and 47 inmates escaped.

5. June 3rd 2018—In the Minna minimum security Prison break 204 inmates escaped leaving one staff dead.

6. October 19, 2020—During the ENDSARS protest, hoodlums broke into correctional facilities in Benin and Oko.

7. October 22, 2020—Protesters broke into Okitipupa correctional center.

8. October 2020—An attempt at jail break in Ikoyi prison was foiled.

9. October 22, 2020—An attempt to break into Afara Umuahia center was foiled by the combined team of the Army, Police, Nigeria Security & Civil Defense Corps, and armed unit of the NCoS.

10. April 5, 2021—Gunmen attacked the Owerri Correctional center along with the Imo State Police Command, burning property and vandalizing vehicles.

11. April 22, 2021—Security agents foiled an attempted jailbreak by inmates of Kurmawa Prison located within the Emir's palace in Kano.

12. October 2021—the Abolongo Correctional center in Oyo was hit by unknown gunmen.

The custodial center held 1,060 inmates comprising 560 ATPs and 500 convicts. 831 ATPs were freed but 262 were later recaptured (The Nation, 2021).

13. Barely, five weeks later, on November 28th 2021, gunmen suspected to be herdsmen from Barkin Ladi Local Council in Plateau State, North Central attacked the Jos Medium Security Custodial center. 262 inmates were freed, 11 men killed namely an NCoS officer, nine inmates, and one of the attackers. The inmates' records room was completely burnt down. 262 inmates were freed but 10 later recaptured.

14. January 2, 2022—Mandala Prison in Ilorin had a jail break and three inmates escaped.

15. May 13, 2022—Agbor prison wall fence collapsed and three inmates escaped.

### **Kuje Prison Attack**

On 6th July, 2022, terrorists broke into Kuje Correctional center successfully. Apparently, Government had received intelligence report of a likely attack but took no steps at mounting a defense. The breakdown of inmate population of Kuje custodial center is examined as seen on Data of Kuje Prison at the time of the Attack.

First is to note that there was: overcrowding by about 50,000 inmates, five persons were killed; 64 Boko Haram suspects escaped, and 600 inmates escaped. It would appear the prison lacked Closed-Circuit Television (CCTV). The Senate President conducted a visit after the attack and observed “Having gone round the facility itself, we are disappointed that there are no CCTV, something that will record or at least give you a view of what is happening and sometimes record the event” (This Day, 2022).

Table 3

*\*Summary of Inmate Population by Convict and Awaiting Trial Persons as at 7th October, 2019*

2019 summary of inmate population	
Total inmate population:	73,818
Total male population:	72,342
Total female population:	1,476
Total convicted prisoners:	22,850
Convicted male prisoners:	22,528
Convicted female prisoners:	322
Total awaiting trial prisoners:	50,968
Awaiting trial males:	49,814
Awaiting trial females:	1,154
Convicted prisoners:	22,850 (31%)
Awaiting trial prisoners:	50,968 (69%)
Male prisoners:	72,342 (98%)
Female prisoners:	1,476 (2%)

Note. \* <https://www.prisons.gov.ng/statistics>. Retrieved 12 October, 2019.

Table 4

*Data on Kuje Medium Security Attack\**

S/N	Prison capacity	Total number of inmates	Escaped inmates	Captured inmates	Inmates in custody	Escaped Boko Haram Suspects	Inmates on the run	Those killed during attack
1.	940	994	600	443	578	64	416	05

Note. \* The Nation, Thursday July 7, 2022, Vol. 13, No. 5817, p. 1.

## Effects of Prison Breaks

### Declining Morale of Law Enforcement

Al-Barnawi one of the Boko Haram commanders along with 63 others was forcefully released in the Kuje custodial center attack. Top Boko Haram and ISWAP terrorists and their financiers were all released including Boko Haram second in command, Muhammed Sani, as well as Yusuf Ali Yusuf, Mansur Usman, Zakari Nabil, Sadiq Garba Abubakar, and Yazid Usman and several others. Members of the Armed forces have lost men and officers fighting Boko Haram insurgency in the North East, banditry, and unknown gun men. It will be demoralizing to hear of the Kuje debacle. Another escapee was the notorious kidnapper of Taraba State, Hamisu Bala aka Wadume who operated kidnap ring across North East and North West. He had eluded arrest until Nigeria Police elite task force arrested him losing three highly trained officers in the process (Wadumeen.m.wikipedia.org, 2022). Their escape will only reduce morale of the men and women who face death in the line of duty against criminals and insurgents.

### **Communities in Danger**

When attacks occur or the inmates mount an insurrection and escape, it has implications on the surrounding community and by extension the society. Law Enforcement invaded the community to smoke out escapees. In the process, ordinary citizens who are trying to go about their daily labors are harassed. During the attack on Benin prison, one of the inmates who escaped went to the village and murdered the key witness who gave evidence that led to his conviction. Aside, it is dangerous to society to have violent rapists, murderers, bandits roaming the community who should be locked up for the protection of society.

### **Increased Criminality**

The escaped prisoners were not saints. Some were convicts while most were ATPs. Some of the ATPs may be innocent but others were hardened criminals. They escape to go back to a life of criminality, which is not safe for the community.

### **Lack of Confidence in Correctional System**

Kuje prison housed Boko Haram suspects, politically exposed persons for example at least two ex-Governors convicted of corruption related offences, senior police officers undergoing trial for sleaze and all manner of hardened criminals along with petty convicts and ATPs. This violates classification of prisoners as Kuje is categorized as a Medium security custodial center. It is time for the Nigerian Government to consider partnership with international firms with expertise in management of custodial centers on a Build, Operate and Manage agreement for maximum security prisons. In the United Kingdom, in 1992, Wolds Prison in Yorkshire was the first modern European prison to be run by the private sector (We-own-it, 2019). G4S, the company who ran Wolds Prison, has now been stripped of this contract but at present there are 14 private prisons contractually managed by private companies such as Sodexo Justice Services, Serco, and G4S Justice Services (Contracted-out prisons, 2019). There are also privately run prisons in the United States (Sentencing project, 2018), South Africa, and in Australia private prisons currently operate in five jurisdictions: New South Wales, Queensland, South Australia, Victoria, and Western Australia (Allizi, 2012). There are issues surrounding privately run prisons that have to deal with treatment of inmates, staff conditions of service, etc., but the call for these firms is as far as maximum security centers are concerned due to involvement of ISWAP and Boko Haram terrorists who are better armed and coordinated than the hotch potch security teams on ground supposedly to protect the centers.

### **Increased Lack of Confidence in Government**

The attackers allegedly arrived at about 10 pm and operated for about three clear hours before departing. Now Kuje Custodial center is just 50 minutes out of Abuja, the Federal Capital Territory, with military checkpoints along that route. Yet, no back up arrived from the security agencies. It remains to be seen if the prison had communication facilities to call for back up. The security architecture of the government proved ineffective. It was stated that the terrorists who were about three hundred in number came with heavy arms and ammunition Rocket propelled grenades (RPG) and improvised explosive devices (IED). The Police Affairs Minister, Maigari Dingyadi, stated that the invaders overpowered the minimal security presence at the facility as a result of their large number and superior fire power.

### **Failure of Intelligence**

It appeared there was failure of intelligence about the invasion. However, these agencies are stretched thin at the moment of fighting insurgencies like banditry in the North West and North central parts of the country. In



all of these attacks, movement of men and materials is involved. Why is it that the communities do not inform the intelligence agencies prior to these attacks?

### **Waste of Lean Resources**

The Nigerian economy is not doing well. This is putting it mildly. Poverty rates are up.

As of 2018, Nigeria was poverty capital of the world (World Poverty Clock, 2022). As of 2022, World Poverty Capital said 70 million people are now living in extreme poverty representing 33 percent of the population although India has overtaken Nigeria as the poverty capital of the world. Most of these prisons are colonial structures not fortified enough to withstand the daredevilry or modern day aggression by these attackers. Each attack means Government already overburdened by competing demands from other sectors of the economy would be deprived. Considerable resources will have to expend to chase the escapees, arrest and transport them back to Abuja under tight security. Resources would be deployed to rebuild the prisons. Prison breaks in Nigeria may also be “adduced to corruption, poor funding of the prison services, poor prison facilities, inadequate security features such as CCTV, motion sensors, high wall made up of barbed wire and sometimes electric fencing of the wall” (Wikipedia, 2019). It is doubtful the major custodial centers can boast of these facilities.

### **Liability for Death of Inmates**

Under International Rules, the nation is responsible for deaths of any inmate in its custody. It should be so held to account. For the detainees, the Constitution avers that they are innocent until proven guilty. Even for a convict in custodial detention, his security and well-being is the responsibility of the detaining authority. By Law, Correctional Service has a legal duty to (i) pay appropriate compensation as may be determined by the panel of inquiry or a court of competent jurisdiction to the victim or the family of the victim whichever is applicable, and (ii) cover the cost of all hospital and associated expenditure and, in the case of death, all expenditure related to burial rites as may be determined by the panel of inquiry or a court of competent jurisdiction (section 32(4) (c) i & ii).

### **Liability for Injury and Death of Staff**

It has been observed that generally correctional staff are underpaid, understaffed, and under-trained. There is also issue of receipt of bribes from well connected inmates, stealing from inmates' rations, and allowing illegal substances into prisons (Dambazau, 2007, p. 211). An increasing number of staff are losing their lives or getting injured during these attacks either from internally provoked jail breaks or from external attacks. The Correctional Service has a duty to provide an enabling environment safe and secure for staff to discharge their duties effectively. In the Strangeway prison attempted breakout at Manchester on April 1, 1990, 47 prison officers got injured (Bamgbose, 2010, p. 57). Section 28 of the NCoS Act provides as follows:

28(1) There shall be provided monitoring devices to protect, control and safeguard Security of correctional activities, including observatory towers, double perimeter walls, close Custodial Centers, circuit television, body scanners, e-monitoring devices, electrically activated alarm systems and other instruments of restraint.

(2) The Correctional Service shall establish and maintain a fully equipped armed squads, intelligence and investigation unit to enhance security, Surveillance, monitoring, intelligence gathering and protection.

(3) In deploying the facilities under subsection (1), priority shall be given to the security requirements of maximum security custodial centers.

In the light of this legal duty which it is submitted NCoS owes its staff, the institution is liable if it is proved it failed to take the measures outlined in section 28. When there is a case of criminal negligence which has led to death of a staff the liability subsists.

#### **Effect on Judicial Process**

When security is breached and a prisoner escapes, it frustrates the sentence imposed by a judicial officer (Bamgbose, 2010, pp. 55-57). Criminal trials take quite a long time before completion. State also incurs expenses in investigation of crimes and prosecution. It throws up as a waste of time the adjudication and judgment of a competent court in arriving at a verdict of guilt in a criminal trial. Such inmates should be arraigned in court once recaptured and be sanctioned. In the Strangeway prison attempted breakout, the prisoners recaptured were taken to court, tried for attempting to escape, and given additional prison sentences.

#### **Effect on Other Inmates**

Any person who connives, aids, and abets, harbors the person or aids in the concealment of an escapee or instigates, solicits, or counsels a mutiny, sedition, or disobedience to a lawful command of custodial staff for their escape commits a criminal offence under the NCoS Act (Section 29(1) (d) & (e)). The Act penalizes these acts with varying amounts as fines ranging from N1million to N5million. There is also imprisonment for periods from 12 months to four years. This information should be communicated to citizenry continuously and especially when a prison break occurs. It must be stated that in prison breaks from inside or externally motivated, some escapees voluntarily return to custody.

#### **Security of Correction Centers**

Custodial centers particularly maximum and medium institutions should have well armed units and security features such as motion detectors, CCTV, barred windows, high walls, barbed wire, razor wire, and electric fencing to make escape from within difficult. Another matter for consideration is whether the arms they bear match the firepower of the invaders as the Kuje center. Most of these centers are historical structures built at the turn of the twentieth century, they are not fortified enough to withstand the daredevilry or modern day aggression by these attackers. Furthermore, one of the challenges of the over-crowding of these centers is that the inmates easily swamped the security system to break loose. There was acute failure of security back up for Kuje attack unlike the Jos attack where reinforcement came from other security services including Nigeria Police and the Department of State Security located in the neighborhood. Ordinarily, the NCoS do not bear arms but after the Oyo prison break, a joint team comprising the Nigerian army, NCoS staff, Nigerian Security & Civil Defense Corps (NSCDC) staff were allegedly guarding selected custodial centers. Yet the centers were easily over run. Only one officer, who was not even a staff of the NCoS, died. He was a staff of Nigerian Security & Civil Defense Corp (NSCDC). The rest of the staff simply fled.

#### **Use of International Private Correctional Security Firms**

The Nigerian Government should consider it an opportune moment to seriously consider contracting out the security of Maximum security Correction centers to international agencies with skills to manage security of prisons. It is fighting an undeclared war on several fronts: with Boko Haram in the North East, bandits now classified as terrorists in the North West, criminal herdsmen in the Southern part, Eastern States Network/IPOB in the South Eastern flank. The situation is dire. The nation cannot continue in this path.

### **Inmates Right to Life**

Section 33(1) of the 1999 Constitution confers on citizens a right to life. It states that every person has a right to life and no one shall be deprived intentionally of his life, save in execution of a sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Sub-section (2) cites exemptions to sub-section (1) to be a situation where the inmate dies as a result of the use, to such an extent and in such circumstances as are permitted by law, of such force as is reasonably necessary, then the death is not wrongful. This ranges from (a) the defense of any person from unlawful violence or defense of property (b) in order to affect a lawful arrest or prevent escape of a person lawfully detained (c) to suppress a riot, insurrection, or mutiny. The force must be reasonable.

The law requires the officer in charge of a custodial center to report every death to the State controller of correctional service who is to report to the Controller General (Section 32(1), 2019 Act). Where there is death or serious bodily injury, the State Controller of Corrections is mandated to investigate the incident and notify the next of kin and higher authorities. The Law directs that an inquest shall be instituted in all cases of deaths in custody to ascertain the nature and circumstances of the death (Section 32(3), 2019 Act).

This demonstrates the seriousness with which loss of life is viewed. Where investigations reveal culpability of staff due to negligence or an unlawful action, the staff is to be suspended and handed over for prosecution and even the supervising officer is to suffer disciplinary action (Section (32)(4) (a) & (b), 2019 Act).

What of where the prison is attacked in a violent manner by terrorists and inmates forcibly freed at the risk of death or shot at in the cross fire, particularly where the prison guards themselves have fled for their lives? It is submitted that the fact that a prisoner is serving a custodial sentence does not entitle him to loss of life as long as he has not been sentenced to death. Persistent attacks on prisons expose inmates to danger either during the attacks or whilst others are trying to escape. The emotional and psychological trauma occasioned is potentially litigious. It violates their rights to be treated with dignity and not in a dehumanizing manner. Tarhule argues that the right to life is the most important right because without it all the other rights become “unimportant and illusory” (Tarhule, 2014, pp. 261-263). This right is the *grundnorm* as it were to guide all other rights whilst in detention. As custodes of the correctional centers, inmates are entitled to certain rights. The UN Standard Minimum Rules on the Treatment of Prisoners<sup>2</sup> and other international, Regional or national laws have a benchmark for treatment of prisoners. These include right to recreational facilities for their physical and mental well being.

### **Right to Health Facilities**

Government has a duty to take every measure to keep prisoners and detainees in right environment for their health, safety, and security. It is submitted that in cases of death, family of such inmate should sue the government for damages. The 2019 Act actually has provisions that state that the NCoS shall:

32(4) (c) Correctional Service shall:

(i) pay appropriate compensation as may be determined by the panel of inquiry or a court of competent jurisdiction to the victim or the family of the victim whichever is applicable, and

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<sup>2</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C(xxiv) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

(ii) cover the cost of all hospital and associated expenditure and, in the case of death, all expenditure related to burial rites as may be determined by the panel of inquiry or a court of competent jurisdiction (section 32(4)(c)) paragraphs (i) & (ii, 2019 Act).

This proviso should be challenged in a court of Law when an inmate dies or sustains serious bodily injury. Damages will make government ensure proper measures are put in place.

This right is inferred in *Aliu Bello v Attorney General of Oyo State (1986)*. The facts were that a convict was executed without having executed his rights of appeal. The Supreme Court held that the Governor of Oyo State cannot lawfully order the execution of a convict who has appealed against his conviction and his appeal has not been finally determined. It therefore held that the execution was unlawful and awarded damages for the loss of life. The appellant argued that a cause of action arose necessitating damages.

In *Peter Nemi v AG Lagos State (1996)*, the appellant stayed in detention since 28 February 1986 under a sentence of death, thus the Supreme Court agreed it was an unreasonable length of time. Furthermore, it raised a constitutional issue which is: a right to life. The court held that a convict condemned to death has a constitutional right to seek redress for the enforcement of his right to life.

The Federal government is fully culpable by failing to provide safe and secure environment. Failure to provide proper security for a correctional center especially one though classified as “medium” housed insurgents and terrorists is negligence, gross negligence. Tarhule argues forcefully that right to life does not just cover physical loss of life but should extend to implied culpability when a prisoner is starved to death or kept in dehumanizing condition that leads to untimely death. This should be tested in a court of law. The Body of Principles for the Protection of All Persons under any form of detention or imprisonment provides that whenever death or disappearance of a detained or imprisoned person occurs during custody, an inquiry whether judicial or by any other authority should be held to determine causes (Principle 34). It would appear that the provisions of Nelson Mandela rules go further. It states that notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance, or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial, and effective investigations into the circumstances and causes of such cases. The prison administration is to fully cooperate with the authority and ensure that all evidence is preserved. There have been no commissions of enquiry set up after these prison escapes as required by the 2019 Act, Mandela Rules, nor Body of Principles. To worsen matters, there are no resignations or dismissal or termination of employment of culpable public officials. It may partly account for the reason why the custodial attacks will continue.

### **Conclusion**

There have been 10 prison jail breaks/external attacks from 2015 when the government of resident Muhammad Buhari was inaugurated. Correctional centers are assailed from within and without by Boko Haram insurgents, terrorists, criminal herdsmen, violent criminal gangs out to rescue their men and ISWAP fighters. The viciousness of these aggression leads to loss of lives both of staff and inmates, bodily injuries, communal danger, damaged integrity, and effectiveness of criminal justice system and loss of faith in the Nigerian State.

### **Recommendations**

- Government should, as a matter of priority, construct maximum security prisons along international standards. These should house convicts who are terrorists, violent and hardened criminals. In view of recent

handshake of local terrorists with ISWAP in the nation, custodial centers are prime targets in attempts to free their commanders. Safety and security of inmates and corrections staff is of prime importance. However, due to the state of the economy, it is advised that Government consider allowing international companies well versed in managing prisons to build, operate these custodial centers. The service agreements must cater for the rights of inmates and custodial staff.

- Awaiting Trial Persons should be separated from convicts and housed in separate holding centers. State of the art security and technological devices for the nation's maximum security centers where hardened criminals and terrorists are detained pending and during trial should be given priority. High risk terrorists should not be kept in medium security prisons as happened in the Kuje custodial center.

- Intelligence gathering and sharing is key to an effective security architecture in the nation. Better synergy and inter-agency cooperation should be created between surrounding communities that play host to the custodial centers and between security agencies.

- The *in situ* security teams are the first line of defense in the custodial centers both for attempts to break out of prison and external aggression. Thus, they should be well armed well-coordinated in line with section 28 of the 2019 Act.

- Better coordinated response time should be worked out between custodial centers, and government security agencies when they come under attack.

- Judicial Commissions of Enquiry or independent panels should be set up to enquire into persistent jail breaks and external attacks by gunmen on the nation's correctional centers. Incidences of disappearance, or death should be covered also. Public representation should be allowed as mandated in Rule 71 of the Mandela Rules.

- In line with section 29 of the NCoS Act, inmates who are recaptured should go through the judicial process and be sentenced as a punitive measure especially where it is a case of internally provoked jail break. Their accomplices within the correctional staff and those who offer residence or support in the society should be punished also.

- Non-governmental agencies should pursue payment of appropriate compensation to inmates and corrections staff who lose their lives or suffer serious bodily injury during externally provoked attacks in accordance with section 32 of the Act.

- Prison Administration should devise an internal grievance mechanism for inmates to make complaints. Rule 56 of the Nelson Mandela Rules allows prisoners to make complaints to prison inspectors. This will serve to reduce frustration and aggression of inmates over prison conditions, arrest systemic failures or custodial staff misconduct, which tends to boil over to prisoner violence and attempted jail breaks.

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