

THE NIGERIAN CRIMINAL JUSTICE SYSTEM'S ABUSE OF CONFESSONAL STATEMENTS: A CALL FOR JUDICIAL POLICY REFORM

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ABSTRACT

The prosecution's responsibility to prove the guilt of an accused person in Nigeria has, over the years, been watered down by the practice of the police extracting confessional statements from accused persons by extrajudicial means. The courts which are supposed to be the last hope of the common citizen or justice appear to be in synergy with the police in its interpretation and application of relevant provisions of statutes geared towards admissibility of coerced confessional statements. This article is a strident call for a reform of the judicial policy with regards to the admissibility of confessional statements in a manner which would clearly discourage the police from abusing the fundamental rights of accused persons in their bid to score a conviction on a coerced confessional statement. The paper adopted the doctrinal methodology by examining confessional statements in Nigeria through the Evidence Act 2011, the Administration of Criminal Justice Act, and relevant Judicial interpretation. Relevant legal articles and news reports online which deal with confessional statements in Nigeria and detail abuses of fundamental rights of accused persons were referenced to show documented and prevalent police abuses and violation of citizens' rights. It concludes with recommendations.

Keywords: Criminal Justice, Confessional Statement, Judicial Policy, Abuse

INTRODUCTION

The law is settled that the prosecution is saddled with the burden to prove beyond reasonable doubt that an accused person has committed a crime. It is not for the accused person to prove his innocence, and/or to aid in his prosecution. However, over the years, it has become a commonplace practice of the Nigerian police to rely on confessional statements made by accused persons as a shortcut to the ultimate

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objective of the conviction of an accused person through the courts. This is one reason to find out if there is an incentive for the police officer (and judges) who rush the trial of the accused persons through the courts gradually doing away with the need to properly investigate the commission of the offence which requires assembling eye witness to testify in court. This is no easy feat for potential eye witnesses, alibi when the opportunity cost is steep-the transportation, the uncompensated hours spent in court, and the loss of wages due to absence from work. To cut through the complication, the best tool for the police to win the case is by confessional statements designed to ensure the guilt and conviction of the accused. More often than not, the supposed confessional statement tendered by the accused person is either retracted or objected to on the grounds that the confessional statement was obtained after a rigorous process of physical, mental and psychological torture of the accused person while in police custody.

Nonetheless it appears the Judges or Magistrates themselves are overlooking a crucial judicial principle: the accused is innocent until proven guilty. The court's posture appears to be one which encourages the continuation of this practice by the police when it consistently demands that the accused person provide proof that the statement was obtained by duress, in apparent contradiction to the requirement in Section 29(2)(a) of the Evidence Act. For the accused to prove that the confession was not obtained under duress negates the invisible psychological and emotional trauma people suffer while in police custody. To this end. It appears the Judges themselves need consciousness-raising about the extent of police mistreatment and abuse of citizens in their custody.

This article will show that the current judicial policy regarding confessional statements favours or suggests that it encourages a continuation of the illegal practices of the police in torturing accused persons in their custody in order to obtain confessional statements.

The methodology used is first to determine what the current state of the law is regarding confessional statements in Nigeria through the Evidence Act 2011, the Administration of Criminal Justice Act, and relevant judicial interpretation of the said pieces of legislation. Relevant legal articles and news reports online which deal with confessional statements in Nigeria and detail abuses of fundamental rights of accused persons were referenced to demonstrate that abuse of accused person's fundamental rights by the Nigeria police force is rampant and well documented. The Evidence Act and Criminal procedure laws of India and two other African countries with a similar judicial system as

Nigeria were also studied and it showed that the problem of police abuse of power with regards to confessional statements obtained from accused persons is not peculiar. The purpose was also to obtain safeguards put in place to check the abuse of confessional statements in those jurisdictions.

The article is divided broadly into six parts. The first is the introduction and definition of relevant terms regarding confessional statements and the crux of the article. The second part deals with the current position of the law, statutorily and judicially, with regards to confessional statements in Nigeria. The third part shows the nexus between the illegality of coercing defendants into making confessional statements, and the abuse of a defendant's fundamental human rights from the prism of some documented reports. The fourth part interrogates the cause of the continued use of coercion to extract confessional statements from accused persons in Nigeria. The fifth part considers briefly how India, Botswana and Ghana, jurisdictions with similar criminal justice system as Nigeria, guard against the coercion of accused persons into making confessional statements. The article then concludes with recommendations.

CLARIFICATION OF TERMS

Section 28 of the Evidence Act 2011 (the Evidence Act) defines a confession as *“an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.”*

Section 20 of the Evidence Act in turn defines an admission as a statement, oral or documentary or conduct which suggests any inference as to any facts in issue or as to any relevant fact, and which is made by any of the persons, and in the circumstances mentioned in this Act.

There are two forms of confessional statements under Nigerian law. There are judicial and extra-judicial confessional statements. This article is concerned with extra judicial confessional statements obtained from a defendant whilst in the custody of the police, with instances where, the defendant, during his trial, retracts his confessional statement on the basis that he never made the statement at all or that it was made by the police and was not read to him before he signed it. The law only requires the court to seek evidence outside the confessional statement to corroborate it and once it is proven to have been made by the accused person voluntarily, it is admissible without more. The

court would then decide on the weight to be placed on such confessional statement².

Once such a confessional statement meets the test of admissibility, it alone without more, is sufficient to ground a conviction for the offence which was admitted by the accused and the requirement of proof beyond reasonable doubt in criminal cases would have been completely and fully satisfied by the prosecution³.

However, a confessional statement would only be admissible if it was made voluntarily. Where the defendant states that the confession was obtained from him involuntarily by either the use of violence or the threat of it, the court is obligated to refuse to admit such confession against the defendant. Section 29(2) of the Evidence Act provides that:

If in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained:

- (a) by oppression of the person who made it;
- (b) In consequence of anything said or done which was likely in the circumstances existing at the time to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him, except in so far as the prosecution proves to the court beyond reasonable doubt that the confession, (notwithstanding that it may be true) was not obtained in a manner contrary to this section.

Section 29(5) of the Evidence Act provides that “oppression” includes torture, inhumane or degrading treatment, and the use of threat of violence whether or not amounting to torture.

In the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment

² See *Elewana v. State* (2019) LPELR-47605(CA); See also *Adisa Wale v. The State* (2013) 14 NWLR (Pt. 1375) 562.

³ See Section 29(1) of the Evidence Act; See also: *Ntaha v. State* (1972) 4 SC 1; *Ikemson v. State* (1989) ³ NWLR (Pt. 110) 455; *Saidu v. State* (1982) 3 SC 41.

or Punishment⁴ torture was defined broadly as:

...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person...”

What is completely absent from all the Acts and procedure is that the accused are not advised to retain a lawyer, and that lawyers be present at the time of interrogation. Clearly, legal representation is a significant component of the judicial system in Nigeria and it is not a conjecture to say the poor, indigent and working class are most likely be subjected to such inhuman treatment by the police and the courts.

TESTS FOR DETERMINING ADMISSIBILITY OF CONFESSIONS IN NIGERIA

Some defendants who supposedly had made voluntary confessional statements, admitting that they committed the crime which they are charged with, usually object to the admission of the said confession in open court during their trial citing the fact that the confessions were obtained under oppression by the police⁵ Overwhelmingly, the accused persons are said to have provided these confessional statements usually written down in details in police statements stating their role in the crime with which they are charged, voluntarily, from a conscientious conviction while in the custody of the police. It should therefore be wondered why the accused person plead not guilty to the crimes during their arraignment, and subsequently retract the confessional statement.

The main criteria for admission of a confessional statement is that the statement was made voluntarily. It does not matter that the statement is true or relevant to the case at hand⁶. Hence as soon as an accused person during his trial objects to the admissibility

⁴Assessed on 1st July 2022 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.; Nigeria became a signatory on 28 July 1988

⁵ *Akinkunmi v. State* (2022) LPELR-57285 (SC), also *Onianwa v State* (2015) LPELR-24517(CA)

⁶ See section 29(2) (b) of the Evidence Act 2011

of his confessional statement on the basis that it was obtained by oppression, it is mandatory that the court determine if for a fact the statement was made voluntarily. This is achieved by the conduction of a trial within the trial during which the prosecution has the burden of proving beyond reasonable doubt that the confessional statement was obtained voluntarily. The Supreme Court, in *C.O.P v. Alozie*⁷ explained the rationale and procedure for a trial within a trial when it held as follows:

Where in the course of criminal proceedings a confessional statement of an accused person is tendered in evidence by the prosecution and question is raised by the defence with regard to whether it was made or obtained voluntarily, the trial court has a duty, and in fact MUST suspend the main trial and conduct a trial within trial to determine its voluntariness or otherwise. At the end of the mini trial, the trial court must make up its mind in the light of the evidence adduced before it by both the prosecution and the defence, on whether such statement was voluntarily made by the accused or not. If in its opinion, the statement in question was voluntarily made, it will admit it. But if the trial court finds that it was not voluntarily obtained, for instance there was slightest evidence of duress, force, promise, inducement or that trick was applied to the accused person, it will reject such statement and mark it so in its ruling and will proceed with the main trial, except that it will not act on it in its determination on the case.

Failure to conduct a trial within a trial to determine the involuntariness of a confessional statement renders the confessional statement liable to be expunged from the record⁸.

In *Eze v. COP*⁹, the court outlined the means of the prosecution discharging the legal

⁷ (2017) LPELR-41983(SC)

⁸ See *State v. Sadiq* (2021) LPELR-56660(SC)

⁹ (2020) LPELR-49770(CA) Per EMMANUEL AKOMAYE AGIM, JCA (Pp 30 - 31 Paras D - C).

burden of proving that the confessional statement sought to be tendered as follows:

The prosecution discharges this burden when it establishes by evidence that the usual cautionary words were administered by the officer obtaining the statement, that the accused understood that he had the right to write the statement himself or require some other person to write same and read it over to him, that when it was read over to him he understood the statement and that it is his exact statement, that he signed the statement, that being a confessional statement, the officer obtaining the statement took him before a senior police officer for the accused to confirm before the senior officer, that the statement is his and that he made it voluntarily and that he did so confirm the statement.

The position of the law from several decisions of the Supreme Court is that the right time for an accused person to object to the admissibility of a confessional statement is at the point where the prosecution seeks to tender the confession in evidence and not subsequently when the defence opens its case¹⁰. The principle was reiterated by the Supreme Court in the case of *Akinkunmi v. State*¹¹. In this case the accused persons were charged with multiple count including armed robbery. The prosecution tendered the accused persons' confessional statements without any objection, and they were admitted. However, during the presentation of the defence of the accused persons, they testified that the confessional statements were obtained by torture and were not voluntary. The court, *per Adama Jauro, JSC (Pp 44 - 44 Paras. A - D)* turned a deaf ear to their claim and held as follows:

It is now settled that the appropriate time to object to the admissibility of a confessional statement is at the point when the Prosecution seeks to tender same. Any objection raised to the admissibility of an

¹⁰ See the case of *Ogudu v. State* (2011) LPELR-860 (SC)

¹¹ (2022) LPELR-57285 (SC)

extrajudicial confessional statement subsequent to its tendering and admission in evidence will be considered an afterthought. In the instant case, the Appellant's confessional statement, exhibits 2, 2A and 7 were tendered without objection. The testimony of the appellant suggesting that he made the statement because he was tortured amounts to nothing more than afterthought.

While it is appreciated that the right procedure for the defendant's counsel defendant' object to the admissibility of the confessional as at the time it is being tendered, this rule of procedure should not be strictly applied in such a manner as to occasion injustice to an ignorant defendant who most likely is unaware of the nuances of the criminal law procedure. This is especially the case for offences where the punishment is a death penalty. It is settled law that a party should not be punished for the mistake of his counsel. Hence where, for whatever reason a defendant's counsel fails to object to the tendering of a confessional statement at the time of the prosecution tendering it, but the defendant subsequently does so on the weighty grounds of torture whilst giving his evidence in his defence, it best serves the ends of justice if the issue is dealt with as though it was raised at the appropriate time to avoid a miscarriage of justice.

The Administration of Criminal Justice Act (ACJA) 2015¹², provides a further layer of protection against admissibility of a confessional statement that was obtained by coercion when it requires that every confessional statement volunteered by a defendant in police custody can only be properly obtained where there is video recording of the statement as it is given by the defendant or in the presence of the defendant's legal practitioner. The police are then at liberty to produce the copies of the recording of the statement as a validly obtained confessional statement during the trial within trial to prove that the accused volunteered the confession without coercion. The obvious purpose of this requirement is to afford the court the demeanour of the defendant when delivering the statement in order to assist it to gauge whether or not the accused person was coerced into giving the statement or whether he made it voluntarily.

¹² See sections 15(4) and 17(1)(2) ACJA 2015

CONFESSIONAL STATEMENTS AND FUNDAMENTAL RIGHTS OF ACCUSED PERSONS

The provisions in the Evidence Act, and ACJA 2015 geared towards the protection of defendants to criminal charges from being coerced into making confessional statements are actually informed by the need to protect the fundamental rights of the accused person guaranteed by the constitution.

The first is the defendant's fundamental right to be presumed innocent of the commission of the crime he has been charged with until the prosecution proves his guilt beyond reasonable doubt¹³. This is most significant because the basis of the torture of accused persons by law enforcement agents in Nigeria is usually hinged on the assumption of guilt of the accused person. Hence, they believe they are simply forcing the defendant to a criminal charge to say the truth. However, given that it is not the duty of the defendant to prove his innocence, it is therefore unconstitutional for the police to interrogate a defendant with the intention of obtaining a confession from him on his participation in a crime which is yet to be proven beyond reasonable doubt by the state.¹⁴

The fundamental right to silence is a corollary of the presumption of innocence. The accused person is protected by section 35(2) of the Constitution against making self-incriminating statements unless he willfully chooses to do so. Confessional statements, being clear admissions of guilt and as such proof of the commission of an offence, are not to be lightly admitted in evidence for the fact that an accused person is not obligated to make statement at all and that police too under no circumstances presume the accused guilty for their right to remain silent, let alone self-incriminating ones from the moment he is arrested and throughout his trial.¹⁵

The Supreme Court, in *Adekunle v. State*¹⁶ enunciated what the accused person's constitutional right to silence entails:

¹³ see Section 36(5) of the Constitution of the Federal Republic of Nigeria, as amended).

¹⁴ See *AJAYI v. STATE* (2013) LPELR-19941(SC)

¹⁵ RIGHT OF AN ACCUSED PERSON UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM' By OLAYINKA OLUWAMUYIWA OJO assessed at

https://www.academia.edu/12347294/RIGHTS_OF_AN_ACCUSED_PERSON_UNDER_THE_NIGERIAN_CRIMINAL_JUSTICE_SYSTEM on 30/6/2022

¹⁶ (2006) LPELR-107(SC)

I am aware of and I recognize the right of an accused person, to remain silent throughout the trial, leaving the burden of proof of his guilt beyond reasonable doubt, to the prosecution. In other words, an accused person, is presumed innocent, until he is proved guilty. There is therefore, no question of his proving his innocence. This is because, for the duration of a trial, an accused person, may not utter a word. He is not bound to say anything. It is his constitutional right to remain silent. The duty is on the prosecution, to prove the charge against him as I had said, beyond reasonable doubt.

The accused person's right to human dignity is also guaranteed by section 34(a) of the 1999 Constitution:

Every individual is entitled to respect for the dignity of human person, and accordingly - no person shall be subjected to torture or to inhuman or degrading treatment.

The right to dignity of the human person is a fundamental and inalienable right which inures even when the accused person is convicted and incarcerated. Article 10(1) & (2)(a) of the International Convention on Civil and Political Rights (1966)¹⁷ guarantees the right to dignity of accused persons as follows:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons...

A person's status as a defendant to a criminal charge should not result in a denial of their fundamental right to human dignity. Hence, when law enforcement agents brutalise

¹⁷ Nigeria ratified this treaty on 29th July 1993.

defendants in their custody, or threaten to do so, in a bid to obtain confessional statements from them, they are not only breaching statutory provisions which insist on the right of the accused person against coerced confessions, they also violate the accused persons' fundamental right to dignity of their persons.

Documented instances of Abuse of fundamental rights of accused persons in police custody

Despite the rights of the accused persons as firmly entrenched in the Constitution¹⁸, relevant statutes and international conventions, there have been copious documented reports which show that the police extract confessional statements routinely from accused persons in their custody using the cruelest means.

In ***Onianwa v. State***¹⁹, two defendants were arrested and kept in police custody. The appellant and the second defendant were tortured by the police. As a result of the torture, the second defendant died.²⁰ The appellant consequently signed a purported confessional statement. Despite the fact that the appellant informed the trial court of his ordeal in police custody which compelled him to sign the confessional statement during the trial within trial, the trial judge held that the confessional statement was voluntarily taken. The court convicted the appellant on the strength of the confessional statement, ignoring entirely the fact his co-defendant died in the process of the police trying to extract a confession from him, and the appellant's testimony that he signed so as not to be killed the same way the co-accused was tortured to death. Fortunately, the Court of Appeal allowed the appeal and discharged the appellant.

In ***Ahamba v. State***²¹, the appellant was charged with the offence of armed robbery. The appellant was tortured by the police in order to obtain a confessional statement from him. To prove that they were not bluffing when they threatened to kill him if he failed to cooperate, they shot him in the head. Miraculously he survived the gunshot wound. However, in the hospital where he was recuperating, the police again brought the confessional statement for him to sign, and this time around he quickly signed it out

¹⁸ See Yin et al. on rights and belief in maintaining prison social order.

¹⁹ (2015) LPELR-24517(CA)

²⁰ This was confirmed by the post mortem report and the coroner's report which described his death as "sudden and unnatural".

²¹ (1992) 5 (NWLR) (Part 242) 450

of fear for his life. The trial court after hearing the accused testimony of the torture and abuse of fundamental human rights that preceded the extraction of the confessional statement admitted it in evidence on the ground that when he signed the confessional statement, the effect of the gunshot wound had already worn off. The court relied on the confessional statement to convict the appellant. Fortunately, on appeal, the Court of Appeal allowed the appeal and discharged the appellant.

In *Effiong v. State*²² the appellant was tortured for several days in a bid to coerce him into signing a confessional statement admitting guilt. When the usual form of torture did not break the appellant, the appellant was chained together with six other suspects, and taken to a deserted location. The other six suspects were shot to death and he was asked if he was willing to cooperate or if he wanted to end up like the other six suspects. The appellant shouted that he would willingly sign any confessional statement presented to him by the police. The police then made him carry the corpses of the dead suspects into their vehicle. During the trial, the court admitted the confessional statement into evidence on the ground that the torture could not have provided the appellant with details of the crime if he had not partaken in it. The Appellant's conviction of the crime of murder was overturned on appeal.²³

In the Punch News report of 28th January 2022, it was reported that Shedrack Ochoche, who was arrested on the allegation that he stole a car battery belonging to his former employer, had been tortured to death while in the custody of the police. This may have been swept under the carpet, but for the fact that Senator Abah Moro, Senator representing Benue South Senatorial District, petitioned the Inspector General of Police asking for an account of how Mr Ochoche was tortured to death while in the police custody on the flimsy allegation of theft of a car battery.²⁴

For every report of police torture that makes it to the public space, there are probably

²² (2009) 1 NWLR (Part 1122) 325

²³ The Relationship between the Constitutional Right to Silence and Confessions in Nigeria by Esa O. Onoja: African Journal of Legal Studies; Online Publication Date: 21 Mar 2014. Assessed at https://brill.com/view/journals/ajls/6/2-3/article-p189_3.xml?language=en#:~:text=Ironically%2C%20the%20Constitution%20of%20the,constitutionally%20guaranteed%20right%20to%20silence.

²⁴ <https://punchng.com/senator-petitions-igp-as-police-torture-man-to-death/>

hundreds of others that do not, and these ills continue to be perpetrated unchecked.

REASONS FOR THE CONTINUED USE OF OPPRESSION TO EXTRACT CONFESSIONAL STATEMENTS FROM ACCUSED PERSONS IN POLICE CUSTODY

Judicial policy towards admissibility of confessional statements

The major reason why the police continue to use the vilest means of oppression and torture to extract confessional statements from accused persons in their custody is, ostensibly, that the courts, particularly the trial courts, appear to encourage the prosecution by, almost always, admitting confessional statements tendered by the prosecution irrespective of compelling oral evidence by the defendant of involuntary obtention of the confessional statements.

One of the ways the courts enable the police and the prosecution in this regard is by the deliberate misinterpretation and misapplication of section 29(2)(a) of the Evidence Act. Although the provision insists that once the question of the involuntariness of a confessional statement is raised by the accused person, the prosecution has the responsibility to prove beyond a reasonable doubt, that the statement was obtained voluntarily, the courts seem to consistently require the defendant to a criminal charge to prove that the statement was obtained by coercion.

For instance, in **Lucky v State**²⁵, the defendant was charged with conspiracy to kidnap, kidnapping, and unlawful possession of firearms. The prosecution relied on a confessional statement which was retracted by the defendant during his trial on the basis that he was tortured. Rather than the court to ascertain whether the prosecution had indeed proven beyond reasonable doubt that the confessional statement was obtained without oppression or torture of the accused, the Court of Appeal, perfunctorily, stated that retraction of confessional statements that had been tendered and admitted amounts to afterthoughts. The Court further held that the accused person failed to lend sufficient evidence to prove that the statement was taken under duress. Hear the court:

The retraction of the confessional statement by the Appellant makes his entire evidence unreliable, except where he proves that the statement was taken

²⁵ (2021) LPELR-53541(CA)

under duress. But where the accused person lends sufficient (emphasis mine) evidence to rebut the accusation by the prosecution (which the Appellant has not done) the confessional statement may be jettisoned by the court.

Likewise, in ***Okafor v. State***²⁶, the court held that it was the duty of the appellant who had objected to the admissibility of his confessional statement to lend evidence to debunk the claim of the prosecution that the confessional statement was obtained voluntarily. The Court further held that the oral evidence narrating his torture and the scars shown to the court were insufficient and that the defendant ought to have provided further medical evidence as well. These requirements were not ascribed to the prosecution as the court was satisfied with only the prosecution's oral testimony that the accused was cautioned and that he signed the statement before a superior police officer. There was no further step taken such as a video or audio recording of the confession or an independent witness' evidence submitted by the police.

It is beyond cavil that there is no requirement for the accused person to prove that the statement was taken under duress under section 29(2)(b) of the Evidence Act. The burden is on the prosecution to prove beyond reasonable doubt that the confessional statement was obtained voluntarily, and as settled in several judicial authorities, the burden of proof in a criminal matter never shifts.²⁷ Section 29(2)(b) of the Evidence Act may be better appreciated on the basis that it is almost impossible for an accused person who is in the custody of the police to have the freedom to gather or collate evidence that would prove that the prosecution obtained the confessional statement by coercion.

Another misinterpretation of section 29(2)(b) of the Evidence Act is with regard to the truth test. The courts have consistently held that once a confessional statement is voluntary the court can convict the accused solely based on it. However, when there is a doubt, it is better to apply the truth test which tries to ascertain whether there are pieces of evidence outside the confessional statement that prove that the confessional

²⁶ (2020) LPELR-51900(CA) Per BITRUS GYARAZAMA SANGA, JCA (Pp 19 - 26 Paras E - E)

²⁷ *Esangbedo v The State* (1989) NWLR (pt. 113) 57 at 69

statement is true. For instance, in the case of **Usman v. State**²⁸ the court held as follows:

It is trite law that a confessional statement can be the sole basis for convicting an accused person. It is that weighty... a confessional statement made at a Police Station may or may not truly be confessional. This is because allegations are rife that some confessional statements made there are not voluntarily made and are the product of threats, force, or inducements. It is for this reason that trial courts carry out trial-within-trial in order to ascertain whether a confessional statement is voluntarily made or not. In its ruling, a trial court can be right in admitting a confessional statement as having been made voluntarily. However, since infallibility is an attribute of God alone, it is not impossible that a confessional statement can be admitted as having been made voluntarily when in fact it is not. It is for this reason that courts usually require witness testimonies outside confessional statements in order to test the truth of such confessional statements. The tests in search of the truth, one can call them truth tests, are to ascertain (1) whether there is anything outside the confession to show that it is true; (2) whether it is corroborated; (3) whether the statement made in it is in fact true as far as can be tested; (4) whether the accused had the opportunity of committing the crime; (5) whether the confession is possible; and (6) whether it is consistent with other facts which have been ascertained and which have been proved.

There is no statutory basis for these tests and more so, it is contrary to section 29(2)(b)

²⁸ (2019) LPELR-49184(CA)

of the Evidence Act, which says that the only test required for the admissibility of a confessional statement is the voluntariness test. The court is not permitted to admit a confessional statement when there is a reasonable doubt in its mind that it was obtained by coercion and then start scrapping about for evidence to ascertain the truth of the confessional statement. Section 29(2)(b) of the Evidence Act clearly forbids the court from *“allowing the confession to be given in evidence against him, except in so far as the prosecution proves to the court beyond reasonable doubt that the confession, (notwithstanding that it may be true) was not obtained in a manner contrary to this section.”*

The court has the power to take judicial notice²⁹ of the fact that the police routinely torture accused persons in their custody and as such require that the prosecution provide unassailable proof that it was not the case in any proceeding where the prosecution proposes to tender a confessional statement against the accused person. This is not satisfied merely by showing that the accused signed the confession and the attestation form before a superior police officer, the prosecution must provide extrinsic evidence which proves beyond reasonable doubt that the statement was obtained voluntarily.

The weakness of the accused's evidence in the trial-within-trial should not be material in considering whether the prosecution has proved that the statement was obtained voluntarily beyond reasonable doubt. This is because it is almost impossible for the defendant who is a victim of extraction of a confessional statement by torture while in police custody to provide corroborative evidence of his torture. If there were bruises and scars he might not have the means to hire a medical practitioner astute enough to determine the age of the scar and bruises and to place it within the time of the confession. Moreover, some methods of torture such as attempted drowning, smothering, electric shocking, mental and psychological torture, rarely leave physical proof of the fact on the defendant's body. For instance, in the case of *Effiong v. State*³⁰ mentioned above where six other suspects were shot and killed in the presence of the defendant and their blood splashed on him while he was made to carry their corpses into the police vehicle, one of the vilest means of torture but which may never be

²⁹ Section 122(2)L of the Evidence Act 2011; on the basis that it is a custom of the police to coerce accused persons in their custody to give confessional statements.

³⁰ *supra*

substantiated by hard evidence.

The defendant person is bereft of any other means of proving that he was tortured except by narrating the event as best he can. It is not for the court to focus on just the narration of the accused person, as he is only required to raise reasonable doubt that the confessional statement was obtained voluntarily, it is more important that the court focuses and scrutinises the evidence of the prosecution which is required to show beyond reasonable doubt that the confessional statement was obtained voluntarily.

Insufficient funding of the Nigeria Police

It is common knowledge that the Nigeria Police is seriously underfunded and as such is very limited in its ability to carry out its basic functions let alone conduct detailed investigations into the commission of a crime.³¹

It is a notorious fact that when an average citizen reports the commission of a crime for the investigation of the police, he is also required to “mobilise” the police by providing sufficient funds to allow it fuel its vehicle, trace the suspect, and other expenses incurred in a bid to apprehend the suspect and bring him to justice. It stands to reason that the police must prove they merit the funding. In not so subtle way, the police have become a security-service-for-hire. It is rather unfortunate that given the funding limitations of the police, the most cost-effective means of conducting investigation and obtaining information is by torturing their captives who are merely suspects of a crime.

Lack of accountability by the police for wrongdoings

In *Yusuf Ibrahim Garko v. State*³² The police arrested two persons suspected of stealing a Vespa motorcycle and in a bid to extract confessional statements from them the Appellant murdered one of the defendants. The 2nd defendant testified of how the Appellant tortured the deceased so much that blood was coming out of his nose, ears

³¹ See the following news reports on the gross underfunding of the Nigeria Police force: Vanguard; Police under staffed, underfunded, lacks decent barracks, by Hon. Chinwe Ugwu; assessed on 2/7/2022 at <https://www.vanguardngr.com/2019/10/police-under-staffed-underfunded-lacks-decent-barracks-hon-chinwe-ugwu/>; Punch Newspaper: Pitfalls of poor police funding, by Taiwo Ojoye: <https://punchng.com/pitfalls-of-poor-police-funding/>, assessed on 2/7/2022; The Guardian Newspaper; Police: is the FG still adamant? By Matthew Ozah, assessed on 2/7/2022 at <https://guardian.ng/opinion/police-is-fg-still-adamant/>

³² (2006) 6 NWLR (Part 977) 524.

and penis after the beating they received when being forcefully hung upside down. Rather than charge the Appellant police officer for murder, the prosecution only charged him with death caused when intention is to cause hurt only³³ and sentenced him to a five years imprisonment, a mere slap on the wrist considering the actual offence of the Appellant. So, in effect the police act as jurors, judges and executioners. This begs the question: what is in it for the police?

In other cases where a confessional statement is declared inadmissible and the defendant's conviction set aside by the appellate court several years after the trial of the defendant commenced, the injustice of the wasted years and agony is rarely counterbalanced by the punishment of the investigative police officer who handled the matter.

It is clear that where there are no consequences for wrong actions, they are indirectly encouraged to continue³⁴. If the justice system put in place a system to reviews the cases of injustice suffered by defendants to criminal charges caused by police coercing confessional statements from them while in custody and proper punishment meted out to the officers found wanting, it will deter investigative police officers from deploying torture and oppression to obtain confessional statements.

Limited protection afforded by Statutes to guard against the protection from coercion

The ACJA requirement that before a confessional statement can be deemed to have been voluntarily made by an accused person, such statement must have been made with a video recording of the confession or in the presence of the legal counsel of the accused person, is laudable, this provision has proved insufficient for instances where

³³ An offence under Section 225 of the Penal Code

³⁴ The case of Samson Enweruzo comes to mind. According to the Sahara Reporters, he is an operative of the Nigeria Secret Police, the Department of State Services has identified him as behind some of the extra-judicial killings and brutalization of people in the South East region of Nigeria He is also notorious forcing false confessions out of persons suspected to be members of the pro-Biafra group, Indigenous People of Biafra (IPOB) or its militant wing, Eastern Security Network (ESN). <https://saharareporters.com/2021/11/28/exclusive-department-state-services%E2%80%99-officer-samson-enweruzo-unveiled-notorious-forcing>. Accessed on 14/11/2022

the accused person is in the custody of the police and will remain in the custody of the police. This is because as long as the accused person is liable to be exposed to the threat of the police invidiously inherent in the fact that his lawyer would eventually leave the police station or custody, and the fact that the video recording could be manipulated. The police could still threaten the accused before the video starts running or before the presence of his legal counsel that if he fails to cooperate, he would be punished by infliction of violence after the video ends or when his legal counsel leaves and he is returned to custody. As long as the accused is still in the custody of the police he is still at their mercy and would still feel threatened as he would believe that they could carry out any act against him and none would be the wiser.

BRIEF COMPARISON OF CRIMINAL PROCEDURE RULES REGARDING CONFESSIONAL STATEMENTS IN OTHER JURISDICTIONS

India

The India Evidence Act 1872³⁵ forbids the use of confessional statements obtained from an accused person by a police officer against the accused person. Furthermore where the accused person wishes to make a confessional statement, the police is required to take him before a magistrate who would then caution him as to his rights not to make any statement, inform him that any statement he makes would be used in evidence against him and observe if the accused is making the statement voluntarily before taking the statement from the accused person.³⁶

The rationale behind the provisions of sections 25 and 26 of the India Evidence Act was explained in *Dagdu v. State of Maharashtra, A.I.R. 1977 S.C. 1579*, when the Indian Supreme Court held as follows:

The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the police investigation. The police should remember that confession may not always be a short-cut to solution.

³⁵ See Sections 25 and 26 of the Indian evidence Act, 1874 assessed on 2/7/2022 at https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf

³⁶ See Section 164 of the Criminal Procedure Code 1973 assessed on 3/7/2022 at <https://legislative.gov.in/sites/default/files/A1974-02.pdf>

Instead of trying to “start” from a confession they should strive to “arrive” at it. Else, when they are busy on their short-route to success, good evidence may disappear due to inattention to real clues. Once a confession is obtained, there is often flagging of zeal for a full and through investigation with a view to establish the case de hors the confession, later, being inadmissible for one reason or other, the case fundles the court.

Botswana

The position of the law in Botswana regarding confessional statements obtained from accused persons while in police custody is similar to that of India in that it requires that the confessional statement made by an accused person only be admitted in evidence against him if it is confirmed and recorded by a Magistrate or Justice after cautioning the accused person on his rights to refrain from making the statement and that the statement could be used against him in evidence.

Section 228(1)(i)-(iii) of the Botswana Criminal Procedure and Evidence Act³⁷ provides as follows:

(1) Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence (whether before or after his apprehension and whether on a judicial examination or after commitment and whether reduced into writing or not), be admissible in evidence against such person: Provided that-

(i) such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly

³⁷ Botswana Criminal Procedure and Evidence Act, 1939 (as of 2005) Assessed on 3/7/2022 at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61337/92022/F805974928/BWA61337.pdf>

influenced thereto,

(ii) if such confession is shown to have been made to a policeman, it shall not be admissible in evidence under this section unless it was confirmed and reduced to writing in the presence of a magistrate or any justice who is not a member of the Botswana Police Force, or

(iii) when such confession has been made on a preparatory examination before any magistrate, such person must previously, according to law, have been cautioned by the magistrate that he is not obliged, in answer to the charge against him, to make any statement which may incriminate himself, and that what he then says may be used in evidence against him.

Notwithstanding that confessions are not admissible if they are made and recorded by the police, even where they are recorded before the magistrate or justice, it is only admissible if it is proved to have been made by the accused person voluntarily, thus giving the accused a double layer of protection as well as increasing the probability that the conviction secured on the confession is justified.³⁸

Ghana

The Ghanaian Evidence Act provides that an accused person in the police custody may make a confessional statement, but such confessional statement is only admissible when made in the presence of an independent witness. Section 120 (2) of the Evidence Act, 1975, NRCD 323³⁹ provides for the procedure to be complied with to ensure that the confession was made voluntarily which is that the independent witness must:

- a) ...understand the language spoken by the accused,

³⁸ See section 231(4) of the Botswana criminal procedure and Evidence Act 1939 (as of 2005)

³⁹ Assessed on 3/7/2022 at [https://acts.ghanajustice.com/actsofparliament/evidence-act-1975-n-r-c-d-323/#:~:text=AN%20ACT%20to%20provide%20for,in%20Courts%20of%20competent%20jurisdiction.&text=\(1\)%20A%20question%20of%20law,be%20decided%20by%20the%20Court](https://acts.ghanajustice.com/actsofparliament/evidence-act-1975-n-r-c-d-323/#:~:text=AN%20ACT%20to%20provide%20for,in%20Courts%20of%20competent%20jurisdiction.&text=(1)%20A%20question%20of%20law,be%20decided%20by%20the%20Court)

- b) can read and understand the language in which the statement is made, and where the statement is in writing the independent witness shall certify in writing that the statement was made voluntarily in the presence of the independent witness and that the contents were fully understood by the accused.
- c) Where the accused is blind or illiterate, the independent witness shall carefully read over and explain to the accused the contents of the statement before it is signed or marked by the accused, and
- d) shall certify in writing on the statement that the independent witness had so read over and explained its contents to the accused and that the accused appeared perfectly to understand it before it was signed or marked.

As can be deduced from the foregoing, it is generally accepted that if the police are given the unchecked power to extract confessional statements from accused persons regardless of the means, there is the likelihood of abuse of such powers which would result in the perpetration and perpetuation of sundry human rights abuses.

RECOMMENDATIONS

This article calls for a comprehensive review of the current judicial framework regarding admissibility of confessional statements in Nigeria to ensure that only persons who voluntarily make confessional statements are convicted on the basis of the said statements and not innocent suspects who had been tortured or oppressed to confess to committing crimes that they did not commit.

It is also important that the courts as a matter of strict application require the prosecution to satisfy its burden of proving that the accused had volunteered the confessional statement without coercion beyond reasonable doubt with more convincing extrinsic evidence. Mere oral testimony of the investigative police officer narrating how the accused person gave the confessional statement is insufficient.

One way the court can ensure the voluntariness and genuineness of confessional statements is to enlist independent medical and/or psychological examiners to examine the state of physical and emotional or psychological health of the defendants within 24 hours of (or before as the specific cases may demand) the making of a confessional statement to confirm that the accused was not coerced into making the statement and report their findings to the court.

Public/mass education on the right of the citizens is also necessary to let the accused person know his rights to counsel and also the right to remain silent. The accused should know that anything said can be held against him in the court of law.

It is also imperative that the police are adequately funded to enable it have the means to carry out proper investigation of crimes in line with international best policing practices. The funding limitations makes it difficult if not impossible for investigative police officers to undertake proper work, no matter how well-intentioned they may be.

Interrogative rooms must be equipped with voice activated video recording. This will ensure transparency and the accuracy of the interrogation transcript and summary. The Defendant's lawyer must be furnished with a copy.

Police officers must be made to take an oath in court that the confession was taken without duress or torture, and that such a discovery, during and after the trial to the contrary, will land them in prison. Equally, police officers should be put on notice that falsely accusing people and framing them as guilty before proven innocence is a crime.

Police officers must undergo regular training to keep them abreast of the organic developments of the law and best practices and the need to perform their jobs within the legal and regulatory limit. For instance, a confessional statement obtained by deception of the accused person is not inadmissible. Section 31 of the Evidence Act provides that:

If a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy or in consequence of a deception practised on the defendant for the purpose of obtaining it or when he was drunk, or because he was made to answer to questions which he need not have answered, whatever may have been the form of

these questions. or because he was not warned that he was not bound to make such statement and that evidence of it might be given.

This above section obviously refers to instances where undercover investigators infiltrate criminal dens posing as gang members and use deceptive means to obtain confessional statements in audio or video recording regarding the accused's criminal involvement in a criminal charge. However, some Nigerian police officers prefer to apply violence even when there are other unorthodox means to achieve the same end. Perhaps the elephant in the room is the mental state of Nigerian investigative officers which many agree demands serious attention. Substantial investment needs to be done on ensuring that our law enforcement officers are mentally equipped for their roles.

Speedy trial of accused persons would help reduce the period an accused person is remanded in police custody especially for persons charged with capital offences which are not bailable as of right. The accused should appear in court for their preliminary hearing, and placed on remand (in the custody) of jail officers for the full hearing with their legal counsel on a scheduled date. The longer the period the accused person spends in the custody of the police, the higher the probability of coercion by the police to fill any perceived gaps in the evidence.

Ultimately, amending the Evidence Act requiring the adoption of: a) the Indian approach of an independent or objective witness to the voluntariness of the confessional statement before the magistrate, and or b) the Ghanaian mode of the accused person giving the confessional statement in the presence of an independent witness.

CONCLUSION

While the zeal of the police, the prosecution and the courts to convict criminal minded persons so as to make the society safer is appreciated, it must be tempered by the realisation that justice, in criminal matters, is a three- way approach which considers not just the victim and the society, but, also the accused person who may also be a victim of circumstance. The case of the Central Park 5-the 5 black youth is poignant. The boys were falsely accused and tortured by the New York City Police to give false and self-incriminating confessions for crimes, and spent 5 years in prison. The boys were exonerated, and for wrongful imprisonment, the cost to the city of New York was

\$41million⁴⁰. The Nigerian state or federal government might not compensate falsely imprisoned Nigerians a fraction of this amount, but at least it can ensure that police officers' who abuse their power, be terminated with haste and their retirement package forfeited.

William Blackstone's ratio⁴¹ is very apposite here concerning the risk in convicting an innocent person as being more grievous than letting free several guilty persons. John Adams in explaining the idea behind Blackstone's Ratio stated as follows:

We find, in the rules laid down by the greatest English Judges, who have been the brightest of mankind; We are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer. The reason is, because it's of more importance to community, that innocence should be protected that it is, that guilt should be punished: for guilt and crimes are so frequent in the world, that all of them cannot be punished; and many times, they happen in such a manner, that it is not of much consequence to the public, whether they are punished or not. But when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me, whether I behave well or ill; for virtue itself, is no security. And if such a sentiment as this, should take place in the mind of the subject, there would be an end to all security what so ever.⁴²

What is even worse is that the very administrative legal apparatuses are oblivious to virtue in their operations. The agents and agencies of the justice systems lack institutional learning to rethink the adverse consequences of its malpractices; they have lost sight of their reasons for their existence. The citizens can no longer depend

⁴⁰ <http://www.history.com/topic/1980s/central-park-fire>

⁴¹ Commentaries on the Laws of England, published in the 1760s.

⁴² "Founders Online: Adams' Argument for the Defense: 3–4 December 1770". founders.archives.gov.
<https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016> assessed on 3/7/2022

on them for honest, fair and transparent administration of law.

Indeed, the Nigerian justice system could be best characterized as Injustice Non-System. Injustice because the innocent, once entrapped in the arms of the security apparatus, have no recourse to extricate themselves. Non-system because the judges, who are gatekeepers to the execution chambers, are devoid of due diligence—namely duty to protect the state.

This article is a strident call for a reform of the judicial policy with regards to the admissibility of confessional statements in a manner which would clearly discourage the police from abusing the fundamental rights of accused persons in their bid to score a conviction on a coerced confessional statement.

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