

IMPACT OF THE UNITED NATION CONVENTION AGAINST TORTURE ON THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA

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Abstract

This paper adopts qualitative research methods and as such relies largely on secondary sources of data, the research doctrinally study the UN convention against torture in line with the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Evidence Act and some decided criminal cases. The research found out that the content of the said convention is indeed reproduced in the country's local laws in substance and in form. The research found out further that in majority of criminal trials, issue of torture is raised by the defense attorney when an investigation police officer sought to tender a statement of an accused person.

The research further used secondary data collected from the High Court of Justice of Jigawa State numbers one and four in accessing the level of human rights abuse in the process of investigation and found out that in every five criminal cases, four out of them pass through trial within trial to determine the voluntariness of a supposed confessional statement made to the investigation police officer during the investigation. Finally, the paper made far-reaching recommendations which include amending the constitution so as to include mandatory presence of defense attorney before taking the statement of an accused person and heavy criminal liability and disciplinary action against any police officer that is found involved in torture.

Keywords: Torture, Human Rights, Accused Person, Criminal Justice, Police and Constitution.

Introduction

The protection of human rights through the criminal justice delivery system is an indispensable feature of any system governed by the rule of law. (Lester and Pannick, 1999) the protection of human rights have been acknowledged to varying extents across time, but since the Second World War, the universality of human rights has been recognized by the United Nations as inherent in the very nature of human beings as a reflection of their common humanity.

(Iwara and Ola, 2016) argue that the right to fair trial is the mother of all rights involved in the administration of criminal justice, they defined the right to fair trial as a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life, right to liberty of the person and right against self-incrimination.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention" or "CAT") was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). The Convention entered into force on 26th June 1987 after it had been ratified by 20 States; however, Nigeria ratified the convention on 28th of June, 2001. The convention is centered on the presumption of innocence, right to remain silence or right against self-incrimination as may be used interchangeably which are essential rights necessary to attain just and fair trial. This is very fundamental in adversarial or accusatorial system or procedure practiced in Nigeria.

Article 1.1 of the Convention defines torture as:

For the purpose of this Convention, the term "torture" means 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, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

Nigeria Criminal Justice System

Enforcement of criminal law remains primarily a function of federal and state governments in Nigeria. The criminal justice system of Nigeria is adversarial or accusatorial system in which

an accused is presumed to be innocent till proven guilty¹, the burden of proof being on the prosecution; the accused person is entitled to a true investigation, and fair and open trial, and the prosecution is enjoined to play a balanced role in the trial of an offence. The standard of proof required is proof beyond reasonable doubt. The process start with a complaint or information of criminal offence, arrest by the police, investigation, transfer of case file to the office of the Attorney General (Ministry of Justice) for advice, at this stage the office of Attorney General will study the transferred file and advise for either the accused person to be charged to court or be discharged for want of prima facie case.

In the case of other agencies with prosecutorial power such as Economic and Financial Crimes Commission (EFCC), The Independent Corrupt Practices Commission (ICPC) and The National Drug Law Enforcement Agency (NDLEA) cases are prosecuted without transferring the case file to the office of the Attorney General.

An accused person standing trial for a criminal offence before any court in Nigeria enjoys the presumption of innocence until his guilt is proved, the proof of which must be beyond reasonable doubt. Nevertheless, the accused person can confess to the commission of the crime and the court is empowered to convict, based on the weight of such confession.

Trial commences with prosecution opening its case, by calling witnesses and tendering the statement of the accused during investigation, the court will now call the accused person to cross examine the witnesses. After prosecution close it case, the accused person is now left with some options; to open his case, by entering his defense or make a submission of no case to answer.

The options open to the accused person at this stage are many. Firstly the accused person can rest his case on that of the prosecution. The accused may also decide to enter his defense and call witnesses. Alternatively, the accused person may decide to make a no case submission, contending that the materials made available by the prosecution present 'no case' requiring him to make any defense². In other words, in a criminal trial, after the conclusion of the prosecution's case the defense has the options of either calling their own witnesses (which may or may not include the accused) to rebut the prosecution's case; rest their case on the prosecution's evidence without calling any witness; or invite the Court to dismiss the charges

¹ Section 36(5) of the Constitution of the Federal republic of Nigeria, 1999 (as amended)

² Ibraheem, O. T. (2013) 'No Case Submission Under Nigerian Law' *International Journal of Innovative Research and Development*, Vol 2(1) pp. 243-261

and discharge the accused if, in their opinion, the evidence produced by the prosecution has not presented a prima facie case against the accused person.³

Another issue that has impact on the administration of criminal justice in Nigeria is trial within trial.

Convention against Torture and Nigerian Laws

Flowing from the definition of torture as provided under Article 1.1 of the convention, the constitution of Nigeria outlined fundamental human rights that clearly prohibit any form of torture, in the same vein; self-incrimination was illegalized by according the accused person right to remain silence.

Section 34 (1)

Every individual is entitled to respect for the dignity of his person, and accordingly:

(a) No person shall be subjected to torture or to inhuman or degrading treatment;

Section 35 (2)

Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

In addendum to the constitutional provisions highlighted above, section 6 of the Administration of Criminal Act 2015 provides that:

6 (2) The police officer or the person making the arrest or the police officer in charge of a police station shall inform the suspect of his rights to:

a. remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice;

b. consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest; and

c. free legal representation by the Legal Aid Council of Nigeria where applicable; provided the authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect.

Section 29 of the Evidence Act provides

(2) If, in any proceedings 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 -

³ ibid

- a. by oppression of the person who made it; or
- 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 the provisions of this section.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either paragraph (a) or (b) of subsection (2) of this section.

In the case of **Olabode vs State**⁴ the court held a statement made at the police station, free from duress, coercion or undue influence, voluntarily admitting of guilt by an accused person whether judicial or extra-judicial, if it is direct and positive and is duly made and satisfactorily proved is sufficient to ground a conviction without corroborative evidence.

In the other hand, the court held in the case of **Dairo vs Federal Republic of Nigeria**⁵ that if the accused person object to the admissibility of the statement on the ground that he made the statement involuntarily due to certain vitiating elements such as torture, inducement, promise of an advantage, threat, duress etc the court is expected to determine the credibility of this claim before making a ruling on whether to admit the statement or not. Thus the Court must either on the application of parties or *suo motu* order a trial within trial.

A trial within trial is a procedure for determining the admissibility of a statement challenged on the ground of involuntariness.⁶ The sole purpose of a trial within trial as enunciated by the court in **Ibeme v The State**⁷ is to find out whether in obtaining the statement in question the accused person was tortured, coerced, induced, threatened, deceived or forced by means of any unnatural intervening factors which would have influenced the making of the statement in question. The consequences is that if the prosecution succeeded in proving beyond reasonable doubt that the statement was obtained freely and was made voluntarily by the accused person, the court will admit the statement in evidence and can even convict the accused person without

⁴ (2007) All FWLR (Pt 389) 1301, See also **Rasheed Lasisi v. The State**, (2013) LPELR-20183(SC)

⁵ (2012) 16 NWLR (pt. 1325) 129

⁶ Adekunle C.O (2017) 'A Case for the Abolition of Trial within Trial in Nigerian Criminal Jurisprudence' "The Legal Insight" *International Journal of The Law Students' Society, Bowen University, Iwo, Nigeria*. Essays in Honour of Late Mr. Oluwasegun Isaac Aderibigbe (The Legal Insight, Vol 1, 2017, Pp 179 – 187)

⁷ (2013) 10 NWLR (pt 1362) 333 at 371 paras C-D

any further corroborative evidence. However, if the prosecution failed to do so, the statement will be rejected and accordingly be marked as tendered and rejected.

(Adekunle, 2017) conversed for the abolishing of trial within trial and submitted that the mere fact that the defendant raised an objection to the admissibility of the statement on the ground of involuntariness should not lead to a trial within trial. He suggested that such objection could be noted by the court as “reserved”. Thus the prosecution will continue with their case and when the time comes for the defense to open their own case, he however agreed that this should be without prejudice to the options open to an accused person to raise a no case submission or rest his case on that of the prosecution.

Undoubtedly, the local laws of Nigeria has made adequate provisions regarding the prohibition of torture and self-incrimination, which of course is in one way or the other influenced by the CAT, however, an assessment of the criminal cases handled by High Court of Justice of Jigawa State Numbers one and four shows that in 95% of the cases that commenced between January to December, 2017, both completed and uncompleted underwent through trial within trial. Although the data indicates that out of the 95% of the cases, in about 50% the accused persons could not be able to substantiate the claim of torture or involuntariness as the case may be, the situation is alarming.

Human Right Watch (HRW) report, 2017 reported allegations of abuses including arbitrary arrests and detention, torture, forced disappearance, and extrajudicial killings continue to trail security operations.

The security forces of Nigeria continuously disregard the provisions of laws against torture by committing serious human rights violations including extrajudicial executions and enforced disappearances. The police and military continued to commit torture and other ill-treatment. Conditions in military and police detention were harsh. Thousands of people were forcibly evicted from their homes, tortured and murdered without any trial.⁸

One of the significant obstacles to the realization of torture-free investigation and generally to access to justice in Nigeria is the high level of illiteracy prevalent in the country today (Shettima, 1999). It is most unfortunate that the socio-economic structure of the country has made it impossible for the vast majority of Nigerians to have access to education, notwithstanding the various development plans and programs by successive governments, which emphasize the importance of education.

⁸ Amnesty International 2016/2017 Nigeria report available at <https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/> last visited 19th January, 2019

In most cases these allegations are made against experienced police officers, predominantly by unexposed illiterate accused persons, the place in which the torture is alleged to have carried out is always a police station in this regard, a place that rarely visited by those categories of people due to lack of exposure and fear of been extorted. In this context, how can an accused person prove to the court that he was indeed tortured? Simply put, accused persons are being tortured but they cannot be able to prove same before the court of law in order to render the self-incriminating documents that is tendered before the court of law.

The Administration of Criminal Justice Act (2015) and the Administration of Criminal Justice Law of Lagos State (See ss. 15 (4) ACJA and 9 (3) ACJL) have added the requirement for a video coverage into the process of how the statement of an accused person should be obtained. This innovation will not be without a challenge, what happen before and after the video recording cannot be ascertained, although it may help in reducing obtaining forced confession but it cannot be a yardstick or a measure of ensuring torture-free investigation.

Conclusion

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have in a number of ways influenced the re-drafting and amendment of local laws in Nigeria, but the practical implementation is very poor as the number of complaint of torture at the police is tremendously increasing.

Whilst it is on record that 90% of the offenders are illiterate, there is inadequate sensitization and guidance on the right against torture, furthermore, knowledge on having a right to an attorney and right to remain silent in the event of arrest will greatly help in curbing the menace of police torture. The constitution should also be amended to clearly make it compulsory to have an attorney of the accused before taking his statement.

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