

THE PRACTICE AND PROCEDURE ON POLICE INTERROGATION OF SUSPECTS IN NIGERIA: A CRITIQUE

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Abstract

Interrogation of a suspect is one of the key aspects in the investigation and prosecution of criminals in any civilized accusatorial system of criminal administration. The success or otherwise of a criminal prosecution depends on how well, the interrogator carried on his activities. The problem however, lies in the fact that in the course of interrogation of suspects, the Police and other law enforcement agencies resorted to the use of coercion, torture and other unorthodox means to extract involuntary confession so as to secure cheap conviction. In addressing this problem, the paper adopts a doctrinal method to critically analyze the Reid techniques of investigation, common law rules and practices, constitutional safeguards and selected provisions of ACJA. The paper mainly observed that in Nigeria, the Police are empowered to investigate crimes and interrogate persons alleged to have committed crime yet, no direct legislation is established, the common law rules applied by judges in deciding whether confessional statements of suspects were voluntary or otherwise, are purely subjected to individual judges, the constitutional safeguards are only echoing the rights of a suspect but not in any way directly regulating the exercise of powers of the interrogator, the wordings used in section 17 ACJA in respect of provision for an interpreter is vague. Who qualifies as interpreter in the context, is it the police officer conducting investigation or a special interpreter? The paper recommends among others; the establishment of a legal framework for police interrogation with a view to address the excesses of police, amendment of the provisions of section 17 of the ACJA by stating that “the interpreter shall be an independent person from the service of the Police Force”, government shall provide the needed finances for the installation of CCTV cameras and other anti torture detective forensic tools in police interview rooms.

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INTRODUCTION

One of the primary functions of the police is to investigate all crimes which are brought to their notice and wherever possible, to bring the perpetrators before courts, together with all the relevant evidence. This aspect of investigation plays a key role in the administration of criminal justice system.

Interrogation is a formal and systematic questioning of a person; especially intensive questioning by the police, of a person arrested for or suspected of committing a crime. Interrogation entails not only express questioning but also words or actions that the police should know are reasonably likely to elicit an incriminating response. Police interrogation otherwise called *interview of suspects*, is one of the primary methods used by police to obtain information about the commission of a crime and plays a very significant role in police investigations. The witness interview may give police new information about a crime such as a description of an offender, an account of events or useful background information. The suspect interview may also allow the police to ascertain an individual's level of involvement in an offence, implicate others or may help exonerate the suspect.

However, the *modus operandi* being employed by Nigerian police in the interrogation of suspected persons and the value of evidence obtained have long generated spontaneous reactions and criticisms among legal experts, public analysts, academicians, sociologists, business cycle and the general public alike.

To achieve a correct balance between the need to ensure that the police have adequate means to investigate crime, and the desirability of protecting the innocent and the liberty of the subjects, certain rules were established over a period of time.

The rules date back as far 1870 when Lord Chief justice Cockburn said at the Central Criminal Court:

"You may ask a man a question with an honest intention to elicit the truth and ascertain whether there are grounds for apprehending him; but with a foregone intention of arresting him, to ask him questions for the main purpose of getting anything out of him that may afterwards be used against him, is very improper proceeding⁴."

The point is however, that there has been some form of guidelines for many years, although it was not generally known to police officers and not enforced to any great extent. This state of affairs was allowed to continue until the beginning of the twentieth century, and it was then, only after a number of objections in Courts had been made about police procedure, that senior police officers became alarmed at the criticisms levied at them.

⁴ See the case of Rhode Island vs Innis U.S. Supreme Court (1980) P. 100

HISTORICAL BACKGROUND

Common Law Rule

At common law, not until the latter part of the eighteenth century was there developed a rule excluding coerced confessions from admission at trial. Prior to that time, even confessions obtained by torture were admissible. As the rule developed in England and in early United States jurisprudence, the rationale was the unreliability of the confession's contents when induced by a promise of benefit or a threat of harm. In its first decision on the admissibility of confessions, the Court adopted the common law rule, stressing that while a "voluntary confession of guilt is among the most effectual proofs in the law, from the very nature of such evidence it must be subjected to careful scrutiny and treated with great caution"⁵.

The presumption upon which weight is given to such evidence, namely, that one who is innocent will not imperil his safety or prejudice his interests by an untrue statement, ceases when the confession appears to have been made either in consequence of inducements of a temporal nature, held out by one in authority, touching the charge preferred, or because of a threat or promise by or in the presence of such person, which, operates upon the fears or hopes of the accused, in reference to the charge, deprives him of that freedom of will or self-control essential to make his confession voluntary within the meaning of the law⁶.

MEANING OF INTERROGATION

It is apposite however to note that although the terms 'interrogation' and 'interview' are used interchangeably, the two, are uniquely different in terms of purpose, nature and even legal implication. The term interview is a non accusatory information gathering exercise that may take place at the beginning of an investigation and in a variety of environment. In other words, the interview is described as 'behavior analysis interview.'⁷ In a sharp contrast, interrogation takes place 'only when the investigator is reasonably certain of the suspect's guilt which certainly may arise from the suspect's behavior during an interview.'⁸ The investigator should employ the nine steps of Reid techniques during the interrogation.⁹

INTERROGATION TECHNIQUES

The police in the course of carrying out suspect interrogation employ some techniques. The techniques were propounded by John E. Reid. The Reid techniques are the basis of the widely used "Criminal Interrogation and Confessions" manual. It lays out nine steps or issues

⁵J. Wig more, A Treatise on the Anglo-American System of Evidence Sec. 823 (3d ed. 1940); Developments in the Law--Confessions, 79 Harv. L. Rev. 935, 954-59 (1966).

⁶Pierce v. United States, 160 U.S. 335 (1896); Sparfvs. United States, 156 U.S. 51 (1895). In Wilson v. United States, 162 U.S. 613 (1896), failure to provide counsel or to warn the suspect of his right to remain silent was held to have no effect on the admissibility of a confession but was only to be considered in assessing its credibility.

⁷Gallini, Police Science at the Interrogation Room, Hastin Law Journal V.61:529, February, 2010.

⁸Ibid p. 539

⁹ Ibid p.539

guiding interrogation. The Reid techniques provide a blueprint of how a successful interrogation might unfold. They are as follows:

1. Confrontation

The detective presents the facts of the case and informs the suspect of the evidence against him. This evidence might be real, or it might be made up. The detective typically states in a confident manner that the suspect is involved in the crime. The suspect's stress level starts increasing, and the interrogator may move around the room and invade the suspect's personal space to increase the discomfort. If the suspect starts fidgeting, licking his lips and or grooming himself (running his hand through his hair, for instance), the detective takes these as indicators of deception and knows he is on the right track.

2. Theme development

The interrogator creates a story about why the suspect committed the crime. Theme development is about looking through the eyes of the suspect to figure out why he did it, why he did like to think he did it and what type of excuse might make him admit he did it. Does the suspect use any particular mode of reasoning more often than others? For example, does he seem willing to blame the victim? The detective lays out a theme, a story, that the suspect can latch on to in order to either excuse or justify his part in the crime, and the detective then observes the suspect to see if he likes the theme. Is he paying closer attention than before? Nodding his head? If so, the detective will continue to develop that theme; if not, he'll pick a new theme and start over. Theme development is in the background throughout the interrogation. When developing themes, the interrogator speaks in a soft, soothing voice to appear non-threatening and to lull the suspect into a false sense of security.

3. Stopping denials

In this technique, letting the suspect deny his guilt will increase his confidence, so the detective tries to interrupt all denials, sometimes telling the suspect it'll be his turn to talk in a moment, but right now, he needs to listen. From the start of the interrogation, the detective watches for denials and stops the suspect before he can voice them. In addition to keeping the suspect's confidence low, stopping denials also helps quiet the suspect so he doesn't have a chance to ask for a lawyer. If there are no denials during theme development, the detective takes this as a positive indicator of guilt. If initial attempts at denial slow down or stop during theme development, the interrogator knows he has found a good theme and that the suspect is getting closer to confessing.

4. Overcoming Objections

Once the interrogator has fully developed a theme that the suspect can relate to, the suspect may offer logic-based objections as opposed to simple denials, like "I could never rape somebody -- my sister was raped and I saw how much pain it caused. I would never do that to someone." The detective handles these differently than he does denials, because these objections can give him information to turn around and use

against the suspect. The interrogator might say something like, "See, that's good, you're telling me you would never plan this, that it was out of your control. You care about women like your sister -it was just a one-time mistake, not a recurring thing." If the detective does his job right, an objection ends up looking more like an admission of guilt.

5. Getting the suspect's attention

At this point, the suspect should be frustrated and unsure of himself. He may be looking for someone to help him escape the situation. The interrogator tries to capitalize on that insecurity by pretending to be the suspect's ally. He'll try to appear even more sincere in his continued theme development, and he may get physically closer to the suspect to make it harder for the suspect to detach from the situation. The interrogator may offer physical gestures of camaraderie and concern, such as touching the suspect's shoulder or patting his back.

6. The suspect loses resolve

If the suspect's body language indicates surrender -- his head in his hands, his elbows on his knees, his shoulders hunched -- the interrogator seizes the opportunity to start leading the suspect into confession. He'll start transitioning from theme development to motive alternatives (see the next step) that force the suspect to choose a reason why he committed the crime. At this stage, the interrogator makes every effort to establish eye contact with the suspect to increase the suspect's stress level and desire to escape. If, at this point, the suspect cries, the detective takes this as a positive indicator of guilt.

7. Alternatives

The interrogator offers two contrasting motives for some aspect of the crime, sometimes beginning with a minor aspect so it's less threatening to the suspect. One alternative is socially acceptable ("It was a crime of passion"), and the other is morally repugnant for example, ("You killed her for the money"). The detective builds up the contrast between the two alternatives until the suspect gives an indicator of choosing one, like a nod of the head or increased signs of surrender. Then, the detective speeds things up.

8. Bringing the suspect into the conversation

Under this stance, once the suspect chooses an alternative, the confession has begun. The interrogator encourages the suspect to talk about the crime and arranges for at least two people to witness the confession. One may be the second detective in room, and another may be brought in for the purpose of forcing the suspect to confess to a new detective having to confess to a new person increases the suspect's stress level and his desire to just sign a statement and get out of there. Bringing a new person into the room also forces the suspect to reassert his socially acceptable reason for the crime, reinforcing the idea that the confession is a done deal.

9. The confession

The final stage of an interrogation is all about getting the confession admitted at trial. The interrogator will have the suspect write out his confession or state it on videotape. The suspect is usually willing to do anything at this point to escape the interrogation. The suspect confirms that his confession is voluntary, not coerced, and signs the statement in front of witnesses.

For the purpose of practical demonstration of Reid Techniques of interrogation above, this paper wish to examine some of the relevant portion of the police interrogation directed to the late Boko Haram leader, *Muhammad Yusuf* before he was eventually executed.

Interrogator: *We went to your house yesterday and we saw a lot of animals, syringes and materials used for making bombs, what were you keeping all that for?*

Yusuf: *Like I told you, to protect myself...*

The above poser put to the suspect and the answer given vividly showcased a classical example of **confrontational technique** of interrogation. The interrogator cleverly presented some of the facts and evidence recovered at the residence of the suspect which he indirectly confessed.

Interrogator: *In this town (Maiduguri), how many areas do you have?*

Yusuf: *The headquarters is right here.*

Interrogator: *What about other branches?*

Yusuf: *We have in Gwange, Bulunkutu...*

Also, the question above reflects the overcoming objections as a technique of interrogation. In this question the interrogator used the previous answer given by the suspect to ask another question which was avoided earlier by the suspect.

Interrogator: *Where they intercepted weapons the other day, right?*

Yusuf: *(Laughs) Intercepted weapons?*

Interrogator: *Who are your sponsors, here at home or abroad?*

Yusuf: *No body*

Interrogator: *No, tell us the truth...*

Yusuf: *Insha Allah, I won't lie to you...*

The interrogator under this question tried to be cordial and friendly to the suspect and this demonstrate the technique of getting suspect attention as one of the interrogation techniques.

JUDGES' RULES AND POLICE INTERROGATION

These are set of rules laid down by His Majesty's Justices- "For the Guidance of Police Officers when Investigating Crime." It must be dearly understood that the Judges' Rules as formulated then, and the Rules which have been recently devised, are not rules of law. They are not governed by statute and are not to be found in any legal work as part of the English Criminal Law. They are merely rules for the guidance of the police. It therefore follows that whilst no one can be punished for a breach of these rules, they may be very severely criticized, and suffer the penalty of having valuable evidence rejected in a criminal trial¹⁰.

The Rules Formulated in 1912 and 1918 respectively read as follows:

1. When a police officer is endeavoring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained¹¹.
2. Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or further questions, as the case may be.
3. Persons in custody should not be questioned without the usual caution being first administered.
4. If the prisoner wishes to volunteer a statement, the usual caution should be administered. It is advisable that the last two words (i.e. 'against you') of the usual caution should be omitted and ends with the words "be given in evidence."
5. The caution to be administered to a prisoner, when he is formally charged, should be in the following words: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."
6. A statement by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.
7. A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said.

¹⁰Ibid note 5.

¹¹R. v. Cook, (1959) 2 All E.R. 97

STATUTORY SAFEGUARDS AGAINST SELF INCRIMINATION IN THE COURSE OF INTERROGATION

The Nigerian Constitution, Regional and International Instruments provide elaborate provisions protecting suspects from self incrimination especially at the police interview room. These rights are couched against any form of violation of citizen's rights in the course of police interrogation and interview. The following are some of the Constitutional rights and safeguard by the Constitution of the Federal Republic of Nigeria:

- a. The right to be informed about the facts and grounds for the arrest or detention¹².
- b. The obligations to take an arrested person within a reasonable time to a police station and to report the arrest of suspects without a warrant to the nearest magistrate¹³.
- c. The right to be brought before a court within a reasonable time. This is stipulated as 24 or 48 hours for non capital offences, depending on the proximity of the court¹⁴.
- d. The right to remain silent until consultation with a legal practitioner¹⁵.
- e. The right to have access to a legal representative or person of one's choice, and to provide reasonable facilities for obtaining legal advice¹⁶.
- f. Right to interpreter. This is called for where the suspect does not understand or speak or write in the English language.

Also, the Nigerian Police Human Rights Manual, adopted in 2004, contains a number of safeguards against torture and other ill-treatment¹⁷. For example, the "Rights of persons under detention and prevention of torture", including the rights of a detainee to have access a lawyer, to be brought to court within a reasonable time, to remain silent during interrogation; to the presumption of innocence; to be informed of the fact and grounds of his/her arrest or detention, and to freedom from arbitrary arrest or detention.

The situation in Nigeria was somewhat similar to the above common law principle prior to the enactment of Administration of Criminal Justice Act (ACJA), 2015 which appears to be more radical as far the reformation of Criminal Justice System in the country. The section of the law that is directly relevant to this paper is section 17 which provides thus;

- (1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.
- (2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of

¹²Section 35(3) of the Constitution of the Federal Republic of Nigeria (1999).

¹³ Section 9, of the Criminal Procedure Code.

¹⁴Section 20, Criminal Procedure Code.

¹⁵. Section 35(4) of the Constitution. In capital cases, suspects may be detained by the police for longer than 48 hours before being brought before a court of law (Section 35(7)). However, defendants must still be brought before a court within a reasonable time.

¹⁶ Section 35(2) of the Constitution.

¹⁷ For more details on the rights see Chapter 10 of the Manual

an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice...

- (3) Where the suspect does not understand or speak or write in the English language, an interpreter should record and read over the statement to the suspect to his understanding and the suspect should then endorse the statement as having been made by him and the interpreter shall attest to the making of the statement.
- (4) The interpreter shall endorse his name, address, designation and or other particulars on the statement.
- (5) The suspect referred to in subsection (1) of this section shall also endorse the statement with his full particulars.

Flowing from the above, the import and purport of the above provision is to clearly establish guidelines and techniques to regulate the mode which an Investigating Police Officer (IPO) must employ when interviewing a suspect. This could be better understood through the lens of constitutional safeguards enshrined under the 1999 Constitution of the Federal Republic of Nigeria. Detail analysis on this would come subsequently.

The Administration of Criminal Justice Act, 2015 reproduced earlier stipulates that before a police officer takes the statement of a suspect, such suspect shall have his lawyer present or any other person of his choice and where the suspect does not understand English Language, an interpreter must be provided for him.

It also provides that such statement must be made in the presence of a lawyer chosen by the suspect¹⁸. If a suspect makes a statement under pressure, threat or torture, it must not be used as evidence in court.

The prosecutor has a responsibility to prove that the statement has been made voluntarily. *Section 29(2)* of the Evidence Act is clear on the prohibition of using a confession made “by oppression”.

In line with the above statutory provisions, the Nigerian Courts have in a number of cases, laid conditions or test to be applied before convicting an accused person on the basis of his sole confessional statement. This is what the Supreme Court held in *KABIRU VS. A.G OGUN STATE*¹⁹;

“To convict an accused on an alleged confessional statement, the statement must pass the following tests;

- a. Is there anything outside the confession to show that it is true?
- b. It is corroborated
- c. Are the relevant statement made in facts true as far as they can be tested
- d. Was the prisoner, one who had the opportunity of committing the offence

¹⁸Section 15(4) Administration of Criminal Justice Act.

¹⁹(2009)5 NWLR Pt 1134 p. 209 at page 212 ratio 5

- e. Is his confession possible?
- f. Is it consistent with other facts which has been ascertained and have been proved?"

In Nigeria, in what appears a legislative attempt to give protection against undue confessional statement in the course of suspect's interrogation the Administration of Criminal Justice Act, 2015 was enacted. Section 17 seems to address the problem of the police interrogation of suspects.

However, a question that merits further investigation is, does the provision of section 17 of the Administration of Criminal Justice Act, 2015 sufficiently enough safeguard the rights of a suspect vis-à-vis the Constitutional safeguard captured above? The answer is definitely in the negative. It is not out in tune with reality that the provisions of section 17 of the ACJA is merely couched to further bolster the rights of suspect as enshrined under the 1999 Constitution of the Federal Republic of Nigeria. As a follow up, to what extent the police observe and effectively put into practice the requirement of the law in the process of suspect's interrogation. A fair analysis and report reveal that a suspect in the police custody has no any right to preach or assert, reason being that person who mistakenly find himself in the police station tells more about the degrading treatment and experience there.

The section under review merely emphasized on the presence of a third-party at the time of interrogating a suspect neglecting the excessive pressure, fear and intimidation being put on the suspect so as to compel him to make any statement that suit the police. Also the atmosphere under which the police interview is been conducted is unfavorable to the suspect talk less of encouraging smooth and effective communication.

It is transparently evident that a suspect is always put under pressure to utter a relevant statement that may be used against him during trial in court. The police can do everything possible to attain such purpose by hook or by crook. This leads the police to resort into violating the constitutional safeguards captured above with no hesitation. This begs the question, what is the problem despite the existence of the laws in place?

It is observed with respect that even though section 17 requires the use of an interpreter however, the section failed to define who qualifies as an interpreter for the purpose of the section. The implication is that a police officer who is carrying the interrogation may serve as an interpreter and that will be detrimental to the suspect, in the sense that he may be unfair.

Again, the International Human Rights law, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), prohibit the use of statements obtained through torture or other ill -treatment as evidence in any proceedings, except against a person accused of such practices as evidence that the statement was given.

INTERROGATION IN AUSTRALIA

As far as the law relating to interrogation is concerned in Australia, three basic statements can be made:

First, police have the right to question any person at any time when investigating a crime. Secondly, a person cannot be compelled to answer such questions; a suspect has the right to remain silent and no adverse inference may be drawn from the exercise of this right. Third, two distinct rules apply to the admissibility in evidence of any confession or admission made to the police: (1) to be admissible the statement must be voluntary and not the result of 'duress intimidation, persistent importunity, or sustained or undue insistence or pressure (2) even if a statement is found to be voluntary it may still be excluded in the exercise of the judge's discretion if it is considered that it would be unfair to the accused to receive it in evidence²⁰.

A relevant factor in determining unfairness is whether the Judges' Rules have been adhered to by the police when questioning the accused person, although non-compliance with the Judges' Rules does not result in automatic exclusion of the evidence obtained²¹.

The judges' rules also apply in Australia but various amendments have been made to the rules since that time and a complete revision was published in 1964. Versions of the Judges' Rules in their pre-1964 form apply in most Australian jurisdictions either by incorporation in *police standing orders* or by adoption by the relevant court as guidelines in exercising its discretion to exclude confessions²².

The rights of an arrested person during police Interrogation in Australia

1. The police officer must, as soon as practicable following the arrest of a person, inform that person of their arrest rights²³. Where there has been a violent arrest, or the arrested person is unable to appreciate or understand their rights (perhaps due to intoxication), the process of informing that person of their rights should be repeated once the arrested person has settled down or sobered up.²⁴
2. A police officer must, as soon as reasonably practicable following the arrest of a person (regardless of whether apprehension occurred with or without a warrant), warn the arrested person that anything they say may be taken down and used in evidence²⁵.
3. The arrested person has a right to make a telephone call (in the presence of a police officer) to a friend or relative to inform them of their whereabouts. Where that

²⁰ <http://www.alrc.gov.au/publications/22.%20Criminal%20Investigation%20and%20Police%20Interrogation%20of%20Aborigines/law-relating-interrog> accessed on 1/5/2019

²¹ Ibid

²² Ibid

²³ S. 79A(3) (a) Summary Offences Act, 1953 Australia.

²⁴ see *Robinett v Police (2000) 78 SASR 85* at 94

²⁵ Section 79A(3) (b) Summary Offences Act, 1953

telephone call is not answered, the arrested person should be allowed to make another telephone call²⁶.

4. Where a person has been arrested on suspicion of having committed an offence, they have a right to have a solicitor, a relative or a friend present during interrogation or investigation while they remain in police custody²⁷.
5. When a person has been arrested on suspicion of having committed an offence and the person is not a native speaker of English, they have a right to the assistance of an interpreter during interrogations²⁸.
6. An arrested person may also request the assistance of an interpreter during a forensic procedure²⁹.
7. When a person has been arrested on suspicion of having committed an offence, they have a right to not answer any questions except when otherwise required to do so under the Summary Offences Act, 1953.
8. A police officer must inform an arrested person (who is eligible to apply for bail) of their right to apply for bail as soon as reasonably practicable after delivering them to the nearest police station³⁰.

POLICE INTERROGATION IN AUSTRALIA

A child who is being questioned by the police has the same rights as an adult not to answer questions unless specifically required to by some Act or other law. This means that the child must tell the police his or her name and address, but does not have to answer questions about the alleged offence³¹.

In addition to the other state laws relating to investigation, arrest, bail and remand³², the police must, as soon as possible after the arrest of a youth, explain the nature of the allegations against him or her, and inform the youth of his or her right to seek legal representation. The police must take all reasonable steps to ensure that the child is only interviewed in the presence of a *parent or guardian* or, if not available, an adult person nominated by the child (and who has a close association with the child) or a person from his family. Statements made to police by a child when a guardian or other adult is not present may not be accepted as evidence by a court in many cases.

²⁶ *R v Tanner [2005] SASC 416*

²⁷ Section 79A(1)(b)(i) Summary Offences Act, 1953

²⁸ *Ibid*

²⁹ S. 22, Criminal Law (Forensic Procedures) Act, 2007

³⁰ See Section 13(1) Bail Act, 1985. under the Act, the police officer must provide that person with a written statement explaining how to apply for release on bail and a form to apply for release on bail

³¹ ., see arrest, your rights and bail, arrest and questioning Act.

³²Section 14, Young Offenders Act 1993

POLICE INTERROGATION IN CANADA

The police whose duty is to enquire into alleged offences has the right to question persons likely to be able to give information. The earlier English cases however made a distinction between the rights of a police officer to question a person when he was merely conducting an investigation and his right to question a person whom he had already taken into custody or has decided to charge to court³³.

The Canadian Courts from early time, consistently held that a statement made by an accused person, if made voluntary, is admissible notwithstanding that it is made while in custody in answers to questions put by the police. This was the decision of Canadian Supreme Court in *Bourdreaux vs the King*³⁴.

In determining the voluntariness of a statement made by the accused before the law enforcement agencies, the Canadian courts take *into consideration the length over which questioning is conducted* and the manner in which it was carried out. In *R Vs Howlell*³⁵ the Ontario Court of Appeal quashed the conviction of the accused because the only evidence consisted of a statement which the court held had been obtained by police interrogation of a coercive nature over a three hour period³⁶.

Section 10(b) of the Charter³⁷ provides that everyone has the right on arrest or detention “to retain and instruct counsel without delay and to be informed of that right.” In addition, there is a recognized right to silence within the principles of fundamental justice under section 7 of the Charter. In relation to the latter, in the similar case of *R. v. Whittle*, Sopinka³⁸ noted that;

“while the confessions rule and the right to silence originate in the common law, as principles of fundamental justice they have acquired constitutional status under s. 7 of the Charter. It is apparent from the case law that section 10(b) of the Charter imposes three duties on the police:

- i. To inform the accused of the right to retain and instruct counsel without delay,*
- ii. To provide the accused with a reasonable opportunity to exercise the right and,*
- iii. To not take evidence from the accused until they do so.*

The courts have characterized these duties as informational. There is no further duty on the part of the police to assure understanding unless if there is an indication that the accused does not understand due to apparent factors such as intoxication, linguistic difficulties, or mental

³³R VS Knight and Theyre

³⁴ 1914 AC page 599 at 609

³⁵ (1950) OR page 181

³⁶ G.A. Martin, Police Interrogation Privileges and Limitation Under Foreign Law, Journal of Criminal Law and Criminology, Volume 52, issue 1, May-June, 1971

³⁷ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (“Charter”).

³⁸ 1994] 2 SCR 914 (SCC) (“Whittle”) at Para 30.

disability. Otherwise, the onus is on the accused to prove that he asked for but was denied access to counsel or was denied any opportunity to even ask.

The courts have also recognized a further duty on police to accused person at the pre-charge stage about the availability of legal Aid and duty counsel services³⁹.

Juvenile Offenders

The new law emerged in 2010 in Canada which repealed /replaced *section 56*⁴⁰ of the Young Offenders Act and section 146 of the Youth Criminal Justice Act. This is what the repeal provides:

“A young person has no more right than adult when it comes to interrogation in police custody. The police may take a statement from a young person without notifying any parent. A young person who provides police with a confessional statement is presumed to have waived his or her right to counsel”.

POLICE INTERROGATION IN QUEENSLAND

A police officer may detain a person for a reasonable time to investigate, or question the person about:

- (a) If the person is in custody following an arrest for an indictable offence, the offence for which the person was arrested; or
- (b) In any case, any indictable offence the person is suspected of having committed, whether or not the offence for which the person is in custody.

However, the person must not be detained for more than eight hours, unless the detention period is extended⁴¹. During the eight hour detention period:

- (i) the person may be questioned for not more than four hours; and
- (ii) the time out may be more than four hours.

The detention period starts when the person is:

- (i) Arrested for the indictable offence;
- (ii) Taken into police custody under a removal order;

³⁹R v Brydges supra

⁴⁰ Section 56 made elaborate provision concerning the right of the young person to remain silent, not to make any statement except in the presence of his parent, guardian or his counsel and to be given reasonable time to do so.

⁴¹see s. 405 of the Police Powers and Responsibilities Act, 2000 ‘Application for extension of detention period’ and S. 406: ‘When detention period may be extended’ of the Police Powers and Responsibilities Act, 2000)

(iii) Taken from a watch-house; or

(iv) Otherwise in the company of a police officer at a watch-house, prison, or detention centre, for the purpose of questioning the person.

If the person decides not to answer questions or not to continue answering questions, continuing the detention period may not be reasonable unless:

(i) it is necessary to carry out further investigations; or

(ii) the person consents, or another authority requires the person, to participate in an investigative procedure (for example, the person consents to taking part in an identification parade; or a magistrate orders a medical examination involving the person).

If a person is detained for questioning more than once in any period of 24 hours and questioned for a total of more than four hours in the 24 hours, you must not continue to question the person, unless the detention period is extended under s. 406 of the Police Powers and Responsibilities Act 2000⁴².

POLICE INTERROGATION AND HUMAN RIGHTS VIOLATION IN NIGERIA

Human rights abuse by the police is a phenomenon that is disturbing and worrisome to Nigerians. This has left many citizens to be injured physically, mentally or psychologically as they go through these experiences in the hands of those whose responsibility is to protect them. There exist frightening experiences in which the citizens hardly have any complements for the police, detest interaction with police personnel as they see it as a prelude to arrest. This has been traced to the committal human rights abuses by the police against the citizenry⁴³.

In the course of exercising their power to investigate and/or interrogate suspects brought under their custody, the Special Anti Robbery Squad hereinafter called (SARS)⁴⁴ is responsible for widespread torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) of detainees in their custody⁴⁵.

Amnesty International's research shows that detainees, both men and women, are subjected to various methods of torture and ill-treatment in order to extract information and "confessions". Such methods include severe beating ("ashasha"), hanging, hunger and

⁴²<https://www.police.qld.gov.au/rti/published/policies/qpsPolicyProc/>

⁴³ F.B.Okeshola, Human Rights Abuse by Nigerian Police in Four Selected States and the Federal Capital Territory, Abuja British Journal of Arts and Social Sciences ISSN: 2046 -9578, Vol.13 No.1 (20130

⁴⁴The Special Anti-Robbery Squad is a branch of the Nigerian police created to fight violent crimes including armed robbery and kidnapping.

⁴⁵<file:///c:/users/elitebook/documents/acja%20and%20human%20orgihts> accessed on 04/10/2016

starvation, shooting in the legs, mock executions and threats of execution. Amnesty international's research also shows that SARS officers involved in the torture and other ill-treatment of detainees are rarely held to account, and in some cases are transferred to another location to avoid punishment⁴⁶.

When Amnesty International researchers visited the SARS detention centre in Abuja in June 2016, they saw 20 detainees who had been in detention for at least six months, including a 20-year-old man who said he had been detained since February, 2014. Many said they had not been given access to their lawyers and family members. A lawyer told Amnesty international that it is usually very difficult to access detainees in SARS detention. On one occasion when he attempted to reach his client, a police officer shouted at him "What are you looking for here? "Don't you know lawyers are not allowed in SARS?"⁴⁷

Samson Abu is a student from Kaduna who said that he was arrested on 2nd April, 2015. When Amnesty International spoke to him in his cell at SARS detention centre in Abuja in June 2016, he looked emaciated and had several new lacerations on his back as a result of the application of a sharp object. He said he had not received any medical treatment for his injuries, which the police claimed he had received from a mob during his arrest. Samson Abu said that immediately after arrest the police had beat him severely with a stick before throwing him into the cell. He told Amnesty International that he had no lawyer and no access to his family and he only managed to get food from his fellow inmates⁴⁸.

Abdulahi Zachari, a 20-year-old farmer, and his brother were detained for three weeks at the SARS Station in Abuja in November 2015 after being accused of robbery. Abdulahi Zachari told Amnesty International that he was tortured and forced to "confess" that he was a robber. He said he was repeatedly beaten by police officers. He said that at about 7-8pm the police would call out names of detainees, who were then taken out and tortured. On two occasions, he was taken out with his brother and tortured by a police officer. "They asked us to lie down and were hitting us with rods all over our bodies". They were telling us to admit that we were armed robbers. We kept on denying it" he said. After three weeks, Abdulahi Zachari was released without been charged to court and spent a week in hospital recovering from his injuries. He did not have a lawyer and did not make a formal complaint because he feared reprisal from SARS⁴⁹.

Torture has become such an integral part of policing in Nigeria that many police stations have "torture chambers". Special rooms where suspects are tortured while being interrogated. Often known by different names like the "Temple" or "Theatre" such chambers are sometimes under the charge of an "Informal officer in charge of torture" or O/C Torture it is

⁴⁶ Ibid.

⁴⁷ Amnesty International Interviews with SARS detainees in Abuja, Enugu and Awkuzu, June 2016

⁴⁸ Ibid.

⁴⁹ Amnesty International interview, 8 April 2016

said. Those officers use an alarming array of techniques, including nail or tooth extractions, choking, electric shocks and sexual violence⁵⁰.

In one illustration incident, a 24-year-old Abosede told Amnesty International how sickening police abuse left her with a permanent injury. “She revealed that a policewoman took me to a small room, told me to remove everything I was wearing. She spread my legs and fired tear gas into my private part”. “I was asked to confess that I was an armed robber... I was bleeding... up till now, I feel the pains in my womb”⁵¹.

Furthermore, in the study conducted by the Constitutional Project (CRP) quoted earlier, 69% of the respondents alleged that statements or confessions made by suspects during police interrogation were not made voluntarily⁵².

Most policemen interviewed in the study conceded that **in the absence of an efficient means of investigating crime, torture is the easiest and most effective means of interrogation**. The methods of torture often used by the police in the course of interrogation include systematic beating with horse whips, cables and iron bars. Other more severe forms include: "hanging" of suspects from the roof of the interrogation room with the aid of ceiling fan hooks, the use of shock-batons, shooting of suspects in the limbs, cigarette bums, insertion of broom sticks or pins into the genitals of male suspects and bottles in the case of female suspects⁵³.

The above account of unorthodox methods of police interrogation of suspects in Nigeria are not all exhaustive, there are many more other forms of cruel means of “interrogation techniques” employed by the Nigerian police in an attempt to secure a quick and short-circuit confession from suspects under interrogation.

OBSERVATIONS

1. It is observed that in Nigeria, police are empowered to investigate crimes and interrogate suspects or persons alleged to have committed crime but no uniform rules/legislations are provided for so doing.
2. The common law rules applied by judges in deciding whether confessional statements of suspects were voluntary or otherwise, are purely subjected to the judge, hence there was no law directly that laid down procedure that must be followed by an interrogator while interrogating suspects.

⁵⁰ Amnesty International Report Exposes How Nigerian Police and Military Routinely Torture, kill, www.amnestyInternational/police accessed on 10/5/2019

⁵¹ Ibid

⁵² See S.G. Ehindero, *Police and the Law in Nigeria*. Themes Press, Lagos, 1986, at 1; ClementNwankwo, et al, *Human Rights Practices in the Nigerian Police 9 Constitutional Rights Project*, Lagos(1993); A.B. Dambazau, *Law and Criminality in Nigeria 144* (1994), (Published by UniversityPress, Ibadan).

⁵³ Ibid

3. Judges rules are not rule of substantive law. They are merely guide to the investigation and therefore inadequate to safeguard the right of suspects against obtaining involuntary confessions by suspects.
4. The constitutional safeguards are only echoing the rights of a suspect but not in any way directly regulating the exercise of powers to the investigator or interrogator, hence there are various abuses of suspects' rights by police and other law enforcement agencies saddled with the responsibility to investigate crimes.
5. Yes, the provisions of section 17 of the ACJA appears to be an advancement and a restrictions to the law enforcement agencies undertaking interrogation but with respect, the wordings used in the section in respect of provision of an interpreter for examples, is vague. Who qualified as interpreter in the context, is it the police officer conducting investigation? is it special interpreter? This is because the Act does not define who qualifies as an interpreter for the purpose of the section.
6. There is no detailed and direct express legislation in Nigeria regulating the activities of investigators.
7. The police in Nigeria have been found to be "guilty" of human rights' violation of its citizens (suspects) in the course of interrogation.
8. Civil liberty Organizations like Amnesty International play a key role in check-mating the extent of abuse of power by police through their visits at the police Division and SARS detention Centres and interviewing of suspects under police detention.
9. There is no law in Nigeria which expressly criminalized act of torture by men of the Nigerian Police in the course of exercising their interrogative powers.
10. No provision for compensation by the Nigerian Government is made to victims of police torture/violence committed in the course of interrogation.
11. Police officers saddled with the responsibility of interrogating suspects were not skilled or trained in the arts of interrogation and may not be aware of the Reid technique, not to talk of exploiting same during interrogation of suspects.

Consequently, in line with the above observations make the followings recommendations;

1. TO THE NIGERIAN GOVERNMENT

- a. Take all positive legal measures with a view to come up with a legislation that will directly address the issue of interrogation of suspects by police.
- b. Take all necessary legal steps to enact a law that will criminalize acts of torture committed by police in the course of interrogation.
- c. Declare publicly that police officers, including members of SARS, will be held accountable for any involvement in torture and other ill-treatment and for any other human rights violations.
- d. Recommend to the Government to amend the provisions of section 17 of the ACJA by stating that "the interpretation shall be an independent person from the service of the Force".
- e. Government shall provide the needed finances for the installations of CCTV cameras and other needed detective tools against torture.

2. TO THE NIGERIAN POLICE

- a. Ensure that any erring member who committed act of torture is brought to book through Orderly Room Trial and then subsequently charged to court for prosecution.
- b. Ensure that any citizen suspect at the police or SARS is informed of his rights including compliance with the provisions of ACJA before the interrogation of the suspect.
- c. Train and educate men of the police who are saddled with interrogative powers, sending them to attend seminars and sensitization courses (both national and international).
- d. Install CCTV Cameras in all the interrogation rooms and ensure that only interrogation duly recorded by the said cameras will be used for the purpose of prosecution in courts.
- e. Ensure that anyone arrested by SARS officers or any other Investigating Officer is brought before a judge within the Constitutional period of 24 or 48 hours.

CONCLUSION

Interrogation is an important aspect of criminal investigation. It marked the first encounter between the law enforcement agencies and the suspects. As a matter of law, police have powers to interrogate suspects. The powers are however, not without limitations.

There is the need to improved and provide robust legal regime in Nigeria that will serve as safeguard against violation of human rights by law enforcement agencies in the course of interrogation in order for them to extract cheap and easy confession which will be used to secure easy conviction in court.

Human Rights Organization plays a key role in check-mating the excesses of police officers during interrogation through the visit and conducting interviews to detainees at SARS, Police Stations and other detention centres by making such information available for the authorities and the general public.

Bibliography

Journal articles

1. G.A. Martin, Police Interrogation Privileges and Limitation Under Foreign Law, *Journal of Criminal Law and Criminology*, Volume 52, issue 1, May-June, 1971.
2. F.B.Okeshola, Human Rights Abuse by Nigerian Police in Four Selected States and the Federal Capital Territory, Abuja *British Journal of Arts and Social Sciences* ISSN: 2046 -9578, Vol.13 No.I (20130)
3. J. Wig more, A Treatise on the Anglo-American System of Evidence Sec. 823 (3d ed. 1940); Developments in the Law--Confessions, 79 Harv. L. Rev. 935, 954-59 (1966).

Text books

1. S.G. Ehindero, Police and the Law in Nigeria. Themes Press, Lagos, 1986, at 1;
2. Clement Nwankwo, et al, Human Rights Practices in the Nigerian Police 9 Constitutional Rights Project, Lagos(1993).
3. A.B. Dambazau, Law and Criminality in Nigeria 144 (1994), (Published by University Press, Ibadan).
4. J. Wig more, A Treatise on the Anglo-American System of Evidence Sec. 823 (3d ed. 1940); Developments in the Law--Confessions, 79 Harv. L. Rev. 935, 954-59 (1966).

Internet sources

1. Amnesty International Report Exposes How Nigerian Police and Military Routinely Torture, kill, www.amnesty.org/en/news/2019/05/nigeria-police-military-torture accessed on 10/5/2019.
2. http://www.lsc.sa.gov.au/cb_pages/legal_advice.php accessed on the 2/5/2019.
3. <https://www.police.qld.gov.au/rti/published/policies/qpsPolicyProc>
4. <file:///c:/users/elitebook/documents/acja%20and%20human%20rights>

Judicial authorities

1. Bourdreaan vs the King.
2. Kabiru vs A.G Ogun State.
3. Pierce vs. United States, 160 U.S. 335 (1896).
4. Sparf vs. United States, 156 U.S. 51 (1895).
5. R. v. Cook, (1959) 2 All E.R. 97.
6. *Robinett Vs Police (2000)* 78 SASR 85at 94
7. *R v Tanner [2005]* SASC 416.
8. Rhode Island vs Innis U.S. Supreme Court (1980) P. 100.

Statutory authorities

1. Administration of Criminal Justice Act, 2015.
2. Constitution of the Federal Republic of Nigeria, 1999 (as amended).
3. Criminal Procedure Code.
4. Criminal Law (Forensic Procedures) Act, 2007.
5. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (Uk).

6. Police Powers and Responsibilities Act, 2000 U.K.
7. Summary Offences Act, 1953 Australia.
8. Young Offenders Act 1993.