



AN APPRAISAL OF ELECTRONIC RECORDING OF CONFESSIONAL STATEMENTS IN NIGERIA **

Abstract

Many times statements made by suspects at the preliminary stage of investigation of a crime are obtained by duress and intimidation, and are therefore involuntary and inadmissible as evidence before a trial court. For the purposes of transparency, accountability and legal integrity, the draftsmen deemed it expedient to make provision for electronic recording of confessional statements in the 2015 Administration of Criminal Justice Act (ACJA), section 15. The law was promulgated to ensure that confession process are conducted fairly, preventing coercion and abuse. Electronic recording served as a reliable and unbiased record, reducing the likelihood of false confessions and aiding in the pursuit of justice. Additionally, these recordings can be valuable evidence in court, providing an accurate representation of the confession and enhancing the overall reliability of the criminal justice system. However, the provisions of section 15 are still not fully complied with. This work therefore, did an appraisal of electronic recording of confessional statements in Nigeria and some other jurisdictions with a view to improving the law and its implementation in Nigeria. With the use doctrinal research methodology, the work reviewed primary and secondary materials on the subject. It was observed that the law on electronic recording of confessional statements in Nigeria is inadequate, both in content and application by the institutions involved in administration of criminal justice. It therefore proffered some solutions to the short comings in the law and implementation in Nigeria, recommending *inter alia* that the legislation (ACJA) should be modified and made more effective to reflect the lawmakers' true, plain, and unambiguous intentions. The Evidence Act should also be amended to include the provision of the law on electronic recording of confessions. There should be training and retraining of police officers and officers of relevant law enforcement agencies on the use and maintenance of electronic recording devices as required.

Keywords: Confessions, Statements, Electronic Evidence, Recording, Administration, Criminal, Justice.

1. Introduction

In Nigeria, confessional statements play a very vital role in the administration of criminal justice, as through a confessional statement and no more, a defendant can be found guilty and convicted for an offence. Confessional statements contain admission by the defendant of the crime he is charged with during investigation stage of the case. When criminal matters eventually get to trial, the Prosecution, who is armed with the confessional statement utilizes it to secure conviction against the defendant. In an attempt to tender a confessional statement as evidence during trial, the prosecuting side is usually faced with objection from the defendant on grounds that the statement was obtained through threat, force or intimidation. In other words, that he actually made the confessional statement but it was made because he for instance, was beaten, forced, threatened or promised to be released from police custody and the case terminated. The defendant in some other cases deny making the statement in total retraction of the said confessional statement. In line with the provision of the law,¹ a mini-trial will be conducted to determine whether the confessional statement was made voluntarily, where the objection is hinged on involuntariness, as was held by the court in *Suleiman v State*.² The burden of proof is usually on the prosecution during the mini-trial to prove beyond reasonable doubt that the statement was obtained from the defendant voluntarily and if this is successfully discharged, the onus of proving involuntariness will shift to the defendant. This was the court's decision in the cases of

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¹ Evidence Act 2011 s. 29 (1) & (2).

² (2022) LPELR-57577, SC.



Hassan v State,³ *Ajiboye v Federal Republic of Nigeria*⁴ and *Kim v State*.⁵ In *Hassan's* case,⁶ it is evident that this task is not so easily discharged by the defendant who at times is expected to use medical evidence to substantiate the assertion. It is therefore wrong to admit a confessional statement through a defendant during cross-examination by the prosecution as in such a case, there will be no positive evidence on which the voluntariness or accuracy of the statement can be founded.⁷ The whole process of going through the mini-trial with its concomitant procedure prolong criminal trials and does not promote quick dispensation of justice. This was why the draftsmen deemed it necessary and expedient, in line with changes in other jurisdictions around the globe, to make provision for electronic recording of confessional statements in the 2015 Administration of Criminal Justice Act, in section 15(4).⁸

Prior to the advent of this provision of the law, confessional statements were taken in writing, and without more could be tendered in evidence if proven by the prosecutor that the statement was obtained voluntarily, without duress, force or inducement. The effect of this provision on electronic recording is for every confessional statement to be recorded on a retrievable video compact disc or such other audio-visual means,⁹ so that the said recording will be tendered and played in court as evidence during trial. The essence of the above provision obviously, is to enable the court to decipher from the demeanor of the defendant and all other surrounding circumstances in the video whether the confessional statement was made voluntarily. Alternatively, where a video facility is not available, the confessional statement will be recorded in writing in the presence of a legal practitioner of the defendant's choice. Many times, those suspects have no access to a legal practitioner and as such, are only left with the option of video recording. The implication of not abiding by the above is that the confessional statement should not be admitted in evidence. This is the decision of the court in *Nnaji for v Federal Republic of Nigeria*.¹⁰ This innovation is geared towards curtailing the excesses of some officers of the law enforcement agencies that have over the years adopted various unethical means in obtaining confessions from suspects that they consider to be guilty of crimes. So that while it is good to gather strong and reliable evidence in criminal cases, the process of getting confessional statements should shift to focus on proper administration of justice. Although the provision of electronic recording of confessional statement is a laudable development in the administration of criminal justice, the major challenge lies with the problem of implementation by various criminal justice institutions in Nigeria and this gave rise to this work.

Electronic recording of confessional statements refers to the underlying principles and structure guiding the process of capturing, storing, and utilizing digital recordings of confessions made by individuals during criminal investigations and legal proceedings. This process of using electronic devices such as audio-visual or video recorders to capture confessional statements made by suspects during investigation is based on the need for an accurate, reliable, and verifiable record of confessions made by suspects in criminal cases. Traditional methods of recording confessions, such as written notes or verbal accounts, may not be adequate or reliable enough to ensure the accuracy of the information obtained.

³ [2017] 5 NWLR (pt 1557) p 1.

⁴ [2018] 13NWLR (pt 1637) p 430.

⁵ [1992] 4NWLR (pt 233) p 17.

⁶ *Supra*.

⁷ N Fidelis, *Modern Nigeria Law of Evidence* (1st edn, Benin City: Ethiope Publishing Corporation, 1979) p 119.

⁸ The Nation Newspaper [https://thenationonlineng.net/video-recording-of-confessional-statement-under-s15\(4\)-of-the-act-mandatory-compulsory](https://thenationonlineng.net/video-recording-of-confessional-statement-under-s15(4)-of-the-act-mandatory-compulsory) June 2022 Accessed on 2 July 2023.

⁹ Administration of Criminal Justice Act 2015 s. 15 (4).

¹⁰ (2018) LPELR-43925, CA.



2. Confessional Statement

Confessional Statement is a combination of two words, that is: confession and statement. Confessional, an adjective of the word “confession,” refers to the practice of confessing an act. It also means the process of divulging every piece of information about an event. On the other hand, the word “statement” denotes a written summary of the circumstances surrounding a crime or case that is given to the police or used as evidence in a court of law. It also means something that is written, stated, or contained in a document that contains information or facts that a person declares. Any statement or declaration made by a person in his handwriting or any typed electronic document taken as a print output and signed by a person, can be used as evidence against him in a court of law. According to the Evidence Act, confession an admission made at any time by a person charged with a crime stating or suggesting that he committed that crime. Statement under the Act includes any representation of facts whether made in words or otherwise.

Before acting upon a confession, the court must be satisfied that it was freely and voluntarily made in line with the Evidence Act. The Supreme Court has also upheld this provision of the law in *State v Ibrahim*¹¹ and *Adeboye v State*¹² to the effect that a confessional statement obtained through promise of an advantage, reward or immunity or by force or by fear induced by violence or threat of violence cannot constitute evidence against the maker of the confession. When inadmissible evidence is tendered, the party contending raises a prompt objection to the admission of the evidence.¹³ Once admitted in evidence, a confessional statement forms part of the prosecution’s case and its probative value will be considered alongside other evidence in the case. This is the decision of the court in *Egboghonome v State*¹⁴ and *Osung v State*¹⁵ It is trite that a conviction may be based solely on the confessional statement of a defendant without corroboration if it is positive and direct as was held in *Ibrahim’s case*¹⁶ and *Ikpo v State*.¹⁷

3. Types of Confessional Statements

There are two types of confessional statements namely, Formal or judicial confessions and Informal or Extra-judicial confessions.

(i) Formal or Judicial Confessions.

Judicial Confessions are confessions made in court before a Judge or Magistrate or another tribunal. A judicial confession can also be a plea of guilt upon arraignment, if made freely by a person in a fit state of mind. The law is clear that a confessional statement made in judicial proceedings is of greater force or value than all other proofs, provided that it is direct, true and positive as far as the charges are concerned and satisfactorily proved. Little wonder why such a confession by itself alone is sufficient without further corroboration to warrant a conviction.¹⁸

(ii) Informal or Extra-judicial Confessions.

An extra judicial confession refers to a statement or admission made by a person outside of a formal legal proceedings or without the involvement of a court of law. It is a voluntary and spontaneous admission of guilt or involvement in a crime made by an individual or someone other than a law enforcement official or judicial authority. Unlike a judicial confession, which is made before a court during legal proceedings, an extra-judicial confession typically occurs in informal settings such as

¹¹ (2019) LPELR – 47548 (SC)

¹² (2014) LPELR – 22988 CSC pp 55-56 F-A.

¹³ F Nwadialo, *Modern Nigerian Law of Evidence* (2nd edn, Lagos: University of Lagos Press, 1999)

¹⁴ [1993] 7 NWLR (pt 306) p 383

¹⁵ [2012] 18 NWLR (pt 1322) p 256

¹⁶ *Supra*

¹⁷ (2006) LPELR-40114 (SC) pp 38-39 C-C.

¹⁸ A Saheed, *locit.*



conversations with friends, family or acquaintances. These confessions can also occur in other non-official contexts, such as interviews with journalists, statements on social media or private letters.¹⁹ Confession of crime to the law enforcement officials such as the police are also referred to as extra-judicial confessions because they are made outside the court room. This work concerns itself mainly with the extra-judicial confessions made to law enforcement officials during the investigation of a crime.

4. Electronic Recording of Confessions

Traditionally, confessional statements in Nigeria have been documented in writing, often leading to issues of credibility, authenticity and potential manipulation. These challenges have underscored the need for a more reliable and tamper-proof method of recording such statements. The introduction of electronic recording systems seeks to address these concerns by providing a veritable and accurate account of the confessions. The administration of justice and fair treatment of individuals within the legal system are of paramount importance. The recording of confessional statement plays a crucial role in criminal proceedings, ensuring transparency, accuracy, and expeditious dispensation of justice. With advancements in technology, electronic recording has emerged as a valuable tool to enhance the efficiency and effectiveness of this process.²⁰

Electronic recording of confessional statements is rooted in the Nigerian Constitution, which guarantees the right of an accused person to a fair hearing. The Constitution provides that every person who is charged with a criminal offence shall be presumed innocent until proven guilty.²¹ This presumption of innocence is a fundamental right that is enshrined in the Constitution and must be respected by law enforcement agencies. It is also guided by the Evidence Act of 2011, which provides for the admissibility of electronically recorded statements as evidence in court. Section 84 of the Evidence Act, 2011 provides that an electronic record of any statement made by a person in the course of an investigation may be admitted in evidence in any proceedings if it satisfies certain conditions. These conditions include the authenticity and integrity of the electronic record, and that it was made voluntarily by the person who is the subject of the statement.

In practice, the electronic recording of confessional statements involves the use of audio-visual or video recording devices to capture the statement made by the suspect during interrogation. This method of recording ensures that there is an accurate and reliable record of the statement made by the suspect, which can be played back in court during trial. It also eliminates the possibility of the statement being tampered with or misrepresented. The use of electronic recording of confessional statements has several benefits. Firstly, it ensures that the statement made by the suspect is accurately captured, which reduces the risk of errors or misinterpretations. Secondly, it promotes transparency and accountability in the criminal justice system. The use of electronic recording ensures that there is a record of what transpired during the interrogation, and any inconsistencies or irregularities can be easily detected. Finally, it provides a means of monitoring the conduct of law enforcement officers during interrogations, thereby reducing the incidence of police brutality and other forms of abuse.

5. Administration of Criminal Justice Act (ACJA)

The Administration of Criminal Justice Act (ACJA) of 2015 has played a crucial role in regulating the recording of confessional statements in Nigeria. Section 15(4) of the ACJA allows for the electronic recording of confessional statements, emphasizing the need for transparency and accuracy. The ACJA also establishes the requirement for the presence of legal representation during the

¹⁹ Wharton, *Criminal Evidence* (11th edn, 1995) p, 587.

²⁰ A Saheed, *ibid*.

²¹ Constitution of the Federal Republic of Nigeria 1999 s. 36(5).



recording process and mandates that the recorded statement be signed by both the accused and the recording officer.²²

The ACJA promotes the use of electronic recording as a means to prevent coercion, safeguard the rights of the accused, and enhance the overall efficiency of criminal trials. It is applicable only in Federal High Courts of the Federation and the Federal Capital Territory.

The statutory enactments governing the electronic recording of confessional statements in Nigeria, particularly under the Evidence Act and the ACJA, represent important milestones in aligning the criminal justice system with technological advancements. These provisions promote transparency, accuracy, and fairness in the administration of justice. However, careful attention must be given to addressing challenges such as technological infrastructure and privacy concerns. By striking the right balance between embracing technologies and protecting the rights of the accused, Nigeria can harness the benefits of electronic recording to strengthen its criminal justice system.

6. Procedure for Obtaining and Admissibility of Confessional Statement.

The Administration of Criminal Justice Act (ACJA) 2015 established a structured procedure for obtaining statements from suspects in criminal investigations. The Act recognizes the fundamental right of suspects to legal representation before obtaining a statement. Once a suspect has obtained legal representation, it stipulates that their legal counsel should be present during statement-taking procedure. By virtue of section 17 of the ACJA 2015, the procedure for obtaining the statements of suspects is lucidly well provided. The section is represented below:

17. (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 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. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

(3) Where a suspect does not understand or speak or write in the English language, an interpreter shall record and read over the statement to the suspect to his understanding and the suspect shall 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, occupation, designation 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 particular.

The statutory requirements envisaged in the above provision are hereby highlighted below²³:

a) Right to Silence and Cautionary Warnings

The Act recognizes the right of suspects to remain silent and not incriminate themselves. Prior to obtaining a statement, law enforcement officials must caution the suspect about their right to silence, explaining that anything they say can be used against them in court. This provision aims to protect the suspect's privilege against self-incrimination and upholds the principle of fair trial. The clause "if he so wishes to make a statement" in subsection 1 of section 17 also suggests that in the process

²² Administration of Criminal Justice Act s. 17.

²³ N Wanjoku, Overview of the Administration of Criminal Justice Act and Law (2020) [https://documents/overview-of-the-Administration-of-Criminal-Justice-Act-and-Laws\(1\)lagosandrivers.pdf](https://documents/overview-of-the-Administration-of-Criminal-Justice-Act-and-Laws(1)lagosandrivers.pdf)>



of taking a confessional statement of a suspect, the use of force must not be used. This by extension includes any form of inducement in terms of promise as well as, threatening the accused. This provision aims to prevent coerced or involuntary confessions during the process.

b) Presence of a Legal Practitioner or any other Authorized Person

Once a suspect has obtained legal representation, subsection 2 stipulates that their legal counsel should be present during statement-taking procedure. This should be the legal practitioner of the suspect's choice or an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization, or any other person of the suspect's choice. This provision serves to safeguard the suspect's rights, allowing their lawyer to observe the process; provide guidance, and ensure that their client's interests are protected.

c) Non-participation of Authorized Persons and the Use of an Interpreter.

In the same vein and for the purpose of ensuring independency, any of the above authorized persons are denied the permission to interfere in the process. The suspect is however entitled to the use of an interpreter who shall append his signature as endorsement.

d) Endorsement by the Suspect

After making a written statement, the suspect is always required to endorse it. This provision protects the integrity of the statement, as involuntary statements are often unreliable and may lead to miscarriage of justice.

In addition to the aforementioned required processes, section 15(4) of the ACJA makes further provision for the audio and/or video recording of a confessional statement. It provides as follows:

(4) Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means.

e) Recording and Documentation

To promote transparency and accuracy, the ACJL 2015 provides for the recording and documentation of the statement-taking process. This requirement ensures that there is an objective record of the proceedings and protects against potential claims of misrepresentation or manipulation. Audio or video recording, as well as written documentation, can serve as valuable evidence in subsequent legal proceedings. Finally, sub-section 5 provides for the admissibility of the oral confession of a suspect.

f) Admissibility of Electronic Recording of Confessional Statement²⁴

Following the advent of the Administration of Criminal Justice Act (ACJA) 2015 in Nigeria, there have been controversies over the interpretation of the implementation of the provisions of sections 15 (4) and 17 (1) & (2) of the ACJA, as well as other similar sections in the Administration of Criminal Justice Laws of some states, relating to the method of obtaining confessional statements of suspects. Indeed, conflicting Court of Appeal's decisions have emerged which forms the basis of the uncertainty as to the real interpretation of the said sections.²⁵ The crux of the issue is whether a

²⁴ N Wanjoku, *opcit.*

²⁵ F Aduagba, 'Should a Confessional Statement be Rendered Inadmissible on the Grounds of Non Compliance with Section 15(4) And 17(1) & (2) Of (ACJA) Act 2015 (2021) <https://thenigerialawyer.com/should-a-confessional-statement-be-rendered-inadmissible-on-the-grounds-of-non-compliance-with-section-154-and-171-2-of-acja-act-2015> accessed on 2 July 2023.



confessional statement made by suspects in the absence of the legal practitioner of his own choice would necessarily invalidate their confessional statement and whether the provision for video recording is mandatory, that is, the compulsoriness of video recording of the confessional statement and implication of the absence of the accused legal practitioner when taking the confessional statement. It is established already in this work that for an extra-judicial confessional statement of a defendant to be admissible, it has to be made voluntarily.²⁶

7. Judicial Interpretation of the Provision of the Law

One of the arguments which revolves round the legal interpretation of Section 15(4) of the ACJA 2015 is that, recording of confessional statement as clearly provided in the aforementioned section is mandatory as was decided in the case of *Charles v Federal Republic of Nigeria*.²⁷ The implication of this decision is that failure to produce the said video recording as stipulated in the Act and as evidence of voluntary making of such confession would render the whole confessional statement a nullity and inadmissible. Most prosecutors, relying on this decision tender the video recording alongside the confessional statement of a defendant during trial as a requirement for admissibility. Another Court of Appeal decisions that toed this line of interpretation is *Zhiya v The People of Lagos State*.²⁸ Though the wordings of the Act is “may,” this interpretation is hinged on the court’s pronouncement on the judicial interpretation of the word “may” in *Nnaji for v FRN*,²⁹ thus: “It has been established by a long line of decided cases that the Courts would interpret the word “may” as mandatory wherever it is used to impose a duty upon a public functionary to be carried out in a particular form or way for the benefit of a private citizen.”³⁰

The more popular interpretation is the one that favors the non-mandatory provision of video or audio recording in the ACJA 2015. This supports the view that a confessional statement cannot be rejected by the court during criminal trial on the objection that the written statement was not captured electronically.³¹ The court in the case of *Enang v State*,³² held in line with this view, that the admissibility of any document is governed by the Evidence Act. Evidence is listed as Item 23 of the Exclusive legislative list, part 1, 2nd schedule to the 1999 Constitution (as amended). Also, the Evidence Act being a specific Act on evidence including admissibility takes precedence over the ACJA in matters of admissibility.

8. Appraisal of Electronic Recording of Confessional Statements in some States in Nigeria.

The procedure for electronic recording of Confessional Statement in the Administration of Criminal Justice Law 2022 of Anambra State is laid down in section 13 of the Law, particularly in section 13(4). The provision of section 13 of the ACJL of Anambra State 2022 is as follows:

- I. An arresting officer shall immediately take the to a police station or other place for the reception of suspects, inform him of the allegation against him in the language he understands and give him reasonable facilities for obtaining legal advice, getting and perfecting bail, and arranging for his defence or release.
- II. The arresting officer shall ensure that the following record of the suspect is taken:
 - (a) The alleged offence(s);
 - (b) The date and circumstance of arrest;
 - (c) His full name, occupation and residential address; and,

²⁶ Evidence Act 2011 section 29

²⁷ (2018) LPER 46420.

²⁸ (2016) LPELR – 40562 (CA).

²⁹ (2018) LPELR 43925 (CA).

³⁰ *ibid*

³¹ E Udim, *Trial within Trial in Criminal Proceeding* (Enugu: Priceton and Association Publishing Co Ltd, 2016) p 118.

³² (2019) LPELR-48682(CA)



- (d) For the purpose of identification, his:
- (i) Height;
 - (ii) Photograph
 - (iii) Full fingerprint impressions; or
 - (iv) Any other means of identification.

- III. The process of taking the record of the suspect shall be concluded within reasonable time, but shall not exceed 24 hours.
- IV. Where a suspect volunteers to make a confessional statement, the police shall ensure that the making and taking of the confessional statement is recorded on video, and the video recording as well as its copies may be produced at the trial.
- V. A suspect may give his statement in the presence of a legal practitioner of his choice, or if he has no legal practitioner, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of Peace or any other person of his choice.
- VI. Where the suspect does not understand, speak or write in the English Language, an interpreter shall be provided at no cost to him. The interpreter shall record and read over the statement to the suspect in a language he understands, before he signs or makes his mark on the statement.
- VII. The interpreter shall endorse his name, address, occupation, designation and other particulars on the statement.

It is imperative to clarify that the provision of section 15(4) of the ACJA did not make it mandatory to record a confessional statement electronically on a retrievable disc, because of the use of the word 'may.' Conversely, section 13(4) of the ACJL (Anambra State), section 9(3) of the ACJL (Lagos State) and Section 17 (3)(b) of the ACJL (Rivers State) respectively, made it mandatory to record a confessional statement electronically in the presence of a legal practitioner of the suspect's choice. This automatically will remove any objection which could be raised in regard to the voluntariness of the defendant's confessional statement, and a call for a trial within trial. However, this provision does not apply to a partial or outright denial of a statement, which would amount to a complete or partial retraction. The difference between section 15 and section 17 of the ACJA 2015, is that section 15 has to do with taking of a confessional statement while section 17 deals with statement taking generally, which may not be confessional. The Act, by the provision of Section 17 of the ACJA has taken away any undue influence by the police during the making of a statement by making provision for statements to be made in the presence of a legal practitioner, or an officer of the legal aid council of Nigeria, or an official of a civil society organization, or a justice of peace, or any other person of the suspect's choice. So long as the person does not interfere while the statement is being taken. This provision is replicated in the laws of various states too. By this, the person making a statement at the police station shall now make a statement confidently, without any fear or favor. It is further stipulated that a copy of the electronically recorded statement be given to the maker. Similarly, the Act under this same section makes provision for an interpreter where the maker does not understand or is not fluent in English language. The same discussions made in respect to the mandatory nature of the provision of the Act was still made for that of the Laws.

On whether the provision of the law is compulsory or optional, the Court of Appeal in Charles's case and Nnajofofor's case held that based on the intention of the legislators, the above sections were made mandatory. However, in *Ike v State of Lagos*,³³ it was held that these sections will only become mandatory where an objection as to the voluntariness of the statement has been raised. The import of this case is that where the defendant fails to raise any objection, these sections

³³ (2019) LPELR-47712 CA.



will not apply. The most favored decision as discussed above is that the admissibility of any document is governed by the Evidence Act. Evidence is listed as Item 23 of the Exclusive legislative list, part 1, 2nd schedule to the 1999 Constitution (as amended) and that Evidence Act being a specific Act on evidence including admissibility takes precedence over the ACJL.

9. Recording of Confessional Statements in some other Jurisdictions

In most jurisdictions outside Nigeria, the entire custodian interview are recorded by law enforcement officials. Thomas P. Sullivan in his work *Compendium: Electronic Recording of Custodial Interrogations*,³⁴ painstakingly reviewed the nature of the provision of the law on electronic recording of confessional statements and the standard procedure for recording confessions in Australia, England and Kenya. This will be recaptured below in this work.

a. Australia³⁵

Since about 1990, in all jurisdictions in Australia, for a defendant's custodial confession or admission to be legally admissible it must be electronically recorded by audio or audio video. The South Australian provisions apply in relation to the investigation of "indictable offences."³⁶ In the Northern Territory, the recording requirement applies to offences for which the maximum penalty is imprisonment in excess of two years.³⁷

If it is not reasonably practicable to record the interview on videotape, but it is reasonably practicable to record the interview on audiotape, an audiotape recording of the interview must be made.³⁸ If it is "neither reasonably practicable to record the interview on videotape nor reasonably practicable to record the interview on audiotape

- (i) a written record of the interview must be made at the time of the interview or as soon as practicable after the interview; and
- (ii) as soon as practicable after the interview, the record must be read aloud to the suspect and the reading must be recorded on videotape.³⁹

In deciding whether it is reasonably practicable to make a videotape or audiotape recording of an interview, the following matters must be considered:

- (a) the availability of recording equipment within the period for which it would be lawful to detain the person being interviewed;
- (b) mechanical failure of recording equipment;
- (c) a refusal of the interviewee to allow the interview to be recorded on videotape or audiotape;
- (d) any other relevant matter."⁴⁰

In South Australia, unexcused failure to record results in inadmissibility of the "evidence of an interview," unless "the court is satisfied that the interests of justice require the admission of the evidence despite the investigating officer's noncompliance."⁴¹ In the Northern Territory, a court may admit evidence even if the requirements of (the recording statute) have not been complied with, or there is insufficient evidence of compliance with those requirements, if, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant

³⁴ T Sullivan, <https://www.nacdl.org/getattachment/581455af-11b2-4632-b584-ab2213d0a2c2/custodial-interrogations-compendium-january-2019-.pdf> accessed 2 July 2023.

³⁵ T Sullivan, opcit

³⁶ Summary Offenses Act of 1953 s 74D ("SOA").

³⁷ Police Administration Act of 1978, Division 6A s 139(c) ("PAA").

³⁸ SOA s 74D(1)(b)

³⁹ SOA s 74D (1) (b) (c).

⁴⁰ *Ibid* s 74D (3).

⁴¹ *Ibid* s 74E.



matters, the court is satisfied that, in the circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

In South Australia, “{a} suspect must be provided, on request and on payment of the fee fixed by regulation, with (a) an audiotape of the soundtrack of a videotape recording of an interview with the suspect under this Part; or (b) a copy of an audiotape recording of an interview with the suspect under this Part.”⁴² In the Northern Territory, “(t)he investigating member must (1) inform the person that the person is entitled to a copy of the electronic recording on request; (2) issue a certificate the recording has not been altered after being made and that the prescribed requirements in relation to the method of making the recording have been met; and (3) cause a copy of the audio or video recording to be made available to the person or the person’s legal representative, without charge, within 7 days after request⁴³.

b. England⁴⁴

Recording of custodial interrogations is mandated by the Police and Criminal Evidence Act 1984 (PACE), Code E, Code of Practice on Audio Recording Interviews with Suspects.

Generally, “Audio recording shall be used at police stations for any interview” (a) with a person cautioned “in respect of any indictable offence, including an offence triable either way,” “(b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in paragraph 3.1(a) after they have been charged with, or told they may be prosecuted for, that offence,” “(c) when an interviewer wants to tell a person, after they have been charged with, or informed they may be prosecuted for, an offence described in paragraph 3.1(a), about any written statement or interview with another person.”

The Terrorism Act 2000 provides for the audio recording of interviews of persons suspected to be terrorist as follows; The custody officer may authorize the interviewer not to audio record the interview when it is: (a) not reasonably practicable because of equipment failure or the unavailability of a suitable interview room or recording equipment and the authorizing officer considers, on reasonable grounds, that the interview should not be delayed; or (b) clear from the outset there will not be a prosecution.

There are no consequences of unexcused failure to record. The officer in charge of each police station at which interviews with suspects are recorded shall make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as material which may be used for evidential purposes, in accordance with force standing orders. Interview record files are stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are first saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and will be transferred when the network connections are restored.

At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.

c. Kenya⁴⁵

Kenya has also regulations promulgated in 2009 for recording of confessional statement known as the Evidence (Out of Court Confessions) Rules, 2009. The rules provide that

⁴² SOA s 74D (6).

⁴³ PAA s 142 (a).

⁴⁴ T Sullivan, *Ibid*.

⁴⁵ Kenyalaw.org <https://kenyalaw.org:818/exist/ken...ew.xql?subleg=CAP.%2080> Accessed on 10 July 2023.



- (1) Where an accused person intimates to the police that he wishes to make a confession, the recording officer shall take charge of the accused person and shall ensure that the accused person—
- (a) has stated his preferred language of communication;
 - (b) is provided with an interpreter free of charge where he does not speak either Kiswahili or English;
 - (c) is not subjected to any form of coercion, duress, threat, torture or any other form of cruel, inhuman or degrading treatment or punishment;
 - (d) is informed of his right to have legal representation of his own choice;
 - (e) is not deprived of food, water or sleep;
 - (f) has his duration, including date and time of arrest and detention in police custody, established and recorded;
 - (g) has his medical complaint, if any, adequately addressed;
 - (h) is availed appropriate communication facilities; and
 - (i) communicates with the third party nominated by him under paragraph (3) prior to the caution to be recorded under rule 5.
- (2) The recording officer shall not record a confession from any accused person who complains to him of being a victim of torture or whose physical appearance shows signs of physical injuries including open wounds, body swelling, or shows extraordinary fatigue or any other indicators that would suggest that the accused person has been tortured.
- (3) The recording officer shall ask the accused person to nominate a third party who shall be present during the duration of the confession session, and upon the appearance of the third party, the recording officer shall record the third party's particulars and relationship to the accused person.⁴⁶
- There is also provision for cautioning the accused person before the recording, both written and electronic recording.⁴⁷ The rule guiding electronic recording provides as follows;
- (1) Subject to paragraph (2), the recording officer may record the confession of an accused person on electronic recording media.
- (2) Where the recording officer records the confession of an accused person on the electronic recording media—
- (a) the accused person shall be notified of such recording and of his right to object and the notification and any response thereto by the accused person, preferably on electronic media; and
 - (b) the recording shall be in the open.
- (3) In the event of failure of the electronic recording media, the recording officer may—
- (a) opt to replace the equipment and record the failure upon the resumption of the confession session; or
 - (b) record in writing.
- (4) Upon electronic recording, the first recording which shall be the master recording, shall be marked with a reference number and sealed in the accused person's presence while a second recording will be used as a working copy by the prosecuting authority during the period of exercise of prosecutorial discretion.
- (5) The recording officer shall produce the master electronic record to the court and may be requested by the court to prove its authenticity.
- (6) A copy of the recording shall be given to the accused person, upon request.⁴⁸

⁴⁶ Evidence (Out of Court Confessions) Rules, 2009, S 4.

⁴⁷ Ibid, S 5.

⁴⁸ Ibid, S 6.



The regulation provides a standardized procedure for electronic recording of confessional statement just like the model bill for electronic recording of custodian interrogation created by the legal pundit on electronic recording of confessional statement, Thomas P. Sullivan as a guide.⁴⁹

10. Conclusion

The provision of ACJA 2015 on electronic recording of confessional statements in Nigeria offers promising prospects for improving the criminal justice system. By incorporating technology to capture and preserve accurate records, electronic recording enhances transparency, accountability, and respect for human rights. However, its successful implementation requires careful consideration of technical, training, privacy, and legal challenges. Ultimately, electronic recording systems can contribute to a more just and equitable criminal justice system, ensuring the integrity and reliability of confessional statements in Nigeria. Collaboration and coordination among these stakeholders are essential to ensure the effective and fair implementation of electronic recording systems.

11. Recommendations

The implementation of Section 15(4) involves several key aspects, as outlined below⁵⁰:

i) Procurement and Deployment of Recording Equipment:

To implement Section 15(4), law enforcement agencies will have to procure appropriate electronic recording equipment capable of capturing audio and/or video during the process of obtaining confessions. The equipment should meet the necessary technical standards and ensure the clarity and integrity of recorded statements. Additionally, agencies should deploy this equipment to relevant investigation units or police stations.

ii) Training of Law Enforcement Officials:

Law enforcement officials, including police officers and investigators, need comprehensive training on the proper use of electronic recording equipment and the procedures for capturing confessions. Training programs should emphasize the importance of ensuring voluntariness, fairness, and accuracy in recording statements. Officials should be educated about legal requirements, such as informing suspects of their rights and the implications of their statements

iii) Standard Operating Procedures:

Developing clear and detailed standard operating procedures (SOPs) is crucial for the effective implementation of Section 15(4). SOPs should outline the step-by-step process for recording confessions, including the use of the equipment, documentation, and storage of recordings, and adherence to legal and ethical guidelines. These procedures ensure consistency and accountability in the recording process.

iv) Preservation of Recorded Confessions:

Recorded confessions should be treated as crucial evidence, and steps should be taken to ensure their admissibility in court. The implementation of Section 15(4) requires establishing protocols for the storage, preservation, and chain of custody of recorded statements. Access controls, encryption, and backup systems should be in place to safeguard the integrity and confidentiality of recorded confessions.

⁴⁹ The Justice Project, *Electronic Recording of Custodial Interrogations, A policy Review*
<https://www.congress.gov/116/meeting/house/110815/documents/HMKP-116-JU00-20200617-SD004.pdf> pp 22 and 23,
accessed on 10 July 2023.

⁵⁰ S Kassin loccit



v) Monitoring and Oversight:

Monitoring and oversight mechanisms are essential to ensure compliance with Section 15(4) and detect any potential abuses or shortcomings. Supervisory bodies or agencies responsible for oversight should conduct regular inspections, audits, or quality control assessments to ensure that law enforcement officials adhere to the requirements of electronic recording. Any violations or non-compliance should be addressed promptly and appropriate action taken.

vi) Public Awareness and Education:

Creating public awareness about the provisions of Section 15(4) is crucial to promote understanding and compliance. Awareness campaigns can educate the public, suspects, and witnesses about their rights during interrogation and the benefits of electronic recording. This can help foster trust and confidence in the criminal justice system.

vii) Evaluation and Continuous Improvement:

Regular evaluations of the implementation of Section 15(4) should be conducted to assess its effectiveness and identify areas for improvement. Feedback from stakeholders, including defense attorneys, prosecutors, and judges, can provide valuable insights into the challenges and successes of the electronic recording process. Recommendations and lessons learned from these evaluations can guide ongoing efforts to enhance the implementation of Section 15(4).

Implementing Section 15(4) of the ACJA 2015 on electronic recording of confessions requires a multi-faceted approach involving equipment procurement, training, clear procedures, oversight, public awareness, and continuous evaluation. By ensuring the proper implementation of this provision, Nigeria's criminal justice system can enhance transparency, protect the rights of suspects, and promote the integrity of confessions as evidence in court.