

DISRESPECT TO THE CONSTITUTIONAL PROVISION OF “PRESUMPTION OF INNOCENCE” AND IT’S IMPLICATION TO POLICE PUBLIC RELATIONSHIP IN NIGERIA.<sup>1</sup>

I feel highly honoured and humbled by the privilege accorded me to be one of the guest speakers during this event which I strongly believe will not only close the gap of antagonism between our law enforcement agencies in Nigeria but will be an opium for a paradigm shift in the relationship between the law enforcement agencies especially the Police and the citizens they are supposed to serve in Nigeria.

**EVOLUTION OF THE CONCEPT OF PRESUMPTION OF INNOCENT**

The phraseology “presumption of innocence” has its roots from the ancient general rule of evidence, which seeks to provide that “proof of evidence lies on whoever that asserts and not on him that denies”<sup>2</sup>. The rationale behind adducing proof by whoever asserts is to the effect, and by nature of things, that whoever denies a fact is incapable of producing any proof to the same fact he or she denies. By so doing, the proof lies squarely on the one that asserts and not one that denies<sup>3</sup>.

To ensure justice, the forestalling of bias and inherent prejudices against the accused person in the Nigerian criminal justice system where the police is the gatekeeper, presumption of innocence remains one of the sacred principles in the Nigerian constitution and has historically featured as a long constitutional principle from the republican constitution till date<sup>4</sup>.

Presumption of innocence, a Nigerian criminal policy system has its origin from England being one of the countries colonized by the British government in 1861. The application of the doctrine of presumption of innocence is not a universal criminal concept but is limited to most common wealth countries where criminal

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<sup>1</sup> Being a paper presented by Saviour Akpan, Esq., Executive Director Community Policing Partners for Justice, Security and Democratic Reforms – COMPPART during a one day Eminent Person Forum/ Security Summit Organized by Ikot Ekpene Area Commands of the Nigeria Police Force on 30<sup>th</sup> November 2016. Centre for Law Enforcement Education in Nigeria now CLEEN Foundation inaugurated COMPPART in 2002 as a platform for Community Policing Advocacy in Nigeria.

<sup>2</sup> See the sixth century digest of Justinian also known as the Pandect which was a name given to the compendium of Roman Law digest compiled by the order of Emperor Justinian 1 in the 6<sup>th</sup> Century (AD 530-533).

<sup>3</sup> Dr. Richard Eke, PhD., Challenges and Observation of the concept of the presumption of innocence under the Nigerian criminal justice system. *Faculty of Law Journal, University of Uyo, Vol.8, 2014 p.177*

<sup>4</sup> See Sections 22(4), 1963, Constitution, S.33 (5) 1979, Constitution, S. 35(4) 1989 Constitution which was a still birth and S.36 (5) of the 1999 Constitution as amended.

justice system is accusatorial and not inquisitorial as obtained in continental Europe such as Germany, France and Italy<sup>5</sup>.

#### DIFFERENCE BETWEEN ACCUSATORIAL AND INQUISITORIAL JUSTICE SYSTEM

In an accusatorial justice system, the accused person is presumed innocent and guarantees public trial with a prosecutor and a defence counsel, the judge is accorded with the opportunity to sit as an unbiased umpire, listening attentively to the weight of the evidence of parties.

Whereas, the inquisitorial system, presumed the guilt of the accused person. In the inquisitorial justice system, the judge exercise a lot of control over the manner by which evidence are collected and presented in order to do justice. The accusatorial criminal justice system judges sit as a neutral arbiters insuring that matters are conducted according to laid down procedures while the accused is saddled with the responsibility of adducing positive evidence that establish his innocence. The judge in this case carry out the interrogation of the accused person during the pre-trial stage and at the full trial level which invariable presupposes that he would have availed himself of the opportunity of proof of evidence in order to establish the likelihood of the required guilt of the accused person<sup>6</sup>.in other word, the required prejudice must have been built up by the judge while carrying out interrogations and other necessary examinations. Presumption of innocence seeks to ensure that negative inferences are not unduly drawn based on fact that an accused is before the court or is being in police custody undergoing interrogation of facing alleged criminal offence. Offences against which the accused is charged must be solely decided on the evidence presented during the trial. By implication, the duty of proving the guilt and, or otherwise of the offender rest squarely on the prosecution.

#### WHY RESPECT THE CONCEPT OF PRESUMPTION OF INNOCENCE?

The concept of presumption of innocence has been famously described as the 'golden thread' in the criminal justice system. In the English case of *Woolmington v D.P.P.*<sup>7</sup>, Lord Sankey L. C., had observed that:

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<sup>5</sup> Dr. Richard Eke (supra) p. 178

<sup>6</sup> Very unfortunate that instead of the Nigeria police force following our accusatorial justice system in their dealings with alleged offenders, it seems they have deviated to the later thereby incurring the wrath and mistrust of the public to the extent of lack of public confidence on their performances.

<sup>7</sup> (1935) AC 462

Through out the web of the English criminal law, one golden thread is always to be seen – that is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to my statutory exception.

Presumption of innocence as a criminal justice policy is so important and must be respected so long as the draftsman did not forget to engrained it into our constitution and as it is today, the concept of presumption of innocence has become a serious component of the constitution of modern democracies to which Nigeria is one. It is a constitutional right of an accused person standing trial and as in the case of Nigeria, since it has been enacted and enshrined as fundamental rights of the citizen it must not be violated by any person no matter how highly placed because an accused person being interrogated or standing trial is presumed innocent until proven guilty. This therefore places more dedication to duty on the police during investigation to ensure that the real suspect<sup>8</sup> is arrested and the investigator has to collect and present positive and compelling evidence to convince the court of the guilt of the accused otherwise such a person should be release to go.

#### THE LEGAL INSTRUMENT OF THE CONCEPT OF PRESUMPTION OF INNOCENCE IN NIGERIA

The concept of presumption of innocence has been a visible feature in the Nigeria constitution history. The Republican constitution of 1963 puts it thus:

Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such the burden of proving particular fact<sup>9</sup>.

Besides the foregoing provision, a similar provision is also contained in the wordings of the 1979, and 1999 constitutions of the Federal Republic of Nigeria.

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<sup>8</sup> See Section 7(1) Administration of Criminal Justice Act, A.C.J.A. 2015

<sup>9</sup> See section 22(4) of the 1963 constitution of the Federal Republic of Nigeria

The point being made here is that presumption of innocence has been a cardinal concept in the administration of the criminal justice system in Nigeria which has from inception, been a policy designed to forestall the inherent prejudices and bias against the accused before any court in Nigeria. It is meant to protect the accused from likely negative attitudes of the enforcement agents and the court assailed with the responsibility of criminal justice<sup>10</sup>

Again it has to be noted that the bulk of Nigerian Legal System is tailored to that of the English legal system where it was confirmed by the 1215 magna Carta that no citizen was to be imprisoned except in accordance "by the rule of law".

The foregoing is in addition to the United Nations General Assembly adoption and endorsement of the Universal Declaration of Human Rights as a basic international statement of the inalienable and inviolable rights of all members of the human race. It provides thus:

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he had all the guarantees necessary for his defence<sup>11</sup>

To ensure compliance and fulfillment of the concept, according to a learned author, the judge must epitomize a sound and firm knowledge and understanding, equipped with sterling qualities of courage, integrity and judicial rectitude.<sup>12</sup>

Nonetheless, it is to be further noted that both the Nigerian constitutions earlier referred to and the United Nations Universal Declaration of Human Rights, envisage and accommodate circumstances whereby an accused person will be required to produce certain evidence in proof of his innocence. In other words, where certain statutes shift the onus to the accused person, it arises in a situation where it is the accused that possesses exclusive knowledge of the hidden tissue of the matter.

The likelihood being that such evidence, if put in place would exculpate the accused.<sup>13</sup> By virtue of the Evidence Act, where the prosecution prove the

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<sup>10</sup> See Dr. Richard Eke (supra) p.180

<sup>11</sup> See article 11(1) of Universal Declaration of Human Rights of 10<sup>th</sup> December 1948.

<sup>12</sup> Mamman M, "Presumption of Innocence", *The Advocate*, A Magazine of Law Students Society, University of Jos 1991, p.11, cited in Richard Eke (supra) p.180

<sup>13</sup> See section 137(3) of the Evidence Act 2011

commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt if shifted to the accused.<sup>14</sup>

Additionally, the Evidence Act provided that:

Where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any exemption or exception from or qualification to the operation of the law creating the offence with which he is charged is upon such person.<sup>15</sup>

Generally, the burden of proof rests squarely on the person who asserts of the commission of an offence. It is only when this burden has been effectively discharged by the prosecution that the onus of proving particular facts shift to the accused person. Such particular fact may include proving the existence of circumstances bringing the case within any exception or exemption of qualification to the operation of the law creating the offence with which he is charged. And where a doubt occurs in discharging the burden imposed on the prosecutor, the benefit is resolved in favour of the accused.<sup>16</sup>

It is in this respect that learned Professor Glanville Williams maintained that “it is better that ten guilty men should escape than for one innocent man should suffer”.<sup>17</sup>

Also it is worthy of note further that on the burden of proof of particular fact, section 135, 137 and 139 of the Evidence Act 2011, provides that, the burden of proof of a particular fact is on that party who would fail if no evidence at all were given. In this regards, the burden would squarely be put on the accused after the prosecution has discharged the onerous task or burden placed on him to prove the particular fact. For instance, when an accused person makes a plea of alibi to a commission of an offence, it is a matter that is peculiarly within the knowledge of the accused person and therefore required to furnish the particulars of his whereabouts when the alleged offence was committed.<sup>18</sup>

## SCOPE OF THE APPLICATION OF PRESUMPTION OF INNOCENCE

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<sup>14</sup> Ibid.

<sup>15</sup> See Section 140 (1) of the Evidence Act 2011

<sup>16</sup> Richard Eke (Supra) p.181

<sup>17</sup> Glanville William, “Textbook on Criminal Law” London: Steven and sons, 1983

<sup>18</sup> See the case of *Almu v State* (2000) 10 NWLR (pt 1148)31

The concept of presumption of innocence enjoys wide latitude of judicial applicability in the criminal justice process wherein the Police serve as the gatekeeper. It starts from the point of arrest, which is the beginning of the contact situation between the agency, and the citizens though unfortunately may be involuntary. It is at this point that the police should try as much as possible to ensure a better relationship between the alleged offender, his or her relatives and the entire public. Following the process of arrest is interrogations, at this point the accused person is made to narrate his or her involvement in the alleged crime or offence alleged to have been committed unfortunately when one look at the lines of the different laws governing criminal procedures in Nigeria, it can be summits that the police has no power whatsoever to carry out "investigation" after arrest if proper thing is done. Down to the point of arraignment, course of trial, the provision of constitution which provides that an accused person should be brought to court within 24 hours or 48 hours where the distance is more that 20km radius<sup>19</sup> implies that before an offender is arrested apart from an arrest conducted under section 10(1)<sup>20</sup> of the east while Criminal procedure Act<sup>21</sup>, the police is supposed to have carry out intelligence gathering and surveillance on the suspects during which vital information and evidence that would secure a conviction gathered and preserved in such a way that it would not jeopardize the cause of justice.

The concept , which is to the effect that persons accused of crime are presumed to be innocent until they are convicted by a court of competent jurisdiction, makes it difficult for the government to commit innocent citizens into prison based on an allegation of crime until such allegation is proved beyond reasonable doubts by the prosecutor.

It constitutes an injunction against any form of abuse and maltreatment on an accused person. Information and confessions must not extracted from the accused based on the arduous task laid on the prosecution to discharge in proving the commission of the offence by which the accused is charged.<sup>22</sup>

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<sup>19</sup> See section

<sup>20</sup> See section 10 (1) a , Criminal Procedure Act , CAP C41, Laws of The Federation 2004

<sup>21</sup> This Act has been repealed by the Administration of Criminal Justice Act 2015, which was passed into law by the 7<sup>th</sup> Senate. This Act has also help to lay to rest the controversy in the case of Federal Republic of Nigeria V. Osahon on the controversy of lay prosecution by police officers that are not legal practitioners. See (2006) 5NWLR (pt.973) 361

<sup>22</sup> see section 28, Evidence Act 2011, Section 24 of the earstwhile criminal procedure code.

In other word, no matter how seemingly serious, grave, heinous or unconscionable an alleged offence, committed by an accused person, he or she is still entitled to the constitutional presumption of innocence as an article of faith and a matter of right guaranteed to the accused person.<sup>23</sup>

In fact, even the risk or strong likelihood that an accused person may jump bail should and cannot be used as an excuse or sole bulwark for denying the accused person bail where the law provides or even be the basis for imposing suffocating bail conditions against the accused person thereby whittling down the accused constitutional right to presumption of innocence.

The court of appeal has in trying to guide law enforcement in regards to the foregoing in the case of *Ibori V. F.R.N.* observed:

In this vein, it does not speak well or say well of the courts or our justice system, that when bail is granted with one hand it is surreptitiously retrieved, withdrawn or taken away with the other by the imposition of unwieldy and inhibitive bail conditions. Hence courts must always be conscious and approach the issue of grant of bail with an element of liberalism and circumspection.<sup>24</sup>

From the foregoing, no matter how inhibitive the enforcement agencies may find the concept, the determination of guilt to any alleged offence is the prerogative of the courts and not the law enforcement agencies namely Police, Economic and financial crimes commission, State Security Services and any other agency in Nigeria that has law enforcement responsibility.

It is incumbent on courts with competent jurisdiction that are properly constituted to guarantee impartiality to consider thoroughly all defences put forward by both the prosecutor and the accused person. No matter how spurious, the court must not be wary to give them due consideration to arrive to a just decision. If in the totality of evidence before the court, a

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<sup>23</sup> The case of *Ibori V. F.R.N.* (2009) 2 NWLR (pt. 1127) at p.94 drives home this point.

<sup>24</sup> Per Oredola JCA, in *Ibori V. F.R.N.*(supra) P.106, E-F.

particular defence avails the accused, he or she should be made to benefit from such defence and be acquitted.

The court by so doing is under an obligation to exhaustively consider such defences that are open to the accused person. It is not the duty of court to speculate on the existence of a fact not placed before the court otherwise such a court will become a Father Christmas giving even what is not pleaded.

For the purpose of doing substantive justice, the court requires the accused person to give his or her evidence viva voce rather than adopting his previous extra-judicial statement made under duress during police interrogation or the court should rest its case solely on the evidence of the prosecution.<sup>25</sup>

#### THE CONCEPT OF PRESUMPTION OF INNOCENCE. WHERE WE GOT IT WRONG.

As earlier stated, the Police are the most visible agency of government that has the closest of contact between the citizen both eminent and otherwise in Nigeria. Unfortunately the contact situation is involuntary and occurs during the police trying to enforcement an existing law and this is during an arrest of an alleged offender.

From arrest, the accused person should given the liberty having been presumed innocent, to exercise his option of either contacting his counsel before volunteering any statement before the police or remain silent. The accused person's detention must not be unreasonably longer than the maximum permissible period before a formal arraignment. the accused must be informed of the reason for his arrest which must occur through actual touch or confinement of the body of the suspect, unless there is a submission to the custody by word or action.<sup>26</sup>

The purpose of respect for and protection of all legally guaranteed rights, the suspect so arrested or defendant as the case may be may not be handcuffed, bound or be restraint except as provided by law.<sup>27</sup>

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<sup>25</sup> See the case of *Edohov v. state* (2010) 14 NWLR (Pt. 1214) 651 at Pp.681-682. F-B, 699,C-D.

<sup>26</sup> See sections 3 & 4 of the Administration of Criminal Justice Act 2015.

<sup>27</sup> See Section 5, a,b,c, of the Administration of Criminal Justice Act, ACJA, 2015

Arrest must not be by proxy. In other word the police should not and have no power whatsoever to arrest “A” for an offence committed by “B”, as is always the practice of arresting mothers or parent in place of a wanted child.<sup>28</sup>

It is the duty of pre trial actors such as the police, the EFCC, whose primary duties it is to make arrests and conduct investigations. There are occasions when their pattern of arrest are peremptory and arbitrary thereby negating the principle of presumption of innocence. Most often over-zealousness and personal interest destroy their legitimate duties thereby running fowl of the statutes that established them.<sup>29</sup>

Again, the practice of unnecessary restraints such as handcuffing and other manner of extracting information from accused including the practice of parading suspects before the press in a bid to display sycophantic performance before the public which are always adopted by the police subject and accused person to inhuman treatments contrary to their fundamental human rights as enshrined in the constitution.

Sometimes, total disregard is shown to some codes of administrative directions such as judges rules designed to show the manner and pattern of interrogations by the police. It is important to note, that the erroneous impression and misconception that presumption of innocence terminates when a conviction and sentence is been handed down on the accused person is wrong. This may not be true because in certain position there is right to appeal and its exist as a privilege. We got it wrong whrn we disrespect the presumption of innocence because it gives every accused person the opportunity to be treated in a humane and dignify manner and until this highly respected by the Police as the gatekeeper to the Nigerian criminal justice system including the way and manner we police talked to members of the public in areas such as tinted glass use, Stop and search by Safer Highways and the relationship between station guards and

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<sup>28</sup> See section 7 of ACJA 2015

<sup>29</sup> See section 20 (1) (b) and (c) (i) of the Police Act, section 10 CPA

visitors to the police station, this much talk about rebuilding relationship between the police and the public will remain and illusion.

## CONCLUSION

While commending the police for coming up with this initiative of Eminent Persons Forum, I strongly believe that the way forward is that the police should as a matter of urgent public important understand that they couldn't enforce non-existing laws. Therefore the practice of asking people to pay for and acquire tinted permit in factory fitted tinted glasses which has cause a lot of unpleasant encounter between the public and the police on our roads should be seriously looked into and the exercise acted on in accordance with the law banning such.

Furthermore, all police officers on station Guard duties should be train and retrain on public relations.

Divisional Police Officers using a bottom up approach up to the Force Headquarters should prepare police Budget and this should be according to their needed in policing their respective jurisdictions.

The Politicization of security should be treated as an offence because it is the cankerworm that is eating into effective policing of the Nigeria citizen. The practice of investigation after arrest should be minimizes or if possible eradicate.

Akwa Ibom State House of Assembly should amend the Akwa Ibom State Traditional Rulers Law of Akwa Ibom State to stop Village Heads from handling public matters in their palaces including criminal acts.

The National Assembly should as a matter of urgency for quality service delivery amends section 215 of the Constitution which gives the President of the federal Republic of Nigeria the Executive power to appoint the IGP rather such should be done through a process whereby the names of qualified officers are make known for public inputs based on the relationship and encountered of such officer while in office before such appointment.

Government should revisit all reports on Police Reforms in Nigeria and in cooperation and active participation of the citizens through a forum like this sieved out those recommendations that will enhance effective Police public cooperation, trust and confidence thereby sustaining quality proactive service delivery.

Thank You

Saviour Akpan, Esq., 2016