Use of Admissions of Guilt under Afghan Law

Major T. Scott Randall[*]

The criminal justice system in Afghanistan is modeled on the Italian inquisitorial system of justice.[1] In this type of system, the judge is the main player who seeks to arrive at a just result through an investigation of all of the evidence.[2] In an inquisitorial system, the accused has the right to silence; however, this right is rarely exercised because the main aim of an inquisitorial system is to find the truth through rigorous investigation from all components of the criminal justice system, including the accused.[3] Therefore, the accused is expected to fully cooperate with the investigation in order for the truth to be uncovered.[4] Hence, statements by the accused both pre-trial and during the criminal proceedings are integral to this type of criminal justice system.[5]

Understandably, there are several provisions under Afghan law that deal with admissions by the accused. Pursuant to Article 30 of the Afghan Constitution of 2004, "a statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid. Confession to a crime is a voluntary admission *before an authorized court* by an accused in a sound state of mind."[6] Similarly, under the Afghan Criminal Procedure Code of 2014 (CPC), Article 4, a confession is defined as "admitting responsibility for committing the crime voluntarily and in a sound state of mind without duress *before an authorized court.*"[7] Further, pursuant to Article 19 of the CPC, incriminating evidence includes a confession by the accused.[8] Finally, under Article 150 of the CPC, the accused may remain silent in response to any question asked.[9] Silence of the accused is not considered a statement, and a statement, confession, or testimony taken from an accused person or a witness by lure, threat, dismay or coercion is not valid.[10]

Based on the foregoing, the question arises regarding whether out of court admissions by the accused can be used against him in Afghan courts. The answer is yes. Under Article 156 of the CPC, the prosecutor is obligated to ask the suspect in the beginning of the pre-trial investigation to state his role in the crime.[11] If he confesses to the material element of the crime or to a part of it, or provides information with respect to the issue, the prosecutor shall request him to provide further details on how the criminal action was committed.[12] Further, during this pre-trial questioning, the accused is given the opportunity to state his reasons for elimination of suspicion and to express the facts that are in his favor.[13] Most importantly, pursuant to Article 221 of the CPC, "if the accused person refuses to answer the question [during trial] or his statements made during the session contradict those already made during the stages of evidence collection and investigation, the court may order that his first statement be read."[14] Therefore, the CPC recognizes that the court may be able to bring up the accused's out of court admissions at trial provided the accused chooses to remain silent during his court appearance, or if his testimony contradicts his out of court statements.[15] This provision, in essence, allows the court to use out of court admissions in almost every case.[16] The reliance on such admissions is one of the primary attributes of the Afghan legal system.

A unique aspect of the Afghan legal system is its dependence on fingerprints to verify documents.[17] Under Article 37 of the CPC:

> witness statements and testimony shall be put in the report without changes, additions, distortions, correction, cleaning, and scratching. The statement and/or testimony will not be valid until confirmed by the witness, prosecutor's office or

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* Major Randall is a judge advocate, U.S. Army Reserve (AGR), presently assigned as OIC of Legal Operations, National Security Justice Development Directorate, Bagram, Afghanistan.

[1] John Jupp, *Legal Transplants as Tools for Post-Conflict Criminal Law Reform: Justification and Evaluation*, 3 (1) Cambridge J. of Int'l and Comp. Law 381 (2014).

[2] *Inquisitorial and accusation systems of trial*, Law Teacher (2009), http://www.lawteacher.net/free-law-essays/common-law/inquisitorial-and-accusation-systems-of-trial.php.

[3] *Id*.

[4] *Id*.

[5] *Id*.

[6] Afghan Const. January 26, 2004, art. 30.

[7] Crim. Pro. Code, art. 4 (2014) (Afg.).

[8] *See id*., art. 19.

[9] *Id*., art. 150

[10] *Id*., art. 150.

[11] *Id*., art. 156. *See also* Crim. Pro. Code, art. 45 (*stating* the primary investigator for all misdemeanor and felony crimes is the prosecutor, who may then ask for assistance from the police or National Directorate of Security to perform this duty).

[12] *Id*.

[13] *Id*.

[14] *Id*., art. 221.

[15] *Id*.

[16] *Id*.

[17] *Id*., art. 37.

> the court. The witness shall sign or put his/her fingerprint on the statements when the entire statement is read to him/her and is confirmed. If the witness refuses or is not available to sign or put his/her fingerprint in the registry a reason shall be entered in the registry.[18]

Further, under Article 85, "the statements of suspect, accused person, victim, plaintiff, witnesses and present people and informer of the crime scene should contain their signatures; if the person is unable to sign he/she should fingerprint the statement."[19] This reliance upon fingerprinted statements brings a modicum of validity to the statement of the accused, but also creates an issue when the accused is illiterate and does not understand the contents of "his" statement.[20] Therefore, corroborating evidence in the case file, even in this inquisitorial system, is crucial to a transparent prosecution.

Because courts rely on written confessions so heavily in the Afghan criminal justice system, rule of law judge advocates must be cognizant of their proper uses. Confessions derived from coercion are specifically forbidden in the Afghan Constitution.[21] Further, the contents of any written admissions must be read back to the accused prior to signing or placing his finger print on the document.[22] Although these safeguards are meant to protect the rights of the accused, the rule of law judge advocate must remain wary of any case that relies solely on out of court admissions for its validity.

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[18] *Id*.

[19] *Id*., art. 85.

[20] *Id*.

[21] Afghan Const. January 26, 2004, art. 30.

[22] Crim. Pro. Code, art. 37 (2014) (Afg.).