

**CRIMINAL JUSTICE SYSTEM IN UGANDA AND ITS IMPACT ON
MOB JUSTICE**

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DECLARATION

I, **WERE JOHN**, declare that this dissertation is my original work and that to the best of my knowledge it has never been submitted for any academic award to any institution of higher learning.

Sign: ----- Date: 1/10/2013-----

WERE JOHN

APPROVAL

I certify that I have supervised and read this study and that in my opinion it conforms to accepted standards of scholarly presentation and is fully and adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Laws of Kampala International University.

Sign..... *Kay*

Date..... *01-10-13*

SUPERVISOR

DEDICATION

This work is first dedicated to God who has given me wisdom, strength and grace to do his will.

Secondly, to my lovely parents the Late Mzee **RAPHAEL MUCHUDE MUSUMBA** and Mrs. **JOYCE NAFULA MUSUMBA** who have worked tirelessly to make me who I am.

Lastly to my beloved wife **NAFULA JUDITH WERE** for her patience, moral support and who has demonstrated that love always protects, always trusts, always hopes, always perseveres and therefore never fails.

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CHAPTER ONE

1.0. Introduction

Criminal Justice System (CJS) is administered through a system of inter-connected and interdependent actors. It is through this system that social control is maintained; criminal laws are enforced and justice is meted out to the victims of crime, accused persons and society at large. The interrelationships between the Criminal Justice System actors act as a check and also serve to protect the rights of individuals as they wade through the system¹

Some scholars understand the functional study of criminal justice as a phenomenon that is distinct from criminology which in their opinion involves the study of crime as a social phenomenon, causes of crime, criminal behavior, and other aspects of crime². Irvin Kinnes in fact expounds that the criminal justice system consists of three distinct parts namely; legislature which is responsible for making laws, the judiciary that is responsible for case adjudication and correctional institution on the other hand comprising of jails and prisons. Irvin however asserts that although the criminal justice system comprises of three distinct integral aspects these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society³

¹ Kinnes, Irvin (2009) Criminal justice in Africa An introduction to the theory and practice of criminal justice. Monograph No.161 African Human Security Studies

² Adinkrah M (2005) Vigilante homicides in contemporary Ghana. Journal of Criminal Justice 33, 413-427

³ Bowd, Richard (2009) Status quo or traditional resurgence: what is best for Africa's criminal justice systems? Monograph No.161 African Human Security Studies

1.1. Back ground to the Study

According to Human Rights watch report⁴ the applicable criminal justice law in Uganda include statutory law, case law, common law, doctrines of equity, and customary law. Statutory law takes precedence, and customary law is only applicable in the absence of relevant statutory or case law. According to this report, Ugandans and especially the rural population, many seek justice at the local level and State sponsored local tribunals or Local Council courts (LC courts) apply customary norms and provide local council courts for dispute resolution. The report highlights five local government levels in Uganda, running from the village level to the district or city level. Local Council courts are established from the village level (LC1), to the parish level (LC2), and on to the sub-county level (LC3). Human Rights Watch explains that the courts at the bottom of the country's court system have jurisdiction over limited civil matters and petty criminal offences.⁵

However, although the legal framework establishing Uganda's criminal justice system is apparently sufficient to ensure the dispensation of justice to suspected offenders the existence of mob justice undermines the seemingly efficient criminal justice tool operationalised by the various legislative and institutional apparatus. Mob justice prevents the suspect from accessing criminal justice administered by the courts since the suspect get smothered before they are arraigned before the relevant courts.

According to the research finding, Mob Justice, a qualitative research regarding vigilante justice in modern Uganda, mob justice is the violent phenomenon which can be explained as; when a

⁴ Uganda Human Rights Watch 2005.

⁵ Kiryabwire, Justice G W M (2005). Alternative dispute resolution: A Ugandan judicial perspective. Paper delivered at a continuation seminar for Magistrates Grade I, Colline Hotel, Mukono, 1 April 2005.

group of people, sometimes several hundred, take the law into their own hands, act as accusers, jury and judge and punish an alleged wrongdoer on the spot. The person accused of a crime has no chance to make a defence or make claim of innocence. This procedure often ends up with the victim being beaten to death or seriously injured. The victim of a mob is denied a fair trial and the right to life which violates the UN standards of human rights⁶

According to newspaper excerpts, occasions of mob justice are so common in different parts of the country and for different reasons. The excerpts often tell similar stories about victims beaten or burnt to death on alleged accusations. One excerpt from the Daily Monitor newspaper read “... 14 Face Murder Charges over Mob Justice”⁷

There are also debates in the daily media on the subject of mob justice involving academics, police officers and civilians Mob Justice. “Cyclists Kill Innocent S.6 Student”⁸

The general opinion through these debates is that mob justice is not a desirable way of solving issues and that something has to be done. Usually the accusations regard failure of the judicial system and corruption within the Police Force. “UPDF Colonel’s Son Survives Mob Justice”⁹

Owing to the mob justice phenomenon illustrated above, the need to investigate the role of mob justice in relation to Uganda’s Criminal justice system is crucially essential. The appropriate

⁶ United Nations Universal Declaration of Human Rights <http://www.un.org/en/documents/udhr/> (2013-05-11)

⁷ Edison Akugizibwe The Daily Monitor, 25/03/2013. P.23

⁸ Sandra Birungi Posted on April 16, 2012

⁹ Nicholas Mwesigwa 04/11/2011 01:29:00)

ways to deal with mob justice so as to protect the appropriateness of the country's criminal justice system is also of equal importance.

1.3 Statement of the Problem

Although Uganda has a functional Criminal justice system responsible for dispensing justice, there is sufficient evidence indication that this end can't be achieved by conventional legislations and criminal justice institutions. This is apparent from the rampant acts of mob justice that often frustrates the object of assuring a good criminal justice system in the country. Evidence of mob justice is sufficiently covered in other chapters of this research.

Arvin Kinnes defines Criminal justice system as a process, involving a series of steps which begins with a criminal investigation and end with either the release of a convicted offender from correctional supervision or acquittal of the accused for no case to answer. The Uganda criminal justice system has all the functional components prerequisite in the handling of criminal offences.

However, with the, existence of the criminal justice system and relative stability in social economic development under the movement government since 1986, cases of mob justice still co-exist in the country. Some of these cases are reported in the media while a number of them remain unreported. It's against this background that the research had center on the criminal justice system in Uganda and its impact on mob justice.

1.4. Purpose of the Study

The sole purpose of this study is to establish the role and impact of mob justice on Uganda's criminal justices system.

1.5. Specific Objectives of the Study

- i) To establish the efficacy of Uganda's Criminal Justice System.
- ii) To establish the role of Mob justice in Uganda's Criminal Justice System.
- iii) To examine the challenges facing Uganda's Criminal justice system in relation to the discourse of mob justice.

1.6. Research questions

- i) What are the general roles of the Criminal justice system?
- ii) What are the roles of Criminal justice in relation to mob Justice?
- iii) What are the possible challenges caused by mob justice in relation to Uganda's criminal justice system?

1.7. The Scope of the Study

This research was carried out in the High Court of Uganda, Luzira Prison and Central Police Station (CPS) which the researcher believes constitutes an integral facet of Uganda's Criminal Justice system.

1.8. Methodology

The research adopted qualitative research method since qualitative research primary goal is to make the facts understandable, and often place less emphasis on deriving inferences or predictions from cross-case patterns. It involves in-depth, case oriented study of a relatively small number of cases, including the single-case study, qualitative research also seeks detailed knowledge of specific cases, often with the goal of finding out how things happen or had happened.

The case study design that was used in the research allowed the researcher to focus on the specifics of Criminal Justice System and mob justice thereby allowing the researcher to obtain comprehensive information about the research problem, and to apply the qualitative research designs without substantial limitation in gathering the research data.

1.9. Significance of the study

The study is significant because it establishes that to a large extent mob justice exists side by side with the criminal justice system and continues to undermine the ideals of a good criminal justice system as is to be seen in subsequent chapters. It is believed that the research will be relied on by the country's policy makers in identifying the factors leading to mob justice and the appropriate measures to be adopted to avert the negative role posed by mob justice on Uganda's criminal justice system. Lastly it is believed that the report will be handy criminal justice and human rights scholars and researchers in Uganda.

CHAPTER TWO

2.1 Literature review

The literature reviewed in this study covers the areas of; the concept of Criminal Justice, the Criminal Justice System in Uganda, types of Criminal Justice and the components of criminal justice system. The literature also reviewed the concept of mob justice its causes and the role of criminal justice system in dealing with mob justice.

2.2 The concept of criminal justice:

Brantingham, Paul J. and Frederick L. Faust (1976) present the phenomenon of Criminal Justice has existed since the 1920s and is a concept encumbers the system, principles, rules, practices and institutions through which the state makes sanctions against socially undesirable behavior in order to ensure the implementation of the sanctions taking into account the relevant criteria relating to justice¹⁰. The authors present that the concept Criminal Justice presupposes and derives its applicability form legislation, policy, police practices, jurisprudence, and other state systems one integrated system. The authors also explain that the concept presupposes that the study of criminality, and how this is handled, cannot and should not be separated from one another. It demands a multi-disciplinary approach, where use is made of the expertise that has been built up by the related disciplines within legal studies and criminology. They further compound that the empirical study of criminality, how this is handled, and related normative questions can be directly related to one another and to social developments¹¹. They argue that the

¹⁰ Brantingham, Paul J. and Frederick L. Faust., 1976. "A Conceptual Model of Crime Prevention." *Crime and Delinquency* 22: 284-296.

¹¹ Coldman, S. 2000. Criminal justice policies in Commonwealth Africa: trends and prospects. *Journal of African Law* 44(2):218-238.

management of criminal justice involves the advocate, the judiciary, and correctional institutions inter alia.

2.3 Criminal justice system in Uganda

Baker, B ¹²analysed the British Criminal justice system and asserts that hitherto in Uganda most societies' judicial system consisted of a number of local authorities, tribal chiefs, and king group elders, who worked primarily to enforce local customary law and that in northern Uganda Islamic law was also practiced. He explains that during the twentieth century British jurisprudence was gradually imposed, spreading more quickly across the south than the North and that at independence, the resulting legal system consisted of the High Court, which heard cases involving murder, rape, treason, and other crimes punishable by death or life imprisonment; and subordinate magistrates' courts, which tried cases for crimes punishable by shorter terms of imprisonment, fines, or whipping. Magistrates' court decisions could be appealed to the High Court. He states that all courts had the privilege of rendering competent verdicts, whereby a person accused of one offense could also be convicted of a minor, related offense. The author asserts that in Uganda's post independence period, the Director of Public Prosecutions (DPP), was to be appointed by the president and was to be charged with prosecuting criminal cases.

The principal components of Uganda's Criminal Justice System are the Police, the Courts and the Prisons service. These three components function as indispensable parts of the criminal

¹² Baker, B 2004. Popular justice and policing from bush war to democracy: Uganda 1981–2004. *Int Journal of the Society of the Law* 32(2004):333–348.

justice machine whose sole purpose is to protect society by ensuring justice and tranquility for everybody. Nevertheless, each of them serves a distinct role within the system.¹³

2.4 The police

The Uganda Police Force (UPF) is centrally organized. There is one force, with local units in the districts, all under an Inspector General of Police. The inspector general is in turn answerable to the minister of internal affairs. The major Police functions in the system include as outlined in the police Act.¹⁴

- To protect the life, property, and other rights of the individual;
- To enforce the laws of Uganda;
- To maintain security within Uganda;
- To ensure public safety and order; and
- To prevent and detect crime in the society.

Protecting the life, property and other rights of the individual covers the whole range of police activities these includes the rendering of specialized services such as guarding particularly vulnerable members of the community, guarding public property, and putting out fires.

The two functions of ensuring public safety and order and maintaining security encompass the whole gamut of police efforts in the area of prevention of crime, reduction of the incidence of crime, arrest and detention of suspected criminals, controlling crowds at public functions, and quelling riots and other unlawful assemblies or processions.

¹³ Research and Legal Studies *A Study for the Reform of Trial Procedures in Uganda* (2002)

¹⁴ The Police Act Cap 303 Law of Uganda Revised Edition 2000

Law enforcements include securing suspected individuals for trial in the courts of law. In addition to investigation of crime the police are responsible for initially laying charges against the accused and for producing the evidence against them. They identify and call witnesses, including their officers who witnessed or investigated the crime in question; to testify against the accused .It is worth noting too, that in Uganda it is the police who actually conduct the bulk of the criminal prosecutions against criminal suspects on behalf of the state. This they do in the magistrate courts where most of the criminal trials take place. They nevertheless remain under the direct control of the Director of Public Prosecutions.

Also related to law enforcement is the regulation of non-criminal activities such as superintending the traffic code through inspections and the granting of permits, and authorizing such activities as public procession, demonstrations, and public solicitations

Crime prevention encompasses all police efforts aimed at eliminating causes of crime, reducing the incidence of crime, and educating members of the public on how to avoid becoming victims of crime and on what to do should they become victims. Detection includes investigating crimes that have already been committed, and gathering information on the activities and movements of the suspected criminals, and on the situations that lead to commission of crime. It also includes preparing and marshalling evidence in support of court proceedings against suspected offenders.

2.5 The Courts

The primary function of the courts in the Criminal Justice System is to determine whether, on the strength of the evidence adduced before them, the accused is guilty of the offence with which he/she is charged with, and if they find him guilty, they must also decide on the appropriate

sentence to be imposed on him or any other method of disposition, the courts are duty bound to take into account the nature of the crime committed, the offender, and the need to protect the public. An equally important role of the courts is to ensure that the accused's rights have been or are observed by the various components of the Justice System before, during and after the trial. If they have not been observed the courts must then ensure that the accused must obtain redress. In this respect, the police play the role of watchdog over the rights of the accused

The court system of Uganda consists of hierarchy of courts of varying grades and powers. The central and most important of these courts is the High Court of Uganda. It is a superior court of record with unlimited original jurisdiction in both civil and criminal cases section 14 of the Judicature Act.¹⁵

As far as criminal cases are concerned, this means that it has powers to try any case involving any offence which has been committed anywhere in Uganda however serious or petty. In practice however, it tries only the most serious offences such as treason, murder, manslaughter, robbery and kidnapping with intent to murder. It also hears appeals from magistrates' courts presided over by chief and Grade I magistrates. In its appellate capacity the High court has power to confirm, reverse or revise decisions or orders of the inferior courts. It also has the power to confirm sentences passed by Magistrates courts under certain circumstances Section 16 of the Judicature Act¹⁶ and Article 139 (1) of the constitution of Uganda¹⁷.

¹⁵ Judicature Act Cap 13 Law of Uganda Revised Edition 2000

¹⁶ Judicature Act Cap 13 Law of Uganda Revised Edition 2000

¹⁷ Article 139(1) of the Constitution of Republic of Uganda

Superior to the High Court is the Supreme Court of Uganda which is the highest court of record and its jurisdiction is limited to hearing and determining appeals from the High Court in exercise of its original jurisdiction in cases where the accused has been sentenced to death or to imprisonment for a term exceeding 12 months or to a fine exceeding two thousand shillings point. It also hears criminal appeals from the High Court in the exercise of its appellate jurisdiction, but only on point of law as stated in Section 5 (1) a of the Judicature Act.¹⁸

The courts that are less superior to the High Court are the magistrates' courts which are presided over by magistrates of varying grades of seniority: Chief Magistrate, Magistrate Grade I, and Grade II. The chief Magistrate may try any criminal offences created under any law, except treason and related offences, promoting war on chiefs, murder, manslaughter, rape, kidnapping with intent to murder, and attempts or conspiracies to commit such offences. Provided he has jurisdiction to try the offence, a chief Magistrate may impose the maximum penalty prescribed in respect of any offence as provided for under section 161 (1) a-d ¹⁹. In other words, there are no restrictions on his sentencing powers. It is also worth noting that in addition to his original jurisdiction a Chief Magistrate hears appeals from the decisions of Magistrates Grade II and III. Additionally, he plays a supervisory role over all the Magistrates within his magisterial area, and has power to transfer cases from any Magistrate to himself or to another Magistrate within the area as provided for under section 221²⁰.

¹⁸ Judicature Act Cap 13 Law of Uganda Revised Edition 2000

¹⁹ Magistrate Courts Act Cap 16 Law of Uganda Revised Edition 2000

²⁰ Magistrate Courts Act Cap 16 Law of Uganda Revised Edition 2000

Magistrates Grade I, II and III on the other hand, have jurisdiction to try any offences created under any law with exception of those that are specifically excluded from their jurisdiction section 161(1) c of the MCA. Unlike the Chief Magistrates the sentencing powers of Magistrates Grade I, II, and III are circumscribed. Even when they have the jurisdiction to try a particular offence they may not have the power to impose the maximum penalty prescribed by the law creating that offence. Thus, the sentencing powers of Magistrate Grade I are limited to seven years imprisonment and to a fine not exceeding Shillings 1,000,000/=. Those of Magistrate Grade II are limited to three years imprisonment and to a fine not exceeding Shillings 50,000/=.

However, where Magistrates Grade I, II, and III from the view that a person they have convicted of a particular offence deserves a severer sentence than they have power to impose they may commit or send the accused to the Chief Magistrate of their area for sentencing. In doing so, they must indicate on the court record the grounds for their views on the matter.

The Chief Magistrate and Magistrate Grade I are presided over by lawyers qualified to practice law in Uganda. Magistrates Grades II and III are lay people, comparable to the justices of the peace in Britain. They do, however, undergo some training in the rudiments of the law and procedure at the Law Development Centre. Salutary as the training may be, it is submitted that it is not adequate. Magistrates must be able to evaluate the evidence adduced before them as well as the arguments of counsel, and be able to decide on the issues raised thereby in accordance with the law applicable. These qualities and skills can be attained only through thorough and rigorous training. Moreover, since lawyers are allowed to appear before them, there is a danger that the unscrupulous ones among them may mislead them as to the law and procedure, to the prejudice of the ends of justice.

An innovative feature of the court system that was introduced by the National Resistance Movement Government led by Yoweri Museveni, known as the resistance councils which vested the judicial powers in village committees. This system have administrative set up at every level starting with the village, there is an elected committee. The committee is charged with, among other things, ensuring the social welfare, and general development of the area under its jurisdiction²¹. In addition to these responsibilities the committee is empowered to settle minor intra citizen disputes of a civil nature , including debts, contracts, trespass, assaults, and damage of property , and others of civil customary nature. They also have jurisdiction to try matters arising out of infringement of any bylaws enacted by them under the provisions of the Resistance council and Committee statute , 1987. The greatest advantage of the committees wielding judicial powers is that they are able to dispense ‘popular’ justice in an informal and expeditious manner. An objectionable feature about them however, is the fact that they are currently constituted, they combine legislative, executive and judicial powers contrary to the libertarian doctrine of separation of powers. This is a major flaw²².

There are two important issues to note with respect to the Uganda criminal justice system, first is that, unlike most Western industrialized nations, there is no jury system in Uganda. The magistrate or the judge is the sole tier of the facts .However, in the proceedings before the High court at least two lay persons, known as the assessors, are required to participate in the proceedings who at the close of the case for the defense but before the court’s verdict, the

²¹ Baker, B 2004. Popular justice and policing from bush war to democracy: Uganda 1981–2004. *International Journal of the Soc of the Law* 32(2004):333–348.

²² Baker, B 2004. Popular justice and policing from bush war to democracy: Uganda 1981–2004. *International Journal of the Soc of the Law* 32(2004):333–348.

presiding judge give the assessors an opportunity to express their opinions as to the appropriate verdict he should return in the case. Their opinions are however, not binding on the judge. Nevertheless, where the judge disagrees with the majority of the assessors he must, in the course of his judgment, give reasons for his disagreement.²³

Secondly under the Constitution of Uganda every person charged with a criminal offence is entitled to be represented by a lawyer of his own choice and at his expense. In majority of cases however, the accused persons are unrepresented, because they are indigent, unlike developed countries such as United states of America where that nation's constitution obliges the state to provide free legal assistance to any person charged with a criminal offence and who is willing to avail himself of it, there is no such provision in Uganda constitution .The state's obligation in this matter is limited to permitting the accused to be represented by a lawyer of his choice. There is as yet no legal scheme in place. It is only in capital offences that the state is obliged to provide free legal assistance to defendants who are willing to accept it²⁴. The majority of the defendants, the rights to the legal assistance remain illusory.

2.6 Prisons

Uganda Prisons Services is part of the integrated justice system responsible for the safe, secure and humane custody of prisoners who are sentenced to imprisonment and individuals who have been remanded by the courts of Uganda. The institution derives its authority from the Constitution under Article 215²⁵and the Prisons Act.

²³ Trial on Indictment Act Cap 23 Law of Uganda Revised Edition 2000

²⁴ Article 28(2)e of the Constitution of Republic of Uganda

²⁵ Article 215 of the Constitution of Republic of Uganda

Prisons Service is responsible for the provision of safe, secure and humane custody of prisoners. Besides custody, the prisons service is responsible for providing social rehabilitation to prisoners in preparation for their re-integration back to their local communities upon completion of their sentences. Rehabilitation includes providing prisoners with industrial and agricultural skills they will find useful once out of prison.

The prison's service falls under the Ministry of Internal Affairs and established by the Constitution under Article 215²⁶. The prisons in Uganda are centrally organized and are under the overall charge of the Commissioner of Prisons. The commissioner superintends the 46 government prisons and, indirectly, local government detention centers. He is answerable to the minister. The central government prisons falls under two broad categories: those for the un-convicted prisoners and others for the convicted prisoners. There is one type of prison under the first category; it's called a reception centre or district prison. Reception centers are as a general rule situated in urban centres where there are courts. Prisoners on remand or awaiting trial, usually from upcountry areas, are kept here. In this respect district prisons serve to facilitate court attendance by the prisoners. Convicts sentenced on short- term imprisonment also often serve their sentences in these prisons. Prisons for convicted prisoners tend to be specialist and currently fall under six classes, depending on the type of convicts kept there and the nature of treatment they need. The first type of prison under this category is called the preventive detention prison, designed for habitual offenders. The second types are the prison farms, for prisoners serving medium to long-term sentences. Prisoners in this type of prison are trained in agriculture and animal husbandry and in other useful vocations or industries. The third is the maximum-

²⁶ Article 215 of the Constitution of Republic of Uganda

security prison for hardcore criminals, or criminal convicted of very serious offences such as murder and armed robbery. The fourth and fifth are the reformatory schools for juveniles and the young persons' prison. The sixth are the women prisons, for women serving various types of sentences.²⁷

Prisons play an important role in the criminal justice system .They receive and securely confine persons awaiting trial or those already convicted of crimes and sentenced by the courts to terms of incarceration and the unconvinced persons are available to answer charges against them . In the case of the convicted offenders the prisons help to incapacitate such offenders from committing further crimes and from menacing innocent members of the public, furthermore, isolating the offenders from their loved ones and by depriving them of their liberty and of their pastimes, prisons help to teach them a lesson as to the unpleasant consequences of engaging in crime. This deters them from engaging from further criminal activities²⁸.

Prisons also assist the prisoners to reform and to become responsible, productive and law binding members of the community. Nevertheless, the attainment of these desiderata depends, to a large degree, on the mode of treatment that the inmates receive while in prison. This will in turn depend on the availability of resources such as trained manpower, facilities necessary for the training of the prisoners in useful industrial skills, appropriate physical structures, provision of adequate diet, healthcare, recreational and educational facilities referred to herein and the concomitant harsh conditions that have existed in Ugandan prisons during this period, have

²⁷ Street Law (2012) The Uganda Prison Services

²⁸ Ibid.

tended to encourage rather than deter or sober up the inmates. This has in turn resulted in a cycle of violence and criminality²⁹.

2.7 The concept of mob justice

Tessa V. Levine, in the report, *Combating Mob justice* asserts that mob justice is sometimes called “Jungle Justice”, and refers to the act of a group of people taking the law into their own hands and enacting violent justice on an alleged criminal and that this type of justice is, while not an everyday occurrence, regrettably common in Uganda, in the urban areas, but especially in the more rural areas where there is less presence of the police.

Tessa asserts that at first glance, it is easy for most people to see why mob justice is wrong, it violates a person’s right to a fair trial³⁰ and right to be innocent until proven guilty (not only stated as article 11, but also viable in all areas that use a Common Law system, including Anglophone Countries). The author explains that without a trial in an official court of law, it is all too easy to hurt or kill a person without proof of their guilt³¹

She presents that mob justice perpetuates a cycle of violence, creates a culture of fear, and rejects personal accountability for violent acts that are committed in the name of justice and that as we condemn the act of mob justice, it is important to understand the social climate that allows for it

²⁹ *Ibid.*

³⁰ Article 10 of the UN Universal Declaration of Human Rights.

³¹ Geason, Susan and Wilson, Paul R. (1988) *Crime Prevention theory and practice* Australian Institute of Criminology.

to happen. Mob justice is a result of a severe lack of faith in local police forces and judicial systems³²

Tessa believes many villages in Uganda especially those in rural areas do not have a police presence and that, indeed, the police are called on an issue, even if it is a violent and urgent crime, it can take before they can arrive. The author avers that perceived lack of competency, due primarily to the countries underfunded and understaffed law enforcement system, forces people to believe that justice only comes through their own hands.

2.8 Causes of Mob justice in Uganda

The inadequacy of resources to the state's law enforcing organs, make them inadequately equipped to effectively and efficiently do their work. As a result, the public participates in mob justice because they consider it as the most effective response to insecurity. The Police are poorly equipped to respond to cases of mob justice.³³

They lack communication equipments, vehicles and gadgets to investigate and arrest perpetrators. The Police lack even stationery for recording statements and the public look at the Police as a useless institution. One has to come with his own paper for recording statements at small Police stations. In addition lack of evidence always force the police to , released the few who are arrested and this does not go well with the public, as the result they end up ganging up to beat the victims to death and eliminate them completely.

³² Tankebe, J. (2009) Self-help, policing and procedural Justice: Ghanaia Vigilantism and Rules of law. *Law & Society Review*, 43(2), 245-270.

³³ Nalukenge, Harriet A. (2001): The right to life – A case study of the mob justice “system” in Uganda. Make-rere University, Kampala.

According to Nalukenge, Harriet ³⁴ examines the relationship between mob justice (or mob violence) and weaknesses in the judicial system alongside the police. She stated that the causes of mob justice are rooted in an insufficient legal structure where weak laws and following punishment do not match the impact of the crimes committed, whereby people take the law into their own hands. She also added that the mentality of punishing a person responsible for someone else's death by taking his/her life an eye for an eye, is ingrained in the Ugandan culture and connected to a widely spread public illiteracy as well as inertia and delays in the judicial system.

Mutabazi, Sam Stewart ³⁵ finds that the members of the public derive the causes of mob justice to the incompetent and inefficient police and the legal system in Uganda. The main perpetrators of mob justice are the police force itself alongside with the unemployed, idle youth. It is also stated that the poor, un-educated people within the Ugandan society suffer the most from mob justice and that both the police and so called local council leaders must address the issue more directly to prevent its continuation. The maintenance of mob justice will only serve encouragement of murder and lawlessness among the public, according to Mutabazi (2006).

³⁶partly derives the causes of mob justice to a public perception of an ineffective judicial system, however, her main emphasis on the problematization of constraints such as corruption and insufficient funds within the judicial system institutions like the Ugandan Police Force, the court

⁴ Nalukenge, Harriet A.(2001): *The right to life – A case study of the mob justice “system” in Uganda*. Makerere University, Kampala

⁵ Mutabazi, Sam Stewart (2006): *Mob justice as a violation of individual's human rights: A case study of Kampala District*. Makerere University, Kampala

⁶ Kanaabi, Margaret (2004): *An assessment of the factors responsible for mob justice in the management of public affairs in Kampala District*. Makerere University, Kampala

and the prison³⁷ stress that this leads to public distrust against these institutions and mob justice becomes a vital alternative when it comes to solving judicial issues.

2.9 How to Combat Mob Justice using Uganda's Criminal justice system

According to Tessa V. Levine³⁸ (2011) the variety of social factors that contribute to mob justice, as well as a pervasive mentality that it is the only way to bring people to justice, the challenge of combating it is indeed a challenge. The author presents that, there are a variety of techniques ranging from simple tasks to elaborate system changes that help promote alternative ways of dealing with criminals.

2.9.1 Spreading Awareness of Human Rights

According to Human Rights Watch August (2003)³⁹ many people in Uganda may have heard the term "Human Rights", but aren't entirely sure what it really means and some people have never heard it at all. The report presents that through teaching people about rights with which they themselves are endowed and the benefits they would receive from the promotion and protection of these rights, one can empower people to say "I don't want my rights violated, so I don't want to violate someone else's."

In light of the above explanations, Mob Justice violates one's right to a fair trial, and right to be held innocent until proven guilty. Anyone who has experienced Uganda's judicial system could relate stories about their rights being violated in that institution; as a result of their experiences,

³⁷ ibid

³⁸ Tessa V. Levine, combating mob justice, Global Conscience Initiative November 2011

³⁹ Human Rights Watch August 2003, Vol. 15, No. 15(A).

they know how much better the justice system would be if it consciously upheld these particular rights. An effective way to breach the subject is: If this were your son or daughter, wouldn't you want them to have a fair trial before being sentenced to death? Making the situation personal creates sensitivity to the plight of Mob justice victims.

2.9.2 Improve Local Justice System and Demand Accountability

Tessa V. Levine⁴⁰, *Combating Mob Justice an overview*, presents that the climate that leads to Mob Justice begins with an ineffective local justice system. The author affirms that in places where the police cannot be counted on to deal with criminals, it is only logical that victims and the communities in which crimes take place will feel compelled to take the law into their own hands⁴¹. The author states that the way forward for the government of Uganda to combat Mob Justice in the country would be to improve local justice systems and demand accountability for the way they handle criminals, especially in rural areas. The author alludes that a police chief in charge of a region that includes rural villages is responsible for ensuring access to justice in those rural villages and, if necessary, a police force. The author elaborates further that it is not acceptable that villages and villagers who suffer violent crimes have to wait days or more for a police investigator to show up to the crime scene. The author believes that while systematic changes in the judicial system and police force must come from the Ugandan Government, it is also an important and empowering step that rural communities can take to begin demanding accountability and effectiveness from the stations that have jurisdiction over them.

⁴⁰ Tessa V. Levine, *Combating Mob Justice an overview*, Global Conscience Initiative November 2011.

⁴¹ Roberts, J.V & Hough, M (2005a) *Public Confidence in the Criminal Justice System, Understanding public attitudes to criminal justice*, Maidenhead: Open University Press.

2.9.3 Teach Non-Violence

Tessa V. Levine⁴² also explains that mob justice is only possible in a culture where violence is an acceptable form of punishment. In Uganda there are cases of brutality and unnecessary violence in all forms of life, especially in the justice system. The author believes that one way of combating mob justice from the ground up is to teach children that violence is not an effective way to solve problems. The author also asserts that teaching mediation skills, encouraging children to observe the Traditional Council mediating local disputes, refraining from beating children and animals, and working to be non-violent in day to day life, it is possible to eliminate Mob Justice altogether and a community that doesn't accept violence on a day to day basis will not accept violent retribution for an un-convicted person.

2.9.4 Don't Participate

Tessa (supra) believes that not participating in mob justice is the most vital and powerful tool any community has in combating mob justice and that even if a person does not deal a blow or participate directly in the harming of an alleged criminal, it is vital to those people who are delivering violent retribution that there is a crowd of people supporting them. The author suggests that none participation in this mob mentality, refusing to tacitly support that torture of an un-convicted person, and encouraging other people to uphold human rights, any person can do their part to stop mob justice.

Tessa believes that in a nutshell Mob justice is the symptom of a society where ignorance, an incompetent justice system, and human rights violations impede access to justice. She asserts

⁴² Ibid.

that the root cause of the phenomenon is the lack of public trust in the legal and security authorities to properly handle suspected criminals. She further asserts that compounded with the public's ignorance of the human rights afforded to every citizen, this distrust yields a willingness to try suspected criminals in the court of armed public opinion instead of in a court of law. The author believes that what results is a vicious cycle of violence where the accused suffer injuries or even death on account of possibly unfounded accusations, which in turn generates more distrust for the law and its enforcement on behalf of the victim and his or her relations.

Tessa suggests further that eliminating mob justice requires a concerted effort on behalf of the government, civil society organizations, and individual citizens. The value of its eradication lies in more informed citizens, the subsequent creation of a justice system that properly handles crime, and a more peaceful society.

CHAPTER THREE

CONCEPTIONAL ANALYSIS

3.1. International level

Criminal Justice at the international level is provided for under the Rome Statute of the International Criminal Court (ICC). The law was established on 17th July 1998 in Rome, when One Hundred and Twenty States adopted a statute to enable the functioning of the International Criminal Court (ICC). Uganda rectified the Rome Statute and put in place the International Criminal Court Act 11 of 2010 in 2010 which domesticates crimes under the Rome Statute and the modes of liability are almost all taken directly from that statute. The act makes no mention of the War Crimes Division (WCD) that was established by administrative decree in 2008, but gives the High Court (of which the WCD is a part) first-instance jurisdiction to hear cases of war crimes.. The ICC is a permanent, treaty-based and independent court which is not controlled by any government or organization but work incorporation with the United Nation and other organizations that help it achieve its purpose.⁴³

The jurisdiction of the court is limited to the most serious crimes that are of concern to the national community as outline in the.⁴⁴

3.2. National Legislation

In Uganda the legislations which guide criminal offence process are the Constitution of the Republic of Uganda 1995, the Penal Code Act Cap 120, and the Trial on Indictment Act Cap 23,

⁴³ Claire de Than and Edwin Shorts (2003) International Criminal Law and Human Rights, Sweet & Maxwell London

⁴⁴ Rome Status Article 5.

The Prison Act Cap 304, Magistrate Court Act Cap 6 and the Criminal Procedure Act among others.

Articles 126 (2) of the Constitution provides for the adjudicating cases of both a civil and criminal and states that,

(a) Justice shall be done to all irrespective of their social or economic status;

(b) Justice shall not be delayed;

(c) Adequate compensation shall be awarded to victims of wrongs;

(d) Reconciliation between parties shall be promoted; and

(e) Substantive justice shall be administered without undue regard to technicalities.⁴⁵

In the Penal Code Act,⁴⁶ the joint offenders in prosecution of common purpose is provided for under section 20 which can be applied in the prosecution of mob justices offender, but the same Act has provision under sections 192 and 193 on provocation which always give leeway to mob justice perpetrators, since they believed that their act was out of provocation.

The Penal Code Act is the legislation which spell out most of the criminal offences and their punishments as prescribes under the law of the Republic of Uganda.

⁴⁵ Art 126 (2), 1995 Constitution.

⁴⁶ Penal Code Act Cap 120 Law of Uganda Revised Edition 2000.

The Trial on Indictment Act and the Prisons Act⁴⁷ provides for the process of executing the criminal sentences while the Magistrates Courts Act⁴⁸ and the Criminal Procedure Code Act⁴⁹ provide for procedures to be followed by court when handling criminal offences.

⁴⁷ Cap 23 and Act No. 17 of 2006

⁴⁸ Cap 16

⁴⁹ Cap 116

CHAPTER FOUR

FINDINGS

4.0. Introduction

This chapter presents the findings of the research basing on the research objectives set out in this research. The findings comprise an explanation of the manifestation of mob justice in Uganda, the impact of mob justice on Uganda's criminal justice system in assuring justice to crime suspects and the challenges faced in combating the vice. The present content analysis was carried out on various legal documents, research reports, internet resources and general media.

4.1. The role of criminal justice system

It is established in this research that Uganda's criminal justice system was drawn from the functions of the four stakeholders namely; the Uganda Police Force (UPF), the Directorate of Public Prosecutions (DPP), the Courts and the Uganda Prison Services (UPS)⁵⁰.

The function of Uganda Police Force which is established by Article 211⁵¹ of the Constitution of Uganda is charged with functions laid out in Article 212⁵² and Section 4 of the Police Act⁵³ and that are:

(a) To protect life and property;

(b) To preserve law and order;

⁵⁰ Law Watch Report 2005 at pg 13.

⁵¹ Article 211, Constitution of the Republic of Uganda, 1995 as amended.

⁵² Constitution of Uganda, 1995 as amended.

⁵³ Police Act Cap 303, Laws of Uganda.

- (c) To prevent and detect crime; and*
- (d) To cooperate with the civilian authority and other security organs established under this Constitution and with the population generally.*

The functions of the Police stated above indicatives the existence of substantive legislations that should calibrate the functionality of Uganda’s criminal justice system given that the police is such an integral facet of a good criminal justice system as elaborated in the earlier chapters of this research. The other functions of the Police are based on Article 212 (c) of the Constitution and this is clearly laid out in what is referred to as Principles of Policing. The Principles of Policing as explained by Sir Richard Maine in the terms below where he said:

“.....the primary objective of an efficient police is the prevention of crime; the next that of detection and punishment of offenders if crime committed. To these ends all the efforts of police must be directed. The protection of life and property, the preservation of public tranquility and of the crime will alone prove whether those efforts have been successful and have been attained”⁵⁴

⁵⁴ Reith, Charles. 1948. A Short History of the British Police. London: Oxford University Press as quoted by Menno Zacharias <http://mennozacharias.com/2009/08/20/peels-principles/>

The objects of prevention of crime and detection and punishment of offenders are also the main functions of the police of modern society.⁵⁵

Crime prevention has become an increasingly important component of many national strategies on public safety and security. This has made crime prevention the most important function of the police, it is therefore better policy to prevent crime rather than come in after it has been committed to detect or investigate it with the hope of punishing the offender.⁵⁶

One of the theory of upon which preventive work is based is that,

*“...a person is more likely to be deterred from committing crime through the fear of the likelihood of being caught rather than the fear of a severe penalty”.*⁵⁷

Preventive policing can be achieve through diverse means such as foot of motor patrolling by police officers, responsive policing by arriving at the scene of crime commission in order to either stopping further commission of the crime or by arresting the offender. The approach use by police in responding to situation like 999 calls plays a big role in crime prevention.

The detection as police role means discovery of offences and offenders, which can be carried out by uniformed police officers or Criminal Investigation Department (CID) personnel depending on the seriousness of the crime. The methods of crime detection are searches and inspection of persons, premises and vehicles. In a nutshell detective work is carried out by Criminal

⁵⁵ Odoki, John Benjamin (1999) Criminal Investigations and Prosecutions' 3rd ed. Law Development Centre, Kampala

⁵⁶ UNODC (2010) Handbook on the Crime Prevention Guidelines: Making them Work, *United Nations Publication, Criminal Justice Handbook Series*

⁵⁷ Geason, Susan and Wilson, Paul R. (1988) Crime Prevention theory and practice Australian Institute of Criminology.

Investigation Department officers who have the necessary training and expertise to handle this specialised work which mainly focus on the tracking down of offenders after the discovery of the crime.

4.2 The Directorate of public prosecution

The DPP is established by the Constitution under Article 120 and the functions are outlined under Article 120 (2) as follows:

- (a) To direct the police to investigate any information of a criminal nature and to report to him or her expeditiously;*
- (b) To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial;*
- (c) To take over and continue any criminal proceedings instituted by any other person or authority;*
- (d) To discontinue at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court.*

Prosecution of criminal offences are conducted according to the legal provision as provided for under Section 46 of the Magistrate Court Act and it states that,

- (1) Criminal proceedings may be instituted in one of the following ways:*
- (a) by a police officer bringing a person arrested with or without a warrant before a magistrate upon a charge;*
 - (b) by a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant or a summons; or*
 - (c) by any person, other than a public prosecutor or a police officer, making a complaint as provided in subsection (3) and applying for the issue of a warrant or a summons in the manner hereafter mentioned.⁵⁸*

When the prosecutors performs the above mentioned function they will be assisting the Court in arriving at a fair and just decision and, in the event of a conviction, a fair sentence based upon the evidence presented. According to the legal system, prosecutors represent the Republic of Uganda in criminal trials and they are supposed to ensure that the interest of victims and witnesses are promoted, without negating their obligation to act in a balanced and honest manner.⁵⁹

4.3. The courts

The judiciary derived its powers to handle courts matters from Article 126 which states that;

⁵⁸ Magistrates Courts Act Cap 16 Law of Uganda Revised Edition 2000.

⁵⁹ Street Law (2012) The Role of Directorate of Public Prosecution of Administration of Criminal Justice

Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.

(2) In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles—

(a) Justice shall be done to all irrespective of their social or economic status;

(b) Justice shall not be delayed;

(c) Adequate compensation shall be awarded to victims of wrongs;

(d) Reconciliation between parties shall be promoted;
and

(e) Substantive justice shall be administered without undue regard to technicalities.

4.4. The role of criminal justice systems in combating mob justice

The three main stakeholders of the criminal justice system is the police, the prosecution, the court and the prison, the police as Law enforcement officers take reports for crimes that happen in their areas. Officers investigate crimes and gather and protect evidence. Law enforcement

officers may arrest offenders, give testimony during the court process, and conduct follow-up investigations if needed.

Prosecutors are lawyers who represent the state or government (not the victim) throughout the court process—from the first appearance of the accused in court until the accused is acquitted or sentenced. Prosecutors review the evidence brought in by law enforcement to decide whether to file charges or drop the case. Prosecutors present evidence in court, question witnesses, and decide at any point after charges have been filed, whether to negotiate plea bargains with defendants. They have great discretion, to make choices about how to prosecute the case. Victims under the may contact the prosecutor's office to seek other information about the case. On the other hand defense attorneys defend the accused against the government's case. They are either hired by the defendant or are assigned by the court. While the prosecutor represents the state, the defense attorney represents the defendant.

The Courts' role is to make sure the law is followed and oversee what happens in court. They decide whether to release offenders before the trial. Judges accept or reject plea agreements, oversee trials, and sentence convicted offenders.

The prison which is managed by correction officers supervise convicted offenders when they are in jail, in prison, or in the community on probation or parole. In some communities, corrections officers prepare pre-sentencing reports with extensive background information about the offender to help judges decide sentences. The job of corrections officers is to make sure the facilities that hold offenders are secure and safe. They oversee the day-to-day custody of

inmates. They also oversee the release processes for inmates and sometimes notify victims of changes in the offender's status.

4.5. Challenges faced in combating mob justice

The Police are central in the prevention or management of mob justice. The police initiate the collection of the information required in the investigation and prosecution of offenders by courts of law. According to the⁶⁰the police overall performance report 2006/7 the data production and management system has been in existence for a hundred years, and it faces various challenges such as the absence of Central Information System for the Police in Uganda. The system is characterized by a decentralized system with isolated and uncoordinated pockets of statistical units at different levels of governance. The collection, analysis, dissemination of statistics is poor and uncoordinated, in addition to using outdated police forms and books designed during the colonial times for data collection. The usage of the available information is again limited due to the bureaucratic tendencies of the system.

Article 23(4)(b) of the Constitution provides that a person arrested must be brought to court as soon as possible but in any case not later than 48 hours. In case, the Police are not ready, the officer in charge of the Police Station where a person is detained has a right to apply to court for extra detention to enable them to complete their investigations. Article 23 of the Constitution further provides the rights of an arrested person and these include; a right to a lawyer of his or

³⁰ Uganda Police Force (2006) Strengthening Statistics for Development Planning: Uganda police force Sector strategic plan for statistics (2006/07 - 2010/11).

her choice, the right to inform his family, access to a lawyer, family, personal doctor and medical treatment.

These provisions when being followed by criminal justice system the public, out of ignorance of the law look at it as failure of the system to punish criminals and in most cases resort to mob justice in situation where another person is caught committing crime, since they believed the criminal justice system is lenient to suspected criminals.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The deductions of this research are discussed thematically basing on the established objectives of this research that have amply been discussed in Chapter 1 of the research. The detailed basic conclusions of the findings are laid out under the following sub heads below.

5.2 The efficacy of Uganda's Criminal Justice System

It is apparent from the research findings that there exists an elaborate framework of legislations and institutions that are charged with the function of ensuring an efficient running of Uganda's Criminal justice system. Some of the existing institutions include the Uganda Police, Uganda Prison Services (UPS), The Courts, Parliament, practicing Advocates and the Director of Public Prosecutions (DPP). The relevant legislations streamlining the functioning of Uganda's criminal justice system include inter alia: the Constitution of Uganda 1995 as amended, Penal Code Act, Prisons Act, Police Act, Criminal Procedure Code Act, Trial on Indictments Act, judicature Act, Magistrates courts Act, Court of Appeal (Judicature) Rules, Supreme Court (Judicature) Rules, Advocates Act, and others. Despite the established incontrovertible Crimiminal Justice legal and institutional framework, the study has elicited sufficient data to show that mob justice has continued to undermine Uganda's criminal justice system.

5.3 The role of Mob justice in Uganda's Criminal Justice System

Mob justice undermines many aspects of Uganda's constitutional law in the ambit of the law relating to the fundamental rights of a person. These are discussed under the subheads below:

Presumption of innocence

Article 28 of Uganda's constitution provides for the presumption of innocence. The latter is a criminal law concept which requires that a person charged with a criminal offence should be treated as not guilty until the gravity of the evidence adduced against him or her irresistibly point to the fact that he or she is guilty of the offence charged, the principle was discussed in the case **Woolmington vs. DPP**.⁶¹ Because mob justice leads to condemnation to death without being heard it violates the cardinal criminal law and Constitutional law principle of presumption of innocence.

Right to a fair hearing

Article 28 of the 1995 constitution guarantees the right to a fair hearing which entails inter alia the right to be heard, the right to be give time and facilities to prepare ones case and the right to legal representation.

The right to a fair hearing has many aspects some of which are explained by case law such as the rule of natural justice and the rule against bias.⁶² Article 28 of the 1995 constitution also

⁶¹ Woolmington vs. DPP [1982]AC 213

⁶² Ridge vs. Baldwin [1986]AC 19

endeavors to highlight the different aspects of the right to a fair hearing as enshrined in the relevant part of article 28 where it is provided:

"In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

(3) Every person who is charged with a criminal offence shall-

(a) be presumed to be innocent until proved guilty or until that person has pleaded guilty;

(b) be informed immediately, in a language that the person understands of the nature of the offence;

(c) be given adequate time and facilities for the preparation of his or her defense:

(d) be permitted to appear before the court in person or at that person's own expense, by a lawyer of his or her choice;

(e) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State;

(f) be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial:

(g) be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court.

(4) Nothing done under the authority of any law shall be held to be inconsistent with-

(a) paragraph (a) of clause (3) of this article, to the extent that the law in question imposes upon any person charged with a criminal offence, the burden of proving particular facts;

(5) Except with his or her consent the trial of any person shall not take place in the absence of that person unless the person so conducts himself or herself as to render the continuance of the proceedings in the presence of that person impracticable and the court makes an order for the person to be removed and the trial to proceed in absence of that person.

(6) A person tried for any criminal offence, or any person authorized by him or her, shall, after the judgment in respect of that offence, be entitled to a copy of the proceedings upon payment of a fee prescribed by law.

(7) No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.

(10) No person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence.

(11) Where a person is being tried for a criminal offence, neither that person nor the spouse of that person shall be compelled to give evidence against that person.

(12) Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.

The right to life

The right to life is provided for in Article 22 of the 1995 constitution and is enshrined on the supposition that a person would not be deprived of his or her right to life except where the same is authorized by law or passed as a sentence by a competent court following a fair trial. Article 22 provides in the relevant part that:

“No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.

(2) No person has the right to terminate the life of an unborn child except as may be authorized by law.

This research has established that the discourse of mob justice violates this right to life since mob justice leads to the death of a suspect in a complete extra judicial process and has been discussed in the earlier chapters of this research. This is the case because most acts of mob justice, as discussed in the earlier chapters of this research, do not allow the right to be heard and is usually motivated by unproven allegations or erroneous belief of some person whose credibility are largely questionable.

5.4 The challenges of the Uganda Criminal justice system with respect to mob justice

The diversity of socio economic obstacles circumscribing the police institution and the court system help to propagate mob justice tendencies among the public. The research has highlighted some of the socio economic factors that the study has indicated to motivate mob justice actions around the country, these factors included inter alia;

Right to Police bond and court bail

Some persons view the right to bond or bail as a miscarriage of justice especially when a suspect is apprehended *in flagrante delicto*. Seeing the suspect released by the police on police bond or released by the court on bail causes some witnesses to believe that the criminal justice system is in connivance with the suspect, being favorable or lenient with the suspect. The study has highlighted that these incidences act as a spur to mob justice. In fact, the study analysis indicates that some people have lost trust in the criminal justice institutions namely the police and the courts and prefer to engage the suspects directly and thus mob justice.

Case backlogs

The research has elicited information showing that case backlogs in Uganda's court system unnecessarily delays justice making some sections of the public to lose trust in the criminal justice machinery and to resort to mob justice for perceived instant justice. The earlier chapters of this study give statistics of case backlogs in the High Court of Uganda and the Magistrates court in the year 2009.

Ignorance of law and Human Rights

The research has also established that mob justice is in some instance the result of lack of awareness about human rights values by some sections of the public. Those who are ignorant of the position of the law often take the law into their hand unaware of the legal consequences of their act.

Inadequate funding of police institution and lack of accountability

The research has also unearthed lack of efficient accounting system in Uganda's criminal justice system as one of the factors that leads to corruption in the criminal justice system, eroding public confidence in the system and thus giving rise to mob justice tendencies among the public. In the earlier chapters was indicated that there is no records in the police department of suspects details, charges against suspects, length of their detention, place of detention and an audit record of the same to ensure transparency and probity in the police so as to strengthen the Uganda's criminal justice system.

5.5 Recommendations

The study analysed different findings arrived at in the study and prescribes the following recommendations as a way to engage with the obstacles facing Uganda's criminal justice system. The recommendations are discussed under the distinct heads below.

• Investigating officers

It is recommended inter alia that investigating officers should provide appropriate assistance to prosecutors and to provide courts with adequate information to determine the necessity for an accused to be detained pending trial in doing so the police will be helping prosecution in determining cases which have high chances of success when taken to court.

• Respect for Human Rights

In line with the Constitution, which is the supreme law of the Republic of Uganda, all role-players, through court and case flow management must endeavour to strengthen respect for

human dignity, the achievement of equality and the advancement of human rights and freedoms.

When a case flows steadily and smoothly from filing to termination and its life span is shortened, the community's trust and confidence in the criminal justice system will be maximised and bolstered.

- **Spreading Awareness of Human Rights**

According to Human Rights Watch August (2003)⁶³ many people in Uganda may have heard the term "Human Rights", but aren't entirely sure what it really means and some people have never heard it at all. The report presents that through teaching people about rights with which they themselves are endowed and the benefits they would receive from the promotion and protection of these rights, one can empower people to say "I don't want my rights violated, so I don't want to violate someone else's."

- **Improving Local Justice System and Demand for Accountability**

The study highlighted that the climate that leads to Mob Justice begins with an ineffective local justice system. The study also highlighted that that in places where the police cannot be counted on to deal with criminals, it is only logical that victims and the communities in which crimes take place will feel compelled to take the law into their own hands'

- **Teaching Non-Violence**

The study also highlighted that mob justice is only possible in a culture where violence is an acceptable form of punishment. In Uganda there are cases of brutality and unnecessary

⁶³ Human Rights Watch August 2003, Vol. 15, No. 15(A).

violence in all forms of life, especially in the justice system. The researcher therefore believes that one way of combating mob justice from the ground up is to teach children that violence is not an effective way to solve problems. The researcher also believes that teaching mediation skills, encouraging children to observe the Traditional Council mediating local disputes, refraining from beating children and animals, and working to be non-violent in day to day life, it is possible to eliminate Mob Justice altogether and a community that doesn't accept violence on a day to day basis will not accept violent retribution for an un-convicted person.

- **Not participating in mob justice**

The study also highlighted that not participating in mob justice is the most vital and powerful tool any community has in combating mob justice and that even if a person does not deal a blow or participate directly in the harming of an alleged criminal, it is vital to those people who are delivering violent retribution that there is a crowd of people supporting them. This study suggests that none participation in this mob mentality, refusing to tacitly support that torture of an un-convicted person, and encouraging other people to uphold human rights, any person can do their part to stop mob justice.

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