

THE PLACE OF MOB JUSTICE IN CRIMINAL LAW

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DEDICATION

To my beloved parents, John Siundu and Margaret Ingete,
to whom I owe much for their tireless efforts to see me
through my academic pursuits.

"If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and men are not improved by injuries."

George Bernard Shaw.

TABLE OF CASES

1. R-v-Mikaeri (1941) 8 E.A.C.A. 84.
2. R-v-Tabulanyenka (1943) 10 E.A.C.A. 51.
3. R-v-Young 173 E.R. 655.

(ii)

TABLE OF STATUTES.

1. The Constitution (Act No. 5 of 1969)
2. The Criminal Procedure Code (Cap 75 of the laws of Kenya).
3. The Foreign Investments Protection Act (Cap 518 of the laws of Kenya).
4. The Judicature Act 1967 (Cap 8 of the laws of Kenya).
5. The Penal Code (Cap 63 of the laws of Kenya).

CHAPTER ONE:

A. POSSIBLE DEFINITION OF MOB-JUSTICE:

It should be pointed out right at the outset that insofar as the Kenyan legislations are concerned mob-justice, as commonly conceived, does not appear anywhere in the statutes. Indeed, what could be said to lend appearance of it are the attributes of mob-justice, mainly in the Penal Code (Cap 63 of the laws of Kenya) under section 20 and 21 which deal with parties to a crime.

It should further be pointed out that the two words "mob-justice" are intra-contradictory and may import an erroneous view that the punishment submits to the standards of justice, which as will be shown is not the case.

A mob by definition is a group of people rebelliously assembled with intent to commit an unlawful act. In "Corpus juris",¹ it is defined as:

"an unorganised assemblage of many persons intent on unlawful violence either to persons or property."

For the purposes of this dissertation, I shall labour on mob-justice as against the person. The definition quoted above emanates from the United States of America which is in the forefront among the capitalist countries, especially in foreign investments in the developing world. By the very nature of capitalism, property is regarded by the proponents of this ideology as holy. America being the main ideologue in propelling capitalism, the sanctity of property becomes an inherent component in their jurisprudence. This should be expected of any capitalist country, because it is on the basis of private property that the economy thrives, and that is exactly why such property must be protected.

From the above definition it is clear that the word "mob"

has a criminal import and, therefore, is incompatible with justice, the yardstick for that justice notwithstanding. The definition, correctly, assumes that the acts perpetrated by a mob are essentially criminal and therefore justice cannot flow from it.

As for the definition of the term "mob-justice" we can appropriately borrow from the American equivalent: mob-violence, which gives a better reflection of what happens in reality. In "corpus juris"² it is defined as:

"The infliction of some physical injury on a person by a multitude of people acting in a riotous and unlawful manner."

What is of essence here is that the perpetrators of this misguided form of "justice" vest in themselves the power to correct what they consider as offensive to them or to society generally.

What I have been attempting here is to point out that the term "mob-justice" is purely euphemistic and has been, rightly, referred to as amounting to: "Murder in the name of justice"³. The use of the phrase "mob-justice" has the tendency to legitimise in the minds of the people, or at the very least the perpetrators, the grotesque acts that are attendant to it.

The more appropriate term for this form of punishment should be "mob-injustice"⁴.

B. REASONS THAT EXPLAIN THE INCIDENCE OF MOB-JUSTICE:

There are four main reasons that have been advanced to explain why there is "Mob-justice". They are the following:

- (a) Socio-economic;
- (b) psychological behaviour of the mob;
- (c) the lenient sentences given to thieves; and
- (d) the small number of police patrolling urban streets.

Now we shall discuss each in detail.

(a) SOCIO-ECONOMIC REASONS:

To have a good background of the socio-economic explanation in mob-justice, it will be worth to consider the economic forces operating in Kenya. This is necessary as many of the mob-justice victims in Nairobi and other urban centres are those who have been suspected of having committed crimes against property i.e. pickpocketing and shoplifting.

Kenya inherited bourgeois jurisprudence which is committed to sanctifying property when the Union Jack was lowered. It is not accidental that we have wide stipulations in the supreme law of the land: the constitution, which are committed to protect private property.⁵

Over a long period, bourgeois jurisprudence has striven to obscure the class nature of the legal and socio-economic issues, and to this end the state which wields the coercive powers is mystified as a disinterested umpire and a value-neutral party. Once the state has been accepted by the people as being value neutral, this becomes a major achievement for the bourgeoisie as this would ensure them with a further lease of expropriating the surplus value.

It is submitted here that mob-justice itself is a very effective tool in favour of the bourgeoisie, who are the ruling

class to veil the class nature of our society, and more importantly, it erroneously reflects that the public at large approves of the accumulation of private property and hence their distaste for property offenders. An acceptance of such a view by the public must be so dear to the bourgeoisie.

It is at the moment undeniable that the Kenyan society is a class society. These classes were created by the colonialists and they became more pronounced after independence due to the capitalist mode of production which continued to govern our economy. Three classes are clearly identifiable: we have international capitalists right at the top, who are supported by the ruling class (the comprador bourgeoisie). The ruling class basically plays the role of an agent and facilitates and consolidates the growth of international capitalists within the country by promulgating laws designed for the protection of international capital.⁶ This is the class that owns the means of production and the country's economy wholly depends on them. We have the middle class, but its composition is not very clear. However, most of the local petty-businessmen can be said to be in this class and also most of the elites. Grouping of these two in the middle-class has been based on the fact that they are able at least to meet the basic necessities in life like food, clothing and shelter without making heavy sacrifices. Then we have the low class which has got the bulk of the populace. In this class are mainly the peasants and the workers.

The degree of exploitation of the people intensified immediately following independence. During the colonial era, the Kenyan peoples were exploited only by British imperialists who had acquired a monopoly over all the natural resources within the colony. After independence, more finance capital came from other western powers like America, West Germany,

France and Japan. All were out to invest their money and exploit human labour and the natural resources. It is the low class: the peasants and the workers who have suffered the pinch of these "investments". The whole process of exploitation has made them economically disabled and most of them are not even able to meet their basic necessities of life.

It is with this background that we should pose this question: why do people engage in petty-thieving? Engels gives the following reason:

"Want leaves the working-man the choice between starving slowly, killing himself speedily, or taking what he needs where he finds it - in plain English, stealing. And there is no surprise that most of them prefer stealing to starvation and suicide." 8

Engels was then talking of the English working man, but his observations are still weighty even to the Kenyan worker. When society fails to provide the basic essentialities due to maldistribution of property, those who stand disadvantaged may very easily resort to crime as a means of achieving those necessities.⁹

Put in the Kenyan situation, this would be a tenable view given the economic situation. It is our society itself which has prepared the conditions that constrains the criminal to commit a crime against property. Stealing by most people should therefore be seen as a negation of the economic system - a demonstration of inequality within the people. This is a view that the bourgeoisie would not like to accept, and they condemn in the strongest terms any crime against property.

But the mechanisms within the capitalist set-up clearly

shows that the ultimate end of capitalism is the creation of have-nots. This is a process that started during the colonial period when the African was disinherited from his land and was left with the option of selling his labour power or starve to death. Independence did not substantially alleviate the landlessness problem, and this has remained with us to date. The only rescue for the landless is to go to the urban centres and seek for employment, which is not guaranteed by the state.

There is no provision in our laws which obliges the state to provide employment for all its citizens. This is not by accident. Any such law would seriously interfere with the bourgeoisie's desire to maximise profits. They are left to contract with labour power only insofar as the labour would generate profits for them. The only time when the Government obliged the employers to employ workers was in 1978 when President Moi directed that all employers should increase their labour force by 10%.¹⁰ Good though it was, this measure did not ~~alleviate~~ ^{alleviate} the unemployment problem.

The general level of unemployment could be cited as one of the factors promoting mob-justice. An unemployed person, having no means through which he may subsist, may easily be tempted to use other means which the strong arm of the law proscribes.: and this may include stealing.

It has been admitted repeatedly by the Government of Kenya that there is widespread unemployment. The state in showing its concern for the plight of its peoples, has come up blaming the present education system as the root cause of the unemployment plaguing many people. In fact, a new system of education has been proposed to alleviate this unemploymentt problem. In the new system, there will be a 9 year primary

education with an emphasis on practical skills so that those who will pass through the system will be able to employ themselves. Whether the new proposed education structure will actually alleviate the unemployment problem, remains a matter to be seen when the proposal will be effective. Unemployment coupled with landlessness constitute a very big temptation to the unemployed who can easily resort to stealing as he has no other means of survival.

As for those who are lucky to get employment, the workers, they too have got a host of problems. The most crucial among them is underpayment. The bourgeoisie need to maximise their profits and this they can achieve by, inter alia, underpaying the workers who sell their labour to them. The worker is therefore given only such money that would enable him to live so that he can continue selling his labour power to capital.

The plight of the workers has even been noticed by musicians. "Gabriel Omollo" in his gold disc "Lunch Time" attempts to give a picture of the working class. Most of the workers have got to travel long distances by foot before they reach their places of work, and most of them often go without lunch. Omollo, correctly asserts that all this is not done through a personal desire of walking or forgoing lunch, it is the economic realities that constrain the worker into such conditions.

These are the people for whom the state attempts to cater for their economic interests through the Regulation of Wages and Compensation Act. The Act empowers the Government to set up minimum salaries. The design here is clear. The workers should be lured into the belief that the state is fighting for their interests, and at any rate they should not see the ruling class

as promoting the interests of the bourgeoisie. The Act, however, cannot be dismissed wholesale. There are some employers who would not bother about the salaries of their workers and the Act should be seen from this perspective as trying to limit the appropriation of surplus value.

With their small salaries the workers are a frustrated, lot, and they, with most of those who are unemployed, find a vent to let out their frustrations in mob-justice. Both unemployment and underpayment interact to create a good atmosphere of mob-violence. The former creates the victim, who has no alternative but to steal, and the latter who creates a frustrated group which seeks to punish the alleged thief.

The economic structure of a society is very crucial in determining how some section of that society would react to supposed criminals, especially those who are alleged to have committed offences against property. So in a society where a class of people are economically deprived, and they are conscious of this fact, the people from the economically oppressed class take stealing of property very seriously. This can be explained by the fact that they are a frustrated people. Tibamanya Mwene Mushanga cites the following hypothesis on frustration:

"The hypothesis is that when a person is frustrated in the attainment of a desire he becomes aggressive, and if he cannot retaliate against the source of his frustrations, he will direct his aggression toward a less threatening substitute person or object."¹²

It is submitted that this argument is a very plausible one and ample examples can be furnished by what transpires in every day life. A simplistic example could be where a worker turns hostile to his wife because of the frustrations coming from

his place of work and vice versa.

The source of the frustrations among the workers and the job seekers is the economic system which underpays them or fails to offer them jobs. But the economic system is too powerful and, therefore, they cannot aggress it. Instead, they attack a thief who presents himself as an exploiter. The supposed thief is a substitute of the economic system and usually he is dealt with very ruthlessly. Their cruelty to thieves, therefore, should be seen as a reaction against the system and the economic system it sustains. It is not a reaction against the thief per se. It is a manifestation of some inner form of deprivation on the part of the perpetrators of mob-justice.

The socio-economic explanations and the frustration theory find favour in what actually happens. Most of those who belabour a thief so mercilessly usually are those ones who have not been directly affected by the actions of the thief. In other words they are not the owners of the alleged stolen property. The only rational explanation could be found in their frustration, and hence the reason for their reacting so violently. It would be naive to argue that they are violent because they abhor thieves. Such an argument is evasive and strives to shy away from the reality: that the reaction to the thief is merely a manifestation of the deprivation of most of the workers and peasants.

Another strand that gives more support to the socio-economic factor is where mob-justice incidents occur. Generally these incidents are more recurrent in the more crowded areas than in the sparsely populated areas.

In Muthaiga,¹³ for example, the opportunity of one stealing

is small as most of the residents here engage 24 hours security services, usually from multi-national corporations. This is an area which is occupied mainly by the propertied and their engagement of security services to guard them and their property demonstrates their psychological fear of crime and their lack of confidence in the other classes which they view with suspect. In such areas a thief may very easily be apprehended by the guards there, and in most cases the issue of stealing from such places by an outsider (apart from the servants) is definitely out of the question. In such places it is only armed robbery that can be resorted to by an outsider. In any case, the population being sparse in such areas it may be easier for a thief to escape. Moreover the culture adopted by the residents is free from psychological frustration and they more probably than not handle a thief less violently.

In Mathare,¹⁴ which is the converse of Muthaiga, the chances of a thief escaping are very slim. Most of the frustrated workers have their residences there and the culture they inherit from that place is one which makes them to be generally intemperate in character and this explains their tendency towards brutality. It is therefore not surprising that an alleged thief who comes into their hands is dealt with with extreme violence. Apart from their intemperance, they are crowded within a small space and the formation of a mob becomes easy in such crowded places. Such areas harbour mainly the working peoples and as earlier pointed out, these people are economically deprived and very frustrated and this is the main reason that explains their brutality.

Mob-justice incidents are also high in the city centre. There are two possible explanations for this. Firstly, most of the self-selection stores are situated here, and these are

more tempting places as the "criminal" would not feel that he is risking too much in shoplifting or pickpocketing the customers, and generally they form a convergence of those who have money. Major bus stations are also situated here, and they also form a convergence of a crowd of people, which makes pickpocketing a little easier. It is common to see in such places warnings cautioning members of the public to be aware of pickpockets. Most members of the public here are usually workers and some of them are unemployed and are frustrated by the process of looking for employment. The working class within the city centre usually assemble in places where the lunch hour is spent listening to sermons by street preachers. Their frustration is obvious. So when an alarm is raised, the mob-justice victim will surely be dealt with very gravely. All the accumulated frustration will be vented on the supposed thief.

(b) PSYCHOLOGICAL BEHAVIOUR OF A MOB:

The question that propagators of this explanation address themselves to is why an individual when in a crowd behaves unlike himself. One of the most prominent exponents of this reasoning is Gustave Le Bon.¹⁵

His general belief is that the average individual is good and would desire to operate within the conventional standards of the society in which he is a member. But the psychological mechanisms that operate in a group, usually have a substantial influence to the individual as to make him act in a manner that is peculiar to himself if he is put aside from that group. In other words, the individual when in a group undergoes some transformation.

The psychological school has it that the actions of a group of people assembled together is heavily dependent on the

disappearance of the "conscious personallity" of individual participants. When there is such a loss of personal identity the individual becomes capable of violent actions that are alien and strange to himself as he is then governed by the intellect of the crowd which is much inferior to that one of his own.

The other strand of their argument is that in a large group, the individual feels safer as he cannot be easily singled out for legal reprisals. The higher the chances of one being held responsible for his actions, therefore, the more he will be cautious in being driven by the group.

It suffices to say that the psychological theory does explain the reason why an individual degenerates when in a group of other people to the extent of performing actions that would shock him if carried out by his solitary self. In the context of mobs generally it is appropriate, but when applied to the mob in the Kenyan situation, it leaves several questions unanswered.

The mob in most of our urban centres has proprietary overtones. In other words, the mob reacts most violently when their victim is alleged to have committed an offence against property. In fact, most violent mob-justice incidents involve alleged thieves. This is a clear pointer to the fact that the individuals who form such mobs are economically frustrated and any apparent source of their frustration is confronted bitterly.

The theory does not address itself to the economic aspects manifested in mob-behaviour, especially where the victims are property offenders. The violence with which the mob attacks the alleged thief cannot be explained by the psychological theory. This can only be best explained by the frustration theory, and the way it operates within our socio-economic

structure.

The psychological theory, however, should not be dismissed wholesale. The aspect that attempts to explain the behaviour of a mob with reference to the safety of the individual participants is important. It is true that most people, if not all, fear legal reprisals against them. The colonial experience has not left the average man, and that is why most people are fearful of going through the legal machinery. In many of the mob-justice incidents, and indeed any other occasion that may demand the individual to appear as a witness, it is common practice for people to scatter away when the police appear. This embodies the aspect of fear of legal reprisals very clearly. The average man does not view the judiciary as the guardian of his rights. Instead it is viewed as an institution of punishment. So in a mob, the safety of individual participants is guaranteed against legal reprisals. Their safety thus ensured the individual participant becomes very brutal. But the idea of safety cannot independently drive a mob to the brutality that is often displayed. It needs to be complimented with the frustration theory.

Inasmuch as the psychological theory attempts to explain the driving force behind the mob participants with regard to their safety, it is acceptable, while the other aspects though plausible, deal with a generality in mobs. Because of the generality, the peculiar facts in violent mobs like those ones in Nairobi mainly, are not accounted for.

(c) INADEQUATE SENTENCES TO THIEVES:

It has been suggested by some that the sentences meted out to thieves are very lenient.¹⁷ On this ground they attempt to explain and justify the incidence of mob-justice.

Such an argument is clearly a creature of our capitalist mode of production, which emphasizes private property ownership and its sanctity. Their argument is that thieves are a menace to society and therefore deserve rough handling as is the case in mob-justice. Much of their argument goes to justify capital punishment. Mob-justice usually results in capital punishment if the police are not within reach to come to the "rescue" of the victim.

Their argument is very simplistic and loses track of the real problem. To start with their argument does not even attempt to consider why people engage in petty thieving. It is oblivious of the existence of economic pressures that may force somebody to engage in stealing. To those who champion this argument, the thief is his own maker. As already shown, it is the society itself that makes the thief, and if there should be any blame, it should go to the society itself.

What, however, emerges clearly within such a line of argument is that mob-justice participants in belabouring a thief usually demonstrate their dissatisfaction with the legal system. At least that is implicit in their argument. There is a manifestation of rebellion within the mob. The mob in effect is calling for a harsher sentence to be imposed on thieves so that it can act as a deterrence.

But is a harsher sentence against the thief effective in reducing crime? Eminent criminal lawyers hold the view that it is not the degree of cruelty in punishment that may reduce the incidence of a particular crime. Calling for a harsher custodial sentence for the thief may not help the thief himself or even the society.

The argument that mob-justice incidents reflect the

society's dissatisfaction ³ ^{with} of the sentences meted out to thieves does not take into account the socio-economic realities within us. Those who ascribe to this argument implicitly believe that mob-justice victims have inherent biological criminal tendencies. This theory of crime causation was one of the earliest in criminal law and emphasized that one could have features that could explain his criminality - say a flat nose, excessive hair and the like, but the theory came to be rejected by most psycho-analysts who dismissed the idea of inherent biological criminality. At least all of them have come out to argue very strongly that criminals are not born as such. Erasto Muga had this to say on the issue:

"Crime is not inherited; but is by and large a function of the multifarious environmental factors including the legal system prevailing in society which impinge upon an individual who lives in such a society and which altogether creates circumstances which ultimately expose the individual to criminal and delinquent acts."¹⁸

Arguing that thieves are born as such enables the proponents of such an argument to evade certain key issues, prominent among them being the economic factor. To them, the economy plays no part in exposing the victim of mob-justice to stealing. Their argument as was mentioned earlier reflects the desire to protect property. But it is not convincing when it is considered that most of those who partake in mob-justice are actually property-less. If their argument would have been tenable, then more of these incidents should occur in Muthaiga and not in such areas as Mathare.

(d) LACK OF POLICE WITHIN REACH:

Others have suggested that mob-justice can be explained by the fact that police are usually not within reach when an alarm has been raised. This argument also assumes that there

are inherent biological criminal tendencies in the mob victims which can only be suppressed by the fear of being brought to book. This is an unconvincing view and the reasons have been given in (c) above. They also fail to take into consideration the economic pressures at play. Their argument deserves to be dismissed as being evasive of the crucial problem within the society.

In the Kenyan context, the more plausible explanation of this brand of justice is that one which views it from a socio-economic perspective. Noting the economic system obtaining here, and the fact that there are many have-nots, these other theories do not address themselves to such fact. They are, however, important in that they generally help us in understanding the mechanism that operate within the mob.

Footnotes:

1. V. 40 at p. 1232
2. *ibid.*
3. Soita Siundu Samuel: "Murder in The Name of Justice"
SUNDAY NATION, August 9th, 1981 p.25.
4. SUNDAY NATION, 24th January, 1982 p.14.
5. The Kenya Constitution (Act No. 5 of 1969), S.75.
6. See The Foreign Investment Protection Act (Cap 518),
S.8.
7. Mutunga, W.: "Contract law and society: A study of
Rivatex's Investment & Management Agreement."
8. Engels, The condition of the Working Class In England,
p. 138.
9. Chinnard & Abbot, Crime in developing countries
10. Jamhuri Day Presidential Address, 1978.
11. Singer and composer.
12. Tibamanya Mwene Mushanga: Crime and Deviance,
E.L.B., 1976, p. 59.
13. High class area occupied mainly by the Bourgeoisie class.
14. Low class area occupied mainly by the workers
15. Lindsey, G., The Handbook of Social Psychology, p. 46.
16. Most of the people interviewed randomly confessed to
this fact.
17. SUNDAY NATION, 17th January, 1982, p. 7.
18. Erasto Muga, "Is Criminality Inherited" in THE JOURNAL
OF EAST AFRICAN RESEARCH AND DEVELOPMENT (1972) V.2, No.2,
p.25.

CHAPTER TWO

The broad aim of this chapter is to attempt to put mob-justice squarely in a legal context with a view to showing its criminality. We shall first of all look at the constitutional position with regard to the victim, then we shall consider the provisions in point in the Kenyan Penal Code (Cap 63 of the Laws of Kenya). In each case we shall consider the case-law in point.

A. CONSTITUTIONAL POSITION:

An attempt to put mob-justice in its legal corners obviously should start from the constitution,¹ which according to the Judicature Act (1967)² is supreme in our legal hierarchical norms. The relevant provision is S.3(1) which provides:

"S.3(1) The jurisdiction of the High Court, the court of Appeal and all subordinate courts shall be exercised in conformity with:

- (a) the constitution;
- (b) subject thereto, all other written laws, including the Acts of Parliament of the United Kingdom cited in Part I of the schedule to this Act, modified in accordance with Part II of that schedule;
- (c) subject thereto and so far as the same do not extend or apply, the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th August 1897, and the procedure and practice observed in the courts of justice in England at that date:

Provided that the said common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary."

Clearly the above section gives the constitution priority over the

other laws. This position is amplified by the constitution itself which by S.3 declares its supremacy.

"....subject to section 47 of this constitution, if any other law is inconsistent with this constitution, this constitution shall prevail and the other law shall, to the extent of the inconsistency, be void."

Having seen that our constitution is the supreme body of law, it is necessary to put to ourselves one question: why was there a departure from Parliamentary supremacy which is cherished in Britain when most of our jurisprudence comes from there anyway?

It is my submission here that it was because of certain vested economic interests that the constitution had to be supreme. And to this end provision was made to ensure that constitution would not be tampered with immediately following independence. As of now, Kenya being a "de jure" one party state any constitutional amendment can be easy, provided it was the blessings of the ruling part.³

Needless to say, our constitution and numerous other laws emphasize the interests of the propertied. We should, therefore, proceed from the view that the constitution embodies various interests, but emphasis is laid on property rights. Bourgeois interests are well protected by this document, while these other interests enshrined in the constitution are aimed at mystifying the concept of equality in Kenyans, or to put it more precisely, the masses, as there are various types of Kenyans anyway.

It is therefore necessary to look at the historical development of the constitution which will establish more forcefully the fact that property interests are given priority

and supremacy in that document.

At the outset we should point out that our constitution is a compromise between interests which were threatening to conflict after the Union Jack was lowered. A compromise had to be struck. So like many other British colonies⁴ nationalists assembled at Lancaster House to prepare their Independence Constitution.

The major pre-occupation of African nationalists was their human autonomy which had been disgraced for long throughout the colonial period. Movement of Africans was severely restricted and this reached a "climax" during the Emergency. The human autonomy they were seeking for was provided under the fundamental human rights guaranteed to every citizen.

The colonialists at the other side of the spectrum had their interests rooted in the economy of the country which they had maintained and controlled since 1897. Their major aim was to preserve that economic structure in the independent Kenya. All their efforts during the negotiations were directed to this end.

The colonialists actually succeeded in their endeavour to preserve the economic structure which could facilitate their exploitation of the Kenyan peoples after independence. Their main success is reflected in the constitution itself, which in no uncertain terms declares the sanctity of property in S.75.

The obvious question that would follow is how they succeeded to have provision made for them to economically dominate the Kenyan peoples. When it had dawned on the colonialists that the Nationalists were not going to relent in

their struggle for independence, they started co-opting Africans into the economic sector so that such Africans could cushion them from nationalists who would desire to change the economic system that obtains from capitalism. A move in the direction of altering the economic system would then be suicidal to them, as they would have a stake to lose. Such was the logic of the colonialists. An African in that position would fight hard to save the existing economic system from any wind of change. These co-opted came to form what has been referred to as the national Bourgeoisie.⁵

The colonialists were also made more comfortable by a provision which, called for prompt and adequate compensation⁶ for any property expropriated by the Government. It was known to them that the young African Government could not afford to pay such compensation and hence the Government would have no other choice than to desist from acquiring such property. The majority of the Africans as at independence time were property-less, and this provision on compensation had little meaning for them. It was aimed at protecting the interests of the propertied then, who were essentially colonialists. They could not be deprived of their property without prompt and adequate compensation.

All this was to have a direct bearing on the economic circumstances of the majority of Kenyans. The Kenyans would not have been in a good position to compete with the colonialists who had accumulated property over a long period. The end result had to be that the African could rely on the colonialists for his survival in the turbulent economic realities.

Most of the lands which had been appropriated from the majority of Kenyans by the whites on the strength of S.75 had to

be adequately paid for before the whites left and this money had to be reimbursed. So these junks of land had to be sold; and it is only the petty-Bourgeoisie who had been assisted by the colonialists that could afford it. The ordinary Kenyan was in this respect at a loss. He had to continue living as a wage-earner amidst all the display of private individual property. His detest for property and property owners including thieves becomes obvious.

Other interests are also enshrined in the constitution and most important of them is the Bill of Rights⁶ which guarantees to every citizen certain fundamental rights. There are however, numerous qualifications which render the Bill of Rights, nothing but a mere Bill of exceptions. Mumo Matemu⁷ points out that the Bill of Rights was aimed at putting the people in the erroneous satisfaction that after the fall of the Union Jack they would be treated as equals, with all the jargon that accompanies it about discrimination. It is my submission that the provision regarding protection from any form of discrimination looked at from the economic front operates to the advantage of the exploiters of the people and this provision, indeed, became a big stumbling block when it came to "Africanisation".⁸

The most important provision which relates to the subject under discussion is S.71(1), which guarantees each individual's right to life. The section provides:

"S.71(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted."

There is, however, a very wide proviso to S.71(1) in subsection (2)(a) which allows a person to kill in protection

of his property, while subsection (2)(b) enables the police to shoot suspects. The remaining two provisos are insignificant for the purposes of our discussion.

It is submitted here that none among these provisos enables the public to kill with impunity. Mob-justice is, therefore, unconstitutional and contrary to S.71(1) which guarantees the individual a right to life.

In connection with mob-justice, a word about the police killings of suspects will be vital. It is not uncommon to read in the media that police have shot a suspect to death. The police shoot-to-kill, as it has commonly come to be referred to, and mob-justice have got one significant common aspect. Both of them deprive of an individual's life without affording him an opportunity to prove himself innocent. In other words they proceed against one of the most cherished principle of criminal law which states in unequivocal terms that a person shall be presumed innocent until proven guilty.⁹ As it were they proceed from the contrary footing: namely that one is guilty and an opportunity to prove otherwise thereby being denied the victim.

The order to shoot-to-kill was made by the Government through the then Attorney General of Kenya. It is submitted here that the order was itself unconstitutional and so were the ensuing killings. What it all amounted to was a clear contest against the presumption of innocence. The order clearly indicated that the state machinery could be stretched to any lengths to ensure the protection of property. This was an amplification of S.75 of the constitution in the direction of the protection of private property. When the order was made the number of robberies was on the increase,

and the order was just a manifestation of the concern that had grown among the propertied.

The order was, however, withdrawn by the Government¹⁰ through a private member's motion in Parliament. The member argued that the former A.G.'s order to police to shoot-to-kill was unconstitutional as it assumed guilt. While it is gratifying that the Government accepted the embarrassment and withdrew the order, what continues to happen in practice leaves a lot to be desired. Suspects still fall victims of the shoot-to-kill police.

Mob-justice should be condemned in the same breath. It operates as a blatant encroachment on an individual's right to life. Just like the shoot-to-kill, it should also be condemned as unconstitutional. It contests against the constitutional provision that presumes innocence on the one hand, while on the other hand it deprives of an individual's right to life, this being contrary to S.71(1) of the constitution.

Mob-justice also shows the extent to which Bourgeois ideologies may have been indoctrinated into the people. The Bourgeoisie and property are inseparable. According to them, the gravest offence which demands the heaviest possible sentence (even a capital one) is an offence against property. Seemingly the mob proceeds from such a platform that property violaters are bad and should be dealt with heavily. It is my submission, however, that rather than seeing the mob participants as championing the interests of property, they should be seen as sub-consciously fighting against the accumulation of property. I have already referred to this

in Chapter 1.

Before I turn over to the Penal Code, I would like to briefly consider the powers of arrest conferred on members of the public.

Arrest is one of the key features in the criminal process, and indeed, it is the one which sets in motion the criminal process. A police officer or any member of the public can arrest a suspect.

A suspect arrested by a private individual person, or by a group of persons, must without delay be handed over to the police.¹¹ The police officer on duty will then re-arrest the suspect and charge him, or if there is no reason to believe that the suspect has committed an offence, release him.

It is agreeable that it is proper that the public should aid the police to curb crime by making arrests when the police are out of reach, but this power has been abused often~~y~~ and this abuse is what often~~y~~ escalates into mob-justice. The gravity of the force employed on the victims or suspects is unnecessarily too much.

S.21(2) of the Criminal Procedure Code¹² provides that if a person forcibly resists the endeavour to arrest him or attempts to evade the arrest, all means necessary to effect his arrest may be resorted to.

Of course, this section can adequately cushion mob-justice participants, as it can be argued that they intend to maim the victim so that he cannot escape his arrest. This may

be a dangerously erroneous view considering what practically transpires. When the mob sets on a thief it is then covered by S.21(2) of the C.P.C., but when they proceed to use unnecessary force, they should be deemed to have removed themselves from the operation of S.21(2) C.P.C. As the practice clearly shows, the suspect is never handed over to the police. When he lands in the hands of the police it is usually through a "rescue bid" from the police. In essence the power of arrest conferred on the public has left much to be desired and instead of being useful in aiding the criminal process it has turned out to be more dangerous and harmful.

B. RELEVANT PROVISIONS IN THE PENAL CODE:

Mob-justice is usually carried out by a large group of people, who assemble spontaneously and mete out their measure of "justice".

It is a general requisite in criminal law that before one is proved guilty two key elements must be established as having existed during the commission of the offence. The two are the Actus reus and the mens rea. The former is the actual act while the latter is the intention in the actor.

It is my submission here that there is sufficient mens rea in a mob which pursues a suspect and belabours him to death. This proposition finds favour in the actual practice. When the mob sets on a thief the intention is never to arrest such an alleged thief, their intention usually is to punish the victim on the spot without due regard to the rights of the victim.

"Mob-justicing" may result in various offences being

committed. The more common one is that which results in the death of the victim, in which case the offence committed can either be murder or manslaughter, or where the victim is only belaboured, it may result in grievous assault on the person of the victim.

The offence of murder is covered by S.203 of the Penal Code. It provides as follows:

"S.203. Any person who of malice-aforethought causes the death of another person by an unlawful act or omission is guilty of murder."

Among the requisites listed in S.206 of the Penal Code for malice-aforethought to be established is an intention to cause death or grievous harm to the deceased.

As has been pointed out earlier, the intention to cause grievous harm, and indeed, murder the victim is present in the mob. Technically there is the mens rea ingredient, which is vital for the guilt of an accused to be established. The existence of the mens rea introduces another technical legal problem: namely how will the mens rea be apportioned within the mob. This problem was solved by the laws relating to parties to a crime.

The main principle underlying the laws relating to parties to a crime is that it is not only the actual actor who will be guilty of the offence charged, but other people may also be adjudged guilty on the same offence. S.20 of the Penal Code provides that apart from the person who actually commits the crime, those persons who procure or counsel the commission of such a crime are similarly guilty.

Put into context, this section has great potential in mauling down all participants in mob-justice. From a purely theoretical platform, nobody would escape liability if this section is construed literally. The participants who take an active part in the "mob-justicing" will become the principles and the rest who were at the scene during the belabouring of the victim, will become either counsellors or procurers. In the group that will fall under the procurers are all those who were giving either the weapons or stones used to belabour the victim, while counsellors will be all those who were advising that the suspect be beaten. The distinction between procurers and counsellors is, however, really not important, because the law deems them to be in the same boat with the active participants and the punishment will be the same. Under this theoretical framework it would seem that establishing guilt is very easy, but in practice it is rather difficult.

In an English case, R-v-Young,¹² restriction to the law relating to parties to a crime was introduced by the learned judge, VAUGHAM, J, who observed that presence alone could not make one party to the crime committed. What this actually meant, in effect, was that a party who is charged with counselling and aiding must be positively proved to have actually assisted the principal or in the very least encouraged him. This would be a big stumbling block if "mob-justice" participants are brought to book. Most of them may claim to have been merely present, and if no evidence is adduced to show their active participation, they may stand innocent. It is our submission that those who are merely present, encourage the actors by the mere fact of their presence, while on the other hand they omit to make an effort to call the police.

S.21 of the Penal Code is also in point and deals with

common intention. It provides that where two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and an offence ensues, each one of them will be deemed to have committed the offence. It should be pointed out once again that the mob in pursuing a suspect has as its sole purpose to teach and punish the suspect for whatever crimes alleged against him. What is empowered in the public is to arrest the suspect, but they should not outstretch themselves and do the punishing. With that intention of teaching and punishing the suspect, they are, in my opinion, prosecuting an unlawful purpose and any offence arising out of their unlawful purpose should render them accountable.

In R-v-Mikaeri¹³, the accused had been charged with murder. They had set upon a suspect and beat him with sticks until he died afterwards. The court held that any person identified as having taken part in the beating must be regarded as linked by a common intention, making him responsible for the crime of murder. The court here proceeded from the view that all the accused had actively participated in the beating, and were therefore responsible. In such a situation the evidence adduced should clearly indicate that the accused were participants, and once such evidence has been accepted by the court, all the accused are guilty of murder, notwithstanding who took the most active role in the beating.

This position was made more emphatic in the case of R-v-Tabulanyenka¹⁴ where the deceased who had been suspected of being a thief was beaten by several people the consequence of it being death out of a multiple of injuries. The court had this to observe:

"....if a number of persons assault another, and the

general result of the assault is death, it is not necessary to inquire into the effect of each particular injury caused by each of the assailants."¹⁵

The court made it clear that the fact that there was no concerted agreement before the assault could not rule out the existence of a common intention. To hold otherwise, would put the prosecution in a ridiculous position of establishing the existence of a concerted agreement, which would be an impossible task considering that in such incidences each participant answers the alarm independently. So what the prosecution need to prove in such a situation is the participation of the accused, and that will suffice.

The court in this case observed that the common intention could be inferred from the presence of the accused, their actions and the omission of any one of them to dissociate himself from the attack. It is not readily clear what aspects would be accepted by the court as amounting to a dissociation from the attack. The court did not address itself to this, but it is submitted that walking away after taking some part would not amount to a dissociation from the attack. At least one should walk away and make an attempt to conduct the police.

From the constitution and the relevant provisions in the Penal Code, it is clear that mob-justice is criminal, but the restrictions imposed by case-law makes the prosecution very hesitant to bring a case in court. Apart from that, when such incidences happen, the participants scatter away when the police are spotted so getting prosecution witnesses becomes difficult,¹⁶ even the would-be complainants who actually initiate the mob-justice never come up when the victim has been "rescued" by the police.

Footnotes.

1. The Kenya Constitution (Act. No. 5 of 1969)
2. Cap 8 of the Laws of Kenya, S.3(1)
3. Expulsion from the party becomes an effective tool with which support can be achieved by the party.
4. Zimbabwe is a recent example and it took a long time before the different parties could reach a compromise.
5. Nikola Swainson identifies that we have a national Bourgeoisie in Kenya.
6. All those sections under the Fundamental Rights.
7. In LL.B. dissertation (1980)
8. There are ample cases in Constitutional law which highlights on how discrimination provisions were manipulated to the advantage of the non-Africans.
9. S.77(2)(a) of the Constitution
10. A successful motion was tabled in Parliament by Nakuru M.P. Koigi wa Wanjere whereby the Government withdrew the shoot-to-kill order on 18/6/80.
11. Cap. 75 Laws of Kenya
12. 173 E.R. 655
13. (1941) 8 E.A.C.A. 84
14. (1943) 10 E.A.C.A. 51
15. Ibid. at p. 52, per SIR JOSEPH SHERIDAN, C.J.
16. Most police-men interviewed identified the running away of the would-be witnesses as a big stumbling block in an attempt to bring the participants to justice.

CHAPTER THREE

This chapter will attempt to analyse the data¹ collected on "mob-justice" and establish concrete positive trends from 1970 to 1981, and then suggestions as to how the situation can possibly be alleviated will be given.

A. AREAS THAT HAVE A HIGH INCIDENCE OF MOB-JUSTICE:

Generally, areas which are densely populated and which also are occupied mainly by members of the low class are the ones in which mob-justice incidents are rampant. The degree of violence, however, markedly varies from one locality to another. The main explanation for the high occurrence of mob-justice in low class areas would be that the police are usually not within reach in such places to rescue the thief from the hands of the mob. Apart from this, the population in such areas being dense the formation of a mob is considerably easier. It has already been mentioned that the residents of the low class get adapted to their culture which is characterised by intemperance due to the economic frustrations they suffer. It is for this reason that the degree of violence is higher in such areas.

In contra-distinction, the more sparsely populated areas, which are areas that harbour members of the high class, have no incidents of mob-violence. The explanation for this was tendered earlier, in Chapter one.

The city centre which has a large proportion of the mob violence incidents has a comparatively bigger number of victims who are rescued by police from the mob. In other words the number of deaths at the hands of the mob is considerably small as compared to those who are rescued (See Table A). What is

crucial in the survival of the mob-justice victims is the presence of the police when the belabouring of the victim starts. The fact that there are quite a number of policemen patrolling our streets explains the fact why most mob-justice victims within the city centre are rescued from a capital punishment intended by the mob.

TABLE A:*
Areas with High Incidence of Mob-justice.

Area	Number of Victims killed	Number of Victims rescued	Totals
CITY CENTRE	32	53	85
KIBERA	41	15	56
KAWANGWARE	25	8	33
MATHARE	29	8	37
OTHERS	24	26	50

* The table was compiled using information from police records in conjunction with newspaper reports. The table covers the number of incidents dating from 1970 to 1981.

Among the areas that displayed most unusual violence against the mob-justice victims are those within Kibera and those adjoining it. At least in two cases, the mob after carrying out their death sentence went ahead to burn their victims, which is a clear indication of their intemperance.

Their economic deprivation and the appalling conditions under which they live in their slums are largely contributive for their extreme intemperance.

Between 1970 and 1981 there was a steady increase in mob-justice incidents. More of these incidents have been in the city centre itself, although as already mentioned, the victims are usually rescued by the police. A possible explanation of the high incidence of mob-justice in the city centre would be in the fact that more of the self-selection stores have been opened in the centre, while on the other hand the major bus stations are situated here. Table B, below gives the details of mob-justice incidents within Nairobi.

TABLE B: *
Mob-justice incidents within Nairobi.

Year	Number of Incidents	Number of Victims Killed	Number of Victims Rescued
1970	5	2	3
1971	6	1	5
1972	8	3	5
1973	11	7	4
1974	16	10	6
1975	23	9	14
1976	20	15	5
1977	25	5	20
1978	32	23	9
1979	35	24	11
1980	38	27	11
1981	41	23	18
TOTAL	260	149	111

* This table was compiled using information from police records in conjunction with newspaper reports dating from 1970 to 1981.

Newspaper reports between 1970 and 1974 indicate that there were more of mob-justice incidents in the rural areas, which are not within the purview of my research. But it suffices to

mention that most of the victims in rural areas during that period were those who had been suspected of having stolen cattle. Parliamentary debates during that time reveal that cattle rustling had achieved an upswing and honourable members showed great concern about this.

B. THE EFFECT OF MOB-JUSTICE

In general mob-justice results in death, and where a victim is so lucky as to escape death, there is usually a grievous assault committed on his person for which nobody is made legally answerable. This is the case because the arrest of the participants is difficult as the police would not readily know who took an active part and who was a mere spectator. The practice usually is that the victim "rescued" is arrested and held in police custody while awaiting somebody to come up to complain about the alleged theft and if the would-be complainant does not show up the victim is then set free. Where a complainant comes up and the police form the view that there is a case against the mob-justice victim, then they proceed to take him to court for the alleged theft. But it is only in few instances that it is possible for a complainant to be known and these are usually in cases of house-breaking. So where there is a mob-justice incident and the alleged cause be house-breaking, it becomes easier for the owner of the house to be questioned by the police, and if he is found to be blameworthy for the incident, then he may be charged with inciting a mob.²

Another serious short-coming of mob-justice is the fact that it does not observe certain aspects of natural justice. One of the most cherished aspects of natural law is that one

which provides that no man shall be condemned unheard. Mob-justice operates contrary to this. In practice, the mob usually does not have the time nor the patience to listen, let alone consider, the submissions of the suspect. They just proceed to belabour their victim with all weapons they are able to lay their hands on. In effect, they condemn, sentence and execute that sentence instantly. To borrow from elsewhere,³ the mob is not guided by any technicalities and ensure that there is no undue delay within its understanding of what justice is.

There is one particular tragic case which happened in Kibera in the later part of 1981.⁴ The deceased had got into the house of his cousin who was not there at the time and went to bed. When the cousing came he heard some movement in his house and he immediately raised an alarm. Neighbours answered the alarm and started belabouring the deceased with stones. The deceased was shouting that he was the cousing of the owner of the house but nobody could believe him. It is only when the damage had already been done that the cousin noticed that the deceased was his cousin.

This sad case reveals clearly that the intention of that mob was to extract the supreme penalty from the deceased. Here the alleged thief had not even attempted to run away and an arrest could have been very possible. Clearly the mob had over-stretched itself because the powers conferred on the public only allow them to arrest, and they should resort to mobbing only if the intention is to effect arrest.

Mob-justice also interferes with the aspect of rehabilitating a criminal.⁵ It has increasingly been accepted over the past few years that custodial sentences are

basically designed to rehabilitate the criminal so that he can lead a better and socially desirable life after the prison sentence has been completed. Mob-justice insofar as it causes the death of the victim deprives of that victim the opportunity to reform when it is noted that most of the petty-thieving cases have a maximum of a 3 years custodial sentence. It is most unfair that a death sentence should be given for such ordinary stealing.

SUGGESTED SOLUTIONS:

(i) SHORT TERM REMEDIES:

There are two solutions which may help curb the problem of mob-justice on a short term basis.

(a) INCREASING THE NUMBER OF POLICEMEN:

As earlier pointed out, there should be considerable doubt as to whether the police would make the suspect thief not to steal. What one is addressing himself to here is whether the chances of one being caught can have any deterrent effect. It has already been pointed out that economic pressures are the driving force behind the temptations the thieves are exposed to. To this extent, increasing the number of police may have very little effect in deterring a person from stealing.

The salutary aspect in such a measure would be in the fact that the police would be better positioned in thwarting the intention of the mob: namely to extract the supreme sentence of death from the victim. At least the number of rescues would be increased and most of the mob victims can have their lives spared.

It is pointed out here that this solution is not directed

towards eliminating mob-justice as such, but it is directed towards reducing the number of deaths arising out of mob-justice incidents. This will be the effect of the measure when we take note of the fact that most of the victims who ^{were} where lucky not to meet death at the hands of the mob were rescued by the police. It may be difficult for another member of the public to save the victim, particularly when the excitement and anger of the mob has reached a peak.

At least this seemed to be the case in one incident which took place at the Gikomba Market.⁶ The victim had been alleged to have stolen some clothes and members of the public started belabouring him and when a concerned member of the public asked them to hold him and wait for the police, they turned on him while alleging that he had colluded with the victim, and he and the victim were beaten up and were only saved by the police. Like in many other mob-justice incidents, the victim was fairly timid, and therefore there was no suggestion that he could escape arrest to warrant his maiming!

Increasing the number of patrol police will, however, not eradicate assaults on the persons of the victims. But this measure will definitely be a welcome step towards solving the problem.

(b) INTRODUCING A LEGISLATION:

This would be a wise ^{move} move by the Legislative, but the question that one should address himself to is whether such a move will pay any dividends at all.

It will be a short term solution insofar as it will proscribe the mob-justice incidents. Also the prescriptions

under such a legislation may exert some influence in certain participants. At least such a legislation will make members of the public to be aware that the legislature or the state does not give tacit recognition of the activities of a mob. It has earlier been mentioned that mob-justice itself is an ideological tool for the capitalists because of the erroneous impression it gives about the public's view on private property.

The effectiveness of such a legislation would very much depend on whether or not the factors that motivate the mob into action have been done away with. Reference has already been made to the economic and psychological theories in Chapter One.

Some people who have suggested that a legislation would go a long way to solve the problem and give a new strong new impetus towards eradicating the problem fail to recognise one factor: that such a legislation would be directed towards solving the symptoms and not the root cause of the problem. The root problem is the economic frustration of participants in the mob, and if this is not bettered, the legislation may achieve very little.

A legislation, however, will be an essential first step as it may have the potential of influencing the public so that those who are conscientious will have to desist from the mob-justicing.

More so, such a legislation will have to define the offence and this will make the work of the police easier when they are prosecuting the offence. One of the most

difficult situations facing the prosecutor in such cases is proving that a person actually took part. It is submitted, however, that more prosecutions will not solve the problem. The fear of being arrested is not enough.

These short term solutions cannot all alone eradicate mob-justice totally. In fact, what they are able to achieve is only a mere easing of the problem and they can only check mob-justice from escalating to wider dimensions. These solutions should not, however, be underrated. They form a good platform from which an onslaught can be directed against this brand of justice.

(ii) LONG TERM REMEDIES:

Embarking on these long term solutions will demand much patience from those concerned.

(a) EDUCATING THE PUBLIC

It is suggested here that the Government should embark on a programme of enlightening the public about the injustice that stems from mob-justice. The public should be made aware that there is a gross disparity between the ordinary legal machinery and the "justice" meted out by the mob. The public should also be made aware that there is a danger of mob-justice extending into witch-hunting.

In fact as of now the word "mwizi" has the potential of incriminating a victim. Granted that once such an alarm has been raised, there is usually no way in which the victim can explain to the satisfaction of the mob and the possibility of quite an innocent person being "mobbed" cannot be ruled out.

Radios and newspapers are the more effective means of communicating to the public. But how many people in the low class have access to radios and newspapers? Most workers and peasants cannot be able to vote some money for the purchase of newspapers when they forgo their lunch everyday. The newspapers in this respect become ineffective, because their message will reach to the elites who may be recognising the fact that mob-justicing is improper. The radio may have similar problems, but not as those ones regarding newspapers. But the number of the workers having radios is considerably low and this means that not a wider section of the Kenyan population can be reached.

The better method of communication to the peasants and workers would be through public meetings ^{where} they can be informed of the dangers they may be risking in allowing mob-justice to continue unabated. It should be made clear to them that it is grossly unfair to extract the supreme penalty from a person who deserves only three years under the legal machinery.

The economic system obtaining in Kenya has been such that the peasants and workers have been made to believe that property is good. Added to this is the fact that our leaders have been giving very strong condemnation of offences against property. The Late President Kenyatta had this to say:
"People must learn to respect other people's property and the Government will not tolerate lazy people who sit idle and steal their neighbour's property."⁸

The arguments put forward for the withdrawn infamous shoot-to-kill order were more less the same as above. Such statements

from political leaders which are allegedly aimed at the protection of the public have the effect of making members of the public to be more inclined to react violently towards an alleged property offender.

The public should be made aware that in certain instances some of these so called thieves steal so that they can live and allowance should be made for this. Such a "confession" would require much tolerance and honesty but cannot readily be forthcoming in a capitalist mode of production. That would be tantamount to destroying the basis of capitalism: namely adoring property.

(b) AMELIORATING THE ECONOMIC CIRCUMSTANCE OF THE
KENYAN PEOPLES:

This one would be the most effective one if taken to its logical extent. It is submitted that if the whole population has at least something on which to peg its survival, then some of the minor offences against property can be reduced very substantially. As earlier pointed out it is these petty crimes that usually result in mob-justice.

For those who are still unemployed, a method should be devised to see that they get some employment from which they can get their basic necessities. This will go a long way in discouraging petty thieving like shoplifting, pickpocketing and the like. It is gratifying that the Government is already making a step in this direction as a Presidential Committee to probe into the area of unemployment has been appointed and it has already started its deliberations. At

least if all of the employables get employed then some of those who are tempted by the desire to survive will not fall victims of the law or the mob.

Most of the victims of mob-justice were mainly alleged to have snatched wrist-watches, handbags, attempting to steal vehicles, some parts of the car especially the windscreens, shoplifting and pickpocketing. In some instances the victims have been suspected of house-breaking. It suffices to note that most of the items listed above are stolen so that the "thief" can make a living out of them by selling them. This clearly points out to the fact some of the thieves are after survival, and as a measure of stopping them from stealing a means of living should be made available to them. Getting them employment will become a welcome solution.

The workers also constitute a big problem for mob-justice incidents. As earlier pointed out they are economically frustrated and are more inclined to act violently against any property offender. This economic frustration should be lessened. It is submitted that towards this end, it will be vital if the wages are revised. After any revision of workers' wages, the employers should strictly be controlled so that they cannot increase the price of consumer goods in an attempt to offset the "loss" that may have been incurred from the wages increase. It has been common practice for manufacturers to increase the prices of their products when there is an increase in the salaries of their workers and this effectively puts the worker back to the same level where he was before the increase. Quantitatively he gets more money than before but the quality of life he leads is the same.

If the economic woes haunting most of the workers are dealt with, then the frustration and intemperance may go and the participants are likely not to react violently towards an alleged thief.

Footnotes:

1. This data was extracted from Kenyan Newspapers:
The Standard, Daily Nation, Sunday Nation and Taifa Leo
of 1970 - 1981.
2. There is an interesting case pending in a Mombasa Court
in which the learned Magistrate following an inquest
ordered that a teacher be prosecuted for inciting the
mob to beat the deceased - DAILY NATION, 6th July, 1982.
3. Customary law is applied without any due regard to
technicalities and without undue delay.
4. This case was reported at the Kilimani Police Station.
5. Step, Vol.2 No. 12, p. 6.
6. This incident was personally witnessed by the writer in
1978.
7. Magaga Alot: "Mob Justice Must be Outlawed"
DAILY NATION, February 9, 1982, p.6.
- 8.
8. DAILY NATION, June 17, 1972, p. 1.

CONCLUSION

Mob-justice incidents have increased over the past decade and their effect amounts to a usurpation of the power of the court to adjudicate over the matters alleged against the victims. The mob becomes judge, prosecutor and executioner. Most of the victims are alleged property offenders, and to this extent economic pressures are necessarily implied both in the victim and the reactions of the mob. From the thief to the mob itself, economic forces exert a tremendous influence on what transpires.

A reflection on the mechanisms that operate within a mob, in particular the violence which accompanies it, suggests that mob justice can only be active where class differences are pronounced to the extent that one class, the subjugated one, is rendered property-less and no alternative means of survival are afforded to them. It is these inherent economic pressures that combine to make mob-justice very violent.

The provisions existing within our laws: viz: the constitution and the Penal Code are adequate in establishing the guilt of the participants in mob-justice incidents, but due to constraints imposed by case-law, it becomes difficult for the prosecutor to prove his case. The prosecution's burden is made even worse by the fact that it is difficult for them to get prosecution witnesses for the purposes of proving that certain persons took part in the mob-justicing. Most of the would be witnesses disappear at the sight of the police-men.

So far no leader has come out in condemnation of mob-justice. Given that mob-justice has got some potential in playing a role in the ideological justification of capitalism

by tending towards glorifying the accumulation of private property, it becomes a good tool in the hands of the bourgeoisie. To the extent that mob-justice may be seen as embodying the public view on property and erroneously representing the public as regarding property to be holy, it is in the interest of the bourgeoisie if it continues and this may explain the reason behind the reluctance of our leaders to come up and outrightly condemn mob-justice. Mob-justice, therefore, becomes a strong tool in aiding the bourgeoisie in their further accumulation of property because, as their argument goes, most members of the public approve of the accumulation of property!!

If a permanent solution has to be sought to this problem of mob-justice, it must be through improving the economic hardships haunting the Kenyans. Increasing the sentences meted out to thieves will certainly prove a futile exercise, while legislating against mob-justice and leaving the economic situation as it is, may only reduce the number of incidents, but will not come even close to solving the problem.

For a better solution to this problem, an effective way would be to raise the economic standards of the people as the effect would be the reduction of petty-thieving and the economic frustration suffered by the workers. This can be done by providing employment, since this is the only rescue granted that there is no more land available for distribution. For the workers their wages should be improved.

Petty-thieving and economic frustration being the main ingredients that cause mob-justice within our urban centres, bettering the economic circumstances of the people, will obviously go a long way in solving the problem of mob-justice.