

Volume 6, Issue 2, December 2022

The Effects of Mob Justice on the Rule of Law and Democratisation in Africa: a Case Study of Ghana

Brian Ikejiaku, Jasmine Osabutey

Research Articles*

DOI:

10.14658/pupj-phrg-2022-2-5

How to cite:

Ikejiaku, B., Osabutey, J. (2022) 'The Effects of Mob Justice on the Rule of Law and Democratisation in Africa: a Case Study of Ghana', *Peace Human Rights Governance*, 6(2), 181-202.

Article first published online

December 2022

*All research articles published in PHRG undergo a rigorous double-blind review process by independent, anonymous expert reviewers

The Effects of Mob Justice on the Rule of Law and Democratisation in Africa: a Case Study of Ghana

Brian Ikejiaku*, Jasmine Osabutey**

Abstract

The emergence of globalisation has promoted human rights education, the media and scholarly works have drawn attention to the issue of the rule of law and mob justice activities constantly recurring in developing countries. The paper examines the effects of mob justice on the rule of law and democratisation in Africa using Ghana as a case study. The paper is of the view that mob justice has both negative and positive effects on the rule of law and democratisation in Ghana. This is because the legal and criminal justice systems in some societies are seen by citizens as illegitimate as they fail to punish suspected criminals appropriately; thus, negatively destroying democracy and the image of the State. Positively, mob justice serves as a wake-up call for the State to take its responsibility to protect the rights of its citizens seriously. The paper draws on international human rights law in the light of international legal instruments, such as the UDHR, ICCPR, and African Charter, as well as the 1992 Constitution of Ghana and employs mainly the Tylerian procedural justice perspective, as well as Liberal democratic theory. It uses theoretical, critically analytical and qualitative empirical evidence (based on semi-structured interviews from purposive sampling of 15 expert opinions and relevant organisations with a keen interest in the subject matter) for the analysis.

Keywords: *International Human Rights Law, the Rule of Law, Mob/Instant Justice, Democratic Governance, Africa/Ghana.*

* Research Lead, Law School, Faculty of Management, Law & Social Sciences, University of Bradford UK, email: bvoikeji@bradford.ac.uk;

** School of Law, Coventry University, UK, email: osabutej@uni.coventry.ac.uk.

1. Introduction

The media and scholarly works have drawn attention to rising activities of mob justice and the issue of weak rule of law in Africa (Tankebe 2009; Kodah 2012; Adu-Gyamfi 2014; Asamoah 2019). The rule of law, an aspect of system of governance where the State is seen by citizens as legitimate because it is accountable, transparent and protect the human rights of citizens (Bingham 2011; Dicey 1885; Aristotle 1286) – it is necessary for the implementation of human rights because without it human rights would be a mere puff (Apodaca 2004). In contrast, the practice of mob justice where ordinary people take the law into their own hands to seek instant justice on suspected criminals without recourse to the relevant authorities violates the principles of rule of law and human rights (Asamoah 2019; Kodah 2012). In another dimension, mob justice is the verdict of the crowd by subverting legal procedures and institutions in situations of great injustice and mass suffering. The decision to take human life (the legality of capital punishment such as death penalty) may belong to the State but should not be such in societies where weak courts and poor law enforcement are combined with institutionalised injustice. The judicial system has failed to deliver and has aggravated the general frustration of a society that has increasingly come to feel that it must take the law into its own hands (Younce 2015).

The paper argues that mob justice violates the principles of the rule of law, especially the rights to life and fair trial which is embedded in the international instruments such as the Universal Declaration of Human Rights (UDHR 1948, Articles 3, 10, 11), International Covenant on Civil and Political Rights (ICCPR 1966, Articles 6, 14), African Charter on Human and Peoples' Rights (African Charter 1981, Articles 4, 7), and national constitutions (such as the Republican Constitution of Ghana 1992, Articles 13, 19). It examines the effects of mob justice on the rule of law and democratisation in Africa using Ghana as a case study. The paper is of the view that mob justice has both negative and positive effects on the rule of law and democratisation in Ghana. This is because the legal and criminal justice systems in some societies are seen by citizens as illegitimate as they fail to punish suspected criminals appropriately; thus, negatively destroying the image of the State and democracy (Kodah 2012; Adu-Gyamfi 2014; Attafuah 2008; Asare 2007). Positively, mob justice serves as a wake-up call for the State to take its responsibility to protect the rights of its citizens seriously (the Responsibility to Protect 'R2P' 2005). The paper focuses on Africa, specifically on Ghana because mob justice is predominant within developing countries than developed ones (Sekhonyane and Louw 2002; Baker 2002). Developed countries have active and effective rule of law

than the developing countries (Ikejiaku, 2020)¹; thus, any suspected criminal acts follow the due process of the law (Sekhonyane and Louw 2002; Baker 2002).

In terms of method, the paper draws on international human rights law in the light of international legal instruments, such as the UDHR 1948, ICCPR 1966, African Charter 1981 and the Constitution of Ghana 1992 as the legal framework and employs the Tylerian procedural justice perspective and Liberal Democratic theory as the theoretical frameworks. The paper uses library-based secondary data, critical, and qualitative empirical evidence from interviews of research participants conducted for its analysis. While the UDHR, ICCPR, African Charter, and the 1992 Ghana Constitution as well as Tylerian justice, liberal democratic and functionalism theories will be used to analyse the effect of mob justice on the rule of law and democracy in Africa, with particular emphasis on Ghana; the critical analytical and interdisciplinary perspective will adopt literature in legal and socio-legal fields for critical analysis; and the qualitative empirical evidence is based on useful information and materials collected from interviews with research participants to strengthen an in-depth analysis. The paper is structured into four sections: Section 1 introduces the paper; section 2 briefly considers the legal and theoretical frameworks used for the analysis; section 3, which is the analysis section, examines the effects of mob justice on the rule of law and democratisation in Ghana (Africa); and section 4 summarises and concludes the paper.

2. Legal and Theoretical Frameworks

This section considers the applicable theoretical (Tylerian procedural justice perspective and liberal democratic theory (Tyler 1990a; Giddens 1971)) and legal (UDHR 1948; ICCPR 1966; African Charter 1981; Constitution of Ghana 1992) framework(s) that are employed in examining and analysing the paper.

2.1. Tylerian Procedural Justice Theory

The proposition of Tylerian procedural theory is that perceived procedural unfairness/injustice by relevant authorities contribute to increased public support for violent self-help mechanisms such as mob justice (Tyler 1990a). According to Tyler a 'normative' perspective of justice is where peoples understand justice and conform to the law because of how they judge or

¹ For an in-depth understanding and application of the role of law and the rule of law in developing countries.

perceive fairness and equity (Tyler 1990b). The certainty of decision-making elements and the fairness of cases and convictions make people perceive legal jurisdictions procedurally fair (Tyler 1990b). Several scholars have linked employees' attitude to their perception of injustices which eventually ended in their protest (Vermunt, 1996) and acts of brutality (Folger and Skarlicki 1998). Procedural justice propounds that all individuals have rights which should be fairly treated and respected (Herbert 2006). Therefore, violent acts such as mob justice are the displeasure of the public against their perception of procedural injustice/fairness with legal authorities (Tankebe 2009).

The relevance of Tylerian procedural justice perspective to this paper is that the citizens' expectations of legal authorities in executing their professional responsibilities will do so with accountability, transparency and honesty (Seron 2004). This is not seen in some developing countries facing inequalities because the legal and criminal justice systems are seen by citizens as illegitimate as they fail to punish suspected criminals appropriately; therefore, destroying negatively the representation of the State, rule of law and democracy. It is believed to be procedurally unjust if one is denied the opportunity to present his/her case and legal authorities also show levels of biasness (Tankebe 2009, 249). Although, the ineffectiveness of legal authorities may be understood by people sometimes, such would not be the case if people feel that their human rights are blatantly being disregard by legal authorities such as the police and judiciary (Tankebe 2009, 249).

Instant justice is believed to have two motivations; the first being crime restriction (Black 1989; Black 1983), where ordinary citizens use violent acts as a way of safeguarding societal rule thus conflicting with the regular rules meant to protect society in the first instance (Rosenbaum and Sederberg 1974). As such, instant justice is what people use to provide effective security for society since the police have failed to so do (Tankebe 2009, 250). An example is where a community in Onitsha, Nigeria faced widespread violence from gangs and a vigilante group called the Bakassi Boys were organised to provide effective security to restore the community (Harnischfeger 2003, 41). This shows the highest form of providing effective security and what numerous works strongly affirms on instant justice (Adinkrah 2005; Smith 2004; Goldstein 2003). Corruption by legal authorities is also a factor causing mob justice. Adinkrah and Harnischfeger argue that corruption occurs when legal authorities neglect the duties and connive with criminals for favours and the police in Onitsha had to accommodate the violent acts of the Bakassi Boys because the boys had a list of names with corrupt police officers, challenging the police legitimacy (Adinkrah 2005; Harnischfeger 2003, 24). The second motivation of mob justice is punishment to legal authorities where people rebel against constant injustices (Barbalet 2001). The failures

of legal authorities to provide fairness and effective security to communities causes people to take the law into the own hands to compel legal authorities to bridge the gap between what is fairly expected and the abuse people rather face from legal authorities.

From the above arguments a strong correlation between procedural justice and police trustworthiness of legal authorities was established by Tyler and Huo (Tyler and Huo 2002). There are arguments that corruption and poor performances with the police weakens citizens' trust in legal authorities and encourage them to engage in mob justice because people question the legitimacy of the police and judiciary (Goldsmith 2005; Rothstein 2000; Gurr 1970). The Tylerian procedural justice perspective gives a good explanation as to why mob justice occurs and the aim of the paper, the effect of mob justice on the rule of law and democracy in Africa, Ghana. The theory confirms the positions of the paper that mob justice negatively impacts on the image, security, peace and productivity of a developing country because it undermines the legal and criminal justice systems and thus, the rule of law and democracy. Positively, the theory explains why instant justice serves as a wake-up call for the State to take its responsibility to protect citizens' rights seriously (the Responsibility to Protect 'R2P' 2005).

2.2. Liberal Democratic Theory

Liberal Democratic theory posits that citizens comply and obey laws when the government is accountable, adhere to formal legalities and guarantee citizens' rights (Giddens 1971, 124, 125). Citizens' morality with the authenticity and regularity of the law enforces obedience even when the law fails; when the opposite occurs, citizens disobey the law (Giddens 1971, 124, 125). In the view of liberals, law is understood when it appeals to rational citizens who consent to it without force for the common good (Allan 2003, 65). Therefore legal authorities which do not receive citizens' consent are viewed as faulty (Allan 2003, 65). Although citizens may oppose the law as serving the common good, its power may be denied by them based on that requiring justice commands hostility and rebellion (Allan 2003, 67). The existence of genuine lawful obligation is usually the result of the moral understanding of citizens' that compliance and obedience is justified (Allan 2003, 67). The rule of law assumes that the law will be enforced in terms of the tone they will reasonably be understood by people affected (Allan 2003, 62).

Liberal democratic theory is important to the paper because it explains people will obey the legal duties expected of them whiles living harmoniously with others because their human rights are protected when other violates it and people know they have access to the courts when seeking retribution.

People are aware that they will not be punished for laws that they are not aware of or impractical to obey. This means that citizens will usually obey and compel with the law because of their moral duties even if the law fails at times because they are used to the law's regularity and authenticity and the existence of state power. Contrarily, if people felt or believed the law in the country was irregular and not authentic often, they would take the law into their own hands to protect and safeguard their rights since the State and its legal authorities could no longer do so. This is why mob justice commonly occurs in some developing countries. This forms some form of retribution for crimes committed against them by suspected criminals where people demand justice the State cannot provide. This theory is essential to the position of the paper that mob justice has both the negative and positive effects on rule of law and democracy in Africa, thus Ghana.

2.3. Universal Declaration on Human Rights 1948

To maintain security, world peace, friendly relations and unity among States, the United Nations (UN) was established as an international organisation in October 1945 after the Second World War (United Nations Association UK, n.d.). To protect the fundamental rights and freedoms of every human being and nations worldwide for the first time, the UN General Assembly adopted the UDHR in December 1948 as a universal document (United Nations 1948). The UDHR promotes the significance of the rule of law in guaranteeing human rights. Its most dominant and relevant clause hints that individuals have the right to rebel against tyranny and oppression when their rights are not guaranteed (UDHR 1948, Preamble 3). The UDHR is usually viewed as a yardstick that individuals and States should go by and adhere to (UDHR 1948, Preamble 8). The relevant and compelling provisions of the UDHR include Article 3 right to life, liberty and security, Article 10 right to a fair trial, and Article 11 presumption of innocence among others.

2.4. International Covenant on Civil and Political Rights (ICCPR) 1966

The UN adopted other human rights conventions such as the International Covenant on Civil and Political Rights in 1966 (UN General Assembly Resolution 2200A (XXI), 1966). This was to protect civil and political rights and human rights in addition to the UDHR. Part III of the ICCPR contains rights such as Article 6 right to life, Article 14(1) right to fair trial and equality before the courts, Article 14(2) protect the presumption of innocence among others. The ICCPR serves as a yardstick for domestic constitutions when drafting human rights area worldwide (Tomuschat, n.d., 3). Ghana is a signatory

to both the UDHR and ICCPR and has thus ratified and incorporated their provisions into its domestic constitution (Tomuschat, n.d., 3; Hurst 1995).

2.5. African Charter on Human and Peoples Rights (ACHPR) 1981

In achieving human rights, self-determination and eliminating colonialism in Africa, the Organisation of African Unity (OAU) was established in May, 1963 (Umozurike 1983, 902). The OAU Charter Article II(1)(e) endorses the UDHR by referring to human rights and a better life for Africans.² This called for the drafting and adoption of the African Charter on Human and Peoples Rights (ACHPR ‘The Banjul Charter’) as a regional human rights instrument for Africa in 1981 (African Commission on Human and Peoples’ Rights, 1987). The African Charter contains rights such as the right to life and integrity-Article 4; protection from torture-Article 5; right to fair trial and presumption of innocence-Article 7(1); Article 28 gives citizens a duty to respect others without discrimination. Ghana has ratified the African Charter, its provisions and human rights practices (International Justice Resource Center 2017).

2.6. The Republican Constitution of Ghana 1992

Ghana was formerly under British colonisation before it gained independence on 6 March 1957 and a new constitution was adopted (Constitutionnet 2020). In 1960, Ghana became a republican country with several amendments to the constitution (Constitutionnet 2020). After several military regimes, the country was restored to democratic governance in the 1990s (Constitutionnet 2020; Schwelb 1960). The Constitution of the Republic of Ghana came into force in April 1992 (Constitute Project 1996) and was amended in 1996 (Constitution of the Republic of Ghana (Amendment) Act 1996). Fundamental human rights are contained in Chapter 5 of the Constitution of Ghana 1992. Article 13 protects right to life, Article 15 prohibits torture, and Article 19-fair trial and presumption of innocence among others.

3. The Effects of Mob Justice on the Rule of Law and Democratisation in Africa: Ghana

Democracy is described as government of the people, by the people, for the people³ and government by law which means government using the

² Article II(1)(e) promotes international corporation, with regards to the UDHR and UN Charter.

³ The Gettysburg Address delivered by President Abraham Lincoln during the American

rule of law in its administration is mostly linked to democracy (Fletcher 1990, 71). Democracy is seen to centre on how people selected by citizens actually hold power, whereas the rule of law centres on how to execute this political power (Fletcher 1990, 71). Scholars like Adu-Gyamfi and Kodah demonstrated that mob justice implicates on the rule of law in a democratic State in the following ways – undermining the legal system by showing the criminal justice system as weak, destroying a country’s domestic and international stability and peace, disrupting due process and breaching international conventions (Adu-Gyamfi, 2014; Kodah, 2012) such as the UDHR 1948, ICCPR 1966, ICESCR (International Covenant on Economics, Social and Cultural Rights 1966) and domestic constitutions such as the Constitution of Ghana 1992.

The following is based on the semi-structured interview (Mathers, Fox and Hunn, 2009, 20; Fox 2009, 4) conducted online with key organisations and expert opinion leaders from five selected regions (Greater Accra region, Central region, Eastern region, Volta region, and Ashanti region) in Ghana, which have high mob justice incidences.⁴ The interview participants were questioned about their views on whether mob justice had any implications on the rule of law and democratisation in Ghana.⁵ The following are some of their responses.

A Journalist and a member of Ambassadors Against Mob Justice (AAMJ) emphasised how the mistrust in the rule of law leads people to do their own thing by putting the law into their own hands which is bad for the country since it can happen to just anyone. She stated that:

Civil War in 1863.

⁴ The five regions in Ghana were purposely selected because: the Greater Accra Region is the capital region of Ghana. The capital city, Accra is the most populated area in Ghana and people from different areas move there with hopes of acquiring brighter futures. This results in numerous devious and criminal activities within the societies. This makes people protective of themselves, their properties and willing to engage in acts such as mob justice. The Ashanti Region, the second largest region in Ghana is known for its market and trading opportunities. People from diverse regions convey there to trade making the region especially the capital city, Kumasi, more prone to lawless activities such as mob justice. The Central Region is the tourist attraction area in Ghana and attracts many tourists and travellers. Its fishing activities also draws many traders there especially Cape Coast, its capital city. Such activities make people eager to engage in illegal activities. Eastern region is known for trading and illegal mining activities, thus attracting many people for employment and settlement. Volta region is also known for fishing activities and tourist sites, bringing many visitors to the place and therefore many crimes such as mob justice.

⁵ Sample questions include what do you understand by mob justice? what are the reasons why you/others engage in mob justice? do you know laws exist against mob justice? what do you understand by fundamental human rights? what do you think mob justice does to the democratic society of Ghana?

Mob justice has many implications because we don't trust rule of law we do our own thing and it is always bad at the end.....see what happened to Major Mahama (Republic v. William Baah & 13 others, 2017)One day a court judge will leave his high seat to walk the street, mob justice might happen to him because everybody is at risk.....if the thief deserves it what about us wearing the same red attire like the criminal running away?.....⁶

A similar response was given by a Security Agent who explained how unsafe the country becomes because of instant justice.

Mob justice is on the rise which means people are disregarding the rule of law, they don't believe in it. It doesn't make the country safe.....it sends across the universe there are no laws and no peace in the land.....it means the security agencies are not doing their work well.....⁷

The portrayal of Ghana as a violent country to foreigners was also of concern to another participant. According to him:

.....it portrays Ghana as a violent country in the eyes of outsider countries. Because you can't imagine a person is subjected to that act of killing, some are even burnt. A person may be mistaken as a criminal and out of coincidence....they take you as the criminal and subject you to that negative act, it's unfair.....⁸

A participant with the National Commission for Civic Education (NCCE) connected the increase in mob justice to the law not working anymore.

More people engaging in mob justice means the law is no longer working, it means we are entering a lawless society where people take the law into their own hands. It's a serious threat to rule of law when there is fear and panic in citizens.....We are all at risk as citizens.⁹

A Police Officer emphasised on the uselessness of the rule of law in the occurrences of instant justice.

It makes rule of law useless, if people resort to instant justice what is the use of rule of law?.....lots of repercussions on democracy.... continuous instant justice means people do not trust in the system..... cases must be fast-tracked and punishment meted out to criminals must be publicised so people will know the justice system is working...
...¹⁰

⁶ Response by a participant from interview conducted on 23/5/21

⁷ Response by a participant from interview conducted on 26/5/21

⁸ Response by a participant from interview conducted on 26/5/21

⁹ Response of Madam Asante based on interview conducted on 29/5/21

¹⁰ Response of a participant from interview conducted on 10/6/21

Responses from interview participants' indicate that mob justice has several implications on the rule of law and democracy in Ghana if left unattended. From participants' responses mob justice makes the rule of law useless which makes people lose trust in the system because the law is no longer working in the country. Again, it is an indictment on the country's security agencies because it means they are not doing their jobs well. These responses are in line with the arguments of Adu-Gyamfi that the legal system is undermined when people take the law into their hands because it shows the criminal justice system as weak in punishing and handling out appropriate justice to suspected criminals (Adu-Gyamfi, 2014, 91). More so, participants' responses show that when it comes to mob justice, everyone is at risk of falling victim to such barbaric acts and most often it is the innocent who suffers. The participants' responses above are given more credence when we draw attention to the fact that, if mob justice can be committed on a soldier such as *Captain Mahama* (Republic v. William Baah & 13 others, 2017) then no one is safe in the country, not just criminals. This threatens the peace and security of individuals in Ghana because it causes fear and panic among citizens. Adu-Gyamfi argues in this direction that mob justice breaks down a country's security, stability, and peace domestically and internationally because it describes the citizens as barbaric and, in many instances; it is innocent people who end up being brutally killed by the mob based on a mistaken identity in fleeing a crime scene (Adu-Gyamfi, 2014).

On the issue of barbarism, a Justice of the Court of Appeal explained that:

Mob justice has negative implications and sets bad example. If A was there and C was killed next time when somebody does something against D, A thinks he can also kill and goes ahead to kill.....we have institutions to deal with those matters.¹¹

In addition, another Judge noted that;

Mob justice undermines rule of law and democracy. Article 13 right to life and human dignity should be our paramount consideration. We cannot take somebody's life intentionally.....it undermines the justice system. It discourages investment.....what grows a country is investment.....¹²

It can be seen that the economic implication of mob justice in Ghana was reiterated by many participants. Foreigners and investors consider factors such as the peace and stability of a country before investing in that country. If there is no economic stability and the laws are seen as not working, no

¹¹ Response of Justice Adjei based on interview conducted on 11/5/21.

¹² Response of His Lordship Akraasi based on interview conducted on 2/5/21.

outsider would even consider coming down to set up businesses in that country, left alone live there because the country is seen as lawless, and its economy not guaranteed. This is why certain areas especially in Africa is undeveloped because of its political, social and economic instabilities (Weingast 2008, 17). This statement is in line with the arguments made by Gant, Yeboah-Assiamah and Kyeremeh that the requirement to develop a good administration came at a stage when it was accepted that States and their institutions in developing countries restore and refresh to bring about development needed in changing societies (Yeboah-Assiamah and Kyeremeh 2014; Gant 1979). Put differently, public administration enforces law and order through structures such as agencies and ministries to encourage public trust in them and for administrative development to occur either economically or politically; there must be a change from possible administrative and inconvenient measures through which public service challenges are presented to the people (Yeboah-Assiamah and Kyeremeh 2014). If there is transparency within public administrations then citizens and foreigners both understand the systems clearly in the country for improvement to happen economically which in turn will attract investments that grows a country.

Moreover, some participants expressed the negative implications mob justice has on the rule of law, especially Chapter 5 of the 1992 Constitution of Ghana which protects fundamental rights and freedoms. Mob justice is undermining legitimate judicial systems. Participants' responses show that mob justice violates the rule of law especially Articles 13 and 19 of the Ghana's Constitution which protects right to life, human dignity and fair trial respectively. In agreement is Kodah's argument that mob justice breaches the rule of law entrenched in International Conventions on Human Rights (such as UDHR 1948; ICCPR 1966; African Charter 1981) and domestic constitutions of countries like Ghana (such as the Constitution of Ghana 1992; Kodah 2012). According to Kodah, the rule of law protects human rights such as right to life, fair trial and presumption of innocent which are elements of good constitutional governance and sustainable democratic system as well as the principle of natural justice (Kodah 2012, 15).

In relation to the above on natural justice, a Lawyer and a Human Rights Activist noted how the rule of natural justice was violated during mob justice. He explained that the lack of enforcement or loopholes within the 1992 Constitution as the effects of instant justice on rule of law and democracy. In his words:

.....our rule of law is questioned because if people are taking laws into their hands, it means there are loopholes within our constitution or

there is lack of enforcement....It has negative effect on rule of law because it affects democracy.....a suspect must be heard first....¹³

Similar to the above response, a Clinical Psychotherapist also expressed how the weak rule in Ghana is leading to mob justice and destroying democracy and equality:

...the slow movement of rule of law makes mob justice occur. Under democracy everybody is equal before the law but what happen when the powerful and rich are more equal? Is the poor/ordinary having the same value as the rich/powerful? ...people align themselves with the rich/powerful and commit crimes because he thinks he will always be free and this can be a reason for mob justice.....¹⁴

These responses not only confirm the position of this paper on how instant justice undermines the legal and criminal justice system, the fundamental right to life and fair trial, but also agree with the argument of Kodah about the violation of the rule of natural justice (Kodah 2012). The need to be heard that is fair hearing before punishment is delivered on a person suspected of a crime is a doctrine of democracy which is interchangeable with the rule of law. It is argued that the rule of law and democracy discourage dictatorship and authoritarian leadership (Przeworski 2003; Morlino 2010) whiles promoting equality (Fletcher 1990, 80). Fletcher submits that equality requires the same kind of treatment to be given to everybody of the same category and likeness unless there is an exception (Fletcher 1990, 80). Therefore, if a person is denied the right to express their opinion on whether or not they committed a crime and they are rather mobbed; then democracy is not being practiced as it should be because freedom of expression is lost. In effect, the same kind of treatment given to every person that the rule of law reiterates to promote equality is violated during mob justice and thus undermines the rule of law and democratisation.

Responses from participants also suggest how criminals align themselves with the rich and powerful because they can get away with their crimes by a mere phone call to the relevant authorities and politicians. This causes people to commit instant justice on such criminals who in the people's view escaped justice. These responses confirm the argument of this paper on how mob justice undermines the criminal justice and legal systems and the fundamental right to life and fair trial. These viewpoints is also supported by Tankebe and Asif argument that the services of the police and courts are often interfered with by politicians; which make the duties of these

¹³ Response of Mr Osei-Owusu based on conduct on 1/6/21.

¹⁴ Response of Father Amanor based on interview conducted on 10/6/21.

agents dealing with mob justice more difficult and ineffective (Tankebe and Asif 2016). Adu-Gyamfi contends that, enforcing the criminal justice system requires equity and fairness but this can only be achieved with minute differences in political and socio-economic power (Adu-Gyamfi 2014). Political involvement in criminal cases also disrupts investigative procedures and/or due process and makes arrest difficult in crimes which affect democratisation (Adu-Gyamfi 2014). Weingast contends that only few developing countries can preserve an independent judiciary because most compromise their independence especially State leaders when faced with inconveniences such as Adolf Hitler of Nazi Germany and Pinochet of Chile (Weingast 2008, 15). The manipulation of the judiciary by Kings in the 17th Century greatly affected their independence and undermined rule of law (Hirst 1986). Therefore, until the police and judiciary in Africa and in this instant case, Ghana can stand independent of political interferences within their services, the rule of law and democratisation would be undermined and people will continuously loss confidence in them which would end in mob justice.

In terms of the rule of law in Ghana, other interview participants questioned if the rule of law existed in Ghana. One participant stated that since there is complete absence of the rule law in Ghana, the impact of mob justice, is therefore only in theory not in practice, since there is no rule of law being undermined. He noted that;

Do we have laws in Ghana? Our laws are bounded in hard paper books.....our laws are not being implemented to the best of the people/ community so mob justice has an impact on rule of law theoretically but not in practice.....the unemployed youth are used as political thugs, influencing voting patterns and covered in political colours calling themselves vigilante groups like Delta Force, Azorkwa boys.....¹⁵

A Clinical Psychotherapist also questioned the existence of the rule of law in Ghana by stating that:

Is there rule of law? Is the constitution active? Mob justice negatively impact the rule of law because if the wrong person is killed what will the rule of law do? Mob justice thwarts rule of law. It does not make rule of law go as it should go...¹⁶

One participant with the Parliamentary Network Africa (PNA) explained the non-existing and weak rule of law as:

¹⁵ Response by a participant from interview conducted on 27/5/21

¹⁶ Response of Father Amanor based on interview conducted on 10/6/21.

If right to life and fair trial are looked at, when somebody is subjected to mob injustice that individual's rights in both instances get taken away especially when he ends up dying and it is a big blow to rule of law....the rule of law is perceived by people as weak and not alive. Mob justice has extended from less-literates people in the street/market to now state-sponsored security taking the law into their own hands.....If there are vigilantes who are politically supported then you know that it is gradually eating away the strife of democracy and rule of law....¹⁷

The contrary views above of participants calling into questioning, the existence of the rule of law in Ghana is important since it implies that the law only exist in theory or hard books but not in reality or practice as some participants emphasised. Their responses to a large extent, reflect on their experiences with the injustices of the law as provided by State legal authorities in Ghana, which is supported by Tylerian procedural justice theory which proposes that procedural injustice contributes to massive support for violent self-help mechanisms such as mob justice (Tyler 1990a); and liberal democratic theory, which prescribes that equal rights guaranteed to all by an accountable government breeds fairness and obedience (Giddens 1971). States have responsibilities to protect citizens from violence and atrocities since they are best placed to find solutions (the Responsibility to Protect 'R2P' 2005) and since the law allows for social change, it must be changed to meet the dynamics of present societies if that would prevent crimes and violence. Just as Dror argued, a problem arises when the law does not answer the needs emerging from major social changes; however, when conscious legislations are used in contemporary worlds the process of adjusting the laws to meet social change becomes easy (Dror 1958-1959, 795). This calls on the government and institutions to take actions in improving the rule of law by either reforming or amending the law and procedures in contemporary worlds and educating citizens on the law through the media and publicity to make democracy better. However, perpetuity is significance in preserving rule of law because its absence allows future government officials to disregard laws and ministries set up by current officials and thus continuous policies cannot be adhered to (Weingast 2008, 14). Therefore, not only must the government reform out-dated laws/policies to meet social changes, but must also make conscious efforts that these policies or laws are continued by future officials. This will make implementation easier so policies and/or laws can benefit society better as stated from the interview responses and prevent citizens from calling into question whether the rule of law exist at all.

¹⁷ Response from interview conducted on 31/5/21

In relation to the different forms of mob justice, it can also be seen from the responses that mob justice can take political forms. Mob justice is sometime seen as a political violence and used in pursuit of political interests such as harassing voters (Tankebe 2019). This has negative effect on rule of law and democracy since these political parties end up as State leaders in government and continue to use such authoritative or autocratic attitude towards citizens. The interview responses indicate that when mob justice is used by political parties particularly the government to further its interests, it defeats the very nature and mandate of the government's responsibility to protect citizens (the Responsibility to Protect 'R2P' 2005). Gyampo in this perspective, argues that mob justice as political violence has been in Ghana's struggle for independence from colonial rule and the fact that this still exist currently defeats the democratic rule preached in Ghana (Gyampo et al. 2017). Notably, one response shows that mob justice has now graduated from less-literate people in the streets mobbing suspects to State-sponsored securities.¹⁸ This view is in line with those of Tankebe who explained that members of political groups/vigilantes are not just criminals but include people commanding authority and holding political powers like policymakers and parliamentarians, termed 'vigilantes in suits' (Tankebe 2019). Furthermore, another response explains how the uneducated youth are lured and used by political parties in pursuing their interests especially during elections. This is what Paalo and Tankebe referred to as politicians taking advantage of the lack of opportunities and youth's frustrations to brainwash them into violent groups by defending their activities and psychologically guiding them (Paalo 2017; Tankebe 2009). The interview response that the political vigilantes are mostly used during elections also falls in line with Paalo's argument that such groups are used to intimidate voters during elections and target electoral polls ((Paalo 2017). If a developing country like Ghana, in trying to protect the rule of law organises elections to promote democracy and if political vigilantes constantly interfere with such, then it defeats the very purpose of what they are trying to achieve and this has negative effects on the developing countries.

In achieving the aim of the paper to examines the effects of mob justice on the rule of law and democratisation in Africa with Ghana as a case study, the age groups which commonly committed mob justice was asked during the interviews. The interview responses show that it is the youth who mostly engages in mob justice and this is in line with Paalo, Ng'walali and Kitinya arguments that uneven opportunities in societies cause the youth to migrate to urban areas to seek brighter futures of employment

¹⁸ Interview response, note 17.

and financial independence which increases crime rate and cases of mob justice (Paalo 2017; Ng'walali and Kitinya 2006). This affects the rule of law and democracy because the youth are the abled-bodies who massively contribute to economy's production sector in terms of work and strength. If they are killed or constantly being arrested and convicted of crimes, it affects the economic development of a country which is interconnected to the rule of law and governance (Kurtz and Schrank 2007). According to the United Nations, promoting the rule of law on international and domestic levels is relevant for broad and constant economic growth which eliminates hunger and poverty and increases sustainable development, awareness of human rights and the right to develop (The General Assembly resolutions A/RES/66/102 and A/RES/67/1, High-level Meeting on the Rule of Law, 2012). Implementation of laws is another issue most interview participants noted. If there are good implementations, it enhances the smooth administration of the rule of law and democracy especially in developing countries like Ghana.

A participant with the Bureau of Public Safety noted that a core responsibility of every government is the protection of lives and rights; failure of this has negative implications on democracy and rule of law. He explained that:

...we claim to practice rule of law yet people can carry out extrajudicial killing and no one brings them to book; definitely have implications on rule of law. One of the mandates of a democratic state is to protect the rights and lives of citizens. If a government performs short of that it is not only running the risk of getting unpopular but running the risk of undermining the legitimacy of its rule...¹⁹

The above statement is in line with the principles of State's responsibility to protect the rights of citizens and prevent atrocities as reiterated by the United Nations (the Responsibility to Protect 'R2P' 2005). Because it is the State whose citizens are directly affected with violence and the State is best positioned to understand and take actions to prevent personal disputes from turning into potential calamities (the Responsibility to Protect 'R2P' 2005). Since the interests of citizens are at stake, they will ensure that the solutions provided by the State are successful. As argued a State that fails in protecting the fundamental human rights and freedoms of its citizens runs the risk of being unpopular and seen as illegitimate among citizens because the strives for democracy and the rule of law is untrue.²⁰ This encourages citizens to find alternative ways of seeking the justice they believed they deserve for themselves and their communities and protecting their human rights through

¹⁹ Response from interview conducted on 4/6/21

²⁰ Interview responses, note 17 & 19.

activities such as mob justice. However, this behaviour risks undermining the rule of law and democracy and hindering developments in all areas which according to the theory of structural functionalism leads to dysfunction of the State apparatuses and generates instability and ineffectiveness in the country (Parsons 1951). The international community comes in when the domestic State is unable and unwilling to protect their citizens (the Responsibility to Protect 'R2P' 2005). This means that only when the State have exhausted all measures and/or is unwilling and unable to handle issues of mob justice in Ghana; that is they failed in their constitutional and international legal responsibility, can the international community intervene.

4. Summary and Conclusion

The paper assesses the effects of mob justice on the rule of law and democratisation in Africa, with a focus on Ghana. The paper argues that mob justice has negative and positive implications on the rule of law and democratisation based on the contrary views of scholars and interview participants.

On the negative implications, the paper finds that not only does it undermines the criminal justice and legal systems and thus the rule of law and democratic principles, but also, it is a whole indictment on the constitutional rule in Ghana when an innocent person is killed; thereby agrees with the position of Kodah and Adu- Gyamfi (Kodah 2012; Adu-Gyamfi 2014). This is because of the basic principle that '*it is better to release 999 guilty people than to put 1 innocent person in prison*' (Mr Osei-Owusu 2021; Epps 2016).²¹ The peace, security and stability of the country are adversely affected by mob justice. The economic effect of mob justice on the country is the discouragement of investment from foreign countries. The arrest and murder of the youth who are both victims and perpetrators of mob justice also affects negatively the sustainable economic development of a country because poverty and unawareness of rights increases (Kurtz and Schrank 2007). Again mob justice thwarts the rule of law and democratisation by breaching the fundamental human rights enshrined in the 1992 Constitution of Ghana, especially Articles 13 and 19 which protect right to life and fair trial respectively; this is in line with Kodah's argument (Kodah 2012). Political involvement in criminal cases disrupts investigative procedures which affects due process.

²¹ 'The Blackstone principle instructs that in distributing errors in criminal punishment, our justice system should strive to minimize false convictions, even at the expense of creating more false acquittals and more errors overall.'

The positive implications of mob justice on democratisation and rule of law are that it is a wake-up call for the State and its institutions about the challenges people are facing with the laws of the country and services provided by the enforcing institutions. This is supported by Tylerian procedural justice and Liberal democratic theories as well as the Responsibility to Protect (R2P). The theories and the R2P call on the government to follow procedural justice, be accountable and take its responsibility to protect citizens' seriously by finding solutions (Tyler 1990a; Giddens 1971; R2P 2005).

The paper concludes that if the State can amend or reform the law and procedures that are outmoded to meet new social changes this will curb mob justice, promote rule of law and democratisation, which will provide congenial environment for development in Ghana. The State can also educate the public on the law of the country through the media to create awareness of the rule of law, democracy, and human rights. Therefore, an institution of democratic and good governance in Ghana will bring functional judicial and viable security systems; this will undoubtedly lead to active rule of law and decrease or complete elimination of negative effects of mob justice in Ghana.

Acknowledgment

Ghana Scholarship Board funded the research on the Rule of Law & Mob Justice in Ghana.

References

Primary Sources

Legal Instruments

African Charter on Human and Peoples Rights 1981

Charter of the United Nations 1945

General Assembly resolution 217 A, [https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)).

International Covenant on Civil and Political Rights 1966

International Covenant on Economic, Social and Cultural Rights 1966

The Constitution of the Republic of Ghana 1992

The Constitution of the Republic of Ghana 1996

The General Assembly resolutions A/RES/66/102 and A/RES/67/1, High-level Meeting on the Rule of Law (24/9/2012)

United Nations General Assembly Resolution 2200A (XXI).

Universal Declaration on Human Rights 1948

Cases

R v Yeboah [1974] 1 GLR 268

Republic v. William Baah & 13 others (Denkyira Obuasi [Major Mahama's murder] case) SCG, 2017

Secondary Sources

Books

Allan, T. R. S., *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press, 2003)

Aristotle, *Politics Book III* (Section 1286)

Asamoah, D., 'Justice by the People's Court: Mob Action, Vigilantism and the Rule of Law in Ghana' (August 2019) Conference Paper, Stockton University, New Jersey

Attafuah, K. A. 'Fighting armed robbery in Ghana' (1st edn., Accra: Justice & Human Rights Institute 2008)

Bingham, T., *The Rule of Law* (Reprint edn, Penguin Books 2011)

Dicey, A. V., *Introduction to the Study of the Law of the Constitution* (Oxford 1885)

Gant, G.F. 'Development administration: concepts, goals, methods' (London: University of Wisconsin Press 1979).

Giddens, A., *Capitalism and Modern Social Theory: An Analysis of the Writings of Marx, Durkheim, and Max Weber* (Cambridge University Press, 1971)

Hirst, D. 'Authority and Conflict: England 1603-58' (New York: Cambridge University Press 1986).

Kodah, M. K., *Impacts of Mob [In]Justice on the Rule of Law in Ghana* (1st edn, GRIN Verlag 2012)

Morlino, L., 'Rule of Law and Democracy' (BRILL 2010).

Parsons, T., 'The Social System' (London: Routledge 1951).

Parsons, T., and Shils, A., (eds.), 'Toward a General Theory of Action' (Cambridge, MA: Harvard University Press, 1976).

Przeworski, A., 'Democracy and the Rule of Law' (Cambridge University Press 2003)

Sekhonyane, M. & Louw, A. 'Vigilantism and the State's Response' (Pretoria, South Africa: Institute for Security Studies 2002)

Tyler, T. R., *Why People Obey the Law* (New Haven and London, Yale University Press 1990)

Tyler, T.R., *Why people obey the law: Procedural justice, legitimacy, and compliance* (New Haven: Yale University Press 1990)

Journal articles

Adu-Gyamfi, E., 'Implications of Mob Justice Practice among Communities in Ghana' (2014)4(7) *Public Policy and Administration Research* 87-96

Apodaca, C. 'The Rule of Law and Human Rights,' (2004)87(6) *Judicature* 292-299

Baker, B. 'When the Bakassi boys came: Eastern Nigeria confronts vigilantism' (2002)20 *Journal of Contemporary African Studies*, 223-244

Dror, Y. 'Law and Social Change' (1958-1959)33(4) *Tulane Law Review* 787-802.

Epps, D. 'One Last Word on the Blackstone Principle' (2016)102 *Va. L. Rev. Online* 34

Fletcher, G. P. 'Equality and the Rule of Law' (1990)10 *Tel Aviv University Studies in Law* 71-88

Folger, R., & Skarlicki, P. D., 'When Tough Times Make Tough Bosses: Managerial Distancing as a Function of Layoff Blame' (1998)41(1) *Academy of Management Journal* 79-87.

Gyampo, R. E. et al., 'Political Vigilantism and Democratic Governance in Ghana's Fourth Republic' (2017)44(2) *African Review* 112-135

Herbert, S., 'Tangled Up in Blue: Conflicting Paths to Police Legitimacy' (2006)10(4) *Theoretical Criminology* 481- 504

Hurst, H., 'The Status of the Universal Declaration in National Law' (1995)25 *GA. J. INT'L & COMP. L.* 287.

Ikejiaku, B. 'The Role of Law and the Rule of Law in Economic Development Process: Quest for New Directions and Approaches in International Development Law Regime' (2020)47 *Denver Journal of International Law & Policy* 51-71.

Kurtz, M. J. & Schrank, A. 'Growth and Governance: Models, Measures, and Mechanisms' (2007)69 *Journal of Politics* 538

Ng'walali, P. M., and Kitinya, J. N., 'Mob justice in Tanzania: a medico-social problem' (2006)6(1) *African Health Sciences* 36-38.

- Paalo, S. A., 'Political party youth wings and political violence in sub-Sahara Africa: A case of Ghana' (2017)8(1) *International Journal of Peace and Development Studies* 1-14
- Schwelb, E., 'The Republican Constitution of Ghana' (1960)9(4) *American Journal of Comparative Law* 634- 656
- Tankebe, J. & Asif, M. 'Police Legitimacy and Support for Vigilante Violence in Pakistan' (2016)40(4) *International Journal of Comparative and Applied Criminal Justice* 343-362
- Tankebe, J., 'Self-Help, Policing, and Procedural Justice: Ghanaian Vigilantism and the Rule of Law' (2009) 43 *Law & Soc'y Rev.* 245-270
- Umozurike, U. O., 'The African Charter on Human and Peoples' Rights' (1983)77 *A.J.I.L.* 902
- Vermunt, R., et al. 'The Effect of Inaccurate Procedure on Protest: The Mediating Role of Perceived Unfairness and Situational Self-Esteem' (1996)9 *Social Justice Research* 109-119.
- Yeboah-Assiamah, E. & Kyeremeh, T. A., 'A Critical Assessment of Public Administration and Civil Disobedience In Developing African Democracies: An Institutional Analysis of Mob Justice In Ghana' (2014)28 *Journal of Law, Policy and Globalization* pp. 1-11

Websites

- African Commission on Human and Peoples' Rights, retrieved from: <https://www.achpr.org/history>, (accessed: 20/06/22).
- Asare, K. S. 'Linking Judicial Inefficiency to Mob Justice, Vigilantism and Spiritual Justice?' (07-30-2007) *The Statesman*. (accessed: 9/7/22).
- Constitute project, 'Ghana's Constitution of 1992 with Amendments through 1996' (1996), retrieved from: https://www.constituteproject.org/constitution/Ghana_1996.pdf, (accessed: 2/10/2022).
- Constitutionnet, 'The Constitutional History of Ghana,' (10/11/2020), retrieved from: <http://constitutionnet.org/country/constitutional-history-ghana>, (accessed: 21/06/22).
- Fox, N. 'Using Interviews in a Research Project' (2009) *The NIHR Research Design Service for Yorkshire & the Humber*, retrieved from: https://www.rds-yh.nihr.ac.uk/wpcontent/uploads/2013/05/15_Using-Interviews-2009.pdf, (accessed: 23/9/2020)
- History.com Editors 'The Gettysburg Address' (24/8/2010), retrieved from: *The Gettysburg Address - Definition, Meaning & Purpose - HISTORY*, (accessed: 20/11/22).

- International Justice Resource Center ‘Ghana, Regional: African System,’ (2017), retrieved from: <https://ijrcenter.org/wp-content/uploads/2017/11/Ghana.pdf>, (accessed: 20/06/22).
- Mathers, N., Fox, N. & Hunn, A., ‘Surveys and Questionnaires’ (2009) The NIHR Research Design Service for Yorkshire & the Humber, retrieved from: https://www.rds-yh.nihr.ac.uk/wpcontent/uploads/2013/05/12_Surveys_and_Questionnaires_Revision_2009.pdf, (accessed: 20/9/2021).
- Tankebe, J. ‘Ghana has a serious political vigilante problem. Here’s why’ (31/3/2019) The Conversation, Academic Rigour, Journalist Flair, retrieved from: <https://theconversation.com/ghana-has-a-serious-political-vigilante-problem-heres-why114216>, (accessed: 23/5/2022).
- Tomuschat, C. ‘INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS,’ retrieved from: https://legal.un.org/avl/pdf/ha/iccpr/iccpr_e.pdf, (accessed: 28/2/22).
- United Nations Association UK, ‘What is the United Nations?’, retrieved from: <https://www.una.org.uk/get-involved/learn-and-teach/overview-united-nations>, (accessed: on 8/5/22).
- United Nations Office on Genocide Prevention and the Responsibility to Protect (R2P) 2005, retrieved from: <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>, (accessed: 2/5/2022).
- Weingast, B. R. ‘Why Developing Countries Prove So Resistant to the Rule of Law’ (May 2008) 1-20, pg. 17, retrieved from: http://jenni.uchicago.edu/WJP/Vienna_2008/Weingast_ROL_MS_2%2000_08-0519.pdf, (accessed: 2/5/2022).
- Younce, J., ‘Mob Justice is a Symptom of the Degeneration of the Rule of Law’ (July 22, 2015), Courting the Law, retrieved from: [Mob Justice Is A Symptom Of The Degeneration Of The Rule Of Law \(courtingthelaw.com\)](http://courtingthelaw.com), (accessed: 2/5/22).