LAW REFORM COMMISSION

Issue Paper on « Autonomous criminalisation of mob justice »

[LRC_ R&P 174, November 2023]

13th Floor, SICOM Building II
Reverend Jean Lebrun Street
Port Louis, Republic of Mauritius
Tel: (230) 212-3816/212-4102
Fax: (230) 212-2132
E-Mail: lrc@govmu.org
URL: http://lrc.govmu.org

SCAN ME

LAW REFORM COMMISSION

Chairperson	: Mr. Gunness RAMDEWAR, SA, OSK [Attorney]
Chief Executive Officer	: Mr. Sabir M. KADEL
Members	: Representative of Judiciary [Judge Nicholas F. OH SAN-BELLEPEAU]
	Solicitor-General or his Representative [Mr. Rajeshsharma RAMLOLL, SC]
	Director of Public Prosecutions or his Representative [Mr. Abdool Rashid AHMINE]
	Mr. Yatindra Nath VARMA [Barrister]
	Mr. Nicolas BOULLÉ [Notary]
	Mr. Marie Thierry Vincent KOENIG, S.A. [Attorney]
	Mr. Mohamed Iqbal TORABALLY [Member of Civil society]
	Ms. Ashna Devi GUNPUTH [Member of Civil society]
Secretary	: Mrs. Saroj BUNDHUN

Staff & Human Resources

Chief Executive Officer	: Mr. Sabir M. KADEL

Law Reform Cadre

Law Reform Officer/Senior Law Reform Officer	: Ms. Dhan Devi SOOKUR
	Mrs. Nishita Devi HORILL-GOPAUL
	Ms. Beebee Nawsheen Shaseeb MUNGUR
	Mr. Ghirish RAMSAWOCK
Law Reform Intern (Under STM)	: Mr. Gavin DUMUR
	Ms. Hooriyyah Banu RUJUB

Administrative Support Staff

Secretary to Commission	: Mrs. Saroj BUNDHUN
Office Superintendent	: Mrs. Marie Roselilette SOOBRAMANIA
Office Management Assistant	: Mrs. Neelamani BANSRAM
	: Mrs. Kajal RAMDUT
Senior Office Attendant/Technical Assistant	: Mr. Subhas CHUMMUN
Driver/Office Attendant	: Mr. Naraindranathsingh JANKEE
	: Mr. Chundunsingh BOODOO

EXECUTIVE SUMMARY

Issue Paper on "Autonomous criminalisation of mob justice"
[LRC_R&P 174, November 2023]

In an alarming departure from its well-earned reputation for democratic stability and social equilibrium, Mauritius is witnessing a rising propensity among its populace to engage in mob justice. No longer a mere fringe phenomenon, this form of vigilante justice is increasingly becoming a default response, filling a perceived vacuum left by formal legal institutions. A cursory glance at recent incidents reveals not only the frequency but also the growing public tolerance for such extrajudicial practices. It is as though mob justice is mutating from an aberration into an accepted parallel system of retribution, one that bypasses due process and summarily dispenses what it perceives to be justice. This escalating reliance on mob justice should not be seen merely as a series of isolated events but rather as an alarming symptom of a societal shift, one that could potentially undermine the bedrock principles that have long stabilised Mauritian society.
In May 2016, the Commission drafted an Interim Report on "*Reform of the Criminal Code*", where it has identified several aspects of the criminal law which could be reformed. In view of the widespread occurrence of 'mob justice' across the globe as well as its prevalence in Mauritius, the Commission has, in addition to its Interim Report of 2016, proposed further significant amendments which could be brought to the Criminal Code so as to penalise such violence with a view of providing effective protection of the constitutional rights of victims of such acts and to preserve the rule of law.

Mob justice represents the collective, unauthorised punishment or enforcement of perceived justice outside the boundaries of the legal framework. This phenomenon has found increasing prevalence in various societies, where dissatisfaction with the judicial system, a lack of trust in law enforcement, or the pursuit of a perceived moral high ground often culminates in violent acts against alleged wrongdoers. In Mauritius, incidents of mob justice have led to growing concerns over the erosion of the rule of law and the potential threat to social stability.
Currently, the Mauritian legal system does not contain explicit provisions that address the complex issue of mob justice. While general criminal laws may apply, such as those governing assault or manslaughter, these statutes often fail to encompass the unique features and underlying motivations of mob justice.
The collision between mob justice and the rule of law is not merely a theoretical or academic concern. It represents a real and pressing challenge to the integrity and functionality of the legal system. When individuals or groups take the law into their own hands, they not only undermine public confidence in legal institutions but also endanger the very social fabric that binds communities together.

As such, this Issue Paper reviews the existing legislation of Mauritius with respect to mob justice and also examines the provisions for anti-mob justice laws in several jurisdictions, namely: South Africa, France, the United Kingdom and New Zealand, before proposing relevant amendments. Subsequently, the Commission has prepared a draft amendment bill to the Criminal Code, which is attached as "Annexe". The call to criminalise mob justice is not a mere response to isolated incidents but a necessary adaptation of the Criminal Code to address a phenomenon deeply entrenched in various socio-cultural contexts. It requires a judicious balance between legal precision, societal understanding, and a profound commitment to the democratic ideals that bind our nation. The proposed reforms do not merely aim to penalise; they seek to educate, heal, and bridge the divides that have allowed mob justice to flourish.

INTRODUCTION

1. In Mauritius, a disconcerting tremor is increasingly felt—the tremor of mob justice. Its prevalence has escalated not merely in statistical terms, but in its capacity to infiltrate the public psyche as a legitimate form of communal adjudication. This development is deeply worrying, not only for its flagrant violation of the principles of due process and the rule of law but also for its subversive impact on the Mauritian social fabric.

2. While in some jurisdictions the phenomenon of mob justice may manifest sporadically, in Mauritius, it has garnered a disturbing regularity. It is not just its occurrence that unsettles but also the extent to which these acts are often recorded, shared, and in some unfortunate instances, even endorsed within certain strata of the population. This signals a growing erosion of public confidence in the formal judicial apparatus and a worrisome dilution of the ethical substratum that has long undergirded our society.

3. Indeed, mob justice, a phenomenon characterised by the collective enforcement of perceived justice outside the formal legal framework, has emerged as a disturbing trend in various jurisdictions, including in our country. This form of extrajudicial punishment often stems from dissatisfaction with legal institutions, a lack of faith in the criminal justice process, or a misguided pursuit of immediate and visible retribution. It presents itself as a swift answer to perceived injustices, offering an immediate, albeit flawed, resolution where the legal system is seen as slow or inadequate.

4. It is a social and legal issue that serves as a means of social control and community security.[1] In its simplest form, a crowd is a gathering of individuals with a shared purpose, like attending a political meeting or a sports event. However, when a crowd transforms into a mob, it undergoes a shift in its nature and adopts a different set of implications and intentions related to anger, uncontrolled emotions, violence, and notably, excessive behaviour.[2] A mob can be defined as an unauthorised and often ill-organised group of

[1] A.O. Shodunke, S.A. Oladipupo, M.O. Alabi, A.H. Akindele: "*Establishing the nexus among mob justice, human rights violations and the state: Evidence from Nigeria*" (International Journal of Law, Crime and Justice, 2023). Available at: < https://www.sciencedirect.com/science/article/pii/S1756061622000519>
[2] L. Buur, "*The horror of the mob*" (Danish Institute for International Studies, Critique of Anthropology, Vol. 29(1)).

persons, easily swayed or annoyed by unrestrained passion.[3] This passion which usually leads mobs to take the law in their hands is often termed as "mob justice" where the passion is equivalent to vengeance.

5. Since time immemorial, people have resorted to violence in group in order to foster some sort of moral justice. In the 16th century, almost the entirety of Europe was engaged in witch hunts where people would employ mob violence in search of witches and burned them at stakes. In the United States of America, from 1882 to 1968, 4,743 people were lynched.[4] In India, mob lynching or mob justice is still a persistent concern and has its figures on the rise. The occurrences of lynching have mainly been linked to religion, caste, and the spread of rumours.[5] In Nigeria, mob justice is commonly known as *Jungle justice*. While there are no official statistics regarding the frequency of mob violence, it is frequently reported in the media. According to a 2014 survey, 43% of Nigerians had personally witnessed a mob attack.[6] It is, therefore, a worldwide phenomenon that is present within mankind and has existed irrespective of races, cultures, traditions, and religions. When people resort to mob justice, they go against the law. The more so, they act in contravention of several human rights.

6. As articulated in Article 3 of the 1948 Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1966, human rights encompass the entitlement of all individuals within a state, irrespective of their gender, nationality, race, socioeconomic status, or any other consideration. Mob justice breaches several human rights as protected by the Universal Declaration of Human Rights. Article 3 protect the right to life, liberty and security of person. However, mob justice severely undermines the fundamental principles of Article 3, thus contradicting the core value of human rights, which strongly emphasises the right to life.[7]

---

[3] J.T. Ridgeway, "*Psychology of mobs as an educational factor*" (Journal of Education, August 1904) pp 136-138.
[4] The National Association for the Advancement of Colored People (NAACP): "*History of Lynching in America*". Available at < https://naacp.org/find-resources/history-explained/history-lynching-america>
[5] Dubey, S., & Malik, N. (2019). *Mob Lynching A Growing Menace*. Supremo Amicus, 13, 287-297.
[6] "*Nigeria set to pass a law against mob lynching.*" (The Conversation.com, December 5, 2017) < https://theconversation.com/nigeria-set-to-pass-a-law-against-mob-lynching-will-it-make-a-difference-87890>
[7] A.O. Shodunke, S.A. Oladipupo, M.O. Alabi, A.H. Akindele: "*Establishing the nexus among mob justice, human rights violations and the state: Evidence from Nigeria*" (International Journal of Law, Crime and Justice, 2023). Available at: < https://www.sciencedirect.com/science/article/pii/S1756061622000519>

7. Article 5 of the Universal Declaration of Human Rights provides for the right to protection from inhumane treatment. Similar safeguards are provided in Article 7 of the 1976 International Covenant on Civil and Political Rights, and in Article 1, paragraph 1 of the 1984 Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. In essence, these legal sources unequivocally stress that torture or any form of severe physical and mental harm should not be inflicted on any person, especially crime suspects, for extrajudicial punishment or to coerce confessions during criminal investigations. Mob justice violates this right, as it involves alleged suspects being subjected to physical violence, torture, and inhumane treatment, leading to significant mental and physical health repercussions.[8]

8. Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights state that every individual has the right to a fair and impartial tribunal when facing a criminal charge or having their rights and obligations determined. These provisions, *inter alia*, ensure that all accused persons must receive a fair and unbiased hearing during their criminal trial in a court of law. Mob justice completely disregards this aspect and the mob acts as a judge and executioner without a due process.[9]

9. In embracing the immediate satisfaction of mob justice, societies inadvertently betray the foundational principles upon which modern legal systems are constructed. The rule of law, an essential cornerstone of democratic governance, posits that all individuals are subject to and protected by the law, regardless of their status or position. It demands that legal processes be conducted transparently, impartially, and in accordance with established procedures. In stark contrast, mob justice circumvents these safeguards, rendering judgments that are often impulsive, biased, and devoid of due process.

10. One of the most troubling aspects of mob justice is its blatant disregard for the presumption of innocence. This legal principle, enshrined in various international instruments such as Article 11(1) of the Universal Declaration of Human Rights, dictates that a person is considered innocent until proven guilty in a court of law. It places the

[8] *ibid.*
[9] *ibid.*

burden of proof upon the prosecution and ensures that the accused is afforded a fair and impartial trial. Mob justice, however, negates this fundamental tenet, passing judgment without the benefit of evidence, legal representation, or a fair hearing.

11. In a profound observation, Alexis de Tocqueville stated, "*When the taste for physical gratifications among them has grown more rapidly than their education... the time will come when men are carried away and lose all self-restraint... It is not necessary to do violence to such a people in order to strip them of the rights they enjoy; they themselves willingly loosen their hold... they neglect their chief business which is to remain their own masters*".

12. Immanuel Kant's ethical philosophy, particularly his formulation of the categorical imperative, has long served as a touchstone in moral reasoning and legal thought. At its core, the categorical imperative commands that individuals act according to principles that could be universally applied, treating others not merely as means to an end but as ends in themselves. It calls upon us to act only according to that maxim by which we can at the same time will that it should become a universal law. This moral axiom transcends mere legality and compels us to envision a world where our individual actions become a universal standard. The implications of this philosophical construct are profound, especially when examined in the context of mob justice.[10]

13. In his work *Grounding for the Metaphysics of Morals,* Kant asserts to "*act only according to that maxim whereby you can at the same time will that it should become a universal law.*" Applying this to the phenomenon of mob justice, it becomes clear that such a maxim could never be universally willed without contradiction. It stands in direct opposition to the principles of justice, fairness, and human dignity that undergird our social contract. The criminalisation of mob justice is not merely a legal necessity; it is a moral imperative that resonates with the very essence of our humanity. It aligns with

[10] Consider an individual who, driven by a fervent desire for justice, takes the law into his own hands and becomes a participant in an act of mob justice. According to Kant's categorical imperative, this individual must then accept that his action, if universally applied, would lead to a society where everyone assumes the role of judge, jury, and executioner. It would create a world devoid of due process, where guilt is presumed, and punishment meted out without deliberation or restraint. But would any rational individual truly desire such a world? Would anyone willingly sign up for a society where the scales of justice are permanently tipped, where innocence is disregarded, and where the rule of law is supplanted by chaos and vengeance?

Kantian ethics, reaffirming our collective commitment to a just and lawful society where individuals are treated with the respect and dignity they inherently deserve.

14. The struggle against mob justice, then, is more than a legal battle; it is a profound ethical endeavour that calls upon us to reflect upon our deepest values and the kind of society we wish to inhabit. In embracing the wisdom of Kant's categorical imperative, we reaffirm our faith in the rule of law, recognising that justice must never be reduced to mere retribution but must always strive for the higher ideals of fairness, compassion, and universal respect.

15. The issue of mob justice in Mauritius, therefore, warrants serious examination and reflection. It beckons us to re-evaluate our collective commitment to the principles of justice, fairness, and human dignity. As we delve deeper into this subject, we must bear in mind the delicate balance that sustains our legal system and the vital importance of preserving the rule of law and the presumption of innocence. These are not mere legal constructs but the very pillars that support our democratic society.

16. Therefore, with the aim of exploring the initiatives that can be implemented in Mauritius to address the pressing concern of 'mob justice', this Issue Paper endeavours to examine the following:
    (a) The terminology;
    (b) The psychological aspect of a mob;
    (c) The current law in Mauritius regarding 'mob justice' or 'mob violence';
    (d) Actions against 'mob justice' or 'mob violence' in South Africa, France, the United Kingdom and New Zealand;
    (e) Comparison of the current situation in Mauritius and other jurisdictions regarding the issue of 'mob justice' or 'mob violence'; and
    (f) an evaluation of the relevant legislative strategies that can be implemented in Mauritius to address the aforementioned issue.

17. The autonomous criminalisation of mob justice in Mauritius is not simply an option; it is a compelling legal and ethical imperative that aligns with the foundational principles of democracy, human rights, and the rule of law. By implementing specific reforms to

criminalise mob justice, we accomplish several essential objectives. First, we reinforce the principle of legal singularity, asserting that justice must be uniformly meted out through legitimate state mechanisms. The sanctity of due process and the presumption of innocence are consequently upheld, eschewing the capricious and often violent judgments of mob actions. Second, the proposal for criminalisation serves to deter individuals from participating in such collective acts of unauthorised adjudication and punishment. This preventative aspect is vital for maintaining public order and safety, in turn averting the potential spiral into lawlessness. Finally, and perhaps most crucially, the proposed legal framework resonates with profound ethical principles, not least those enunciated by Immanuel Kant's categorical imperative. If one's actions cannot be universally applied without undermining the social fabric, they cannot be considered just. Mob justice fails this Kantian test, providing a compelling ethical justification for its criminalisation.

A. TERMINOLOGY

18. Lynching refers to the act of killing someone by a mob based on an alleged offence, without adhering to any principles of jurisprudence or due process of law. Unlike a regular murder, lynching is a public spectacle that seeks an audience. It represents an extrajudicial punishment carried out by an informal group.[11] The word lynching has its origin in the USA. Indeed, the origin of this term is generally attributed to Charles Lynch (1736-1796), a Virginia tobacco planter and local militia colonel during the War of Independence. In 1780, he took on the role of an impromptu judge to defend the lead mines, essential for ammunition production, against the covetous loyalists. Concerned with urgently responding to an imminent danger, he delivered a justice as summary as it was uncompromising. In a letter dating back to 1782, Lynch himself used the expression 'Lynch's law' to refer to the expedited methods required against 'mischievous' individuals, whether they were traitors or undisciplined miners.[12]

19. During the relevant time period, lynching was also carried out as a means of social control, particularly to uphold white supremacy. In such instances, "*lynching*" not only meant execution but often an execution where the guilt of the individual was uncertain, or at least guilt for the alleged crime was in question. The victims of lynching were often perceived as posing a threat to the existing white supremacy order or could be potential threats in the future. In cases where lynching was intended to set an example for others who might challenge social norms, the execution (or murder) was accompanied by acts of mutilation, dismemberment, and public display. Throughout American history, a crucial question has arisen: at what point did lynching shift from its earlier, moralistic vigilantism to its later form of criminalistic social control?[13] It is to be noted that the US Senate passed a historic legislation in December 2018 making lynching a federal crime. The 'Justice for Victims of Lynching Act' received unanimous approval, defining

[11] Konduri, S.H. "*Mob Lynching.*" International Journal of Law Management & Humanities, 5, 2022, pp. 413-[xl].
[12] Le Monde Diplomatique, "*La loi de Lynch.*" (November 2021). Available at: https://www.monde-diplomatique.fr/2021/11/A/63987
[13] The Maryland State Archive: "*Judge Lynch's Court Overview*" (Legacy of Slavery in Maryland). Available at: < http://slavery.msa.maryland.gov/html/casestudies/lynch_overview.html>

lynching as a federal hate crime when bodily harm is inflicted on a person based on their actual or perceived race, colour, religion, or national origin.[14]

20. It is with the above in mind that the term "mob justice" has been chosen to describe the violence of a mob against individuals. The violence may range from simple assault to killing of the individual, and not necessarily always ending up in the latter case. Also, the term "lynching" has been primarily described as a hate crime as discussed above. While with the term "mob justice" it englobes a group of persons using violence against individuals in order to attain a certain moral justice.

[14] S.3178 - *Justice for Victims of Lynching Act of 2018.* 115th Congress (2017-2018). https://www.congress.gov/bill/115thcongress/senate-bill/3178/text

B. UNDERSTANDING THE PSYCHOLOGY OF A MOB

21. The Greek tragedies repeatedly emphasise the idea that some people are bound to avenge others, a fatalistic notion that drove characters to madness, as seen in both ancient Greek plays, and Shakespeare's *Hamlet*, centuries later. Despite efforts by leaders and great persons from various cultures throughout history to control the human desire for revenge, it appears that civilisation has not made significant advancements in this regard. For instance, the American Revolution of 1776 began with hostilities stemming from a mob in Boston. Every now and then, in different parts of the world, people have called forth again and again that one original sin – the sweet vengeance without due process of law.[15]

22. The true purpose of the law lies in deterring vengeance, not endorsing it. Just as the philosopher Francis Bacon wisely proclaimed, "*Revenge is a kind of wild justice, which the more man's nature runs to, the more ought law to weed it out.*" This untamed aspect of revenge is finely encapsulated in the well-known word "*outrage*" - a raging force uncontrollable, bursting beyond all limits. Concerns regarding the detrimental impact of vengeance on individuals can be extended to society as a whole. A community fixated on revenge cannot foster a healthy and resilient environment.

23. In 1971, a psychologist named Philip G. Zimbardo conducted a two-week experiment at Stanford University, dividing mentally healthy students into "*guards*" and "*inmates*" to simulate a prison environment on campus. However, the experiment had to be stopped after only six days because the guards began exhibiting sadistic behaviour, physically and mentally abusing the inmates. Zimbardo's initial explanation was that anonymity within a crowd caused individuals to lose their inhibitions and disregard ethical norms, leading them to behave as lawless and cruel animals without restraint or compassion.[16]

24. However, recent studies propose that groups have the ability to influence their members to engage in behaviours they might not display in their everyday lives, and these actions can be either positive or negative with equal likelihood. In his book *Psychologie des*

[15] J. T. Ridgeway, "*Psychology of mobs as an educational factor*" (The Journal of Education, 1904).
[16] B. Simon, "*How Group-Think makes killers*" (Scientific American Mind, 2004).

Foules (Psychology of the Masses) published in 1895, French physician and sociologist Gustave Le Bon argued that when individuals are part of a group, they lose their individual identity and, consequently, their self-control. Instead, they are driven solely by emotions and instincts, acting under the influence of a primal force which he referred to as the "*racial unconscious*".

25. Mark Twain once wrote against mob lynching and stated that "No mob has any sand in the presence of a man known to be splendidly brave. Besides a lynching mob would like to be scattered, for of a certainty there are never ten men in it who would not prefer to be somewhere else and would be, if they but had the courage to go". In other words, he meant that a courageous individual has the ability to disband a mob, as mobs tend to lose their boldness when faced with someone who is known to possess remarkable bravery. It also implies that even in the context of violence by a mob, the members are often not genuinely committed to their actions; many would rather avoid being part of the mob if they had the courage to leave. This underscores the idea that mob behaviour often relies on a lack of individual bravery and a sense of anonymity within the group.[17]

[17] Mark Twain, "*The United State of Lyncherdom*" (The complete essays and satires of Mark Twain).

C. PERTINENCE OF MAURITIAN LEGISLATION REGARDING MOB JUSTICE

26. The issue of mob justice is, unfortunately, present in Mauritius as well. One of the most prevalent examples is violent group attacks by passers-by on the driver of a vehicle after an accident.[18] However, over the years, this has extended to several instances where a mob uses violence against individuals. This vicious practice involves subjecting the alleged wrongdoers to severe harm, or, in more extreme cases, resulting in their death. Occurrences of mob justice in Mauritius are often perceived by the populace today as being quite normal and people tend to encourage such acts.[19]

27. Over the decades in Mauritius, there has been a noticeable trend of individuals resorting to vigilante actions based on suspicion, taking the law into their own hands, and justifying their actions as a form of justice. In other words, people have been resorting to mob justice. It stands in opposition to established legal principles and norms and can be viewed as barbaric violence stemming from abetment, instigation, or intentional assistance, and it goes against the fundamental concepts of natural law, democratic principles, and the inclusive values of pluralism.

28. A fundamental aim of criminal law is to provide solace to both the victims and society, recognising that an offence not only impacts individuals but also resonates throughout the fabric of society. However, it is essential to note that society cannot take justice into its own hands. The laws of Mauritius do not provide for the specific offence of 'mob justice' or 'mob violence'. Nevertheless, it has certain provisions for crimes committed by two or more persons. A crime committed by more than one person would normally either have two or more co-authors or a principal author and accomplices. Accomplices are the ones who are known to aid and abet the commission of the crime.

[18] Razeenah Kurreeman (2022). « *Lynchage : ce qui pousserait les citoyens à prendre la loi entre leurs mains* », L'express. Available online at: https://lexpress.mu/article/416874/lynchage-ce-qui-pousserait-citoyens-prendre-loi-entre-leurs-mains

[19] « *Recrudescence des cas de vol : quand des citoyens se font justice eux-mêmes » Defimedia (2022)* Available online at : https://defimedia.info/recrudescence-des-cas-de-vol-quand-des-citoyens-se-font-justice-eux-memes

29. Consequently, section 45 of the Interpretation and General Clauses Act 1974 provides that "*Every accomplice and any person who attempts to commit an offence shall commit an offence and shall, on conviction, be liable to the penalty provided for the principal or completed offence, as the case may be.*" A similar provision can be found under section 37 of the Criminal Code.[20] Section 38 of the Criminal Code provides for, *inter alia*, instances where one can be said to have helped the commission of a crime and how they would be considered an accomplice to the said crime.[21] It is important to note also section 139 of the Criminal Code, which provides for taking part in an unlawful assembly where '*unlawful assembly*' has been defined as a group of 12 or more persons who are assembled with intent to commit an offence, or are likely to lead or provoke a breach of peace, even though they are assembled for a lawful purpose.[22]

30. In the context of mob justice, it is essential to recognise the delicate balance between the concept of "*arrest by a private person*" and the inherent dangers of vigilante actions. Section 16 of the District and Intermediate Courts (Criminal Jurisdiction) Act grants individuals the authority to effect a citizen's arrest upon witnessing a crime being committed, an attempt at a crime, or the infliction of a dangerous wound. Similarly, Section 17 allows for the immediate apprehension of an individual engaged in acts of larceny, fraud, or malicious property damage that could lead to imprisonment. It should be noted that section 30 (2) of the Criminal Code (Supplementary) Act also provides for arrest of offenders by a private person and stipulates that "*A private person may arrest a rogue and vagabond but shall forthwith deliver him to a police officer.*"

31. However, it is crucial to emphasise that these legal provisions should not be misconstrued as a justification for mob violence. The sections are present to facilitate the responsible intervention of private citizens in maintaining law and order, not to endorse acts of aggression. A person conducting a citizen's arrest should adhere to the principles of lawful apprehension, without resorting to violence. The law does not condone the beating or maltreatment of the arrested individual, nor does it provide an escape route for those

[20] Section 37 of the Criminal Code provides that: "*Except where otherwise provided in any enactment, the accomplices in a crime or misdemeanour shall be punished with the same kind of punishment, or one of the punishments applicable to the crime or misdemeanour, for the time that shall be fixed by the sentence.*"
[21] Section 38 of the Criminal Code under the heading of '*Giving instructions and aiding and abetting*'.
[22] Section 139 of the Criminal Code under the heading of '*Taking part in unlawful assembly*'.

involved in mob violence to exploit the provisions of sections 16 and 17 of the District and Intermediate Courts (Criminal Jurisdiction) Act or section 30(2) of the Criminal Code (Supplementary) Act. Rather, these sections uphold the principles of due process and the rule of law, reinforcing the importance of civilised and respectful conduct even in situations of apprehension.

32. For the formation of a mob, there need not be any prior agreement. Instances in Mauritius reveal numerous reported cases wherein a group of people, sometimes unknown to each other, become subjects of what is termed "*crime de foules*". Each participant in the offence is only prosecuted for their own actions, and the penalties they face are the same as if the offence had been committed by an isolated offender. In the circumstances where someone causes fatal harm during a mob attack, they could be charged with murder or assault with aggravating circumstances as provided by section 228(3) of the Criminal Code, while those who assisted them could be charged with complicity. Should the identity of the individual delivering fatal blows remain undetermined, each participant assumes the role of an accomplice to others involved, thus facing penalties in accordance with the most severe offence, akin to a principal offender. Where prior agreement is established, charges of murder or association of malefactors (as provided by section 188 of the Criminal Code) could also be considered.[23]

33. The courts have dealt with issues of mob justice or mob violence. In *R* v *Hungsraz* (1970) MR 74, the two appellants were previously tried before the Court of Assizes under the charge of "*Inflicting wounds and blows without intention to kill*" and have both been found guilty and were collectively sentenced to 6 years' penal servitude. Both appealed separately but were heard together. On appeal both tried to minimise their guilt, pointing on the other to have landed the fatal blow, when both had actually beaten the deceased. At the trial stage, the Prosecution theorised that it was a 'common purpose' and the jury agreed and ruled in favour of it.[24]

[23] Sabir Kadel, "*Les Différentes déclinaisons de L'Homicide en Droit Mauricien*" (Mauritius Criminal Law Review 2020, Office of the Director of Public Prosecution)
[24] *R* v *Hungsraz* (1970) MR 74.

34. The core principle of the common purpose doctrine is that if two or more individuals agree to commit a crime together or collaborate in its commission, each person can be held accountable for the actions of the others involved. It is a doctrine found in South African common law as well. It is still in use in cases involving mob violence. It will be discussed in detail further hereafter. The common purpose doctrine has its roots in English law and is a derivative of the joint enterprise doctrine.

35. The Appellate court went further by citing a passage from R. Garraud, *Traité Théorique et Pratique du Droit Pénal Français* which, *inter alia*, discusses the concept of criminal participation in the context of offences committed by a mob (*délits commis en réunion*). It explains that individuals cooperating to achieve a shared goal, such as committing a crime like theft or murder, are considered participants in the offence. Even if there is no explicit agreement among them, the common intention to support and assist each other is enough to establish their involvement in the criminal act, which is referred to as "*participation*" with "*complicity*" being a specific aspect of this involvement.[25]

36. The above case law has also been cited in the more recent case of *Isaie L.S.* v *State of Mauritius* (2010) SCJ 332 in which four appellants appealed individually but were heard together, and they raised the issue of co-authorship. The Appellate Court then referred to the case of *Mudhoo & Anor* (1986) SCJ 23 which stated, *inter alia*, for a joint criminal act, there should be a common objective, simultaneous action (*simultanéité d'action*), and mutual assistance (*assistance réciproque*) among the accused. The degree of participation of each accused in the offence is a significant factor.[26]

37. Furthermore, the Appellate Court referred to the case of *Paniapen & Anor* v *The Queen* (1981) MR 254, emphasising that a pre-arranged plan or prior intention is not a prerequisite for establishing a common purpose. It can spontaneously arise, even in the

[25] R. Garraud, *Traité Théorique et Pratique du Droit Pénal Français*, t.3 p.4 :
"*Une situation plus pratique est celle des délits commis en réunion, mais sans entente préalable. La participation criminelle suppose une coopération de force et d'activités en vue d'un résultat commun : des individus se réunissent pour commettre un délit, un vol, un assassinat, un empoisonnement.*
Il y a, la plupart du temps, entre eux, une sorte de convention d'association, ou, s'il est difficile de la dégager, si les coparticipants ont agi sous l'empire d'une inspiration subite, du moins ils ont en l'intention commune de favoriser, par leur propre activité, celle de leurs compagnons. C'est la participation à un même délit, dont la complicité est une modalité."
[26] *Isaie L.S.* v *State of Mauritius* (2010) SCJ 332.

heat of the moment or during the commission of the crime itself. In such instances, all participants would be deemed as co-authors of the offence. The Appellate Court agreed with the two aforementioned cases as well as *Hungsraz (Supra)*, and held that the four appellants were co-authors who acted in concert, for a common purpose, and giving to each other "*assistance réciproque et simultanée*" in the commission of the assault. The decision goes further and adds that even if the appellants were not the ones who dealt the fatal blow which killed the victim, the degree of guilt remains the same in the eyes of the law and all four still stand as co-authors, along with the principal offender.[27]

38. However, in the case of *Mui Wing A. S. W.* v *The State* (2007) SCJ 246, the Appellate Court ruled partly in favour of one Appellant. The latter had been found guilty, along with two other accused parties, on a charge of inflicting wounds and blows upon a person without intention to kill him in breach of section 228(3) of the Criminal Code.[28] One of the grounds of appeal of the Appellant is that the elements of "*simultanéité d'action et d'assistance réciproque*" had not been established concerning the Appellant. The Appellate Court cited an extract from Archbold: Criminal Pleading, Evidence and Practice which provides that "*Where two or more persons embark on a joint enterprise each is liable for the acts done in pursuance of that joint enterprise. That includes liability for unusual consequences if they arise from the execution of the agreed joint enterprise. However, if a participant in the venture goes beyond what has been tacitly agreed as part of the common enterprise the other participants are not liable for the consequences of that unauthorised act. It is for the jury to decide whether what was done was part of the joint enterprise or was or may have been an unauthorised act and therefore outside the scope of the joint enterprise....*" The Appellant had his sentence reduced. Indeed, the Appellate Court quashed his conviction and substituted it with the charge of "*wounds and blows*" under section 230(1) of the Criminal Code. The Appellant went from co-author to an accomplice on his appeal.[29]

[27] *ibid.*
[28] Section 228(3) of the Criminal Code Act 1838 provides that: *"Where the wound or blow inflicted wilfully, but without intention to kill, shall nevertheless cause death, the offender shall be punished by penal servitude for term not exceeding 20 years."*
[29] *Mui Wing A. S. W.* v *The State* (2007) SCJ 246.

39. The more recent case of *The State* v *Henry Didier Jean Louis & Anor* (2023) SCJ 44 shares a similar perspective with the above-mentioned case. In this instance, the Court referred to the cases of *R* v *Wahedally* (1973) MR 103 and *R* v *Deenah* (1973) SCJ 47, emphasising the principle that when multiple offenders are jointly charged as co-authors, the role played by each must be evaluated individually. The acquittal or non-prosecution of some does not prevent the conviction of others, as long as all the elements of the offence are proven against the respective individuals. The Court examined all the facts and circumstances of the case, which included the aggravating factors, personal circumstances of accused parties as well as the mitigating elements such as the guilty plea entered by all the accused parties, and decided to individualise the sentences based on their degree of involvement in the commission of the crime.

40. Based on the above analysis of the current law in Mauritius regarding 'mob justice' or 'mob violence', it can be observed that firstly, there is no actual legal provision that caters for such an offence. Secondly, the courts have had resort to two different avenues. The first being that they relied on doctrines such as 'common purpose' in which each person in a mob can be held accountable for the actions of the others involved. While the second being the court would look at the role played by each person in a mob and would be evaluated individually. It can be observed that there is a divergence in the approaches.

D. MOB JUSTICE IN OTHER JURISDICTIONS

SOUTH AFRICA

41. In 1994, South Africa transitioned into a democratic nation, signifying the conclusion of the prolonged and oppressive apartheid era. Throughout numerous years, the apartheid system enforced racial segregation and state-approved violence, leading to a breakdown of trust between communities and law enforcement.[30] This resulted in a deeply hostile relationship. Despite endeavours to establish more inclusive policing practices, South Africa continues to grapple with significant challenges, including persistent inequality, crime rates, and interpersonal violence.[31]

42. In South Africa, mob justice has become a method used in black townships to handle criminals.[32] It is unquestionably one of the most brutal ways in which a person can be killed. Typically, the victims are stoned to death or subjected to severe assault until they lose consciousness. In some cases, individuals are killed by placing a tyre around their neck and setting them on fire, a practice commonly referred to as "*necklacing*".[33]

43. In numerous cases involving group crimes which often leads to murder, identifying the specific offender responsible for causing the victim's death can be challenging. For instance, when a victim is beaten to death by a mob, it becomes difficult to attribute the fatal blow to a particular individual. Consequently, if the element of causation cannot be proven beyond a reasonable doubt, all the accused individuals might be acquitted. The introduction of the common purpose doctrine aims to address this issue and prevent such injustices by holding all involved parties accountable for their collective criminal actions.[34]

---

[30] Dr. F.C Samuel, Dr. S. Mkhize, K. Majola "*Mob Justice in South Africa: An expression of a failed Criminal Justice System*" (University of Kwazulu-Natal, 2021).
[31] *ibid.*
[32] D Sign '*Resorting to community justice when State policing fails: South Africa*' (Acta Criminologica, 2005).
[33] S. Kings 'Khutsong: '*This is what happens to criminals here*' (Mail&Guardian, 2013) Available at: < https://mg.co.za/article/2013-11-04-gangsters-silenced-in-khutsong/>
[34] *S* v *Mzwempi* 2011 (2) SACR 237 (ECM) at para 45.

44. The introduction of this special doctrine aims to address challenges related to causation in crimes committed by a group of individuals. It intentionally removes the causation requirement in consequence crimes to ensure the conviction of each individual member of the group for murder. The goal is to facilitate the prosecution of each participant involved in such collective criminal acts.[35]

45. The common purpose doctrine finds its roots in English Law and was established and applied in the legal case of *Macklin, Murphy, and others*.[36] It was held by the Court that, it was a principle in law that "if several persons act together in pursuance of a common intent, every act done in the furtherance of such intent by each of them is, in law, done by them all."[37]

46. The common purpose doctrine was brought into South Africa through the Native Territories Penal Code, making it the first legislation in the country to incorporate this legal principle. Section 78 of the Act provides that: "If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been, known to be a probable consequence of the prosecution of such common purpose."[38]

47. *R* v *Garnsworthy* (1923) WLD 17 marked one of the early instances in which the common purpose doctrine was applied in the South African context, and it was articulated in the following manner: "*Where two or more combine in an undertaking or an illegal purpose each of them is liable for anything done by the other or others of the combination in the furtherance of their object if what was done was what they knew or ought to have known, would be a probable result of their endeavouring to achieve their object.*"[39]

---

[35] *S* v *Thebus S* (CCT36/02) [2003] ZACC 12
[36] J Burchell, '*Joint enterprise and common purpose: Perspective in English and South African criminal law*' (South African Journal of Criminal Justice, 1997).
[37] *ibid.*
[38] Native Territories' Penal Code. Available at https://policehumanrightsresources.org/content/uploads/2016/03/South-African-Territory-Penal Code.pdf?x49094
[39] M.M. Boitumelo "Common Purpose: The last hope for the successful prosecution of "mob justice" murder case.

48. The above formulation is considered to have established the basis on which criminal liability can arise from common purpose. Therefore, when the doctrine is used, an accused individual can be convicted of an offence even if there is no direct evidence of a causal link between their actions and the resulting criminal act. Instead, the State must demonstrate that a common purpose existed among the accused person and other members involved in the collective intent.[40]

49. It has to be noted though that merely being present at the scene of the crime does not inherently lead to criminal liability under the doctrine.[41] A crucial differentiation must be made between individuals who are merely present as witnesses to the mob's actions and those actively participating in the commission of the crime. The prosecution bears the responsibility of proving, beyond a reasonable doubt, that each participant possessed the required criminal capacity and intent during the act of association.

50. The case of *S* v *Safatsa and Others* (242/1986) (1987) ZASCA 150, also known as the "*Sharpeville Six case*," remains a significant and notorious landmark case in South Africa where the common purpose by active association was applied. The events surrounding the case were as follows: On September 3, 1984, a large crowd of approximately one hundred people attacked the deputy mayor of the Lekoa town council. They pelted him with stones, dragged him onto the street, doused him with petrol, and set him on fire. The deputy mayor succumbed to the injuries inflicted during the incident and died at the scene. Out of the hundred individuals involved, eight were charged with the murder of the deputy mayor.[42]

[40] *ibid.*
[41] *S* v *Mgedezi and Others* (415/1987) [1988] ZASCA 1359.
[42] M.M. Boitumelo "*Common Purpose: The last hope for the successful prosecution of "mob justice" murder case.* Available at: https://researchspace.ukzn.ac.za/bitstream/handle/10413/15860/Monyela_Boitumelo_Madira_2017.pdf?sequence=1&isAllowed=y

FRANCE

51. In France, mob justice is often characterised as '*violences commises en réunion*' which exists for decades and is often considered the root cause of riots. As reported by the Interior Ministry,[43] 357 incidents relating to gang warfare among young people rose from 288 to 357 in 2020 where 74 gangs have been identified, including 46 in the region of Paris. However, these figures are an underestimation of the incident as the authorities record only the most serious ones while many victims hesitate from filing complaints out of fear of reprisals. '*Violences commises en réunion*' are also spread across social media platforms as they are easier methods to relay threats.

52. Since there was no specific provision for '*violences commises en réunion*' and following an increase of reported incidents, the French authorities have taken initiatives to reinforce its fight against this phenomenon, including strengthening the French laws by defining this act as a serious offence.

53. As such, the French Penal Code was amended to penalise violence committed in groups to a certain extent, for instance, as catered for by Article 222 – 3, subjecting a person to torture or acts of barbarism when it is committed by several persons acting as author or accomplice constitutes an aggravating circumstance and thus is punishable by twenty years of criminal imprisonment. If it is committed in an organized gang or in the usual manner against a minor under the age of fifteen or against a person whose particular vulnerability, due to his age , an illness, an infirmity, a physical or mental deficiency or a state of pregnancy, is apparent or known to its author disability (Article 222-4 of the French Penal Code) or it has resulted in mutilation or permanent disability (Article 222-5 of the French Penal Code), the penalties are increased to thirty years of criminal imprisonment. Furthermore, if the act resulted in the death of the victim without intention to cause it, the offenders are punished with a life imprisonment.

[43] Bahar MAKOOI, « Rixes entre bandes rivales en France : "*Ce sont avant tout des adolescents en souffrance*" » (France 24, 2021) Available online at https://www.france24.com/fr/france/20210302-rixes-entre-bandes-rivales-en-france-ce-sont-avant-tout-des-adolescents-en-souffrance.

54. Similarly, according to Article 221 – 4 of the French Penal Code, if the assault was done with premeditation and is committed by an organised gang (*'bande organisée'*), it is qualified as a murder and the punishment imposed is of a life imprisonment. Article 222-14-1 of the French Penal Code further extends its provision to assault committed by an organised gang or with an ambush on a public official with the use or threat of weapons. However, the punishment for the offence committed under Article 222-14-1 differs according to the consequences borne by the victim, that is, if the offence led to the death of the latter, the punishment is of thirty years' criminal imprisonment or if the offence has resulted in permanent mutilation or infirmity of the latter, the punishment is of twenty years' criminal imprisonment.

55. The more so, if the offence has resulted in total incapacity for work for more than eight days, the punishment is of fifteen years' criminal imprisonment whereas in case, the offence has resulted in incapacity for work of less than or equal to eight days or not resulting in any incapacity for work, the imprisonment is of ten years together with a fine of 150,000 euros. Vide the case *of Cour de Cassation, Criminelle, Chambre Criminelle, 23 mars 2022, 21-82.958*[44], four officers of the national police were attacked by a group of fifteen individuals who threw stones and bottles containing highly inflammable substances in their direction. The Court, in its judgment, had qualified the offence as attempt to murder with aggravating circumstances since it was committed in groups with weapons and there had been concealment of identity. The Court further concluded that *"les faits constituent donc une scène unique de violence, qui doit être appréciée dans son ensemble, sans qu'il soit nécessaire de préciser les faits et gestes de chacun des participants à l'attaque."* In other words, each participant was convicted for the same offence irrespective of their degree of participation.

56. Following the legislation that was passed on 2 March 2010 which aimed at strengthening the fight against group violence and the protection of individuals assigned to public

[44] Cour de Cassation, Criminelle, Chambre Criminelle, 23 mars 2022, 21-82.958. Available online at https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2022/04/21-82.958.pdf.

service missions[45], several amendments were included in the French Penal Code as follows:

(a) A subsection was added under Article 222-14 of the French Penal Code as Article 222-14-2 which harshly penalises *'violences commises en réunion'* and it provides, *inter alia*, that the act of knowingly participating in a group, even if temporarily formed, with the intent to prepare, characterised by one or more material acts, voluntary violence against individuals, or destruction and damage to property is punishable by one year of imprisonment and a fine of €15,000.[46]

(b) Article 222-14-3 of the French Penal Code[47] further extends the provisions laid down in Article 222-14-2 of the Code by including psychological violence and other forms of violence;

(c) The new law also takes into consideration the gravity of the offence, that is, if the *'violences commises en réunion'* has resulted in an incapacity for work for more than eight days, it is punishable by five years' imprisonment and a fine of 75,000 euros (Article 222-12 of the French Penal Code). Otherwise if the *'violences commises en réunion'* has resulted in an incapacity for work for less than or equal to eight days or not resulting in any incapacity for work is punishable by three years' imprisonment and a fine of 45,000 euros (Article 222-13 of the French Penal Code).

(d) This law also provides for *'violences commises en réunion'* with aggravating circumstances at Article 222-15-1 of the French Penal Code[48] where the offence

[45] Loi No. 2010-201 du 2 mars 2010 renforçant la lutte contre les violences de groupes et la protection des personnes chargées d'une mission de service public.
[46] Article 222-14-2 of the French Penal Code : « *Le fait pour une personne de participer sciemment à un groupement, même formé de façon temporaire, en vue de la préparation, caractérisée par un ou plusieurs faits matériels, de violences volontaires contre les personnes ou de destructions ou dégradations de biens est puni d'un an d'emprisonnement et de 15 000 € d'amende.* »
[47] Article 222-14-3 of the French Penal Code : « *Les violences prévues par les dispositions de la présente section sont réprimées quelle que soit leur nature, y compris s'il s'agit de violences psychologiques.* »
[48] Article 222-14-3 of the French Penal Code: « *Constitue une embuscade le fait d'attendre un certain temps et dans un lieu déterminé un fonctionnaire de la police nationale, un militaire de la gendarmerie, un membre du personnel de l'administration pénitentiaire ou toute autre personne dépositaire de l'autorité publique, ainsi qu'un sapeur-pompier civil ou militaire ou un agent d'un exploitant de réseau de transport public de voyageurs, dans le*

constitutes an ambush and is committed in group with the use or threat of a weapon. The sentence is increased to seven years of imprisonment and a fine of 100,000 euros. The same sentence is applicable under Article 222-12 of the French Penal Code where the offence is committed in two of the aggravating circumstances, for example *'violences commises en réunion'* on a vulnerable person and has resulted in total incapacity for work for more than eight days. Nevertheless, it is good to note that the sentencing is harsher if the *'violences commises en réunion'* has been committed with two other aggravating circumstances such as on a vulnerable person with the use of a weapon. Here, the sentence is increased to ten years' imprisonment and a fine of 150,000 euros; and

(e) Likewise, under Article 222-13 of the French Penal Code, if the offence is committed in two of the aggravating circumstances, for instance, *'violences commises en réunion'* on a vulnerable person and has resulted in incapacity for work of less than or equal to eight days, the sentencing is increased to five years' imprisonment and a fine of 75,000 euros or if the *'violences commises en réunion'* has been committed with two other aggravating circumstances such as on a vulnerable person with the use of a weapon and resulting in incapacity for work of less than or equal to eight days, the sentence is increased to seven years' imprisonment and a fine of 100,000 euros.

57. In France, any public official including official of the national police who commits an act of violence in the course of his duties, constitutes a particularly serious and inexcusable personal fault.[49] Thus, the latter is prosecuted on a personal count and does not benefit functional protection as provided by Article 134-4 of the *Code Général de la*

but, caractérisé par un ou plusieurs faits matériels, de commettre à son encontre, soit à l'occasion de l'exercice de ses fonctions ou de sa mission, soit en raison de sa qualité, que l'auteur connaissait ou ne pouvait ignorer, des violences avec usage ou menace d'une arme.
Constitue également une embuscade le fait d'attendre, dans les mêmes conditions, le conjoint, un ascendant ou un descendant en ligne directe ou toute autre personne vivant habituellement au domicile d'une personne mentionnée au premier alinéa dans le but, caractérisé par un ou plusieurs faits matériels, de commettre à son encontre, en raison des fonctions exercées par cette dernière, des violences avec usage ou menace d'une arme.
L'embuscade est punie de cinq ans d'emprisonnement et de 75 000 euros d'amende.
Lorsque les faits sont commis en réunion, les peines sont portées à sept ans d'emprisonnement et à 100 000 euros d'amende. »

[49] « *À quelle protection a droit un agent public agressé à son travail ?* » (Le site officiel de l'administration française, (2023)) Available at https://www.service-public.fr/particuliers/vosdroits/F32574.

Fonction Publique (CGFP).[50] Therefore, it implies that the public official, committing an act of violence, is prosecuted as any other person under the French Penal Code and is subject to the same penalties as in the case of *Amadou Koumé*, where three officials of the national police of France were jointly convicted for manslaughter and were sentenced to 15 months suspended imprisonment by the *tribunal correctionnel de Paris.*[51]

[50] Article 134-4 du Code Général de la Fonction Publique : « *Lorsque l'agent public fait l'objet de poursuites pénales à raison de faits qui n'ont pas le caractère d'une faute personnelle détachable de l'exercice de ses fonctions, la collectivité publique doit lui accorder sa protection.*
L'agent public entendu en qualité de témoin assisté pour de tels faits bénéficie de cette protection.
La collectivité publique est également tenue de protéger l'agent public qui, à raison de tels faits, est placé en garde à vue ou se voit proposer une mesure de composition pénale. »

[51] Bertrand Guay, « *Trois policiers condamnés à 15 mois de prison après la mort d'Amadou Koumé en 2015* » (France 24, 2019) Available at https://www.france24.com/fr/france/20220920-trois-policiers-condamn%C3%A9s-%C3%A0-15-mois-de-prison-apr%C3%A8s-la-mort-d-amadou-koum%C3%A9-en-2015.

THE UNITED KINGDOM

58. In the United Kingdom, there is no specific provision of the law for crimes committed by a mob. Nevertheless, the courts have dealt with such instances and have often addressed this issue with the doctrine of joint enterprise. '*Joint enterprise*' is a comprehensive phrase employed to characterise a convoluted array of legal principles within the legal systems of England and Wales. These principles delineate the conditions under which two or more individuals can be held accountable for a single criminal act. Professor Sir John Smith accurately characterised this doctrine as '*parasitic*' accessory liability, since the accessory's liability is parasitic upon that of the principal.[52]

59. The concept of Joint Enterprise has been established more concisely in the case of *Chan Wing-Siu* v *R* (1985) A.C, which created the foresight test to assess the intent of all participants to a crime. The foresight test is conducted when two or more agree to commit one crime acting for a common purpose and one deviates from the original crime, committing a second crime. The participants must foresee that the second crime could have been committed by the principal offender, even if he did not want or intend it to happen, and therefore he becomes a subject of secondary liability; deemed responsible for the second crime also.

60. The most concise explanation of the above concept was given in the ruling of *R* v *Powell and English* (1997) UKHL 57, where it was stated that, in such situations, a conviction for murder could be established for a secondary party if they realised that, during the joint enterprise, the primary party might intentionally kill or cause grievous bodily harm.

61. In a landmark decision in the case of *R* v *Jogee and Ruddock* (2016) UKSC 8, the judges asserted that the law had taken a misguided path three decades earlier, as established in *R* v *Chan Wing-Siu* (1985) AC 168. They rectified what they perceived as an erroneous interpretation of secondary liability. The judges clarified that mere foresight alone was inadequate to convict the secondary party of the principal offence. Instead, it was necessary to demonstrate that the secondary party actively assisted or encouraged the

[52] JC Smith, *'Criminal Liability of Accessories: Law and Law Reform'* (1997) 113 (Jul) LQR 453 at 455.

crime and had the intention to do so (although foresight could be considered as evidence of intention). The mere existence of foresight is no longer conclusive of guilt and participants to a group crime will be prosecuted accordingly as principal, joint principal or as an accessory under the Accessories and Abettors Act 1861. [53]

62. The Court's willingness to consider defendants' foresight as evidence of a conditional intention to assist or encourage the principal offence has "tamed" the effect of *Jogee* on previous convictions. As a result, most appeals seeking the application of *Jogee* to past cases have been dismissed. Additionally, the change in the articulation of mens rea due to *Jogee* has implications for future cases, as the same facts that were used to infer mens rea before *Jogee* will still be relevant but with a different expression of the legal principle. The Court of Appeal's decision in *R* v *Anwar and others* (2016) EWCA Crim 551 supports this understanding, confirming that the way the law is now articulated may not necessarily change the outcome of cases with similar circumstances as before *Jogee*.[54]

63. Indeed, after the change in law in *Jogee*, only one conviction has been effectively overturned through appeal. Specifically, Mr. John Crilly's murder conviction was quashed by the Court of Appeal (*R* v *Crilly (John Anthony)* (2018) EWCA Crim 168.). The low success rate in appealing convictions can be explained in the ruling in *R* v *Johnson and others* (2017) 1 Cr App R 12., where the Court of Appeal stated that prospective applicants must demonstrate a '*substantial injustice*' to be granted leave for out-of-time appeals.[55]

64. However, the courts have faced difficulties in finding a satisfactory resolution to the tension in cases. In *R v Hall*, one of the appeals heard in *R v Johnson and Others*, the Court of Appeal took a broad interpretation of conditional intent. They ruled that the jury could infer conditional intent based on the defendant's foresight that the principal would harm the victim with an intention to cause serious harm. This interpretation of conditional

[53] Hulley, S., Crewe, B. and Wright, S., "*Making sense of "joint enterprise" for murder: Legal legitimacy or instrumental acquiescence?*", (The British Journal of Criminology, 59(6), 2019), pp. 1328–1346.
[54] Carvalho. H. "*Dangerous Patterns: Joint Enterprise and the Culture of Criminal Law*" (Social & Legal Studies, Volume 32, Issue 3, June 2023) pp 335-355.
[55] Grigg, E. "*Joint enterprise liability: recent developments and judicial responses*" (Journal of Criminal Law, 83(2), 2019) pp. 128-135.

intent bears a strong resemblance to foreseeing crime B and deciding to commit crime A. In essence, the Court of Appeal's approach in *Hall* does not seem significantly different from the original doctrine of joint enterprise liability.[56]

65. On the other hand, the more recent appeal of *Crilly* does not mention conditional intent at all. This is because intent, even if contingent upon certain events, still necessitates proof of intent itself, which under the current law involves purpose or foresight that the outcome is highly likely. Despite both *Crilly* and *Hall* still being valid precedents, it remains uncertain which approach the courts will ultimately adopt and how much they will deviate from the previous threshold established by the old law.[57]

[56] *ibid.*
[57] *ibid.*

NEW ZEALAND

66. Although the issue of 'mob justice' is uncommon in New Zealand, yet gangs are surprisingly prevalent in New Zealand, despite the country being rated as the second most peaceful in the world.[58] Nevertheless, New Zealand is recognised for having one of the highest rates of gang activity on a global scale.[59]

67. Gang-related offences are on the rise, as indicated by anecdotal accounts reporting a surge in gang violence throughout New Zealand. The country's Police Minister has also confirmed this increase. Adding to the concern is the observation that gang involvement in criminal activities in New Zealand has become more extensive and sophisticated.[60]

68. However, there are provisions in the New Zealand law which deal with group violence. For instance, section 66 of the Crimes Act deals with parties involved in offences and serves as a counterpart to the English law of secondary liability. Section 66 provides as follows:

"(1) Every one is a party to and guilty of an offence who—

(a) actually, commits the offence; or

(b) does or omits an act for the purpose of aiding any person to commit the offence; or

(c) abets any person in the commission of the offence; or

(d) incites, counsels, or procures any person to commit the offence.

(2) Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose."

---

[58] Institute for Economics and Peace, 2019.
[59] Breetzke, G. D., Curtis-Ham, S., Gilbert, J., & Tibby, C., "*Gang Membership and Gang Crime in New Zealand: A National Study Identifying Spatial Risk Factors*" (Criminal Justice and Behavior, 49(8), 2022) pp. 1154–1172.
[60] *ibid.*

69. Section 66 outlines the different ways in which an individual can be held accountable as a party to an offence. Adams on Criminal Law divides the main provision in section 66(1) into two distinct categories. Firstly, under section 66(1)(a), a person is considered a party to and found guilty of an offence if they directly commit the crime (referred to as the principal party). Secondly, under section 66(1)(b)-(d), a person is regarded as a party if they aid or encourage the individual who commits the offence (often referred to as a secondary party).[61]

70. Subsection (2) offers an additional basis for liability, specifically addressing situations that differ from those described in section 66(1)(b)-(d). Adams on Criminal Law highlights that "section 66(1)(b) - (d) deals with offences that are intended, where liability arises when one person deliberately aids, encourages, or instigates another to commit the offence." On the other hand, section 66(2) primarily applies to offences not intentionally intended by one or more parties involved. It encompasses any offence that, although not the desired outcome, was known by the parties to be a likely consequence of pursuing a common unlawful purpose. Another essential point to note about section 66 is the dependent nature of secondary liability. "A person cannot be held guilty under section 66(1)(b) - (d) as a secondary party unless it is proven that another individual actually committed the offence as outlined in section 66(1)(a)."[62]

71. A person may be deemed accountable under section 66(2) for a crime they neither intended nor assisted in because they have become part of a criminal endeavour with others. Due to the hazardous nature of such groups, the law considers them collectively responsible for the foreseeable actions of the group. Both these justifications have been firmly established in common law for a significant period. Basically, section 66(2) is similar to the doctrine of Joint Enterprise as found in the UK.

72. Furthermore, the New Zealand Court of Appeal highlighted the distinction between sections 66(1) and (2) in *Bouavong* v *The Queen* (2014) 3 NZCA 484. According to section 66(1), the accused must actively aid or encourage the specific offence they are

[61] Bruce Robertson (ed) Adams on Criminal Law (looseleaf ed, Brookers).
[62] *ibid.*

being held accountable for. On the other hand, under section 66(2), the accused is not required to provide any assistance or encouragement and might even potentially discourage incidental offences that take place. Moreover, while liability established on aiding and abetting demands the most culpable form of mens rea, namely knowledge and intention, the mens rea standard for the common purpose doctrine is only subjective foresight of the likely risk of an incidental crime taking place as stated in *R* v *Renata* (1992) 2 NZLR 346, 349.

73. Similar to South Africa, the doctrine of common purpose liability is also present in New Zealand. In the case of *Ahsin* (2014) NZSC 153, the majority of the Supreme Court simply mentioned the requirement to establish that there existed a mutual understanding or agreement to carry out an unlawful act. Furthermore, the individuals accused of being involved in that agreement had all agreed to support and participate with one another to achieve their shared unlawful objective.[63]

74. Determining the common purpose is typically a matter of inference. For instance, in the case of *Edmonds* v *The Queen* (2012) 2 NZLR 445, the court acknowledged that sometimes the only evidence of a shared common purpose might be the possession of a weapon or knowledge about it by a party. Alternatively, the court proposed that the common purpose could be evaluated based on the intended results the defendants sought to achieve, leading to the inference that the objective was to cause serious, potentially life-threatening violence in any convenient manner. In such a scenario, an expectation that injury would be inflicted through kicks to the head could result in liability for an injury caused by a weapon possessed by one member of the group, even if the defendant was unaware of its existence. The New Zealand Supreme Court also established that it is not legally necessary for the secondary party to foresee the precise weapon used by the principal or even a weapon of similar lethality to be held liable as a secondary party for its use.[64]

[63] *Ahsin* v *The Queen* [2014] NZSC 153. The words used in section 66(2) are '*where two or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein*'.
[64] *Edmonds* v *The Queen* [2012] 2 NZLR 445.

75. In essence, under section 66(2), it is essential for the accused to have subjectively foreseen, as a likely outcome of pursuing the common purpose, the occurrence of the incidental crime. The prosecution must demonstrate that the accused willingly embraced the common purpose with full awareness of the significant possibility of any incidental offending.[65]

[65] Tolmie J. and Gledhill K, "*Common Purpose and Conspiracy Liability in New Zealand: Criminality by Association?*" (Contemporary Issues in Criminal Law, Vol. 34, No 2 (2016)) Available at: < https://journals.latrobe.edu.au/index.php/law-in-context/article/view/40/86#:~:text=to%20the%20agreement).-,Common%20Purpose%20Party%20Liability,with%20the%20offence%20being%20committed.>

E. ANALYSIS AND RECOMMENDATIONS

76. Mob justice is a worldwide phenomenon. It stems from vengeance and not justice. It is a vile act that violates the human rights of the accused. 'Mob justice' or 'mob violence' is a crime that affects the entire society, involving a complex interplay of interests among the victim, accused, and the society through State authority. The existing laws in Mauritius are inadequate to effectively address and prevent this tragic occurrence which is on the rise. Thus, a more targeted and specific legislation dedicated to dealing with this issue is necessary.

77. The above-mentioned four jurisdictions have different approaches to the issue of mob justice. However, their approaches are based on the degree of violence by a mob. For instance, in South Africa, it can be observed that mob justice is very much so present in its society and in most cases, it results either in serious injury sustained or the death of the person. The common purpose doctrine plays a crucial role in eliminating crimes committed during a collective illegal undertaking and in reducing the prevalence of violent offences in the South African society. The doctrine waives the causation component in special cases involving crimes committed by a group of persons. By doing so, it does not encroach the accused's rights to be presumed innocent until proven guilty nor does it place the onus of proof on the accused, it is the State's duty to prove beyond reasonable doubt the accused's guilt.[66]

78. The UK has a similar approach as they rely on the doctrine of joint enterprise. The doctrine is a legal principle in criminal law that permits the conviction of multiple defendants for a crime if they were all engaged in the same criminal activity, regardless of whether only one of them committed the actual act that resulted in the crime. However, the future of the doctrine seems uncertain as there is still some ambiguity concerning '*intention*' and '*foreseeability*'.

79. France, on the other hand, criminalises each aspect of violence of a mob in their Penal Code. Indeed, they have taken violence committed by mob as alarming and legislated

[66] *S* v *Thebus S* (CCT36/02) [2003] ZACC 12.

every aspect of it. And finally, New Zealand, has legislation in place to deal with issues of mob violence. The courts also rely on the doctrine of common purpose to further deal with the issue of violence by group.

80. It can further be observed that the difference between the approaches adopted in New Zealand and the UK is that in the former country the offence is clearly legislated and with the help of the doctrine of common purpose they have an established element of the offence, while in the UK they have to rely on precedents which contributes to uncertainty.

81. Mauritius faces a similar issue as in the UK as observed above. The decisions of the courts have taken divergent paths. It is with this in mind and the rising issue of mob justice, that the Law Reform Commission is of the opinion that the Mauritian Criminal Code could be amended to criminalise the offence of '*mob justice*'.

82. Therefore, the Law Reform Commission proposes that the Criminal Code be amended for the purposes of including acts committed by a mob as a serious offence and consequently, imposing a harsher sentence on people committing those acts. Accordingly, a new section 223A could be inserted titled '*Violence by mob*', another section 223B could be introduced with the title '*Violence by mob with aggravating circumstances*', and finally section 223C could be added with title '*Provocation or Apologia for violence by mob*'.

83. In this context, the Commission has prepared a draft amendment Bill to the Criminal Code which is attached in this Issue Paper as "ANNEXE".

CONCLUSION

84. With the proliferation of mob justice affecting the entire global community, the UN Secretary-General noted in 2009 that nations bear the responsibility to uphold and safeguard the right to life. This entails refraining from infringing upon this right and implementing essential legislative, judicial, administrative, educational, and other measures to ensure its protection within their respective jurisdictions.[67]

85. "*The law is reason, free from passion*", Aristotle once remarked, emphasising the necessity of dispassionate adjudication. Yet, in the face of mob justice, the existing Mauritian legal framework appears ill-equipped to respond to these emotionally charged, collective transgressions.

86. The act of mob justice sustains a pattern of aggression, cultivates an atmosphere of apprehension, and disregards individual responsibility for acts of violence carried out under the guise of seeking justice. Many people have the misconception that criminals do not have rights. However, in truth, all individuals possess inherent rights due to their human status, and every individual has a duty to respect the rights of others.

87. It is, therefore, important to protect the fundamental rights of every citizen. The proposed legislation amendment as suggested above would be a step in that direction. There is also the fact that having recourse to mob justice is no justice at all, it is mere revenge which is acted upon by a group of persons which should be criminalised and this can only be achieved by amending the Criminal Code as stated above.

88. Mob justice, as a manifestation of collective disillusionment with the legal system, represents a profound challenge to the principles of justice, fairness, and the rule of law. The proposed reforms within the Mauritian legal context seek to establish clear legal parameters to address this issue, aligning with universal principles of human rights and the integrity of the legal process.

---

[67] Global Centre for the Responsibility to Protect, "*Implementing the responsibility to protect*" (2009). Available at: < https://www.globalr2p.org/resources/implementing-the-responsibility-to-protect-2009/>

89. The robustness of any legal system lies in its ability to adapt and respond to evolving societal needs and challenges. Through thoughtful consideration, rigorous analysis, and careful crafting of the law, Mauritius can affirm its commitment to justice and the principles of democratic governance. By addressing the issue of mob justice with both legal precision and a compassionate understanding of its underlying causes, the proposed reforms stand as a testament to the rule of law's enduring strength and adaptability.

90. The proposed legal reforms stand as a beacon, illuminating the path towards a more just, compassionate, and lawful society. In criminalising mob justice, Mauritius reaffirms its dedication to the principles of justice and humanity that undergird the very fabric of our legal and social existence.

ANNEXE

THE CRIMINAL CODE (AMENDMENT) BILL

(No. ..... of 2023)

Explanatory Memorandum

The object of this Bill is to amend the Criminal Code in order to recognise the act of mob violence as a serious offence and thereby impose harsher punishment so that to uphold the concept of rule of law, constitutional rights of individuals and to ensure their protection. The Bill further provides for matters connected and incidental thereto.

.....

Minister of .....

..... 2023

THE CRIMINAL CODE (AMENDMENT) BILL

(No. ..... of 2023)

ARRANGEMENTS OF SECTIONS

Section

A BILL

To amend the Criminal Code Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Criminal Code (Amendment) Act 2023.

2. Interpretation

In this Act –

"principal Act" means the Criminal Code.

3. New Section 223A inserted in the Principal Act

The principal Act is amended by inserting, after section 223, the following new section:

223A. Violence by Mob

(1) Toutes violences commises en foule dans le but d'infliger une punition extrajudiciaire à une personne pour des faits vrais ou supposés seront punies d'une peine de servitude pénale n'excédant pas quinze ans et d'une amende n'excédant pas 150,000 roupies.	(1) Any acts of violence committed by a mob with the aim of inflicting extrajudicial punishment to a person for true or supposed facts shall be punished by penal servitude not exceeding fifteen years and a fine not exceeding 150,000 rupees.
(2) Si les violences prévues à l'alinéa (1) consistent en des violences sexuelles, les coupables seront punies d'une peine de servitude pénale n'excédant pas trente ans.	(2) Where the acts of violence specified in subsection (1) consist of sexual violence, the accused shall be punished by penal servitude not exceeding thirty years.
(3) Si les violences à l'alinéa (1) commises volontairement mais sans intention de donner la mort, l'ont pourtant occasionnée, elles seront punies d'une peine de servitude pénale n'excédant pas trente-cinq ans.	(3) Where the acts of violence specified in subsection (1) wilfully committed but without intention to kill, shall nevertheless cause death, they shall be punished by penal servitude not exceeding thirty-five years.
(4) Aux fins de la présente Section, une foule consiste en un groupe non-autorisé ou mal-organisé de deux individus ou plus, facilement influencé ou conduit par une passion effrénée afin d'infliger une punition extrajudiciaire, qu'il soit spontané ou planifié, à une personne ou à un groupe de personnes pour faire respecter des normes or préjugés perçus comme légaux, sociétaux, philosophiques ou culturels.	(4) For the purposes of this Section, a mob consists of an unauthorised or ill-organised group of two or more individuals, easily swayed or driven by unrestrained passion to inflict extrajudicial punishment, whether spontaneous or planned, upon a person or group of persons to enforce any perceived legal, societal, philosophical and cultural norms or prejudices.

4. New Section 223B inserted in the Principal Act

The principal Act is amended by inserting, after section 223A, the following new section:

223B. Violence by Mob with aggravating circumstances

(1) Lorsque les infractions exprimées à la section 223A sont commises dans les circonstances suivantes, elles seront punies d'une peine de servitude pénale n'excédant pas quarante-cinq ans et d'une amende n'excédant pas 350,000 roupies.	(1) Where the offences specified in section 223A are committed in the following circumstances, they shall be punished by penal servitude not exceeding forty-five years and a fine not exceeding 350,000 rupees.
(a) Sur un mineur; (b) Sur une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, est apparente ou connue de la foule; (c) Avec usage ou menace d'une arme offensive; (d) Avec une substance corrosive; (e) en état d'ivresse ou sous l'influence de la drogue ou d'autres produits stupéfiants; (f) en dissimulant volontairement en tout ou partie de leurs visages afin de ne pas être identifiés; (g) avec guet-apens; ou (h) avec préméditation;	(a) On a minor; (b) On a person whose particular vulnerability, due to age, illness, infirmity, physical or psychological deficiency, or pregnancy, is apparent or known to the mob; (c) With the use or under threat of an offensive weapon; (d) With corrosive substance; (e) under the influence of alcohol or drugs or other intoxicating products; (f) By voluntarily concealing all or part of their faces so as not to be identified; (g) With lying in wait; or (h) With premeditation.
(2) Lorsque les infractions sont commises dans deux ou plus des circonstances prévues à l'alinéa (1), elles seront punies d'une peine de servitude pénale n'excédant pas soixante ans et	(2) Where the offences are committed in two or more of the circumstances specified in subsection (1), they shall be punished by penal servitude not exceeding sixty years and a fine not exceeding 500,000 rupees.

d'une amende n'excédant pas 500,000 roupies.	

5. New Section 223C inserted in the Principal Act

The principal Act is amended by inserting, after section 232B, the following new section:

223C. Provocation or Apologia for Violence by Mob

(1) Le fait de provoquer directement à des actes commis en foule ou de faire publiquement l'apologie de ces actes sera puni d'une peine d'emprisonnement n'excédant pas sept ans et d'une amende n'excédant pas 100,000 roupies	(1) The act of directly provoking violence by mob or publicly doing apologia of such act shall be punished by imprisonment for a term not exceeding seven years and a fine not exceeding 100,000 rupees.
(2) Lorsque l'infraction définie à l'alinéa (1) est commise en utilisant un équipement de télécommunication ou un service d'information et de communication ou un service de télécommunication ou des technologies de l'information et de la communication au public en ligne, elle sera punie d'une peine d'emprisonnement n'excédant pas dix ans et d'une amende n'excédant pas 150,000 roupies.	(2) Where the offence defined in subsection (1) is committed on a social platform through the use of telecommunication equipment, an information and communication service, a telecommunication service or information and communication technologies, it shall be punished by imprisonment for a term not exceeding ten years and a fine not exceeding 150,000 rupees.

6. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.