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MOB JUSTICE IN WEST AFRICA: THE ENFORCEMENT OF THE SO-CALLED “ARTICLE 320” IN MALI

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Abstract:-

This article deals with the lynching culture which has been developing in Mali since the 1991 democratic revolution. The phenomenon is growing continuously with the deepening social crises and the serious malfunctioning of the police and the judiciary. With the sense of justice it conveys, the application of the so-called article 320 is believed to be more effective in the fight against criminality than is any other institutional framework, despite the fact that it is being denounced somewhat by some citizens.

Key words:- “article 320”, mob killing, justice weakness, and impunity.

1. INTRODUCTION

Mali is a large West African country covering 1,240,000 square kilometers of land. It has an estimated population of 15.3 million and is considered to be a poor country. Since 2012 it has been experiencing a political and military crisis and destabilization in its northern part due to a rebellion, jihadist fighters and drug traffickers. Over 60% of the population of Mali consists of young people under 25 years of age. The population of the capital Bamako is estimated to be over 2.5 million people, most of whom live in cramped informal settlements and does not have access to infrastructure.

The failure of national institutions responsible for the security of individuals and property and the growing feeling of insecurity are considered by most Malians as key factors in the explosion of extrajudicial killings of those suspected of theft and other offences in Mali.

Following the 1991 Malian revolution that led to the fall of the military regime, and during the troubled period that followed, the public took charge of their own security. Steps taken included the creation of vigilante groups in some slum districts in large cities, and especially the immediate killing of anyone suspected of theft and caught amid public clamor.

The most usual modus operandi gave its name to the phenomenon: "Article 320" meaning the price of a liter of gasoline (300 francs CFA or 60 cent) and a box of matches (20 francs CFA or less than 1 cent) in 1991. The participants doused suspect in petrol before striking the match. By extension, this appellation is now given to all executions or execution attempts carried out through stoning by the crowd, and through drowning or any other means.

This way of executing of suspects recently resurfaced and intensified particularly in connection with the increase in the number of thieves of "Jakarta", a motorcycle popular among the youths in Mali since mid-2000. Thus, during the last five years dozens of people were brutally killed by mobs. For some Malians dogged by poverty and exasperated by corruption and bad governance of the police and judicial institutions, these brutal killings seem to be the only response to the widespread impunity of recent years. Daily press and police reports constantly call us to action against cases of this kind of killing.

In this paper, we analyze the legal, security and sociological implications of these killings.

Methodological approach: This study was carried out collecting data in 15 Bamako police stations. We interviewed local police officers who work on mob killing cases. We met also families of people "mistakenly" killed by mob. We conducted interviews on the issue with young people in neighborhoods of Bamako such as Niamakoro, Lafiabougou, Niarela, Banconi, Daoudabougou from November to December 2017.

2. Mob, a challenge to law and order

The Malian positive law recognizes death penalty but specifically prohibits willful homicide and severely punishes it. The Malian constitution of 1992 proudly proclaims, in Article 1, that "the human person is sacred and inviolable. Everyone has a right to life, liberty, security and physical integrity". The law protects not only human life but also prohibits unlawful physical aggression against anyone.

Article 3 of the constitution went further, stating that "no one shall be subjected to torture or to inhuman, cruel, degrading or humiliating treatment or torture." The barbarism and inhuman and humiliating treatment towards any one are intolerable.

Paragraph 3 of Article 9 of the Malian constitution of February 25th, 1992 establishes the principle of the presumption of innocence. It states that "every defendant is presumed innocent until proven guilty by a relevant court. The practical implementation of this principle is discussed under Provision 01-080 of 20 August 2001 Law on Criminal Procedure in the Republic of Mali.

Thus, under Article 2 of this law "any suspected or accused person is presumed innocent until his guilt has not been established." Extrajudicial executions are specifically prohibited by Malian law. The Malian government is the guarantor of the security of citizens and holds the monopoly of coercion. Any violation of the presumption of innocence is prevented, repaired and punished as is laid down in the law.

Article 201 of the penal code of Mali is more than clear about murder committed by immolation. Paragraph 3 of that article states: "... the murder also carries the death penalty when it has been committed for ritual purposes or speculation or when it has been committed by self-immolation." The enforcement of the notorious "article 320" is naturally concerned here. It must also be emphasized that any murder committed in an organized gang is addressed as first degree murder and assassination. By rejecting the framework established by the Malian positive law, participants to the enforcement of "Article 320" are looking for a new order. They attempt to reverse the social order. As Lamine Ndiaye points out, human societies express the need to break from established social norms. This need appears to be a kind of challenge often presented in an organized and ritualized form.

The order established by the Malian positive law does not give complete satisfaction to a large segment of the population, who tend to apply their own law, their own order. Thus the increase in the number of these actions that challenge the present order is a threat to the institutions. In denouncing the incapacity of institutional justice system that has fallen into an unacceptable disorder, by resorting to so-called vigilante justice, Malian citizens express the need for an order to be created, but by means of an instrument that is in itself a clear expression of disorder. In this same vein, Bakary Camara noted that social inversion is social disorder, either organized or unorganized, that can be temporary or permanent and that can lead to a new or renovated order. The data we collected permit to affirm that the expansion of mob killing has a cyclic character. The key factors of this phenomenon seem to be economic, political or social. The starting point of the phenomenon is considered

to be the March "revolution" of 1991. This revolution is the consequence of a long period of military dictatorship and deep economic crisis in the 1980s.

During the days of riots, the police and the gendarmerie which usually have the burden of maintaining order were quickly overwhelmed.

They have been replaced by the army who fired live bullets at protesters stirring tension. The fall of the regime led to a hunt for security forces who abandoned Bamako to its fate, unprotected. The mob reigned in the streets imposing their own laws and creating absolute chaos. The dignitaries of the deposed regime were hunted down. The bloodiest episode that is known is the assassination of the Minister of Education by the mob when he was trying to flee from Bamako. After murdering him, the frenzied mob mutilated his corpse and walked the streets with it as a trophy.

A long period after security forces vanished from urban areas, insecurity continued to reign everywhere. Just one cry: "stop thief!" and the immediate reaction would be to seek fuel and fire and hunt the person indicated.

During this so-called democratic period from 1992 to early 2012, the phenomenon had experienced a decline. Mob justice is a phenomenon that intensifies during times of crisis and rupture in Mali. Born at the height of the 1991 revolution, it remained marginal for a long time before resurfacing with force from the current political and security crisis in Mali. It can be described as a secondary disorder tending to renovate a disputed order. It can be said that its cultural broth is constituted by any social or political crisis accompanied by serious economic problems. Social tranquility being seriously threatened, the social body adapts reactions often called survival and lying on the fringes of the rules hitherto considered as benchmarks.

"The phenomenon disappeared when the confidence returned between police and members of the public. During this period of confidence, citizens took people accused of robbery or other offenses to the police, who enforced the law. But lately, the practice resurfaced with some regularity.

But since the occupation of the three northern regions of the country and the military coup of 2012, mob killing resurfaced with added vigour. According to police records, no less than 30 persons per year fall victims to the so-called article 320 in Mali. The attempted assassination of the acting president during the transition period, Prof. Dioncounda Traoré in May 21, 2012 inside the Presidential Palace by protesters certainly marked a new stage of mob violence in Mali.

In 2015, the police station of the 4th district of Bamako recorded in the first half (?) four (4) completed cases of lynching and another one in which the victim survived. The other 14 police stations of Bamako have handled at least 2 cases each.

Besides, in 2014, the expansion of mob killing in Bamako has drawn the attention of some organizations of the civil society like Sant'Egidio community or WILDAF/Mali¹ that made statement denouncing the proliferation of that crime.

Police officers we interviewed indicated that victims of «Article 320» are rarely identified or identifiable. They are very often found without identity papers. In general, they do not live in the neighborhoods where they operate and in the places where they are caught and killed. In case they are found with identity documents, these are often carried away by participants to prevent the identification of the person. The authors of these murders act with impunity. To date, the Malian judiciary has no law case on this kind of murders from its criminal courts.

At the level of police investigations, there has been only one known case where the police had managed to conduct investigations leading to the arrest of some people who took part in the enforcement of "Article 320". These people were presented to magistrates but were discharged for lack of sufficient evidence.

In the second case, multiple interventions by traditional authorities and threats of violence against the police station led to the release of the accused and the cessation of the whole procedural action.

However, it should be noted that the enforcement of Article 320 increasingly raises sharp criticism in political circles and in the civil society. This was true for the case which saw a young physical training teacher perish in the hands of an angry mob. He had just spent the night with a young woman he met in a local bar. When the time to leave comes, a dispute erupted between the two people on the price that should be paid.

The customer gave the young woman 500 F CFA (1 USD) but she refused to give him his change. As her client was insisting, she alerted people yelling "Stop thief! Before the young teacher realized what was happening to him, he was badly beaten up. He attempted to escape but was soon caught by a large crowd who beat him to death. In this case, the young woman got arrested instead by the police.

Another case concerned the murder of a 15-year-old young apprentice. A thief of Djakarta bike was chased by the crowd. The thief escaped riding the bike when after a moment he realized that he has run out of petrol. He got off and pushed the bike for a while along the road. He met the young apprentice to whom he entrusted the bike to get the petrol from sellers of gasoline in bottles. While the young apprentice had the bike in his custody, those pursuing the thief arrived. They recognized the stolen bike the apprentice had in his possession. Without further ado they yelled, "stop thief!", pointing fingers at the young apprentice who understood the danger of the situation and tried to explain. They beat him to death before witnesses recognized him as a mere apprentice sent on errand by his boss. The real thief never returned.

¹ NGO whose aim is to promote and reinforce the strategies that link the right to development for the emergence of a culture of exercise and respect for women's rights in Africa. <http://wildafmali.over-blog.com/article-22830365.html>

All these cases show that profile of perpetrators and victims often approaches. They are young people, rather men, coming from the poor neighborhoods and often without school instruction or unemployed and exercising small non-rewarding work. The Jakarta bike that is involved in almost all the cases of 'Article 320' enforcement appears in the early 2000s and became popular among young people. It gives people in outlying districts of Bamako and young students an exceptional freedom of urban mobility. Popular for its strength and low petrol consumption, this bike became quickly the preferred means of transport for many Malians who escape the long wait of "duruduruni" and other "SOTRAMA". The earlier models of the bike presented to Malian customers were sold at 800,000 f CFA (1600 USD). Only some young people from wealthier families or NGO workers could possess one. Very quickly, its popularity has led to the plummeting of prices. A brand-new bike is now available on the markets in Bamako at 275 000 f CFA (550 USD). A booming market, both legal and illegal, has been developing around this motorcycle. Today almost in every family in Bamako Jakarta is present.

This bike becomes progressively the primary target for thieves and other "highway robbers". Big crime syndicates have been formed around the Jakarta bike including both professional and master thieves and highly clever and motivated receivers. There is no shortage of second-hand Jakarta bikes and the black market is booming.

So armed aggression against motorcyclists, often in broad daylight, and removal of Jakarta from homes and bike parks, have become an important component of the Malian criminality.

In impoverished neighborhoods where overcrowding, poverty, unemployment and insecurity are weighing heavily on people, Jakarta bike is often the only wealth of families. In these places, applying the notorious "Article 320" to thieves is a telltale sign of the exasperation of the public and a violent way of protesting against lack of security.

According to those who have been observing the phenomenon, the slogan chanted by mob when killing thieves is "antekorolenfê, fokura!"

3. "Article 320", illustrating the failure of the judicial system in Mali

Mali now has 42 district-court judges with extended powers. These judges preside over courts that are the closest to the populations. The gap between Malians and their justice system is widening year after year. Police authorities and the judiciary are increasingly perceived by Malians as institutions that are plagued by corruption.

This characterization of these important institutions of the Republic resulted from the expansion of the aforementioned insecurity problems and recidivism rate. Many people refuse to go to these institutions for resolving their disputes because of the many cases of time, energy and money lost while gaining any satisfactory outcome. Certainty that the alleged thief will be convicted is almost zero.

Vigilante justice is considered to be more certain, more efficient, without any particular cost related to its implementation. It is also extremely dissuasive. Some insist that collective deterrence and the implementation of article 320 constitute a message sent to whoever failing to preserve the values that the society cherishes.

After lynching, we often hear remarks such as the following, "Malian justice system is too soft with offenders; the sanctions applied against thieves are not enough severe." The population also denounces some kind of complicity between thieves and members of the police and the judiciary.

"You bring a thief caught in the crime scene to the police, they do not say thank you and after some time, you meet that person near your home, challenging or threatening you; this is unacceptable and cannot be tolerated. Some would rather take the law into our own hands"

Some police officers and judges acknowledge the real problems that confront the police and the judiciary in Mali. There is not only malfunctioning in each organ but also a failure in cooperation. The investigative bodies are ill-equipped and are thus ineffective. They fail to gather sufficient evidence for a prosecution to be initiated. It is therefore not surprising that the suspects handed over to police are simply released. The slowness of justice is one of the factors that led to overcrowding in Malian prisons that receive double or even triple their capacity. This creates enormous problems about administering penal institutions. The majority of the prison population are on remand awaiting trial. This situation is an expression of a real problem of access to justice. According to judge Badiaga B «because of the excessively long timeframe of our criminal cases, many judges and public opinion is demanding quick proceedings". Despite textual guarantees such as those provided under the code of criminal procedure of Mali relating to reasonable timeframe, justice is delivered with considerable delay. Because of all these difficulties experienced, the public are getting more and more confident in the conventional justice system. People choose to dispense justice themselves when the opportunity arises. Traditional intermediation mechanisms and transactions even in the most serious cases such as criminal offences are gaining fresh momentum.

"When you go to court, it is at that moment that your real problems begin. You have to be sufficiently prepared to face the bad faith of those in charge of the case. Also, the courts are often remote, you must be in and out there all the time to be able to participate in the various proceedings. You lose time, energy and your modest means. After all this, you are not even sure you will get satisfaction. You'd better fix the problem through other means including mob justice."

In the simplest situations, which naturally involve the rules of the Republic, we observe an unleashing of uncontrollable collective violence. In Mali, everyone has a history of an altercation in the public space or of a traffic accident where curious people and onlookers intervene with comments and judgments; then very quickly convictions fall, voices rise calling for action. This may be the case for an accident where the motorist is disqualified and accused of being drunk or having been on the phone. In such cases, it only takes an unkind word on the part of the person concerned for the situation to worsen. Anyone leaving their house in the morning in an urban traffic may run such a risk of being judged.

The lives of others have little value. We noted that in 1991 Malians have come very close to cannibalism. It must be said that no one is safe from mob violent reaction, including members of the security forces. By way of illustration, one morning in August 2017, around 9 am, a policeman was attacked by a crowd after an altercation with a young man and a lady. As in a sort of catharsis, the crowd who, rightly or wrongly, reproaches the police in general with certain misconduct transforms this situation into a writ of execution. The officer was rescued and transported in a coma to the emergency ward after he used his personal handgun to protect himself.

This is to demonstrate that vigilantes are never far away. It is a real insecurity situation that provides this impetus for immediate recourse to the so-called "Article 320". Even in cases of flagrant lynching, the police are often stopped in their attempt to rescue victims and from bringing the perpetrators to justice. We recently witnessed a riot in a neighbourhood of Bamako, which erupted over the arrest of people who had participated in the lynching of an alleged thief.

In such cases, there is a rapid shift from normal judicial process to a political settlement in order to appease those who are angry, forgetting the lynched victim and the constitutional right to life and physical integrity.

For us, we are witnessing a major and dangerous shift towards settling every litigation through vengeance. This is specifically linked to Mali's current crisis situation and tends in all respects to take over the institutionalization of conflicts. All parties involved in the Malian crisis have this irresistible urge to resolve conflicts through revenge. This concerns above all rebels, jihadist fighters and sometimes the security forces of Mali which are blamed by human rights organizations for indiscriminate violence in their fight against terrorism in the centre and the northern part of the country.

Communities themselves are combatting this logic, especially in central Mali. A feeling of a deficit of justice and bad justice administered by the state is one of the deep roots of the decay of the security fabric in Mali. In the interviews we conducted, dissatisfaction was frequently voiced over the functioning of the police and justice organs. These two bodies were heavily criticized by respondents who consider that they are undermined by injustice and impunity that naturally coexist alongside corruption and other various abuses. It is therefore fair to argue in this context that injustice or lack of justice is the mother of popular arbitrariness.

Some people, by taking part in killings of thieves, express their opposition to a *de facto* abolition of death penalty in Mali. *De jure* death penalty still is a criminal sanction in Mali. The Criminal Code of Mali under Article 4 states that criminal sanctions in Mali are: death; life imprisonment; imprisonment for five to twenty years.

Death penalty is still applied in courts in Mali. However, the last execution of a person sentenced to death dates back to 1980. The Government of Mali has since chosen to impose a moratorium on the implementation of the death sentence. This situation is well accepted by a large proportion of the population who continue to push for a widespread implementation of death penalty for certain categories of offenses which comprise armed robbery or felonious assault. These behavior patterns seem to have been developing quickly in recent years and have become a barometer of insecurity in Mali.

"When a thief is killed by mob in one area, you will never hear again of theft in that area for months. Robberies cease immediately. This is proof that "Article 320" is more effective than conventional justice and it doesn't cost anyone anything".

For some people failing to obtain a real enforcement of the death penalty from the justice system, "Article 320" is a reaction which aims to remind the Malian legislator of the unpopularity of the abolitionist movement which enjoys political support. It is common to hear people commenting with religious justification, cases of murder committed by mob. This way, they talk about Sharia which they consider as a law that is convenient for Malians. Mali is a predominantly Muslim country (90% of the population describe themselves as Muslims). However, it is important to notice that illiteracy, inaccessibility of Malian positive law and religious radicalization of some people are the main reason that make some people believe that the enforcement of Sharia law is legal.

As Ida B. Wells-Barnett rightly stated « It (the lynch law) asserted its sway in defiance of law and in favour of anarchy ». There is a dramatic return to atavistic outbursts of revenge peculiar to humankind.

This so-called Article 320, whose name is such that it confers a certain legitimacy on it, is in fact an unwritten law, which is substituted for death penalty the enforcement of which has not been effective since the 1980s. There is therefore a gap between positive law that seeks to modernize with a hefty dose of humanism and the everyday life of citizens who act outside this institutional right.

The pamphlet of Ida B. Wells is a detailed description of dozens of lynching of black Americans by a crowd of whites under false accusation, without the possibility for victims to seek any protection whatsoever from the judicial system of a country defending the values of democracy.

It is worth noting that some of the difficulties of the Malian justice system relate to its inadequacy from the cultural context of its establishment. It is perceived as a transposition of the French legal system with all its complexity. It is totally foreign

to Malian local cultures. By way of proof, justice is dispensed in one language only, which is French. Although declared an official language, French is spoken by only 10 per cent of the population

Malian justice is presented as the weak link in the reconstruction and reconciliation efforts. Few citizens trust their justice. A perception study conducted by the Netherlands in 2015 revealed that the rate of satisfaction in the functioning of the Malian justice is 26 percent.

To find an answer to this breach of trust between the public and its institutional justice, several international partners of Mali strongly recommend a legal pluralism with a strong rehabilitation of customary justice. However, it should be noted that such a process, if not properly managed, may lead to a shift of the problems of injustice from state level towards that of local authorities with an exacerbation of the otherness.

It is fair to say that Mali's state judicial system is plagued by corruption and suffers from a lack of skills and capacity.

« Think of an American woman in this year of grace, 1892, mingling with a howling mob, and with her own hand applying the torch to the fagots around the body of a Negro condemned to death without a trial, and without judge or jury, as was done only a few weeks ago in the so called civilized state of Arkansas »¹⁵.

As for the legal system in Mali, citizens often complain about its malfunctioning and that of the judicial police and are very suspicious of them.

It is important to note that judges and other players in the legal system are foreign to Malian culture. Just one look at robes that judges are obliged to wear and which is that of the King of France provides sufficient evidence of that. There seems to be a wall separating citizens from their legal authorities. This wall also appears to work and speak for itself, while being used to dominate an elite class

Conclusion

Maliens who strive to enforce “Article 320” are ordinary people. They commit this atrocity as an alternative to the courts of the state. The practice began during the periods of social, economic or political crises. It has roots in the revolts of 1991. Progressively the phenomenon expanded primarily in public places like markets, railway and bus stations before extending to neighborhoods in cities. In recent years its expansion has been linked mainly to Jakarta bike robbery attempts. The reaction of the authorities to this phenomenon has so far been weak and people have the feeling that offenders benefit from their silent complicity.

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