

OPEN AGENDA PUBLIC DOCUMENT

Copy No:

No: 58/2017

Memorandum for Executive Council

SUBJECT

THE VIABILITY OF TRIALS BY JURY ON ST HELENA

Memorandum by The Attorney General

ADVICE SOUGHT

1. Council is asked to consider whether the Attorney General should make a legislation proposal to replace the jury system with a different system and, if so, provide a steer on which proposals they would like to consider

BACKGROUND & CONSIDERATIONS

2. On 10 March 2017 the Chief Justice (CJ) attended an informal meeting of the Legislative Council to answer questions that the Councillors had about trial by jury on St Helena.
3. The invitation to attend the aforementioned meeting was in relation to three issues: [1] the increase in the number of trials by jury and [2] the difficulties with empaneling a jury that did not know the victim or the accused and [3] the reluctance of residents to put their names on the Register of Electors in an effort to avoid being called to jury service and the impact that was having on the number of people who could participate in the election process and fulfil their civic responsibilities.
4. The CJ recognised that there was an issue. He explained the mechanism by which potential jurors are empaneled (called from the Register of Electors) and that indeed the fact that St Helena is a small community means that there are a number of difficulties. The CJ said that the extent to which it is fair or unfair to ask a small community to empanel a jury is a matter for the Governor and Members of Legislative Council (as they make the law and can change the system). He highlighted that the 'right to a fair trial' was enshrined in the Constitution (Section 10), but 'right to trial by jury' in criminal cases is not. A fair trial does not imply a jury.
5. The CJ said that from his previous experience in the Caribbean, he recalled that the jury trials did not lead to many convictions.
6. In 2009 the Attorney General Overseas Territories Conference considered the difficulties of selecting impartial juries in both civil and criminal cases in small OT jurisdictions. A paper concluded that while the overwhelming majority of judges and lawyers support the system of trial by jury, when that jury is not impartial, or not perceived to be impartial, this fatally undermined the system of justice.

OPEN AGENDA PUBLIC DOCUMENT

Partial juries in small territories can arise where:

1. The accused or their family is popular, has a high standing, or has diversified business links in the community;
2. The alleged crime has caused a community reaction either sympathy for the accused or disgust;
3. There are family links, however distant;
4. Jurors interact with the accused during the trial (not uncommon);
5. There is a small pool of potential jurors;
6. There are a number of defendants, thereby increasing the chances of links to friends and family; and
7. The accused is from within the territory or outside it.

The result of an partial jury can be :

1. Fewer convictions and reduced confidence in the police and the judicial system;
2. Prosecutions put forward for 'lesser' offences on the presumption that a conviction is unlikely to be secured for a more serious offence; and
3. High costs, if acquittals become the norm and are contrary to the weight of the evidence.

7. At the time of the discussion in 2009, there had been one jury trial in St Helena in the previous five years. This had resulted in an acquittal. The report notes that 'the resulting acquittal was against the weight of evidence and complainant was subsequently to complain that the verdict was unsurprising given the composition of the jury'.

8. Progress and situation today

Since 2016, an accused can choose between a trial with judge and jury or a trial by a judge sitting alone. This was introduced to try to counter the chances of selecting an impartial jury.

The Crown can make submissions for a trial to be by judge alone even if the accused does not agree. The Chief Justice has the last word on the basis of the facts of the particular case.

Since 2009, where there was one jury trial in the previous years, the numbers have significantly increased. In the last three sittings of the Supreme Court (Nov 2015 to March 2017), there have been eight jury trials. Only one of these resulted in a conviction. All of these cases were sexual offences, including some historical sex abuse cases.

OPEN AGENDA PUBLIC DOCUMENT

9. Proposals

Possible reforms to the jury system are as follows. It would be useful to have a steer about which of these Governor in Council would like to have more research done.

1. Increase the pool of jurors by making it compulsory to register on the electoral roll; reducing the numbers of exemptions (by for example allowing police officers etc. to serve on a jury); and including non-citizens;
2. Move entirely to a trial by judge (alone) system;
3. Move entirely to a trial by judge with two lay Magistrates deciding the questions of fact (would require law reform as the Magistrates currently play no role in the Supreme Court).
4. Increase the Magistrate's powers for certain offences;
5. To adopt and adapt the jurat system, which is used in Guernsey (Jurats are members of the community who sit as judges of fact in both civil and criminal cases. This is similar to the current system in the Magistrates' Court where the Lay Magistrates decide on the facts (who they believe) and the law is explained by the Chief Magistrate.) In Guernsey the Jurats are not interpreters of law; that function is undertaken by the presiding Judge, and Jurats must follow the judge's directions. In criminal cases the senior Jurat present, who acts as Chairman of the Jurats' deliberations, reports their decision to the Court. In criminal cases, following a determination of guilt and after hearing a plea of mitigation, the Judge retires with the Jurats, and directs them on issues relevant to sentencing. The Jurats fix the sentence, and the Judge returns to the Court with the Jurats to deliver the sentence and give the reasons for their decision. This system, with certain adaptations, would ensure that those members of the community who are called as Jurats receive training (like the Justices of the Peace do), are remunerated for their time and are able to follow and understand the proceedings.

FINANCIAL IMPLICATIONS

10. None for researching alternatives to the jury system.

ECONOMIC IMPLICATIONS

11. None for researching alternatives to the jury system.

CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES PUBLIC / SOCIAL

12. Not applicable.
13. None as there are no firm plans to replace the jury system

OPEN AGENDA PUBLIC DOCUMENT

IMPACT	with another one, yet.
ENVIRONMENTAL IMPACT	14. None
PREVIOUS CONSULTATION / COMMITTEE INPUT	15. None. But any reforms would require public consultation.
PUBLIC REACTION	16. The public is likely to welcome this work as serving on juries is unpopular.
PUBLICITY	17. Only on the ExCo report.
SUPPORT TO STRATEGIC OBJECTIVES	18. This Bill has the overall effect of indirectly supporting St Helena's Strategic Objectives by amending the laws that govern and enable St Helena to meet these objectives. <i>AB</i>
OPEN /CLOSED AGENDA ITEM Corporate Support Corporate Services	19. Open Agenda.
DATE OF MEMO	12.09.2017