LAW REFORM COMMISSION

Opinion Paper

«Jury System»

[LRC_R&P 128, December 2018]

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About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of—
   (a) a Chairperson, appointed by the Attorney-General;
   (b) a representative of the Judiciary appointed by the Chief Justice;
   (c) the Solicitor-General or his representative;
   (d) the Director of Public Prosecutions or his representative;
   (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
   (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
   (g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
   (h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
   (i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

The Commission may appoint staff on such terms and conditions as it may determine and it may resort to the services of persons with suitable qualifications and experience as consultants to the Commission.
Law Reform Commission

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Executive Summary

Opinion Paper about «Jury System»
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At the request of the Office of the Attorney-General, the Law Reform Commission [LRC], after having set-up an Advisory Panel on the Jury, has reviewed, from a comparative perspective, laws in different jurisdictions pertaining to the Jury system and has explored reform proposals on that subject.
The Commission is of the view that the Jury System should be kept in Mauritius but that it could be enhanced. Thus, the Commission considers a formula should be worked out to compensate the jurors for the time they are serving. The Commission is also of the opinion that there should be two spare jurors, in case one or more of the jurors chosen is no longer able to fulfill his duties. It is also proposed that a rapid test could be included to assess the understanding of the English language by the juror. Moreover, the LRC believes that at the time of empanelling, jurors should be given preliminary directions. Finally, the Commission is of the view that the Electoral list could be used for the preselection of jurors together with a software which could sort out the Electoral List with regard to the age and professions excused from serving as jurors.
REVIEW OF JURY SYSTEM

(I) BACKGROUND TO THE REVIEW

1 The Law Reform Commission has reviewed, at the request of the Attorney-General’s Office, from a comparative perspective the law on Jury system and has considered aspects of the law which could be changed.

The request was made in May 2013 by the then Attorney-General to review the Jury System and report thereon, with its recommendations as to how it can be altered, strengthened or enhanced.

In July 2013, the Commission decided that a comparative study on the operation of Jury System in criminal trials would be carried out and consultation would also be held with relevant stakeholders. The view was also taken that in due course an Advisory Panel could be set up to examine the proposals for reform of the Jury System in Mauritius.

In August 2013, Members took note of a Preliminary Review of the Jury System, from a Comparative Perspective, brought to their attention. Members considered the proposals for reform to the Jury System, which had been formulated by other law reform agencies and could inspire the Commission in its work. Members were of the opinion it would be desirable to have an empirical study on the Jury System in Mauritius and the Commission decided that the assistance of the Mauritius Research Council [MRC] should be sought to carry out a survey on Jury System, before stakeholders are consulted.
2. A request was made to the Executive Director, Mauritius Research Council, to the effect that the Law Reform Commission would appreciate if the Centre for Applied Social Research (CASR) of the MRC could carry out social surveys on:

(a) Public attitudes towards jury trial - How much do members of the public know about the jury system or the way in which a jury functions? How strong is public support for criminal jury trial? Do the public believe that juries are representative of society in terms of ethnicity, culture, age, gender, occupation, socio-economic status, etc.? What are the views of the public about risk of bias by the jury (gender, ethnic or other form of bias)?

(b) Reactions of jurors to the experience of serving on a jury.

In April 2014, Members took note that Dr. A. Suddhoo, Executive Director of MRC, had in a letter dated 27 March 2014 indicated that “an indicative cost for one component, i.e. the nationwide quantitative survey of a representative sample of people to gauge their perceptions of the present jury system would be in the order of Rs 2,000,000 and would require a minimum of 12 months. Additional research components would also entail considerable costs.”

In June 2014 Members considered that, given the prohibitive cost as indicated by MRC, the option of having recourse to candidates from Service to Mauritius Program to carry out the survey could be sought. Request was made - with the support of the Attorney-General’s Office - to Ministry of Finance and Economic Development for Interns to carry out a survey on the Jury System, but no response was obtained from the Ministry.

3. In spite of the difficulty for arranging for an empirical study to be conducted, the Commission decided, in January 2015, to set up, pursuant to section 8 (1) of the Law Reform Commission Act, an Advisory Panel on “Jury System”. The Advisory Panel
would be presided over by a Member and shall consists of persons having specialized knowledge in, or particularly affected by, the matter to be studied and such other Members as the Commission may deem appropriate.

Mr. Nicholas Ohsan-Bellepeau, then Master and Registrar and Judge in Bankruptcy, and Member of the Commission as representative of the Judiciary, was appointed as Chair of the Advisory Panel.

Subsequently, with the appointment in 2016 of a new representative of the Judiciary on the Law Reform Commission, Mr. Patrick Michel Tat Kon Kam Sing, then Deputy Master and Registrar and Judge in Bankruptcy, the Advisory Panel was reconstituted. The Advisory Panel on the Jury System was then chaired by Mr. Kam Sing, then Master & Registrar.

4. The Advisory Panel chaired by Mr. Kam Sing was made up of Mr. P.R. Domingue, CEO of Law Reform Commission, Mr. M. Arnoogum, Senior State Counsel (as representative of the Office of DPP), Mr. Ah Vee Woo Sow Wing, Chief Registrar, Supreme Court, and Mr. D. Oozageer, Judicial Research officer, Supreme Court.

The Advisory Panel had consultations with persons, who could shed light on aspects of its mandate:
- Mr. Y. Nazroo, Secretary of the Bar Council;
- Mr. P. Cuninah, Acting Chief Electoral Officer;
- Mr. W. M. Ayelou, Registrar of Civil Status;
- Ms. D. Veeraragooven, Civil Status Officer;
- Mr. A. Seewoonarain, Chief Court Usher; and
- Mr. G. Naidu, Retired Head Master, who has served as member of jury.
5. The Advisory Panel held six meetings and had discussions, inter alia, on the following issues:

(1) The need to review and update the Jury List and consider payment of an allowance to members of Jury as they are serving the State;
(2) The possibility of extending Jury System to other offenses such as rape cases;
(3) The implications of jury decision without need to provide reason for decision;
(4) The importance of effective time management by Judge when there is a trial by Jury;
(5) The implications of sequestrating Jury when case is heard for weeks;
(6) The grounds for challenging jury; and
(7) The possibility to have spare Jury members to hear cases.

(II) PRELIMINARY REMARKS ON THE JURY SYSTEM

6. The jury system serves a number of important purposes. First, the jury constitutes an excellent fact finder because of its wide pool of experiences and because it operates collectively. Second, the jury acts as the “conscience of the community,” due to its representative character, bringing to bear the broader community’s sense of fairness and understanding.
justice. Third, the jury constitutes the citizen's ultimate protection against the State's potentially oppressive laws and possibly oppressive enforcement of the law. Finally, the jury serves an important educational purpose. By requiring individuals to participate in this important process, the public's understanding of the workings and goals of the justice system is increased, thus enhancing societal trust in the administration of justice. All in all, "cultivating the public nature of trials reduces the social distance between lay citizen and legal domain".

7 Nonetheless, the jury system is not exempt of criticisms. One of these is that "the jury selection is not truly random and therefore juries do not represent an adequate cross-section of the contemporary community. The numerous exemptions, exclusions and peremptory challenges available under the jury selection processes are thought to work against the stated aim".

8 In Mauritius, criminal trials before the Supreme Court are to be held before a Presiding Judge and a jury consisting of 9 persons who are qualified to serve as jurors. Contrarily to the United States for example, but similarly to France, there is no trial by jury in civil cases in Mauritius.

9 In the adversarial legal system, trial by jury is often identified as a touchstone of the democratic administration of justice, providing a check against arbitrary or oppressive

5 S. 42(1) Courts Act.
6 According to the Seventh Amendment, which codifies the right to a jury trial in certain civil cases, and inhibits courts from overturning a jury's findings of fact.
7 The only court that tries by jury is the cour d'assises, in which three professional judges sit together with six or nine jurors. Conviction requires a two-thirds majority, i.e. six or eight votes.
exercise of power by the State. In Mauritius, the history of trials by jury has been rather hectic. After having been abolished by Captain General Decaen it reappeared in the mid-19th century\(^8\) and provided that for criminal cases, a jury of 9 men be constituted whilst for civil cases, the number should only amount to 7. It is to be noted that trial by jury is not guaranteed in our Constitution, contrarily for example to the American Constitution\(^9\).

10 The jury system in Mauritius has not undergone any important changes since women were allowed to serve as jurors.\(^{10}\) Therefore the question arises whether the jury system should be rethought or whether it should continue to exist altogether.\(^{11}\)

11 For these reasons and to answer these questions, the Commission has undertaken a comparative review of how trials by jury are tackled in other jurisdictions (I) before analyzing the present law in Mauritius in relation to that subject (II). Finally, in the light of the study which has been undertaken, proposals for reform are made (III).

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\(^8\) Under Ordinance No. 10 of 1850.

\(^9\) Thus, Section 2 of Article III of the US Constitution provides that “The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.”

\(^{10}\) In 1990, the Jury Act was amended to allow women to have access to trial juries.

\(^{11}\) The jury as we now know it finds its source in 11th century England and the Norman invaders of William the Conqueror in 1066. Originally, the jurors were neighborhood witnesses who passed judgment on the basis of what they themselves knew. The collapse of the medieval society and the growth of the towns changed the role of the jury, which came to be called upon to determine the facts of the case on the basis of evidence presented in court. The availability of the jury in the king’s courts may have been a key factor in centralizing the country’s courts under the king and thus in creating the common law.
(III) COMPARATIVE LEGAL STUDY

(a) Constitution of Jury

UK

12 In the Crown Court, the minimum number of jurors is 9 and the maximum 12 (the majorities allowed are: 11-1, 10-2, 10-1, 9-1), the same applies for the High Court. While for the County Court, the minimum number is 7 and the maximum 8 (the majority needed is 7-1). As to the Coroner’s Court, jurors must be between 7 and 11 and there must be a minority of no more than two.

Legislation: Coroners Act 1988, S.8(2)(a), S.12

USA

13 In the United States, Article III of the U.S. Constitution states that all trials shall be by jury. The right was expanded with the Sixth Amendment to the United States Constitution, which states in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed" and the Seventh Amendment to the United States Constitution, which guarantees a jury trial in civil cases.
14 Some jurisdictions stipulate or allow a jury of six in minor criminal cases. In civil cases the federal courts habitually employ a six-person jury, and many jurisdictions allow verdicts by less-than-unanimous votes. In criminal cases involving serious felonies there are usually 12 jurors. When the required number of jurors cannot agree on a verdict (termed a hung jury), the judge declares a mistrial, which means that the case, unless it is withdrawn, must be tried anew. Hung juries occur with relative infrequency even when unanimity is required. The United States Army court-martial jury also operates under this principle.

15 As to the Grand Jury, which determines whether there is "probable cause" to believe the individual has committed a crime and should be put on trial, it consists of 16 to 23 people.

Legislation: Federal Rules of Civil Procedure › TITLE VI. TRIALS › Rule 48

Case law:
*Williams v. Florida*, 399 U.S. 78 (1970) - the Sixth Amendment does not require a jury to have 12 members.
*Ballew v. Georgia*, 435 U.S. 223 (1978) - the number of jurors could not be reduced below six.
CANADA

16 The jury in criminal cases, like in the USA, comprises 12 jurors\textsuperscript{12}. Jury lists (arrays) are prepared annually from a random selection of names from the county assessment roles or voters’ lists.

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Legislation: Part XX of the Criminal Code of Canada
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IRELAND

17 Each county registrar, using a procedure of random or other non-discriminatory selection, shall draw up a panel of jurors for each court from the register or registers delivered to him (omitting persons whom he knows or believes not to be qualified as jurors).

18 There is no statutory requirement for gender balance on Irish juries. The Law Reform Commission of Ireland considered the matter in the context of rape law but decided against recommending a minimum number of women on juries in rape trials. Statistics for the years 1979 to 1986 show that the changes made in the 1976 Act have increased the representation of women on juries with the percentage of women on juries varying over those years from twenty-three to forty-four percent. The Commission did not find any direct correlation between the gender composition of juries and verdict, and verdicts of not guilty were returned in several cases in which there had been a majority of women jurors.

\textsuperscript{12} https://www.justice.gc.ca/eng/csj-sjc/just/12.html
SCOTLAND

19 In Scotland, criminal trials by jury comprise 15 individuals.\textsuperscript{13} If a juror becomes ill during a trial or is excused for some reason the trial may continue provided a minimum of 12 jurors remains. Cases where juries consisting of fewer than 15 members have deliberated and returned verdicts are not commonplace but neither are they infrequent.

Civil cases have a jury of 12, with a minimum of 10 needed for the trial to continue. It is possible to have a hung jury if it is completely tied after at least three hours’ deliberation.

NEW ZEALAND

20 A jury has 12 jurors. However, more than 12 potential jurors are involved in the selection process. This helps to ensure that the jury represents a cross-section of the community. The jury selection process consists of two ballots: first the pre-trial ballot and then the jury ballot.

\textsuperscript{13} https://www2.gov.scot/Publications/2008/09/17121921/9
NEW SOUTH WALES (AUSTRALIA)

21 The jury consists of 12 persons in New South Wales for a Criminal trial. Up to 15 jurors can be empanelled if a trial is expected to last longer than three months. A civil trial jury is typically comprised of 4 jurors, however, in the Supreme Court, 12 jurors may be ordered.

Legislation: Jury Act 1977, S. 19

FRANCE

22 Jury takes place only at Assizes Court, before a judge who sits together with 6 or 9 jurors.

Legislation: Article 296 Code de procédure pénale

BELGIUM

23 Twelve jurors decide by majority whether the defendant is guilty or not. Jurors are drawn from among the population of citizens over 28 years of age and under 65 living in the province where the Assize Court is held.

Legislation: Article 119 of the Judicial Code
(b) Qualification of Jurors

USA

24 To be legally qualified for jury service,\textsuperscript{14} an individual must:
- be a United States citizen;
- be at least 18 years of age;
- reside primarily in the judicial district for one year;
- be adequately proficient in English to satisfactorily complete the juror qualification form;
- have no disqualifying mental or physical condition;
- not currently be subject to felony charges punishable by imprisonment for more than one year; and
- never have been convicted of a felony (unless civil rights have been legally restored).

CANADA

25 Usually, all Canadian citizens aged between 18 and 65 or 69 who do not suffer mental or physical handicaps that might hamper the performance of their duty and who have not been convicted of an indictable offence are qualified to serve as jurors.

\textbf{Legislation: Section 644(1) of the Criminal Code}

\textsuperscript{14}http://www.uscourts.gov/services-forms/jury-service/juror-qualifications
IRELAND

26 Every citizen aged eighteen years or upwards and under the age of seventy years who is entered in a register of Dáil electors in a jury district shall be qualified and liable to serve as a juror for the trial of all or any issues which are for the time being triable with a jury drawn from that jury district, unless he is for the time being ineligible or disqualified for jury service.

27 According to the Irish Law Commission, fluency in English should be introduced as a requirement for all jurors.

| Legislation: Juries Act, S. 6 |

NEW ZEALAND

28 Every person who is currently registered as an elector in accordance with the Electoral Act 1993 is qualified and liable to serve as a juror upon all juries that may be impanelled for any trial within the jury district in which the person resides.

| Legislation: Juries Act 1981, S. 6 |
NEW SOUTH WALES (AUSTRALIA)

29 Every person who is enrolled as an elector for the Legislative Assembly of New South Wales is qualified and liable to serve as a juror.

Legislation: Parliamentary Electorates and Elections Act 1912

FRANCE

30 Only those citizens of either sex who are over the age of twenty-three, who are able to read and write in French, who enjoy their full political, civil and family rights, and who do not fall within any of the cases of incapacity or incompatibility are qualified for jury service.

Legislation: Article 255 Code de procédure pénale

HONG KONG

31 The criteria for service as a juror are set out in section 4 of the Jury Ordinance. A person is liable to serve as a juror if he: has reached 21 years of age, but not 65 years of age; is a
resident of Hong Kong\textsuperscript{15}; is of sound mind\textsuperscript{16} and not afflicted by blindness, deafness or other disability preventing him from serving as a juror; is of good character; and has a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings.

32 The Law Reform Commission of Hong Kong recommends that the minimum age for jury service should be maintained at 21, but that the upper age limit should be raised from 65 to 70. An individual who has attained 65 years of age should, however, be entitled as of right to exemption from jury service if he makes such an application. It also proposes that potential jurors must have been resident in Hong Kong for a period of three years or more immediately before they are issued with a Notice of Jury Service.

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Legislation: Jury Ordinance, S. 4  \\
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\textsuperscript{15} The requisite length of residence or stay in Hong Kong is not specified. In practice, the Commissioner of Registration or his deputy (or an assistant commissioner of registration) will place the name of any person who satisfies the other criteria (and who is not exempted under section 5 of the Ordinance) on the provisional list of jurors as long as that person is at that time resident in Hong Kong.

\textsuperscript{16} Any person who is eligible for inclusion in the list as a potential juror will be presumed by the Commissioner to be of sound mind, unless there is evidence to the contrary.
(c) Persons ineligible for jury service

USA

33 All US citizens are liable to be selected for jury duty. A person may be exempted:
   - When the juror is ill, or when on account of serious illness in the juror’s family, the
     presence of the juror is required at home;
   - When the juror’s attendance would cause a serious financial loss to the juror or to the
     juror’s business; or
   - When the juror is under an emergency, fairly equivalent to those mentioned in the above
     paragraphs.

CANADA

34 Certain classes of persons (and occasionally their spouses) are exempt, including
members of the Privy Council, provincial Cabinets, the Senate, the House of Commons
and provincial legislatures, lawyers, law students, judges, police, law-enforcement
officers, clergy, doctors, dentists, veterinarians in active practice and employees of some
essential services.

35 Persons normally qualified to serve may be excused on the grounds of illness or if undue
hardship would result.
IRELAND

36 The following persons linked with the administration of justice cannot serve as jurors:

- Persons holding or who have at any time held any judicial office within the meaning of the Courts (Establishment and Constitution) Act 1961 (No. 38);
- Coroners, deputy coroners and persons appointed under section 5 (2) of the Local Authorities (Officers and Employees) Act 1926 (No. 39) to fill the office of coroner temporarily;
- The Attorney General and members of his staff;
- The Director of Public Prosecutions and members of his staff;
- Practising Barristers and Solicitors;
- Solicitors’ apprentices, solicitors’ clerks and other persons employed on work of a legal character in solicitors’ offices;
- Officers attached to a court or to the President of the High Court and officers and other persons employed in any office attached to a court or attached to the President of the High Court;
- Persons employed from time to time in any court for the purpose of taking a record of the proceedings of the court;
- Members of the Garda Síochána;
- Prison officers and other persons employed in any prison, Saint Patrick’s Institution or any place provided under section 2 of the Prisons Act 1970 (No. 11) or in any place in which persons are kept in military custody pursuant to section 2 of the Prisons Act 1972 (No. 7) or in any place specified to be used as a prison under section 3 of the latter Act; chaplains and medical officers of, and members of visiting committees for, any such establishment or place;
- Persons employed in the welfare service of the Department of Justice;
- A person in charge of, or employed in, a forensic science laboratory;
- Members of the Defence Forces:
  - Every member of the Permanent Defence Force, including the Army Nursing Service;
  - Every member of the Reserve Defence Force during any period during which he is in receipt of pay for any service or duty as a member of the Reserve Defence Force;
- A person who because of insufficient capacity to read, deafness or other permanent infirmity is unfit to serve on a jury;
- A person who suffers or has suffered from mental illness or mental disability and on account of that condition either—
  (a) is resident in a hospital or other similar institution, or
  (b) regularly attends for treatment by a medical practitioner.

37 The following persons are Excusable as of Right: Members of either House of the Oireachtas; Members of the Council of State; The Comptroller and Auditor General; The Clerk of Dáil Éireann; The Clerk of Seanad Éireann; A person in Holy Orders; A regular minister of any religious denomination or community; Vowed members of any religious order living in a monastery, convent or other religious community; Persons actually practising their profession and registered (including provisionally or temporarily registered), enrolled or certified under the statutory provisions relating to that profession (Medical practitioners; Dentists; Nurses; Midwives; Veterinary surgeons; Pharmaceutical chemists); A member of the staff of either House of the Oireachtas on a certificate from the Clerk of that House that it would be contrary to the public interest for the member to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed; Heads of Government Departments and Offices and any civil servant on a certificate from the head of his Department or Office that it would be contrary to the public interest for the civil servant to have to serve as a juror because he performs essential and urgent services of
public importance that cannot reasonably be performed by another or postponed; Any civilian employed by the Minister for Defence under section 30 (1) (g) of the Defence Act 1954 (No. 18) on a certificate from the Secretary of the Department of Defence that it would be contrary to the public interest for the civilian to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed; Chief officers of local authorities for the purposes of the Local Government Act 1941 (No. 23), health boards established under the Health Act 1970 (No. 1) and harbour authorities within the meaning of the Harbours Act 1946 (No. 9) and any employee of a local authority, health board or harbour authority on a certificate from its chief officer that it would be contrary to the public interest for the employee to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed; The head or principal teacher of the college of a university, of a school or other educational institution, and any professor, lecturer or member of the teaching staff of any such institution on a certificate from such head or principal teacher that the person concerned performs services in the institution that cannot reasonably be performed by another or postponed; Full-time students at an educational institution; The secretary to the Commissioners of Irish Lights and any person in the employment of the Commissioners on a certificate from the secretary that the person concerned performs services for the Commissioners that cannot reasonably be performed by another or postponed; Masters of vessels, duly licensed pilots and duly licensed aircraft commanders; Persons aged sixty-five years or upwards and under the age of seventy years.

38 According to the Irish Law Commission, the existing blanket excusal from jury service of many professionals and public servants should be replaced by an individualised excusal “for good cause”.

19
NEW ZEALAND

39 The following persons are not qualified to serve on any jury in any court on any occasion:
(a) any one who, at any time, has been sentenced to imprisonment for life or for a term of
3 years or more, or to preventive detention; and
(b) any one who, at any time within the preceding 5 years, has been sentenced to
imprisonment for a term of 3 months or more, or to home detention for a period that is, or
is more than, 3 months.

40 The following persons shall not serve on any jury in any court on any occasion: the
Governor-General; Members of the Executive Council of New Zealand; Members of the
House of Representatives; Judges of the High Court, Masters of the High Court, Judges
of the Employment Court, Judges and Commissioners of the Maori Land Court, District
Court Judges, and Community Magistrates; Visiting Justices under the Corrections Act
2004, and members of the Parole Board; Justices who have agreed to make themselves
available from time to time to exercise the summary jurisdiction of District Courts;
Lawyers within the meaning of the Lawyers and Conveyancers Act 2006; Police Officers
and Traffic officers; An employee of the Public Service who is employed in the Ministry
of Justice or in the Department of Corrections or as an officer of the High Court or of a
District Court; A party to a prison management contract entered into under section 198(1)
of the Corrections Act 2004 or to a security contract entered into under section 166 of the
Corrections Act 2004 or a security officer within the meaning of section 3(1) of the
Corrections Act 2004; and Persons with an intellectual disability.

NEW SOUTH WALES (AUSTRALIA)

41 A person is excluded from jury service for life if the person has been found guilty or
convicted of any of the following offences (wherever committed):
(a) an offence that, if committed in New South Wales, would be punishable with a
maximum penalty of life imprisonment,
(b) an offence that involves a terrorist act within the meaning of the Terrorism (Police
Powers) Act 2002,
(c) an offence under Part 7 (Public justice offences) of the Crimes Act 1900,
(d) a sexual offence within the meaning of section 7 of the Criminal Records Act 1991.

A person is excluded from jury service while serving a sentence of imprisonment (in New
South Wales or elsewhere) for an offence committed when the person was of or above
the age of 18 years.

A person is excluded from jury service:
(a) for 7 years after serving such a sentence or sentences of imprisonment of less than 3
consecutive months, or
(b) for 10 years after serving such a sentence or sentences of imprisonment of 3
consecutive months or more.

42 A person who is an Australian lawyer, whether or not an Australian legal practitioner, is
excluded from jury service.

21
A person who is a paralegal is excluded from jury service during any period in which he or she is employed or engaged in the public sector in the provision of legal services in criminal cases.

A person is also excluded from jury service during any period in which the person is employed or engaged as a member of staff in any of the following bodies, except if the person is employed or engaged as clerical, administrative or support staff:
(a) the Office of the Ombudsman,
(b) the Office of the Director of Public Prosecutions,
(c) the Crown Solicitor’s Office.

Moreover, a person is excluded from jury service during any period in which he or she is employed or engaged in law enforcement or criminal investigation in any of the following bodies, except if the person is employed or engaged on a casual or voluntary basis or as clerical, administrative or support staff:
(a) the NSW Police Force,
(b) the Australian Federal Police,
(c) the NSW Crime Commission,
(d) the Australian Crime Commission,
(e) the Police Integrity Commission,
(f) the Independent Commission Against Corruption.

Legislation: Jury Act 1977, Schedule 1
FRANCE

43 The following persons do not have the capacity to serve as jurors: Persons who have a conviction for a crime or misdemeanour, resulting in a sentence of at least six months' imprisonment; Accused persons, persons in a state of contumacy and persons under a detention or arrest warrant; Civil servants and agents of the State and municipalities who have been dismissed from their office; Legal professionals who have been disbarred, and members of professional bodies who are subject to a final judicial prohibition against exercising their profession; Persons declared bankrupt and who have not been discharged; Persons who have been convicted under article 288 of the present Code of Criminal Procedure, and those prohibited from jury service pursuant to article 288, paragraph 5, of the Code of Criminal Procedure or of article 131-26 of the Criminal Code; and Adults under guardianship orders and those placed in institutions for the mentally ill pursuant to articles L. 326-1 to L. 355 of the Public Health Code.

44 Jury service is incompatible with the following positions: Member of the Government, of Parliament, of the Constitutional Council, of the High Council for the Judiciary and of the Economic and Social Council; Member of the Council of State or of the Public Accounts Court, judge or prosecutor of the judicial courts, member of the administrative courts, judge of the commercial courts, assessor of the paritary court for rural leases, and labour court judge; Secretary general of the Government or of a Ministry, division head of a Ministry, member of the body of district administrators (préfets); Public official attached to police or to the prison administration, and military personnel attached to the gendarmerie, who are on active service; Persons aged over seventy.
A person who does not have his main residence within the district where the seat of the assize court is located are exempt from jury service when they apply for this exemption. In addition, persons invoking any serious reason which the commission recognises as valid may also be exempted from jury service, as well as persons who have served as jurors within the département in the five previous years are excluded or struck off the annual list of jurors and the special list of extra jurors.

Legislation: Code of Criminal Procedure, articles 256 to 258-1

HONG KONG

Those exempted include the following persons: Members of the Executive Council or Legislative Council; Justices of the Peace; Public officers, including judges, Government legal officers, officers in the law enforcement agencies, officers in the Correctional Services Department, etc.; Consuls, vice-consuls, etc.; Barristers and solicitors in actual practice and their clerks; Registered doctors and dentists; Daily newspaper editors, chemists, and members of the clergy; Full-time students; and Members of the crew of ships or aircraft.
(d) Challenges of jury

UK

47 The whole jury panel can be challenged on the grounds of bias from the Court official who selected them. Moreover, according to the *Attorney General’s Guidelines on Exercise by the Crown of its Right of Stand-by*, the prosecution and judge, but not the defence, have the right to prevent a juror from serving by asking them to “stand by”. However, prosecutors are instructed to invoke this right sparingly as the quality of the jury is primarily the responsibility of the court officer. The right should only be invoked in cases of national security or terrorism, in which case the personal authority of the Attorney General is needed, or where a juror is “obviously unsuitable”, and the defence agrees.

[Legislation: Juries Act 1974, S. 12(6)]

CANADA

48 In a criminal trial, the prospective juror goes to the front of the courtroom and faces the accused. At that point, the person is either accepted by each of the lawyers or rejected by one of them. The Crown attorney and defense counsel can reject a limited number of
prospective jurors without giving a reason. The prosecutor and the accused are each allowed: twenty challenges for first-degree murder or high treason; twelve challenges for any offence, except first-degree murder or high treason, where a term of imprisonment exceeding five years is a possible sentence, and four challenges where the accused is charged with a lesser offence.

49 In a civil trial the names of six prospective jurors are randomly drawn and those six people are seated in the jury box. At that point, counsel for the plaintiff and counsel for the defendant are asked if they wish to challenge any of the jurors. If a juror is challenged, he or she leaves the jury box and is replaced by another juror, called randomly from the panel. The judge decides if the panel members who have been challenged return to the general panel or are dismissed from jury duty obligations.

Legislation: Section 634 (2), Criminal Code of Canada

USA

50 In the USA, there is an elaborate screening process known as a “voir dire”, which is conducted by trial counsel at the inception of a trial. The law permits counsel to challenge prospective jurors either for cause (if there is specific probability of bias) or, for a limited number, “peremptorily”, that is without having to give a reason. American trial tradition attaches a great deal of significance to the strategies of juror selection, and in high-profile cases the lawyers’ voir dire examination has sometimes extended for several weeks.

17 https://www.attorneygeneral.jus.gov.on.ca/english/courts/jury/jury_selection_process.php
IRELAND

51 The right of peremptory challenge still exists in the Republic of Ireland, alongside the right to challenge for cause. Indeed, in jury trials in this jurisdiction, both the defence and the prosecution may challenge, just like it is the case in Mauritius, up to seven jurors without cause. In a case involving many co-defendants, each defendant may challenge seven potential jurors without cause, whereas the prosecution may never challenge more than seven jurors notwithstanding the number of co-accused. No explanation whatever need be given for these peremptory challenges. Any number of jurors may subsequently be challenged with cause. Finally, it appears that the right to ask potential jurors to “stand by,” once enjoyed by the Crown, no longer exists in Ireland. Unlike the situation that prevails in the United States, potential jurors in the Republic of Ireland may not be questioned by the parties to the proceedings before challenges are made. Indeed, accused persons and the prosecution are armed with little or no insight into the sympathies and prejudices of potential jurors with which to make the decision to challenge or not. Although any member of the public is entitled to reasonable facilities to inspect a jury panel, and any party to a proceeding is entitled to apply to the county registrar for a copy of the jury panel list free of charge, these lists generally contain only the names and addresses of potential jurors and occasionally their occupations. Consequently, they provide little information for either the accused or the prosecution to decide whether to exercise their rights of challenge.

52 The Law Commission of Ireland questions whether the number of objections to jurors without the need to give any reason for both the prosecution and the defence should be reduced from the existing seven each.
NEW SOUTH WALES

53 Both the prosecutor and the defence counsel can challenge (reject) a juror without giving reasons. They are each allowed a minimum of three challenges.

(e) Warning to Jury/Jury Instructions

UK

54 The Auld report recommended trial judges “fashion factual questions” when summing up a case to the jury. It considered that where appropriate, the judge should ask the jury publicly to answer question and declare a verdict “in accordance with those answers”. This would mean juries could no longer “acquit defendants in defiance of the law or in disregard of the evidence”.

28

SCOTLAND

55 The judge must give the jury such direction as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

Legislation: Criminal Procedure (Scotland) Act 1995, S. 271T

NEW SOUTH WALES (AUSTRALIA)

56 Any direction of law to a jury by a judge or coroner may be given in writing if the judge or coroner considers that it is appropriate to do so.

57 In its Consultation Paper, the Victorian Law Reform Commission proposed that state and territory legislation should provide that a direction must be made to the jury on consent in sexual offence proceedings where it is relevant to a fact in issue. Such directions must be related to the facts in issue and the elements of the offence and expressed in such a way as to aid the comprehension of the jury. Such directions should cover:

(a) the meaning of consent (as defined in the legislation);
(b) the circumstances that vitiate consent, and that if the jury finds beyond reasonable doubt that one of these circumstances exists then the complainant was not consenting;

(c) the fact that the person did not say or do anything to indicate free agreement to a sexual act when the act took place is enough to show that the act took place without that person’s free agreement; and

(d) that the jury is not to regard a person as having freely agreed to a sexual act just because she or he did not protest or physically resist, did not sustain physical injury, or freely agreed to engage in another sexual act (whether or not of the same type) with that person, or a sexual act with another person, on an earlier occasion.

(e) any evidence of that belief; and

(f) whether that belief was reasonable in all the relevant circumstances having regard to (in a case where one of the circumstances that vitiate consent exists) whether the accused was aware that that circumstance existed in relation to the complainant;

(g) whether the accused took any steps to ascertain whether the complainant was consenting or might not be consenting, and if so, the nature of those steps; and

(h) any other relevant matters.

Legislation: Jury Act 1977, S. 55B

58 The Council’s National Committee on Jury Instructions created model jury instructions for criminal cases\textsuperscript{18}. These jury instructions provide a "script" for judges to read when informing juries about the nature of the criminal charge and the issues that are specific to the case. The purpose of the jury instructions is to reduce case dismissals resulting from errors in instructing the jury, making the court system more efficient.

(f) Summoning of Jurors

59 The county Sheriff is responsible for the summoning and attendance of the jury.

NEW ZEALAND

60 Each potential juror is randomly selected from the electoral roll. People who are eligible may be summoned every two years. A jury summons is a letter that tells one to come to court for jury service.

NEW SOUTH WALES (AUSTRALIA)

61 The sheriff must select at random, from the jury roll for each jury district, the number of jurors estimated by the sheriff as required to be summoned for trials or coronial inquests in that jury district.

62 The sheriff may select one or more of that number of jurors at random from a supplementary jury roll for that district, if the sheriff believes that the jury roll for that district is inadequate for any reason. A selection under this section may be made by computer and may be made at any one time or at different times for the purposes of one or more trials or inquests.

Legislation: Jury Act 1977, S. 25

(g) Jury Verdict

UK

63 The different verdicts which can be returned by the jury are: not guilty, guilty, not guilty but guilty of a similar but less serious offence and a special verdict, which pronounces itself on the facts of the case but without drawing the ultimate inference of whether the accused is guilty or not.
64 The UK Law Commission recommends\(^{19}\) to give the jury in homicide trials greater power to reflect in their verdict the extent to which the offender was at fault in killing. The main means by which the jury will be given this power is through the division of general offences of homicide into three tiers (at present there are only two general offences, murder and manslaughter). If the jury did not wish to convict of the highest category offence (first degree murder), they could convict of second degree murder, instead of manslaughter.\(^{20}\) This would entitle the judge to give a more substantial sentence than might be given for manslaughter under the current law.

65 It is also recommended that it should be possible for the jury to acquit of homicide if the defendant proves that he took part in a killing only in response to an imminent threat of death of life-threatening injury ("duress").\(^{21}\)

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\(^{19}\) [Link: http://www.lawcom.gov.uk/project/murder/#related]

\(^{20}\) The partial defences of provocation, diminished responsibility, and failed suicide pact will only reduce first degree murder to second degree murder. They will not reduce second degree murder to manslaughter. The 'murder' label is appropriate because in such cases the killer acted with the fault element for first degree murder.

\(^{21}\) Duress (threats of death or of life-threatening injury to oneself or others) should be an available defence to murder (first and second degree) and attempted murder. The present law denies the defence in murder or attempted murder cases whatever the circumstances. It will be for the defendant to prove that the threat was made, and it will then be a matter for the jury whether the defence should succeed.
CANADA

66 The jury’s verdict must be unanimous and based on evidence presented in court. If, after a reasonable time, there appears to be no hope of a jury reaching agreement (a “hung” jury), the judge may call for a new jury or set the case for retrial. Fewer jurors (usually 6) are required in civil cases, and unanimity is not necessary. In criminal cases, the number of jurors may be reduced to 10 or more because of death or discharge of one or more jurors and the jury will still be able to give a verdict.

SCOTLAND

67 Before a jury can return a verdict of guilty in any case, even where jurors have been excused, at least 8 of the jurors must be satisfied that the guilt of the accused has been established beyond a reasonable doubt.

68 The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court directs a written verdict to be returned. Where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record. The verdict of the jury may be given orally through the foreman of the jury after consultation in the jury box without the necessity for the jury to retire.

22 It is enough that 5 agree.
69 A judge has no power to direct the jury to return a not guilty verdict on any charge on the
ground that no reasonable jury, properly directed on the evidence, could convict on the
charge. Accordingly, no submission based on that ground or any ground of like effect is
to be allowed.

Legislation: Criminal Procedure (Scotland) Act 1995, S. 97 D and S.100

NEW ZEALAND

70 The court may accept a majority verdict in a criminal case if—
(a) the jury, having retired to consider its verdict, has deliberated for at least 4 hours; and
(b) the jurors have not reached a unanimous verdict; and
(c) the foreperson of the jury has stated in open court that there is no probability of the
jury reaching a unanimous verdict; and that the jury has reached a majority verdict; and
(d) the court considers that the jury has had a period of time for deliberation that the court
thinks reasonable, having regard to the nature and complexity of the trial.

71 If the case involves 2 or more charges, or 2 or more persons charged, the court may accept
a majority verdict in relation to 1 or some of the charges or persons charged, in which
case nothing in this section applies to the other charges or the other persons charged.

Legislation: Juries Act 1981, S. 29C
NEW SOUTH WALES

72 A majority verdict\textsuperscript{23} may be returned by a jury in criminal proceedings if:

(a) a unanimous verdict has not been reached after the jurors have deliberated for a period of time (being not less than 8 hours) that the court considers reasonable having regard to the nature and complexity of the criminal proceedings, and

(b) the court is satisfied, after examination on oath of one or more of the jurors, that it is unlikely that the jurors will reach a unanimous verdict after further deliberation.


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Legislation: Jury Act 1977, S. 55F \\
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FRANCE

73 In France, as in Mauritius, no unanimous decision is required for a conviction. Since January 1\textsuperscript{st}, 2012, any decision unfavourable to the accused requires six votes at least on 9 (the majority of jurors is required). Thus, it takes 4 votes out of 9 to acquit the accused or exclude an aggravating circumstance, such as premeditation. Since 1994, the mitigating circumstances are no longer a matter of the judgment deliberated in common. A simple majority is required for the vote on the sentence, except for the maximum sentence that also requires six votes. On appeal, the majority of 6 votes out of 9 is replaced by 8 votes out of 12. In special Assizes court, any decision is taken by a simple majority. The vote is done by secret bulletin.

\textsuperscript{23} "majority verdict" means:
(a) a verdict agreed to by 11 jurors where the jury consists of 12 persons at the time the verdict is returned, or
(b) a verdict agreed to by 10 jurors where the jury consists of 11 persons at the time the verdict is returned.
BELGIUM

74 A tied vote results in “not guilty”; a “7 guilty - 5 not guilty” vote is transferred to the 3 professional judges who can, by unanimity, reverse the majority to “not guilty”.

(h) Offence by Jurors

IRELAND

75 Any person who, having been duly summoned as a juror, fails without reasonable excuse to attend in compliance with the summons or to attend on any day when required by the court shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50. A juror who, having attended in pursuance of a summons, is not available when called upon to serve as a juror, or is unfit for service by reason of drink or drugs, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.
NEW ZEALAND

76 The court may fine a person a sum, not exceeding $1,000, the court thinks fit if that person is summoned to attend and serve as a juror before the court but fails without reasonable excuse to attend for service as required by the summons; or wilfully refuses or neglects to serve when called upon.

77 Before imposing a fine on a person, the court must first inform that person of the default and afford that person a reasonable chance to explain. If a person who is summoned to appear and serve as a juror fails to answer when called, the court may issue a warrant to secure the attendance of that person before the court.

78 The Law Reform Commission of New Zealand came up with a proposal24 pertaining to the secrecy of the jury deliberations. Thus, a provision has been proposed at Section 77 of the Evidence Code which would read as followed: “A person cannot give evidence about the deliberations of a jury concerning the substance of a proceeding except in so far as that evidence tends to establish that a juror has acted in breach of the juror’s duty.” The intention of this section is to maintain the secrecy of jury deliberations, but at the same time allowing evidence to be given if a juror breaches his or her duty as a juror. Evidence about the substance of a jury’s deliberation will be allowed if such evidence cannot be avoided in giving evidence about jury misbehaviour. This section does away with the distinction made in the common law that depends on whether the impropriety occurred within or outside the jury room.

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NEW SOUTH WALES (AUSTRALIA)

79 A person who fails to attend for jury service contravenes this section and is liable to a penalty not exceeding 20 penalty units.\(^{35}\)

(i) Remuneration to jurors

UK

80 Jury Service in England is not remunerated but one can claim for food and drink, travel and loss of earnings. Jury service usually lasts for up to 10 working days but can be longer.

\(^{35}\) In Australian law, a penalty unit (abbreviated as PU) is an amount of money used to compute pecuniary penalties for many breaches of statute law. Fines are calculated by multiplying the value of one penalty unit by the number of penalty units prescribed for the offence. One penalty unit in New South Wales is $110.
USA

81 Federal jurors are paid $40 a day. While the majority of jury trials carry on less than a week, jurors can receive up to $50 a day after serving 10 days on a trial. Jurors also are reimbursed for reasonable transportation expenses and parking fees. Jurors also receive a subsistence allowance covering their meals and lodging if they are required to stay overnight. The employer may continue the salary during all or part of the jury service, but federal law does not require an employer to do so. Nonetheless, the United States Jury Selection and Service Act of 1968 forbids any employer from firing, intimidating, or coercing any permanent employee because of their federal jury service.

IRELAND

82 There is no payment for jury service. Travelling expenses are not allowed. Lunch will be provided on the day or days that the trial is at hearing.

CANADA

83 Employers must give employees time off to attend jury selection and to serve as jurors. Under the Employment Standards Act, a juror is considered to be on unpaid leave for the period of jury duty. Although the employers are not legally obligated to pay employees for lost wages while on jury duty, the employee is considered to be in continuous

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26 Employees of the federal government are paid their regular salary in lieu of this fee.
27 https://www.law.cornell.edu/uscode/text/28/1861
28 https://www.attorneygeneral.jus.gov.on.ca/english/courts/jury/general_jury_duty_info.php
employment for the purposes of calculating annual vacation, termination entitlements, as well as for pensions, medical or other employee benefit plans. The employee is also entitled to all increases in wages and benefits which he or she would have received if not on jury duty. Moreover, the employer may not terminate an employee on jury duty, or change a condition of employment, without the employee’s written consent. As soon as jury duty ends, an employee must be returned to his or her former position or comparable position.

NEW ZEALAND

84 Every juror who attends the court when duly summoned shall be entitled to such fees and expenses by way of compensation as may be prescribed by the jury rules in respect of each day when the juror is required to attend and does attend, including attendance at a view. The jury rules prescribing those fees and expenses may authorise the chief executive, if satisfied in a particular case that it is desirable to do so, to increase a sum otherwise payable under those rules.

| Legislation: Juries Act 1981, S. 30 |

NEW SOUTH WALES (AUSTRALIA)

85 A person is entitled to be paid an amount determined in accordance with the regulations for attendance for jury service at a court or coronial inquest. However, a person is not so
entitled if the person attends for jury service in accordance with the summons and then successfully applies to be excused from attending further for jury service.

**Legislation: Jury Act 1977, S. 72**

(j) **Offences not to be tried before a jury**

**UK**

86 The Domestic Violence, Crime and Victims Act 2004 allow to try defendants accused of domestic violence on sample counts and, on conviction, for the remainder of the counts to be tried by a judge alone.

87 Under Sir Robin Auld's proposals, juries would still try the most serious cases, such as murder, rape and armed robbery. But offences carrying up to two years' imprisonment would instead be heard by a hybrid court led by a District Judge and two Justices of the Peace.

**Legislation: Domestic Violence, Crime and Victims Act 2004, Ss.17–20**

Report: Auld Report
USA

88 The Juries are used in both civil cases, which decide disputes among private citizens, and criminal cases, which decide cases brought by the government alleging that individuals have committed crimes.

89 When the Bill of Rights was added to the Constitution, the right to trial by jury for both criminal and civil cases was included. The Sixth Amendment states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

90 Jury trials in civil cases were guaranteed under the Seventh Amendment of the U.S. Constitution: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

CANADA

91 In criminal cases in Canada, summary and minor indictable offences are tried without jury. Serious offences, e.g., murder, treason, sedition and hijacking, involve trial by jury
in a superior court, even though such charges may be tried without jury with the consent of the accused and the attorney general. With many less serious indictable offences, the accused may elect jury trial. In civil proceedings (proceedings governed by provincial statutes), parties may elect to dispense with the jury with the exception of cases involving libel, slander, seduction, malicious arrest or prosecution and false imprisonment. Even in those cases the jury may be dispensed with if both sides agree, and in highly complicated and technical cases, and in some instances where the assessment of damages is involved, the courts frequently refuse a jury trial.

BELGIUM

92 The participation of laypersons in the criminal process in Belgium is limited to the procedure before the Assize court.

93 The institution of the jury is limited to a certain category of offences, that is supposed to contain the most serious offences, causing most social troubles and disorder on the one hand and that can be considered as involving the fundamental values of a democratic society on the other hand (political offences and offences concerning the freedom of the press). There is actually no personal right for the accused to be tried by a jury in all other criminal cases.
HONG KONG

94 Jury trial is not available for offences designated as summary offences which are usually minor offences. Thus, the most serious offences are tried in the Court of First Instance, and not in an inferior court. These offences that must be tried in the Court of First Instance are listed in Part III of the Second Schedule to the Magistrates Ordinance. The usual characteristics of an offence triable with a jury are that it is an offence of the most serious kind which is prescribed by statute to be heard in the Court of First Instance, or that the likely sentence upon conviction exceeds seven years’ imprisonment, or that it is in the public interest that the case should be tried before a judge and a jury. The Coroners Ordinance (Cap 504) also provides for a death inquest to be held with a jury in specified circumstances. Where a person dies whilst in official custody, a coroner must hold an inquest with a jury.

Legislation: Magistrates Ordinance, Second Schedule
(k) Jury List

IRELAND

95 According to the Law Commission of Ireland, jury panels should be based on the electoral registers for local and European elections, allowing not only Irish citizens but also EU citizens and long-term residents (of 5 years) to be selected for jury service.


CANADA

96 Jury lists (arrays) are prepared annually from a random selection of names from the county assessment roles or voters’ lists.

SCOTLAND

97 In criminal cases, there need to be at least 30 potential jurors present in the court for the balloting of a jury to begin. The names of the potential jurors are written on paper slips and drawn out of a glass bowl in open court by the clerk. The jurors then take the oath collectively, they just swear by “almighty God” without using any religious text, those who prefer to affirm then do so collectively. The pool of potential jurors is chosen purely at random; Scottish courts have set themselves against any form of jury vetting.
FRANCE

98 An annual list of the criminal jury is drafted in the area of jurisdiction of each assize court. This list numbers one thousand eight hundred jurors for the Paris assize court, and one juror per one thousand three hundred inhabitants for the other assize court areas; provided that the number of jurors shall never be lower than two hundred.

99 An order by the Minister of Justice may fix for the annual list of each assize court a number of jurors higher than that resulting from the provisions of the first paragraph, if the number of sessions held each year by the assize court justifies this. The number of jurors for the annual list is distributed in proportion to the official population figures. This distribution is made for each municipality or group of municipalities by a decision made by the préfet in April of each year. In Paris, the distribution between the boroughs is made by a decision of the préfet in the course of the month of June.

100 In each municipality the mayor publicly draws by lot from the electoral list a number of names three times that fixed by the préfet's decision, in order to draw up the preliminary list for the annual list. Persons who will not reach the age of twenty-three in the coming civil year are not retained for the composition of this preliminary list. If the préfet's decision has provided for municipalities to be grouped, the lots are drawn by the mayor of the municipality designated in the préfet's decision. It includes all the electoral lists of the municipalities concerned. For Paris, the drawing of lots is made in each borough by the civil status officer appointed by the mayor.

Legislation: Code of Criminal Procedure, articles 259 to 261
(IV) CURRENT LEGAL FRAMEWORK IN MAURITIUS

(Sec. 42-61 Courts Act + Sec. 10, 11, 101-104, 114, 116, 117, 119-124, 129 Criminal Procedure Act)

(a) Constitution of Jury

101 Criminal trials before the Supreme Court are held before a Presiding Judge and a jury consisting of 9 persons who are qualified to serve as jurors (Subject to section 10 of the Criminal Procedure Act and to any other enactment relating to trials without a jury).

102 In Peerbocus v R (1991) MR 90, where the issue which the Court had to consider was whether the trial Court was improperly constituted and the appellant had been denied the protection of the law in the form of a trial before an independent and impartial Court on account of the fact that the jury that tried him did not include any woman, Glover CJ and Boollel J in the majority judgement they handed had this to say “To our minds the issue must be considered in relation to sections 3 and 10 of the Constitution which, we agree, entitle an accused person, whose case is heard by a Judge and jury, to be tried by a jury which is not selected or made up in such a way that it can in no way be said to reflect a reasonable cross-section of his fellow-citizens.”

Legislation: Courts Act, S. 41 (3) (a)
(b) Qualification of Jurors

103 Only citizens between the ages of 21 and 65, shall be qualified to serve as a juror. Moreover, no person who has been convicted of a crime shall be qualified to act as a juror.

Legislation: Courts Act, S. 41 (2) (b) and S. 41 (3) (a)

(e) Persons ineligible for jury service

104 Some people may also be excused by the judge to serve as juror if he is satisfied that the person is not qualified to act as juror, is not sufficiently conversant with the English language, because of any serious physical incapacity or any mental deficiency, or being a woman, ought to be excused from so serving for any medical reason or any other reason which the judge may consider to be just and reasonable having regard to the conditions of her family life.

Legislation: Courts Act, S. 41 (5) (a)

Case law: In *R v Paul* (1948), despite having declared that he did not have a sufficient understanding of English, a jurymen was not exempted from serving, following which the accused was found guilty. It was held by the Full Bench that the fact that he was forced to serve constituted an irregularity serious enough to vitiate the proceedings, the consequence of which was that a new trial was ordered.
(d) Challenges of jury

105 The prosecution like the defence can challenge a maximum of seven jurors peremptorily, as well as any other person on good cause shown.

106 According to Sumodhee v State (2005) SCJ 71, the reason for the prosecutor’s exercise of the right of peremptory challenge is irrelevant.

Legislation: Courts Act, S. 46

(e) Warning to Jury/Jury Instructions

107 Section 50 of the Courts Act provides that “The evidence and arguments at the trial on both sides being closed, the presiding Judge shall, in the presence of the parties, sum up the whole case to the jury, stating where the main question and principal issue lies, commenting on the evidence, and affording such explanations and making such remarks as he thinks necessary for their direction, further stating his opinion on any matter of law arising on the evidence which he may consider to require it.”

108 According to Dhurry v State (2016) SCJ 310, “In Mauritius as in the United Kingdom it is trite law that a Judge directing a jury on the standard of proof must make it clear that the prosecution bears the onus of establishing the case against the accused ‘beyond reasonable doubt’.”
(f) Summoning of Jurors

109 According to Section 44 of the Courts Act, "(1) At the sitting of the Court for the trial of any such issue, the name, condition and place of abode of each juror summoned as aforesaid shall be written on a separate piece of card, paper, parchment, or otherwise and put into a box; (2) When such issue is called on to be tried, the Registrar or other officer of the Court shall, in open Court, draw therefrom, until the names of 9 persons appear who are not objected to or challenged, and after the trial, such names shall be returned to the box, to be kept with the other undrawn names, and so on as long as any issue shall remain to be tried."

(g) Jury Verdict

110 The presiding judge needs, in the presence of the parties, to sum up the case for the jury, stating where the main question and principal issue lies, commenting on the evidence, and affording such explanations and making such remarks as he thinks necessary for their direction, further stating his opinion on any matter of law arising on the evidence which he may consider to require it.\(^{29}\)

111 A unanimous verdict is not required in our law, a majority of 7 is sufficient.\(^{30}\) But it is up to the Court to pronounce the sentence and not for the jury (S. 53 Courts Act), whose sole

\(^{29}\) S. 50 Courts Act.
\(^{30}\) S. 52 (1) Courts Act.
role is restricted to the delivery of the verdict of guilty or non-guilty, though sometimes, just like in UK, a special verdict can also be rendered.\textsuperscript{31}

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\textbf{Legislation:} Courts Act, S. 50, S. 51(2), S. 52(1) and S. 53
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(h) Offence by Jurors

112 The penalty for nonattendance by a juror is not really high (Rs. 500), at least not high enough to discourage someone from not complying with his service.

113 \textit{In State v Huberto} (2012) SCJ 248, it was said that: \textquote{Under the common law, if there is an incident involving the jury whilst the trial is still going on, then the issue of the court ordering an enquiry should not pose any problems inasmuch as the jury is still constituted and available to be dealt with by the Judge. The issue is, however, more problematic where the alleged complaint about the jury is made after the verdict has been given and the jury has been discharged but before the sentence is given since the trial proper is not over until the sentence is delivered by the court. The problem appears to arise from the basic notion that the jury is \textquote{functus officio} once it has pronounced its verdict and has been discharged. The principle of \textquote{res adjudicata} would normally operate to prevent the re-opening of a trial after it has been closed unless there is specific authority and, in particular statutory authority, to do so.\textquote{}}

\begin{flushright}
\textbf{Legislation:} Courts Act, S. 43
\end{flushright}

\textsuperscript{31} S. 51 (2) Courts Act.
(i) Offences not to be tried before a jury

114 According to our Criminal Procedure Act, many offences shall not be tried before a jury. These offenses are those committed under the Consumer Protection (Price and Supplies) Act, under Sections 156, 249, 283, 284 and 288 of the Criminal Code, Customs Act, S. 5 (4) of the Customs Tariffs Acts, Dangerous Drugs Act, sections 40, 41 and 45(2)(a), (b), (c), (d) and (g) of Excise Act, sections 134, 135, 137, 138, 145, and 148(4) and (5) of the Gambling Regulatory Authority Act 2007, sections 123(8) and 147 of the Income Tax Act, S. 4 of the International Criminal Court Act 2011, Piracy and Maritime Violence Act 2011, S. 3 of the Prevention of Terrorism Act 2002, section 24(7) of the Registration Duty Act, sections 54, 55, 57, 58, 59(b), 64(2) and 69(3) of the Value Added Tax Act and sections 14(6), 20(5) and 22(2) of the Freeport Act 2004.

(j) Jury List

115 According to Section 3 of the Supreme Court (Jury Lists and Panels) Rules 1992, the Master and Registrar shall, with the assistance of the Electoral Commissioner, the Registrar of Civil Status and the Commissioner of Police, draw up a list of persons qualified to serve as jurors.

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32 S. 10 Criminal Procedure Act, which refers to the Fifth Schedule.
33 Outrage against depository of public authority.
34 In respect of the offence of rape, where it is averred that the offence was committed by 2 or more individuals.
35 Sedition
36 Inciting to disobedience or resistance to law.
37 Defamation.
38 Act, sections 17(4), 21(8), 38(3), 83(3), 97(4), 111(2), 154, 156, 158(1), 2(2) and (3)(a), (b) and (c) and 163(2).
Section 4 of the Supreme Court (Jury Lists and Panels) Rules 1992 provides that "(1) Any person who is registered as an elector of an electoral area may, on good cause shown, apply, in such form and manner as the Chief Justice may approve, to the Magistrate of the district in which he resides to have his name removed from the list of persons qualified to serve as juror. (2) Where the Magistrate grants an application under paragraph (1), he shall inform the Master and Registrar of his decision, and the latter shall remove the person's name from the list permanently or for such period as the Magistrate may determine."
(V) REFORM PROPOSALS

117 The Commission is of the view that the Jury System in Mauritius should be retained, as it reflects the involvement of the public in the Criminal Justice system ensuring a popular legitimacy, constituting “democracy in action”. It would not be proper to remove it, but it can be enhanced. “The jury is not perfect, but what institution is and what is the alternative? Trial by judge alone, or with assessors, does not win popular support and it is feared that if trial by jury were to disappear trust in the rule of law would be undermined”. 30

(a) Constitution of Jury

118 The jury in Mauritius is constituted of 9 people, involving both men and women. We have seen, by the comparative study conducted above, that the size of the jury differs from country to country. In many countries, the jury consists of 12 persons 40 (Belgium, Scotland, New Zealand, Canada, USA), though in some countries (France, UK) it is less. Normally, in many countries, jury of less than 6 people are not allowed. 41 Indeed, smaller juries are more likely than larger juries to convict when the defendant appears less certain to be guilty, 42 as in smaller groups, members are less prone to overcome their biases and obtain an accurate result. 43 Moreover, “larger juries are more likely to contain a minority

40 One of the main reason why today’s juries in many countries tend to have 12 people is that the Welsh king Morgan, who established jury trials in 725 C.E., decided upon the number, linking the judge and jury to Jesus and his Twelve Apostles.
41 Thus, the U.S. Supreme Court in 1978 ruled that a five-person jury is not allowed, after Georgia attempted to assign five-person juries to certain criminal trials.
42 According to the Condorcet mathematical model.
representative, spend a little more time deliberating, and may yield a better recall of case facts among members".\textsuperscript{44}

Given the size of our country, 9 persons fulfills the prerequisite of representativeness,\textsuperscript{45} which is the essence of the jury system.

119 Nonetheless, it is the opinion of the Commission that there should also be spare jurors, which should amount to two persons, in case one or more of the jurors chosen is no longer able to fulfill his duties, for reasons of health for example, mainly in cases of lengthy criminal trials. These two spare jury members would follow the full hearing outside the jury room. In case the member of a jury cannot follow the case till deliberation due to unforeseen reasons, the spare juror can step in and the need for restarting trial would not arise. Having spare jurors will make it possible to avoid discharging a jury completely and having to empanel a new one just because of the absence of one juror, as it is provided for by Section 59 of the Courts Act.

120 According to Section 47 of the Courts Act, every juror shall take the following oath which shall be administered to him by the presiding Judge: “I shall well and truly try the matter at issue between the State and the prisoner at the bar and a true verdict give according to the evidence. So help me God.” It is proposed that the last sentence “So help me God” be removed so as to respect the belief or non-belief of every citizen of the country, as the imposition of such an oath would go against the constitutional right of freedom of conscience entrenched in our Constitution and specially of Section 11 (4) according to which: “No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.”


\textsuperscript{45} Sampling theory suggests that larger juries are more likely to include individuals of diverse backgrounds, beliefs, and experiences than smaller ones.
121 The Commission believes that it would be wise to have a software to sort out the list of preselected members, as to profession, age and gender.

122 Concerning the Sequestration of jurors, the Commission acknowledges that "jurors should be shielded from information which is irrelevant and/or may threaten their impartiality," and that for this reason, sequestration is a necessary evil to ensure that jurors are not influenced by external factors. Nevertheless, the Commission is also of the view that if the case lasts too long, it would constitute an unconstitutional deprivation of freedom of movement, which is protected under Section 15 of our Constitution. Instead, emphasis should be laid on case management and the setting up of a reasonable time frame for cases when they are fixed.

(b) Qualification of Jurors

123 In Mauritius, only citizens between the ages of 21 and 65, are qualified to serve as a juror. Besides, no person who has been convicted of a crime shall be qualified to act as a juror. In some countries, like Canada, Ireland or New Zealand⁴⁷, the minimum age to serve as jury is the legal age of majority, which is 18. In France, on the contrary, one cannot serve as juror before 23 years.

124 The Commission is of the opinion that the present age limit should be retained, as at 18 one does not have enough maturity to decide on complex and sensitive cases which a jury must judge. Moreover, for persons between 60 and 65 years, the judge should have the

⁴⁷ In New Zealand, the Juries Amendment Act 2000 reduced the minimum age for jury service from 20 to 18 years and removed the maximum age limit of 65 years.
discretion to excuse them due to their age. If the electoral list is used for the preselection exercise, the selected members would be required to fill in a form for screening purposes.

125 The Commission is also of the view that jurors should be conversant with English language to follow the case and understand the summing up of the Judge, as it is provided for in Section 57 of the Courts Act. It is proposed that a rapid test could also be included under section 57 to assess the understanding of English language.

(c) **Persons ineligible for jury service**

126 It is proposed that according to specific professions (such as judges, Ministers) or personal commitment (nursing mothers, persons under medical treatment or medication), some persons could be excused from serving as jurors. These reasons for exclusion should be mentioned at Section 42 (3) of the Courts Act.

(d) **Challenges of Jury**

127 The Commission suggests that the present number of peremptory challenges be maintained, that is, not more than 7 for both the Prosecution and the defence. As to the challenge of any other person on good cause shown, it should only be considered with leave of the judge.
(e) **Warning to Jury/Jury Instructions**

128 Everywhere in the world, Jury instructions “are a core element of all jury trials. Every jury is instructed by the judge as to the relevant law after the evidence is heard – sometimes beforehand too – and judges issue various instructions to the jury during the course of the trial as well”.  

129 It is proposed that at the time of empaneling, Jurors should be explained their duties. A movie on the role of Jurors could also be designed to be shown to the jurors, as is the case in France.

130 The Commission also considers it would be proper that Judges give preliminary directions before the prosecution case commences, in addition to directions in the summing-up. Nevertheless, it would not be inappropriate that a glossary defining legal terms and expressions be given to jurors, as the latter are to assess the facts presented before them and not the law as such, which is up for the judge to clarify if need be during the course of the trial.

131 Moreover, the Jury should be instructed as to what would constitute improper use of mobile phone or other means of communication.

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(f) Summoning of Jurors

132 It is suggested that Section 45 of the Courts Act\(^{49}\) be repealed as it is obsolete. Staff list of ministries could also be considered for the preselection for jurors.

(g) Jury Verdict

133 Juries “play a crucial role in accepting or rejecting the legal building blocks that will ultimately serve to construct the sentence, even though they do not formally determine the sentence. Jurors must frequently answer questions about the offender’s moral culpability in addition to ascertaining whether or not he committed the actions the prosecutor is charging”\(^{50}\).

134 The Commission is of the view that the present majority of 7 to return a guilty verdict should be kept, and that it should be up to the judge, contrarily to France for example, like it is at present, to pronounce the sentence, and not for the jury to do so. But the jury should keep the choice to exclude aggravating circumstances and the Judge has to explain the different options as well as the alternative verdicts.

135 The Commission does not believe that there should be a minimum time below which the jury cannot go before coming to a verdict, just to be sure it has thought the matter well,
like it is the case in some states of Australia. Indeed, to impose upon the jury a minimum amount of time to deliberate may alter the choice to which some jurors arrived at and increase the chance of being influenced by other jurors.

136 Also, the jury should not be allowed to return a verdict of "not guilty but guilty of a similar, but less serious, offence", like it is the case for England.

(h) Offences by and against Jurors

137 The Commission considers that S. 43 of the Courts Act should be amended and the penalty of Rs. 500 rupees for nonattendance as juror be reviewed and this amount increased to Rs. 2000.

138 It is also proposed that publication of material that may lead to the identification of a juror should be made an offence. Besides, not complying with confidentiality during the hearing of cases should be liable to penalties.

(i) Remuneration to jurors

139 It is the opinion of the Commission that a formula should be worked out to compensate the jurors. Public Officers draw their salary on attendance, while those from the private sector have difficulties. It was reported during the Advisory Panel that there have been cases where jurors from the private sector do not draw their salary when they attend hearing.
Moreover, to alleviate the hardship entertained by serving as juror, it is proposed that an amendment to the Employment Rights Act be considered so that employees from the private sector be protected.

(j) Offences not to be tried before a jury

The Commission considers that only Assizes cases should be tried before a Jury.

(k) Jury List

It is proposed that it could be convenient to use the Electoral list for the preselection of jurors together with a software which can sort out the Electoral List with regard to the age and professions excused from serving as jurors.

Furthermore, the public could be invited to apply to be registered as Juror online. The actual jury list should be sent to the Registrar of Civil Status for same to be updated.
(VI) CONCLUDING OBSERVATIONS

144 Juries “have long played a critical role in the legal system of free societies, and this is very likely to continue into the foreseeable future.”\(^{51}\) Jury systems exist nearly all around the world, although not all countries have trial by juries (the Jury system in Singapore was entirely abolished in 1970 and in India, it was abolished in the 1960’s.\(^{52}\) Germany also does not have recourse anymore to a jury\(^{53}\)). Some jury systems, like those in Britain and the Commonwealth countries, have a long history. Others are of more recent vintage, having materialised in the last century in connection with other political and legal changes. Contemporary jury systems give rise to a paradox. Although in many countries the proportion of cases decided by laypersons has declined dramatically owing to proliferations in legal restrictions, litigation costs, plea bargaining, and alternative dispute resolution, in recent decades a striking number of countries have seriously debated or adopted new ways of incorporating ordinary citizens as decision makers in their legal systems. Diverse countries including Argentina, Japan, Korea, Russia, Spain, and Venezuela have all, in the recent past, changed their legal systems to include ordinary citizens, either in traditional juries composed exclusively of laypersons or in mixed bodies in which laypersons decide cases together with professional judges.

145 Jurors perform a vital role in the Criminal justice system. The judge determines the law to be applied in the case while the jury decides the facts. Therefore, in a very important way, jurors become a part of the court itself. Jury service is a high duty of citizenship. Jurors help in the maintenance of law and order and uphold justice among their fellow

\(^{52}\) The Law Commission recommended its abolition in 1958 in its 14th Report.
\(^{53}\) The Jury system was abolished in 1924 and replaced by a mixed system including bench trials and lay judges.
citizens. Thus, “the jury acts in a way that draws private citizens into political society to exercise official state power”. For these reasons, the Law Reform Commission shares the view that trial by jury should be retained.

146 Nonetheless, the Commission considers that some improvements can be brought to the actual system. Thus, among other things, it is proposed that in addition to the 9 jurors selected, there be two spare jurors who would follow the whole case and be able, if need be, replace any juror. Moreover, a test should be devised to assess the master of the English language possessed by the jurors to make sure they will be able to grasp the whole case. It is also recommended that the penalty for non-attendance of jurors be increased from Rs. 500 to Rs. 2000. Also, members of some professions should be able to be excused from jury service. The Commission also takes note of the fact that service as jurors may cause financial inconvenience for those selected, thus it is recommended that a formula be calculated to compensate those selected to serve as jurors.

147 In 1835, Alexis de Tocqueville described the American jury as “a political institution... one form of the sovereignty of the people...” Tocqueville called the jury a “free school in which each juror learns his rights,” and he wrote that “juries teach men equity in practice.” The Law Reform Commission is thus of the view that it is of paramount importance for our legal system not to depart from this sovereignty with which citizens are empowered and that with the necessary amendments our jury system can be invigorated and more trust placed in our peers chosen to serve as jurors.

56 Id at p. 287.
Annexes
### ANNEX 1.
### SUMMARY OF RECOMMENDATIONS

| Keeping the Jury System in Mauritius | ➢ The Jury System in Mauritius reflects the involvement of the public in the Criminal Justice system ensuring the “legitimité populaire”. It would not be proper to do away with such a system, but it can be enhanced. |
| Constitution of Jury | ➢ Size of Jury to remain 9  
➢ 2 Spare Jury members  
➢ Sequestration is deprivation of freedom of movement and is unconstitutional especially when duration of hearing is too long. Focus should be put on case management and the setting up of a reasonable time frame for handling of cases. |
| Qualification of Jurors | ➢ A rapid test to assess the understanding of English language by Jurors.  
➢ For persons between 60-65, the Judge would have the discretion to excuse. |
| Persons ineligible for jury service | ➢ According to specific professions (such as judges, Ministers) or personal commitment (nursing mothers, persons under medical treatment or medication), some could be excused from serving as jurors. |
| Challenges of jury | ➢ Peremptory challenges be maintained to 7. The challenge for cause would be considered with the leave of the judge. |
| Warning to Jury/Jury Instructions | ➢ At the time of empanelling, Jurors should be explained the preliminary directions.  
➢ A movie on role of Jurors could be designed.  
➢ No glossary defining legal terms |
<table>
<thead>
<tr>
<th><strong>Law Reform Commission of Mauritius [LRC]</strong></th>
<th><strong>Opinion Paper about “Jury System”</strong></th>
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<tbody>
<tr>
<td>[LRC_R&amp;P 128, December 2018]</td>
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<tr>
<th><strong>Summoning of Jurors</strong></th>
<th>➢ Staff list of ministries could also be considered for the preselection for jurors.</th>
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<tbody>
<tr>
<td><strong>Jury Verdict</strong></td>
<td>➢ Jury verdict 7:2 is sufficient to prove an accused guilty.</td>
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<td></td>
<td>➢ It is up to the Judge to pronounce sentence and not for the Jury.</td>
</tr>
<tr>
<td><strong>Offence by Jurors</strong></td>
<td>➢ Penalty for non-attendance should be increased to Rs. 2,000.</td>
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<td>➢ Not complying with confidentiality during the hearing of cases should be liable to penalties.</td>
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<tr>
<td><strong>Remuneration to jurors</strong></td>
<td>➢ A formula should be worked out to compensate the jurors.</td>
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<td><strong>Offences not to be tried before a jury</strong></td>
<td>➢ Only Assizes cases should be tried before a Jury.</td>
</tr>
<tr>
<td><strong>Jury List</strong></td>
<td>➢ Actual jury list should be sent to the Registrar of Civil Status for same to be updated.</td>
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<tr>
<td></td>
<td>➢ Possibility of using the Electoral list for the preselection of Jurors together with a software which can sort out the Electoral List with regard to the age and professions excused from serving as jurors.</td>
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<td></td>
<td>➢ The public could be invited to apply to be registered as Juror online.</td>
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ANNEX 2.
Foreign Legislation

<table>
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<th>Country</th>
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<tr>
<td>CANADA</td>
<td>Canadian Charter of Rights and Freedoms / Employment Standards Act</td>
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<tr>
<td>FRANCE</td>
<td>Code of Criminal Procedure</td>
</tr>
<tr>
<td>HONG KONG</td>
<td>Jury Ordinance</td>
</tr>
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<td>IRELAND</td>
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</tr>
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<td>NEW ZEALAND</td>
<td>Juries Act 1981</td>
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**ANNEX 3.**

**Foreign Reports**

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<th>Country</th>
<th>Report</th>
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<tbody>
<tr>
<td>HONG KONG</td>
<td>Hong Kong Law Reform Commission – Report – Criteria for service as Jurors – June 2010</td>
</tr>
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ANNEX 4.

Bibliography

J. Hostetler, *The Criminal Jury Old and New, Jury Power from early times to the present day*, Waterside Press, 2004