

LCQ22: Extending the jury system to the District Court

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (October 21):

Question:

The issue of whether the jury system should be extended to the District Court has been discussed repeatedly over the years. In June 2015, the Department of Justice provided, at the request of the Panel on Administration of Justice and Legal Services of this Council, information on the estimated overall resource implications if jury trials were to be introduced in the District Court. Such resource implications included the construction of a new purpose-built court building with suitable and adequate facilities in support of jury trials at the District Court level. In this connection, will the Government inform this Council:

(1) of the following figures, in each of the past two years and in this year (up to September 30), in respect of trials of indictable offences heard in the (i) Magistrates' Courts, (ii) District Court and (iii) Court of First Instance, as well as the respective total numbers of criminal trials:

Court level	Number of trials of indictable offences						Total number of criminal trials		
	Conducted in English			Conducted in Chinese			2018	2019	2020
	2018	2019	2020	2018	2019	2020			
(i)									
(ii)									
(iii)									

(2) whether it knows the respective current numbers of persons on the list of jurors who speak (i) Chinese only, (ii) English only, and (iii) both Chinese and English;

(3) whether the authorities plan to extend the jury system to the District Court; if so, of the work plan; if not, the reasons for that;

(4) of the estimated additional number of jurors needed for extending the jury system to the District Court; and

(5) as the Judiciary has accepted using a portion of the Caroline Hill Road site for the development of a new District Court Complex, whether the authorities have planned for facilities required for enabling jury trials therein; if not, of the reasons for that?

Reply:

President,

As pointed out by the Government in past discussions at the Panel on Administration of Justice and Legal Services of the Legislative Council (LegCo) and in its previous written reply to relevant LegCo question, the current system of trial by judge alone at the District Court level has worked well over the years since its introduction in the 1950s. The introduction of the jury system to the District Court should only be taken forward if there are strong merits and upon careful consideration of the significant changes and profound implications to be brought to the entire criminal justice system.

In relation to Hon Dennis Kwok's questions, the Department of Justice (DoJ), after consulting the Judiciary, replies as follows:

(1) Based on the information provided by the Judiciary, the numbers of criminal trials in Magistrates' Courts, the District Court and the Court of First Instance (CFI) as at June 30, 2020 are set out in Annex 1.

(2) The Judiciary does not maintain relevant statistics.

(3) The current system of trial by judge alone at the District Court level has sufficiently protected the rights of all parties to a fair trial. We consider that there are at present no strong merits for changing the system.

Judicial independence is the cornerstone for safeguarding the rule of law in Hong Kong. Hong Kong's judges have all along been discharging their judicial duties in an independent and impartial manner, and the current trial system of the District Court has worked well over the years. A defendant is also subject to a fair trial by a judge alone in the District Court. In paragraph 9 of its judgment in *Chiang Lily v Secretary for Justice* ((2010) 13 HKCFAR 208), the Court of Final Appeal expressly rejected that a trial in the District Court was less fair by virtue of being a non-jury trial.

As a matter of fact, neither the Basic Law nor the Hong Kong Bill of Rights Ordinance confers on a defendant in criminal proceedings the right to choose trial by jury. Article 81 of the Basic Law stipulates, among other things, that the judicial system previously practised in Hong Kong shall be maintained. Article 86 of the Basic Law provides that the principle of trial by jury previously practised in Hong Kong shall be maintained. Article 10 of the Hong Kong Bill of Rights guarantees that everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge against him, or of his rights and obligations in a suit of law. The Court of Appeal of the High Court held in *Chiang Lily v Secretary for Justice* (CACV 55 & 151/2009) that a defendant does not have the right to choose trial by jury in criminal trials in Hong Kong. This principle was confirmed by the Court of Final Appeal in *Chiang Lily v Secretary for Justice* ((2010) 13 HKCFAR 208). We also note that the European Court of Human Rights has also ruled that the right to fair trial under Article 6 (1) of the European Convention on Human Rights (comparable to Article 10 of the Hong Kong Bill of Rights though the European legal system may not be entirely applicable to Hong Kong) does not include the defendant's right to choose to be tried before a jury (see *Twomey, Cameron and Guthrie v The United Kingdom*, Applications nos. 67318/09 and 22226/12, paragraph 30).

It is worth noting that the benefit that a judge alone trial confers on a defendant is that the court is required to give reasons for verdict (instead of only summing up to the jury by the judge), which is advantageous to the convicted defendant, as well as the public, in both understanding the reasons for why the defendant is being convicted and formulating grounds of appeal against his conviction.

As pointed out by the Court of Final Appeal in *Chiang Lily v Secretary for Justice* ((2010) 13 HKCFAR 208), choice of the prosecution venue is clearly a matter covered by Article 63 of the Basic Law where the Secretary for Justice shall control criminal prosecutions free from any interference. When conducting prosecutions, the DoJ's prosecutors have all along been handling all criminal cases professionally and in strict accordance with the law and the relevant guidelines in the Prosecution Code, and have been applying the highest standards in maintaining the proper administration of justice. When deciding the venue for trial, a prosecutor should, having regard to the considerations set out in paragraph 8.4 of the Prosecution Code and other legally relevant factors, select an available venue for trial that will enable the relevant court to deal most appropriately with the matter and impose an adequate sentence to address

the criminality involved in the conduct.

On the other hand, due to the differences in trial proceedings, a criminal case tried by jury would generally be more time-consuming than being tried by a judge alone. For instance, under certain circumstances, a criminal case tried by jury may need to undergo the voir dire procedure in the absence of jury to decide the admissibility of evidence (usually the defendant's admission). That evidence, if admitted by the judge, shall together with other relevant evidence be heard and considered by the jury. The judge guiding the jury and deliberation by the jury will also lengthen the time taken in trying the case.

With reference to the statistics published in the Hong Kong Judiciary Annual Report 2019, the average waiting time at the District Court level in 2017 to 2019 was on the rise, and far exceeded the target waiting time (see Annex 2).

Article 87 of the Basic Law protects the right of a defendant "to a fair trial by the judicial organs without delay". Article 11(2)(c) of the Hong Kong Bill of Rights also protects the right of a defendant "to be tried without undue delay". The public and, importantly, accused persons awaiting trial are entitled to expect justice to be administered without unnecessary delay. Excessive waiting time will add to the tension of victims, defendants, particularly those in custody awaiting trial, and witnesses (see *HKSAR v Hon Ming Kong* [2014] 2 HKLRD 710, paragraphs 7 and 8). If the jury system is extended to the District Court, it is reasonably expected that the time required for trying a number of cases will increase significantly, hence longer waiting time of criminal cases at the District Court level. Excessive waiting time for criminal cases is of no benefit to the defendant (whether or not he is convicted), victims and public interest.

(4) As indicated previously by the Judiciary, the resource implications of introducing jury trials to the District Court would be extremely substantial and far-reaching, including additional space and facilities required to cater for jury trials, manpower (involving judges, supporting staff and jurors) and related expenditure.

Regarding the information requested in the question, although the Government is unable to assess at this stage the additional number of jurors required if all cases in the District Court are tried before a judge and jury in the future, it can be inferred from the two sets of statistical figures in the past three years on the numbers of (a) criminal cases tried by jury in the CFI, and (b) criminal trials in the District Court (see Annex

3) that the arrangement of extending the jury system to the District Court will substantially increase by folds the number of jurors required. The expenses involved will include the provision of suitable accommodation, the costs of administrative staff and of allowances paid to those who serve as jurors. Moreover, there is also an indirect cost on self-employed jurors and on the employers of those jurors who are employed, consequential to their absence from work.

(5) According to the Judiciary, given no plans currently to introduce jury trials to the District Court, the planning for the new District Court Building is proceeded on the basis of no jury trials, as at present, in the District Court.

Ends/Wednesday, October 21, 2020