

A Case for the Adoption of Jury Trial in Nigeria

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Abstract

In Nigeria today, the justice system is characterised by the bench trial only. Several other jurisdictions practice the jury trial or trial by jury; which seems to be a better system of justice especially in criminal trials. The jury system was once practiced in Lagos but was abolished after a couple of months by the military government. Trial by jury system has often been condemned by many as trial by a body of laymen who could easily be compromised. Corruption in the judiciary is something Nigeria is still battling with and it is perceived by many that introducing the jury system would only up the level of corruption in justice and it would finally be a case of the highest bidder getting "justice". However true this notion may be, several other countries practice the jury system without issues of corruption. What are these countries doing? What systems have they adopted to have a near perfect jury system? These and other questions are what Nigeria should be deliberating on in considering the possibility of adopting a jury system. A study of a few select jurisdictions is discussed in the paper and it is hoped that the recommendations at the end of this paper would be useful in having Nigeria adopt and practice a jury system without hitch.

Keywords: jurisdictions practice, trial by jury, justice, criminal trials.

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1.0 INTRODUCTION

The justice system, since the existence of man, has either comprised of the bench trial or the jury trial. Bench trial is the justice system where one person (or in the case of an appeal court, more than one person) sits to hear a case and listens to arguments from the prosecution and the defence, decides the principles of law at play in the case and gives a judgement based on the conclusion reached. In ancient royal times, the bench trial was the system where a traditional ruler decided the guilt or otherwise of an accused person. In modern times, the judge is not a traditional ruler but a person appointed by the government or legal system of any people. Jury trial or trial by jury, on the other hand, involves a justice system where a matter is heard by a number of people, who are sometimes laymen and do not know the principles of the law to apply in the matter; these laymen have a duty to decide the guilt or otherwise of a defendant in a matter after listening to the arguments from both sides. In modern days, these laymen are guided by the judge on the principles of law to apply in the matter. The essence of the jury system is to have a judgement that is unbiased and that is decided by a variety of people from different walks of life.

It is expected that the laymen would be able to relate to the facts of the case more than the judge, whose hands and eyes are, most times, tied and blindfolded by the law. Lord Denning is reported to have said that 'Whenever a man is on trial for serious crime or when in a civil case a man's honour or integrity is at stake...then trial by jury has no equal' [¹].

¹E. Gabadi, 'The Feasibility of the Jury System in the Administration of Justice in Nigeria' (15 June 2018) <<https://dnlegalandstyle.com/2018/the-feasibility-of-the-jury-system-in-the-administration-of-justice-in-nigeria-emmanuel-gabadi/>> accessed 12 November 2019

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It is important to note that the jury system is not only applicable to criminal matters. Civil matters, especially contentious ones, can use the jury system. This is usually the practice in the United States. The jury system is in operation in a number of jurisdictions outside Nigeria and was once operated in Lagos, which was once the capital city of Nigeria, but it was abolished during the military rule in 1986.

It has often been wondered what exactly the duty of the jury is: to determine questions of fact or questions of law or both? In 1628, an English Chief Justice, Justice Coke, answered this question and described the line of division of authority between English judges and juries. He said that 'Judges do not answer questions of fact; juries do not answer questions of law (*Ad question emfactinon respondent iudices... ad question emjuris non respondent juratores*)' [2]. In the course of this paper, the history of the jury system, its applicability, its pros and cons and its benefits are examined. It would also be determined whether Nigeria should adopt this system or continue with the bench trial.

1.1 History of the Jury System

The origin of the jury system can be traced to the ancient Greek city, Athens, where a number of citizens ranging from 500-1501, called the *dikastai*, formed the deciding body in a case and verdicts were reached by majority. It spread from Rome to Greece to England and Wales to America and then to other parts of the world. Now, it is a common practice in the western part of the world. The jury, in England, was initially created to investigate cases, uncover the facts and come to conclusions based on what they had discovered rather than listening to arguments in courts [3]. Now, the way it is practiced in almost all parts of the world is that the jury only sit in court, listen to what the parties' lawyers have to say and then reach their conclusion based on what they believe is true.

In Sweden, the jury system was operated in such a way that a tribunal of twelve men was created to investigate and determine the truth of any matter. These men, unlike the ordinary laymen jury, were judges of both fact and law and had witnesses appear before them; a simple majority of seven was enough to return a verdict. The jury system then had an appeal system where the first tribunal was the Hundred's jury and then the Lawman's jury, which heard appeals from the Hundred's jury. The last tribunal of appeal was the

King's jury which heard appeals from the Lawman's jury [4].

The jury system of different jurisdictions vary but one basic characteristic of the system is that the members (or most of them in some jurisdictions) are not learned judges - they are often laymen with no schooled idea of the law - and they are common citizens who are chosen based on certain criteria - in ancient Greek, a member of the jury must not be a gladiator for hire; in some other jurisdictions, a member of the jury must not have been convicted of a felony. The members of the jury are also of a specific number depending on the jurisdiction, which is usually twelve. In ancient times, the members of the jury could be the elites of the society, or the traditional chiefs or generally members of the public who have attained a certain status (for example, the Knight status in ancient Britain). The jury system are in two parts and countries decide which part to adopt: there is the pure jury where all members are laymen and are guided by the learned judge on specific matters of the law; there is also the mixed jury where both laymen and learned judges are members of the jury.

A study revealed that as at 2015, the following countries operate one form of the jury system or the other. Australia, Belgium, Canada, England and Wales, Ireland, New Zealand, Northern Ireland, Scotland, South Korea, Spain and the United States have the pure jury system. Austria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden and Switzerland have the mixed jury system. Denmark operates both pure and mixed jury systems. On the other hand, the following countries, according to that study, have no form of jury system in operation in their court trials: Chile, Israel, Luxembourg, Mexico, Netherlands, Republic of China (Taiwan), Turkey [5]. A number of these countries are discussed in this paper; the most interesting being Japan, whose revival of the jury system struck a worldwide interest.

1.2 Japan

Japanese historians record that the jury system is not a new one and is not alien to the practice of the Japanese. Japan's first experience with the jury system started in the Meiji period when there was a drive to modernise the legal system [6]. Japan resumed the

²E. Coke, *The First Part of the Institutes of the Laws of England* (16th edn, Hargrave and Butler 1809) cited in A.W. Alschulert and A. G. Deisst, 'A Brief History of the Criminal Jury in the United States' [1994] (61) *The University of Chicago Law Review* 867

³*Ibid* E. Gabadi

⁴R.V. Moschzisker, 'The Historic Origin of Trial by Jury' [1921] (70)(1) *University of Pennsylvania Law Review* 1

⁵R. Kage, *Who Judges? Designing Jury Systems in Japan, East Asia, and Europe*. Cambridge [UK]: (Cambridge University Press 2017)

⁶D.T. Johnson, 'Juries in the Japanese Legal System: The Continuing Struggle for Citizen Participation and Democracy' (2016) (19)(1) *Social Science Japan*

adoption of the jury system in 2009 after the *Taisho Jury Act* of 1923 was suspended in 1943, as a result of the war at that time. It was supposed to be resumed after the war but there was a campaign against it because it had western roots and the campaigners wanted nothing to do with the western oppressors anymore. The drive to introduce the jury system into the Japanese judicial system was started by a tour of the western nations and an observation of how the jury system involved the participation of the ordinary citizens in the determination of justice. Before the war, Japan operated the pure jury system and the jury consisted of twelve (12) literate men who had to be above the age of thirty. These men also had to have paid a certain amount in national taxes and would have lived in the municipality for at least two years to be considered eligible to serve as jurors [7]. The jurors sat over criminal cases with sentences that were considered heavy such as the death penalty and life imprisonment and they decided the verdict by majority rule. The defendant could decide not to be tried by a jury and in such cases would be subject to the decisions of the learned judges [8].

As pleasant as the jury system may have been during the pre-war period, it was criticised for not making the jurors' decision binding on the learned judges. There was a provision that learned judges could reconstitute another jury if they did not agree with the jury's verdicts. This defeated the essence of having a jury system because the learned judges were still the final deciding body. One other criticism of the pre-war jury system was that the decisions of a jury trial could rarely be appealed. These two criticisms were the major undoing of the jury system [9].

In 2004, Japan formally reintroduced the jury system through the *Act on Criminal Trials with Participation of Saiban-in* [10]. The practice in Japan now is that six (6) laymen sit with three (3) professional judges to determine the guilt and the appropriate sentence. It is called the *saiban'inseido* meaning the 'mixed jury' system and it was adopted to encourage citizen participation in criminal matters. Trial by jury in Japan is only adopted in very serious criminal trials such as burglary leading to injury or death, injury leading to death and murder [11]. The verdict by the jury need not be unanimous; it is usually by a simple majority decision provided that one layman and one professional Judge are included in the majority [12].

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<<https://academic.oup.com/ssjj/article/19/1/116/2451767>> accessed 12 November 2019

⁷*Ibid* R. Kage.

⁸*Ibid* R. Kage.

⁹*Ibid* R. Kage.

¹⁰*Ibid* R. Kage.

¹¹*Ibid* R. Kage.

¹²J. McCurry, 'Trial by Jury Returns to Japan' *The Guardian* (3 August 2009) <[https://amp-theguardian-](https://amp-theguardian-com.cdn.ampproject.org/v/s/amp.theguardian.com/world/2009/aug/03/japan-trial-by-jury-returns?amp_js_v=a2&_gsa=1&usqp=mq331AQC KAE%3D#aoh=15735487655253&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.theguardian.com%2Fworld%2F2009%2Faug%2F03%2Fjapan-trial-by-jury-returns)

1.3 United States of America

In America, the jury system has a very interesting history and went through ups and downs just like the general history of the independence of the United States. The system went through criticisms for racist reasons as well as for gender reasons. Initially, white men, who had no property to their name, could not serve on the jury but with time not only this class of white men but also African-American men as well as members of other minority groups, were permitted to serve on the jury. It was not until centuries after the introduction of the jury system that women were permitted to serve on the jury and their functions were, at first, limited to cases where a child was affected. This was because it was generally felt, that women, with their sense of intuition, would serve as better jurors in such cases [13].

While Britain still had control over the American government, the jury system was introduced and the style applicable to the British jury was adopted. After a while, due to the unfairness of the British rule, the Americans saw the jury as an important part of the practice of democracy. Alschulert and Deisstt, in their article, 'A Brief History of the Criminal Jury in the United States', record a particular case where the jury fought for a ship-owner who resisted the British colonial policy. The ship-owner was a smuggler whose ship was seized and he paid four hundred pounds sterling to recover his ship in an admiralty court i.e. a nonjury court which was administered by Britain. He then sued the Customs Officer in a jury court (largely governed by Americans) where the jury granted him an award against the Customs Officer of one hundred pounds in excess of the amount he paid to recover the vessel. The defendant appealed and the appellate court set aside the verdict on the ground that the decree of the Court of Admiralty could not be overruled by a court of common law (i.e. the jury). However, despite the appeal, a second jury awarded the ship-owner damages again. This was just one of the cases where the jury in America harassed those who enforced British policy (like the Customs Officer) but freed those who resisted it (like the ship-owner) [14]. Another such notable case is the John Peter Zenger case.

[com.cdn.ampproject.org/v/s/amp.theguardian.com/world/2009/aug/03/japan-trial-by-jury-returns?amp_js_v=a2&_gsa=1&usqp=mq331AQC KAE%3D#aoh=15735487655253&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.theguardian.com%2Fworld%2F2009%2Faug%2F03%2Fjapan-trial-by-jury-returns](https://amp-theguardian-com.cdn.ampproject.org/v/s/amp.theguardian.com/world/2009/aug/03/japan-trial-by-jury-returns?amp_js_v=a2&_gsa=1&usqp=mq331AQC KAE%3D#aoh=15735487655253&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.theguardian.com%2Fworld%2F2009%2Faug%2F03%2Fjapan-trial-by-jury-returns)> accessed 12 November 2019

¹³A.W. Alschulert and A. G. Deisstt, 'A Brief History of the Criminal Jury in the United States' [1994] (61) *The University of Chicago Law Review* 867

¹⁴*Ibid*.

Zenger was an editor and printer charged for seditious libel. The New York Weekly Journal, Zenger's paper, was the first journal that engaged in political criticism in America. It happened that the Chief Justice of New York, Lewis Morris, was removed from his position by the royal Governor of New York, William Cosby appointed under the British colonial rule. In retaliation, Morris and a couple of people established the journal and made Zenger the editor and printer. The journal criticised the Governor by saying that jury trials were taken away and erased as the Governor willed. When charged, the jury refused to indict him. Two other juries also refused to indict him. The Attorney General then filed a charge of libel against Zenger and he was imprisoned for eight months before trial. The new Chief Justice made it absolutely impossible for Zenger to obtain bail by setting the bail at an unprecedented amount. Zenger's lawyers challenged the equity stance of the Chief Justice seeing that he was likely to be biased having started operating on the instructions of the Governor. Several other acts of injustice were done against Zenger, including the disbarment of his lawyers and the appointment of a lawyer who supported the Governor, to represent Zenger. The role the jury played cannot be ignored as Zenger was finally acquitted [15].

The role of the jury as a weapon of revolution against the British in the Zenger's case was emphasised by Alschulert and Deisst thus:

Zenger's trial was not an aberration; during the pre-Revolutionary period, juries and grand juries all but nullified the law of seditious libel in the colonies. Hundreds of defendants were convicted of this crime in England during the seventeenth and eighteenth centuries, but there seem to have been no more than a half-dozen prosecutions and only two convictions in America throughout the colonial period. Grand juries were reluctant to indict and petit juries reluctant to convict. Juries hindered the enforcement of other English laws as well. One Massachusetts governor complained, 'A Custom house officer has no chance with a jury,' and another protested, '[A] trial by jury here is only trying one illicit trader by his fellows, or at least by his well-wishers' [16].

A notable feature in the growth of the American jury is how it was able to later recognise the presence of various tribes and peoples who lived in the United States. Originally, before the British colonial era, there were native tribes living in the land. With the coming of the slave trade era, blacks and coloured people came into America; they later gained freedom and became citizens. There were also migrants who had become citizens and enjoyed equal rights, supposedly, with the original citizens. It was discovered that equity was neglected when aliens, especially blacks, were

parties in a court case. There was clear injustice where black men were the defendants against the American prosecutors judged by white jurors. It was indeed clear that there was racism and so the level of growth that the American jury system has recorded now is to be applauded. At some point in the history of the American jury system, American courts ensured that, in cases where there were alien parties, the juries were composed of half Americans and half of the countrymen of the alien party. Although, this did not solve the problem of injustice caused by discrimination, it contributed a lot to the growth recorded. After the United States of America had gone through the hassles of racial discrimination in jury selection, they now have one of the best jury systems in the world; an enviable one at that. However, while, for over a century, it's been illegal to exclude African Americans from jury duty, they are still dramatically underrepresented, even till date [17].

Usually, people are served summons in their mail to perform the civic duty of being jurors. When they appear in court, a selection process commences, where attorneys on both sides have the opportunity to select jurors that they think will favour their client's case. They also have what is called 'strikes' which the attorneys could use to disqualify a prospective juror from serving on the jury for that case, most likely because the person's belief or personality may be contrary to what the attorneys aim to achieve with their cases in court. The strikes have also been recorded to be used on discriminatory reasons especially against African-Americans. It was perfectly legal to do so for decades but was finally termed illegal in 1986 by the United States Supreme Court [18]. Now, strikes cannot be used legally on racial or sexual discriminatory reasons. However, prosecutors, especially in death penalty cases have found a way to still discriminate against the black race. A study has revealed that all-white juries are most likely to convict a black defendant 16 per cent more often than a white defendant [19]. There are cases year in, year out to buttress this point. It is indeed true that even though the jury system in the

¹⁷ D. Anderson and J. Orwig 'The Truth about the US Jury System' (27 February 2018) <[https://amp-businessinsider.com/cdn.ampproject.org/v/s/amp.businessinsider.com/racial-bias-american-jury-system-explained-2018-2?amp_js_v=a2&_gsa=1&usqp=mq331AQCKAE%3D#aoh=15735459661356&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s](https://amp.businessinsider.com/cdn.ampproject.org/v/s/amp.businessinsider.com/racial-bias-american-jury-system-explained-2018-2?amp_js_v=a2&_gsa=1&usqp=mq331AQCKAE%3D#aoh=15735459661356&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s)> accessed 12 November 2019.

¹⁸ *Ibid.*

¹⁹ S. Hartsoe, 'Study: All-white Jury Pools Convict Black Defendants 16 Percent More Often than Whites' (17 April 2012) <<https://today.duke.edu/2012/04/jurystudy>> accessed 12 November 2019

¹⁵ *Ibid.*

¹⁶ *Ibid.*

United States has tried to overcome the hassles of racial discrimination, it is still battling with it.

The right to jury in a criminal trial has been incorporated into the American Constitution and an attempt to abolish the system means an amendment to the Constitution [20]. This may be why it has not been abolished yet despite several divergent views about it.

1.4 The United Kingdom

The history of the jury system in Britain can be traced to the Norman conquest. The way it was practiced then was that jurors were witnesses who dug into details and provided information on a local case [21]. With time, the jury evolved into a panel deliberating on arguments presented by parties in a case. It is currently governed by the Juries Act, 1974. In the United Kingdom, summary offences are not triable by the jury; only indictable offences can be decided by the jury. Here, the judge in a jury trial can only rule on questions of law and guide the jury on what is expected of them [22].

The jury comprises of 12 laymen who must be at least 18 years old and must be registered on the electoral register. To be qualified, a person must also have been a resident of the United Kingdom for at least five years. There are certain circumstances in which a person is disqualified from serving as a juror. One of such is that a person who has been sentenced to more than five years imprisonment within the previous 10 years is disqualified from serving as a juror [23].

Jurors are not paid in the United Kingdom but are entitled to expenses made for necessities such as food, drink and travel. However, if a juror's employer does not pay him during his jury service, he is entitled to a claim for loss of earnings [24]. Prior to 1967, the jury's verdict was expected to be unanimous but from 1967, there was an introduction of a majority verdict of ten to two. This was later enacted into the Juries Act, 1974. Today, the unanimous verdict is still the rule but juries can give a majority verdict if after a reasonable

period of time, they have failed to reach a joint decision on the verdict [25].

1.5 South Korea

The jury system in South Korea was formally introduced in 2007 but was finally adopted in 2008. Unlike Japan, South Korea had never had a jury system before then; 2008 was the first time a jury trial was held in the country. According to the judicial reforms passed by the South Korea parliament, the only offences that can be tried by jury are serious crimes such as murder, rape, or assault and battery. The jury system operates in such a way that five (5), seven (7) or nine (9) lay judges/men make up the jury depending on the severity of the crime committed by the defendant and they will reach a decision by the majority rule [26]. South Korea can be said to operate a pure jury system where the jury decide verdicts without the interference of the judges. However, there are traces of the mixed jury system whereby three (3) learned judges determine whether or not a jury trial should be adopted in a particular case after the defendant must have petitioned for same. The three learned judges could also be invited to deliberate on the verdict if a majority of the laymen jurors concur or if they discover that the jurors cannot reach an unanimous verdict. It is also mixed in the sense that the lay jurors deliberate with the professional judges on the appropriate sentence if the jurors find the defendant guilty. The verdict of a crime is determined unanimously but the sentence is determined by a majority rule [27].

Unlike the Japanese system that stipulates that at least one learned judge must agree with the verdict reached by the jurors, the Korean system does not make express provision for that. It is also interesting to note that, just like the Japanese pre-war jury provisions, the jurors' verdict is not binding and the learned judges can decide whether or not to be bound by it. The learned judges are, however, required by law to let the defendant know what verdict the jury reached and why they chose to differ from the verdict of the jury [28].

²⁰C. Bok, 'The Jury System in America' [2012] *Sage Journals* <<https://journals.sagepub.com/doi/10.1177/000271625328700114>> accessed 12 November 2019.

²¹Law Teacher, 'The Jury System' (2 February 2018) <<https://www.lawteacher.net/free-law-essays/criminal-law/the-jury-system.php>> accessed 17 November 2019.

²²Nidirect, 'What Happens at a Jury Trial' <<https://www.nidirect.gov.uk/articles/what-happens-jury-trial>> accessed 17 November 2019.

²³Law Teacher, 'The Jury System' (2 February 2018) <<https://www.lawteacher.net/free-law-essays/criminal-law/the-jury-system.php>> accessed 17 November 2019.

²⁴GOV.UK, 'Jury Service' <<https://www.gov.uk/jury-service>> accessed 17 November 2019

²⁵*Ibid.*

²⁶France24, 'South Korea Holds First Ever Trial by Jury' *France24* (12 February 2008) <https://amp-france24-com.cdn.ampproject.org/v/s/amp.france24.com/en/20080212-south-korea-holds-first-ever-trial-jury-south-korea?amp_js_v=a2&_gsa=1&usqp=mq331AQCKAE%3D#aoh=15738104057633&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.france24.com%2Fen%2F20080212-south-korea-holds-first-ever-trial-jury-south-korea> 15 Nov. 15, 2019

²⁷*Ibid* R. Kage.

²⁸*Ibid* R. Kage.

1.6 Ghana

The closest country to Nigeria in terms of the British colonial rule and the aftermaths in its political system is Ghana. Like Nigeria, Ghana was colonised by Britain and a major part of its system of government is defined by what the British introduced while they held the reins of power. A major difference in the judicial system of both countries is the maintenance of the jury system by Ghana; a system which has even been incorporated into its constitution [29]. The jury trial in Ghana is largely governed by the Criminal Procedure Code (CPC) [30] and it provides that a jury trial should be used for indictable offences [31] and for capital cases [32]. A qualified juror must be between the ages of 25 and 60 years, must understand English language, must be resident in Ghana [33] and have no criminal record [34]. A jury is composed of seven persons [35] and is required to reach a unanimous or majority verdict for death and life imprisonment sentences respectively [36]; while the sentencing is left to the judge.

While many are advocating for the introduction of a jury system in their countries, the opposite is the case in Ghana where there have been several calls for the system to be abolished [37]. There have been several criticisms of the system in Ghana [38]; one of which is the fact that the trial judge cannot overrule the verdict of the jury [39] even when it is clear that the verdict was influenced by the emotions of the jury. Other criticisms are the exclusion of highly educated professionals from qualifying for jury service [40]; the consistent absence of jurors due to ill-health and sometimes death which delays the progress of cases and often leads to the start of the trial *denovo*; the lack of provision for jury sequestration which leads to possible influence and corruption of the jury by external parties [41]. All of these criticisms are factors that can

²⁹ Constitution of the Republic of Ghana (CRG) 1992 s19(2).

³⁰ Act 30, 1960.

³¹ CPC s203.

³² CPC s245.

³³ CPC s205.

³⁴ CPC s208.

³⁵ CPC s244.

³⁶ CRG1992 s19(2)(a)(i)-(ii)

³⁷ Julia Ayetey, 'The Verdict is out: Ghana's jury System Needs Urgent Reform' (11 October 2016) <<https://theconversation-com.cdn.ampproject.org/v/s/theconversation.com/amp/the-verdict-is-out-ghanas-jury-system-needs-urgent-reform>> accessed 27 June 2021.

³⁸ Dennis Adjei, 'Ghana's Jury System on trial' (2014) Judicial Studies Thesis, Duke University, School of Law.

³⁹ *Twum v the Republic* [1967] GLR 724.

⁴⁰ CPC s207.

⁴¹ Daniel Korang, 'The Jury System is Anachronistic and should be Abolished' (13 December 2017)

cause the delay of several trials and contribute to the corruption of the jury which defeats the whole purpose of having a trial by jury.

1.7 South Africa

South Africa is another country that was once ruled by Britain and had the jury introduced into its criminal judicial system in 1828 [42] and later it was introduced into the civil cases in 1854. The jury consisted of nine males, who had to be between the ages of 21 and 60 years and own a property or should have paid a certain amount of tax [43]. Of the nine jurors, the decisions of seven were required to reach a verdict [44]. Like Ghana, the system was criticised on grounds that the system contained exemptions that resulted in a jury of less qualified jury candidates and that there was a racial prejudice in the jury selection and verdict. It had to go through several amendments; the first amendment it went through was in 1917 [45] where an accused person could choose if he wanted a bench or jury trial. Later, it was amended in 1935 empowering the Minister of Justice to order that a case could go on without a trial by jury. In 1954, a further amendment stated that there could be no trial by jury unless the accused person requested for it [46]. It was finally abolished in 1969 by the *Abolition of Juries Act 34* after a rapid drop of the public's interest in serving on juries.

1.8 Court Martial

A court martial is a military court and is usually ad-hoc; it is set up when necessary. It involves the trial of military men by members of the military qualified to act as judges in the matter. Usually, members of the Armed Forces forfeit their rights to be tried by a civil court and are tried by an ad-hoc court set up by the military. The court martial is constituted by senior members of the Armed forces and they serve as the judges of any matter brought before them. In the United States, a court martial requires a 3/4th majority vote to convict a defendant. The court martial in the United States also practice the jury system. The jury in

<https://www.ghanaweb.com/GhanaHomePage/features/The-jury-system-in-Ghana-is-anachronistic-and-should-be-abolished-609493>> accessed 27 June 2021.

⁴² S.A Strauss, 'The Jury in South Africa' [1973] (11) *U.W. Austl. L. Rev.* 133.

⁴³ Milton Seligson, 'lay Participation in South Africa from Apartheid to Majority Rule' [2001] (72) *Revue Internationale De Droit Penal* 273.

⁴⁴ Marshall Huebner, 'Who Decides? Restructuring Criminal Justice for a Democratic South Africa' [1993] (102) *The Yale Law Journal* 961.

⁴⁵ Criminal Procedure and Evidence Act 31 1917.

⁴⁶ Cory Adwar 'Here's Why Nobody in South Africa Gets a Jury Trial including Oscar Pistorius' (3 April 2014). <https://www.businessinsider.in/heres-why-nobody-in-south-africa-gets-a-jury-trial-including-oscar-pistorius/amp_articles/33192772.cms> accessed 27 June 2021.

a court martial is called a panel and if the defendant requests, the panel members must consist of at least 1/3rd of enlisted members, who must be senior in rank to the defendant. A special court martial panel consists of at least 3 members while the general court martial panel consists of at least 5 members. A conviction vote is usually decided by a 2/3rd majority rule [47]. 4 members are required to give a verdict of guilt and an enlisted member must be one of the majority. In death penalty cases, a unanimous verdict is required and a majority vote is needed for cases punishable by life penalty [48].

1.9 What Nigeria Can Learn

There has been a call for Nigeria to adopt the jury system by many people including Itse Sagay. The bench trial has been the Nigerian justice system for decades and with the rise of corruption and government influence on the members of the bench, it is imperative that Nigeria begins to consider adopting the jury system. Bench trials in Nigeria have always involved a system where the judge makes decisions both on points of law and points of facts. A number of jurisdictions that have practiced the jury system and have attained a level of success can be the Nigerian guideline in creating a jury system without problems. Just as the Americans saw it, it is an important part of the practice of democracy. Democracy, as is already known and as was defined by Abraham Lincoln, is the Government of the people, by the people and for the people. It is important to have a jury system that cannot be influenced by government forces and that gives independent decisions without pressures.

In considering the adoption of the jury system in Nigeria, Nigeria must take note of the fact that it is a country with peoples of diverse ethnic groups and religions. As Gabadi has rightly observed, 'The normal criticism of a jury trial in Nigeria is the sentimental nature of our citizens, the fear that most decisions would be made through the prism of religion, ethnicity or region' [49]. The racial issue is one America is still battling with till now even though it has overcome major cases of discrimination. It is important to

⁴⁷ Gary Myers, Daniel Conway & Associates, 'Jury Selection in the Military' <<https://www.mcmilitarylaw.com/resources/your-rights/jury-selection-in-the-military/>> accessed 17 November 2019.

⁴⁸ Free Advice Legal, 'Who Appoints the Jury in the Military Justice System?' <https://law.freeadvice.com/government_law/military_law/military_justice_system.htm> 17 November 2019.

⁴⁹ E. Gabadi, 'The Feasibility of the Jury System in the Administration of Justice in Nigeria' (15 June 2018). <<https://dnlegalandstyle.com/2018/the-feasibility-of-the-jury-system-in-the-administration-of-justice-in-nigeria-emmanuel-gabadi/>> accessed 12 November 2019.

consider the possibility of having a jury system without traces of racial discrimination. That may be very difficult to imagine because in every other aspect of Nigeria, especially in politics and economics, race and tribalism have infiltrated the system. Necessary steps will have to be taken, possibly by including solutions to the issues of ethnicity, in the legal framework establishing the jury system in Nigeria.

There is also the belief that jurors would be easier to compromise than the learned judges who are neck deep in corruption; laymen would be easier to approach by a corrupt party to compromise and get a judgment in his favour. One of those who have called for the adoption of the jury system in Nigeria and believe that Nigeria is ripe for its operation is Itse Sagay, a legal luminary and a Senior Advocate of Nigeria. In his words:

In Lagos, the jury system on criminal matter was operating as late as 1986 before it was abolished by the military. I personally supported its abolition for various reasons and the number one reason being that I believed that layman jury could easily be influenced and take instructions; but I believed a judge, being learned in law, would be resistant to persuasion and would uphold the integrity of the judicial system, but I have seen that corruption in the judiciary is so rampant that my earlier view is redundant. In recent years, it has been established that some judges cannot be relied upon to uphold the integrity of the judicial system. It would appear that technical knowledge of the law is being used as a barrier to the administration of the law [50].

Razak Atunwa, a lawyer and former Chairman of the House of Representatives Committee on Justice in Nigeria has also said this about the jury system: It is not a perfect system but it is near perfect in a criminal matter. Even democracy does not give a perfect system. Jurors are not professionals and it is not cumbersome to operate. I can say this because not only have I practiced before a jury, I have also been a juror. To operate the system, however...Nigeria needs a better database because it is from it that the jurors would be drawn. It is said that we are not homogeneous but hardly will you find a nation in the world that is homogeneous today. Emotions will set in but when you start orienting the people, they will see themselves as being able to shape the society. When faced with facts, you would be concerned more about your duty than affiliations [51].

⁵⁰ O. Fadipe 'Sagay Calls for Adoption of Jury system in Nigeria' *Premium Times* (27 March 2018) <<https://www.premiumtimesng.com/news/more-news/263247-sagay-calls-for-adoption-of-jury-system-in-nigeria.html>> accessed 13 November 2019.

⁵¹ *Ibid Premium times*

After reading and understanding the comments by both lawyers, it is clear that the jury is supposed to be a near perfect system of justice with fewer issues of corruption and ethnicity but it still requires close observation. The reason for the adoption has been highlighted in both comments; the problems likely to be faced have also been highlighted. Most importantly, the first step to take as a nation as pointed out by Atunwa is a database. Nigeria has so many cards and numbers that citizens are supposed to have - the Bank Verification Number (BVN), the National Identification Number (NIN), the Permanent Voters Card (PVC), the Drivers' license- but not everyone has them. Those who even have at least one of those numbers are not properly recorded. There are so many biometric numbers but no proper database to collate them all. If Nigeria cannot have an effective database, then the selection of the jury will not be as it should; it will just be a case of a random selection of passers-by and court spectators as it was once done in Europe or if it gets so bad, it may be a corrupt process of handpicking jurors who will favour the rich and the government. If that happens to be the case, then the jury system will have problems from the start.

We cannot talk about adopting the jury system without also talking about the financial expenses Nigeria will incur. The responsibility of feeding and housing the jurors during the duration of a case falls on the government and it is essential that they are kept away from the public so as to prevent chances of compromise by other individuals. During the time of their service as jurors, they would not be able to work for their daily needs as well as for the needs of their dependants, so, the government will have the responsibility of paying them for their service.

1.10 Pros and Cons

For every system, there is at least one advantage and one disadvantage. The jury system is not exempt from this rule. It has a couple of advantages and disadvantages and they have been outlined below.

1.10.1 Pros

Members of the jury are mostly randomly selected with no prior knowledge of the facts of the case. So the possibility of being biased is ruled out, or at best, reduced to the barest minimum. The end result is that there is a verdict that is most likely going to be acceptable by the public [52]. This also means that the trial is likely to be observed and judged by members of the public who can relate to the facts of the case unlike the learned judge who is supposed to be blinded by the principles of law.

⁵²C. Lombardo, 'Pros and Cons of Jury System' (4 October 2015). <http://visionlaunch.com/pros-and-cons-of-jury-system/> accessed 17 November 2019.

The system is governed by a framework that protects jurors from being coerced into giving verdicts against their will. Jurors cannot be threatened or harassed by members of the public for a verdict they gave in any case.

1.10.2 Cons

The choice of attorneys to strike out a potential juror for reasons best known to them makes it impossible to have a totally random selection. If there is a pool of jurors to choose from and attorneys have the options to decide which ones they do not want, by the use of strikes, the advantage of having a random selection is almost defeated. This is because the jury is selected by both attorneys with the hope that their individual choices would favour them. Cases have been recorded of all white juries convicting African-American defendants when the facts point to their innocence. The most recent of this is a case involving Rodney Reed in the United States. He was arrested in 1996 [53] for the rape and murder of a white lady. The evidence presented against him was that some of his sperm was found in her body but he testified that he and the deceased had consensual sex a day before her death. The defendant also had a strong alibi and maintained his innocence all through the case. However, the jury convicted him and sentenced him to death. Over the years, after the conviction, while he was awaiting his execution, new evidence came up suggesting that the deceased's fiancé, who was known for being violent and was also a police officer, was the likely suspect. Expert witnesses who conducted an examination on the deceased's body also came out to say that they cannot stand by their earlier testimonies having made new discoveries. There was a call for a retrial which was rejected and thereafter, the defendant's attorney called for public support and a petition to the Governor of Texas to order a stay of execution, scheduled for 20th November, 2019, and a further order of retrial. On 16th November 2019, the Texas Court of Criminal Appeals ordered a stay of execution and a trial to consider the false testimonies and actual innocence claims by the defendant. More than two decades after his initial conviction, he is still awaiting a retrial, which has been delayed by the events of the Covid19 pandemic and the reluctance of the prosecution to yield every piece of evidence they have with them to the defence lawyers for the re-examination of DNA samples.

Another disadvantage is that there is a possibility of having racial discriminations by a jury.

⁵³Cameron Drummond, 'Death Row Inmate Rodney Reed's Appeal Hearing Rescheduled for July in Bastrop County District Court' (26 April 2021). <<<https://www.statesman.com/story/news/local/bastrop/2021/04/26/death-row-inmate-rodney-reed-appeal-hearing-rescheduled-july/7315867002>>> accessed 27 June 2021.

This is most often seen in cases where all white juries decide against a seemingly innocent coloured man.

One other disadvantage is the possibility of having a tired jury after a long and contentious trial. In this case, the jurors are bored, tired and irritated and will most likely give hasty verdicts just so that they can go home and resume their normal lives. The purpose of having a jury as a fair justice body is then defeated.

It has been discussed earlier that the lack of knowledge of the principles of law in the jury is an advantage because the facts are what the jury is interested in, not the law. However, when a jury lacks total knowledge of the principles of the law, there's a tendency to acquit guilty defendants because the jury feels the facts exonerate him; whereas, if they knew certain principles of the law, they could have convicted him.

1.11 CONCLUSION AND RECOMMENDATIONS

Having analysed the jury system of various jurisdictions and considered the possibility of adopting same in Nigeria, it is concluded that Nigeria needs to adopt the jury system to boost speedy justice and fair justice. All criticisms about the jury system can be worked on and avoided if properly managed. It would be absolutely useless and needless to adopt a jury system in Nigeria if the primary purpose of its adoption, justice, is not achieved. Hence, it is advised that a number of precautions are taken and worked upon. Rood, when discussing the success of the jury system in western countries and the application of the system in African countries mentioned thus:

The export of jury system to English-speaking Africa has not met with success. It has been argued that the jury system, which implies autonomous decision making by the jurors, can function properly only where the community in which it operates is socially homogeneous with no major racial, cultural, or religious divisions. In African countries where such divisions exist, kinship and group loyalties often overrule the fair application of the criminal law^[54].

This statement highlights critical issues that the average African country is likely to encounter because of the complexities and diversities of ethnicity, religions and cultures. Nigeria, as a developing country with multiple religions^[55], ethnic groups and known in major parts of the world for corruption, there are several factors that may hinder the success of a jury system. Some of them are tribalism, corruption, illiteracy, nepotism and apathy that form the mind-set of the average Nigerian. While the average Nigerian is likely

to favour a person from his tribe and of the same religion, incidences in the last few years have revealed that Nigerians have a bond of unity in combating injustice of any form notwithstanding the tribe or religion that the victim and accused person may be from. An examination of the movement for justice on the social media apps reveals that Nigerians set aside all of these dividing factors when there are cases of missing persons, kidnap, rape or murder; put resources together and cooperate to fish a perpetrator out and call on the necessary authorities for further actions. A very recent example is the kidnap, rape and murder of a young lady, Iniobong Umoren (also known as Hinny Umoren), who went seeking for a job in Uyo, Akwa-Ibom. When she was reported missing as a possible case of kidnap on Twitter, one of the social media apps with a large Nigerian presence, those who saw the message combined their technology and financial resources and were able to locate the name, phone number, location, account details, associated social media accounts and family members of the alleged kidnapper in less than 24 hours. Previous survivors who were his rape victims also threw in support and clues that aided the search. All of these happened after Iniobong's family had filed a missing person's report at the Police station with specific details about receiving a call where she screamed but they were told to return after 24 hours before the Police could take any action. 72 hours after the first report, the alleged kidnapper, Uduak Akpan was forced to come out of hiding due to the social media pressure; he was then arrested and led the police to the shallow grave where he buried Iniobong after raping and murdering her. It was a gruelling 72 hours where hundreds of Nigerians from various tribes were sincerely concerned and placing pressure on the police and government authorities to take necessary actions. This attracted the interest of the Nigerian National Assembly, the Governor of Akwa-Ibom State and the Inspector General of Police. Another incidence was the End Sars protest that shut down activities in the country for about two weeks. It began after officials of the Special Anti-Robbery Squad (SARS) were alleged to have caused the death of a young man in Delta State. Nationwide reactions resulted in mass protests where donations were made for the feeding, legal aid and medical care of protesters. Those arrested had a plethora of lawyers visiting police stations and insisting on their release. These incidences and lots more are proof of the fact that Nigerians, though divided by tribe and religion, have a joint voice against injustice. This joint voice can be helpful in forming a jury in criminal cases that generate public interest as the victim and the accused person can be assured that justice would truly be served.

However, many Nigerians lack interest in taking actions unless than they are assured that it would produce results. Many began to join the End Sars protest after seeing that it attracted the interest of Nigerian government authorities and those of other

⁵⁴ L.G Rood, 'A return to the Jury System?' (1990) De Rebus cited in Marshall Huebner, 'Who Decides? Restructuring Criminal Justice for a Democratic South Africa' [1993] (102) *The Yale Law Journal* 961.

⁵⁵ Constitution of the Federal Republic of Nigeria 1999.

countries. If there are clear guidelines laid out to ensure that the jury system would not contribute to injustice and would lead to speedy conclusion of trials, Nigerians would be interested in serving as jurors as their contribution to the growth of the judicial system. The success rate of the first set of cases tried by jury will garner the interest of other Nigerians to declare their interest to serve as jurors. In adopting this system, the errors of Ghana and South Africa, with similar colonial roots as Nigeria, should be studied and avoided. Both countries exempted the inclusion of highly educated professionals like Lawyers and Doctors, as qualified jurors which meant that a major percentage of jurors were the barely literate and illiterate class. The requisite of simply understanding English in the Ghanaian Criminal Procedure Code is not sufficient enough because the proceedings in court go beyond the mere understanding of English language; comprehending court proceedings require a certain level of literacy and logical reasoning which illiterates may not have. This means that majority of verdicts from juries constituted mainly of barely literate and illiterate people would be reached based on emotions and sentiments instead of logic and facts.

As earlier stated, after the United States of America had gone through the hassles of racial discrimination in jury selection, they now have one of the best jury systems in the world. It is recommended that Nigeria studies the growth of the American jury system to avoid a repeat of the racial discrimination that the Americans went through. Nigeria, right now, is battling with issues stemming from racial differences. It would be quite unfortunate if this is allowed to influence the jury system in Nigeria, if and when it is adopted.

One other thing to take note of is having a better database. The details of all citizens need to be captured on a database so that people qualified to be jurors can easily be identified and summons can be sent to them whenever their services are needed. There is a possibility of a citizen changing his address without proper notification and change to his address details on the database, this would mean that when a random pool of prospective jurors is drawn from a particular area, about half of them would still be residing in that area.

It was earlier noted that the right to a trial by jury, in a criminal case, is stipulated in the American Constitution and scrapping it means amending the Constitution. Just like certain provisions in Nigeria - such as the Land Use Act ownership of land by the Governors - have been incorporated into the Nigerian Constitution, it is recommended that if and when the jury system is adopted, an amendment to the Constitution should be done to incorporate same. It has been a battle to have the powers of the governor, as regards land in Nigeria, changed; so, it is foreseen that it will be very difficult to have the jury system scrapped

in the event that it cannot be manipulated by the government.

It is also recommended that the jury system in Nigeria, when adopted, should not bear the same mistakes as the Japanese pre-war jury system had. The judicial system in Nigeria has been lacking total independence; there are influences from the executive and legislative arms of government. If learned judges have been subject to dependence on external arms before doing justice, it is impossible to think of an independent jury system that comprises of laymen. To avoid the mistakes of the Japanese pre-war jury system, steps should be taken to protect the independence of the jury system and make their decisions binding and appealable, if the defendant pleases.

Finally, it is recommended that Nigeria adopts the mixed jury system like it currently obtains in Japan now, where laymen and learned judges sit together to form the jury in a ratio of 3 to 1. This way, the learned judges would serve as a check on the laymen and vice versa. The laymen's decisions, having been protected by the law as binding, cannot be rejected by the learned judges. It is recommended that the verdict and decisions of the jury is determined by the majority rule where at least one of the learned judges needs to consent and form part of the majority.

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