

Helen McEntee TD
Minister for Justice
Minister's Office
51 St Stephen's Green
Dublin 2

26 June 2023

Report of the OASA Review Group

Dear Minister McEntee,

1. The Irish Council for Civil Liberties (ICCL) welcomed the publication of the Reports of the Review Group into the Offences against the State Acts (OASA) last week. We welcomed your statement that the reports would be fully considered and note that you stated that this would happen "in due course".
2. You will be aware of our longstanding position that the Special Criminal Court should be abolished in the absence of a state of emergency in Ireland because of the serious risks to the right to a fair trial, the right to equality before the law and a range of other rights. In this respect, we endorse the minority report of the Review Group and the recommendations on which there was consensus from the whole Group, including the need to repeal the Offences against the State Acts.
3. While we disagree with some of the specific recommendations from the majority, we consider it is imperative that the government immediately outlines a timeline for a comprehensive response to the whole report.

Data collection

4. ICCL considers that some key recommendations on which there was consensus from the majority and minority could be implemented immediately. These include a request to the Director of Public Prosecutions, (DPP), the Courts Services and An Garda Síochána to immediately begin

collecting disaggregated data on issues related to use of the Special Criminal Court.

5. This is particularly relevant given the strong statement by both the majority and minority that there is a lack of clear data on these issues. In our view, the lack of data disallows an evidence-based approach to responding to the issue of jury intimidation or jury tampering. This entirely undermines the main argument in favour of retention of the Court.

Timeline for Repeal of the Offences against the State Acts

6. Given the clear consensus recommendation from the Review Group, we urge you to outline a timeline for the repeal of the Offences against the State Acts. Sufficient time for widespread consultation and robust democratic debate about what form the replacement legislation should take should be allocated within that timeframe.

Immediate Amendments

7. While a process to consider repeal and replacement of the OASA is taking place, ICCL considers that simple amendments to the existing OASAs could be tabled by government at the Oireachtas debate tomorrow, 27 June 2023.
8. These amendments could include, at a minimum:
 - a. Immediate removal of all scheduled offences from the Acts, so all future decisions to send a trial to the Special Criminal Court must be decided on a case by case basis. This is in line with the majority recommendation (approved of by the minority).
 - b. A requirement for all judgments of the Special Criminal Court to be published.

Alternatives to non-jury trials

9. Both the majority and the minority emphasised the need to consider alternatives to non-jury trials to protect juries. We urge you to commit to prioritising legislation providing for alternatives to non-jury trials, as recommended by the majority, expanded upon by the minority and detailed by the Law Reform Commission in 2013.

A rights-based analysis

10. ICCL is continuing its analysis of the two reports and intends to share a more comprehensive response in the next few weeks. In the meantime, we urge you to ensure that the rights to a fair trial and the right to a trial by jury should constitute the cornerstone of any new programme for reform.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'LH', written in a cursive style.

Liam Herrick
Executive Director
ICCL