



Irish Council for  
**Civil Liberties**

## **ICCL Review of the Special Criminal Court<sup>1</sup>**

23 June 2020

### **Executive Summary**

The Oireachtas has to annually renew certain sections of the Offences Against the State 1998 and the Criminal Justice Act 2009. These sections relate to laws around membership of an unlawful organisation, inferences that can be drawn and used as evidence, direction of an unlawful organisation, as well as penalties for certain offences.

ICCL, with many others, believes that this law should not be renewed and the Special Criminal Court should be abolished. This is because it poses problems for the right to a fair trial. The law and the Court were initially devised in order to cope with the emergency posed by paramilitary organisations to the State.

That emergency is now over but the jurisdiction of the Special Criminal Court has been extended to deal with organised crime. Ireland has been criticised by international human rights bodies and legal scholars for continuing to use the Special Criminal Court beyond the emergency that led to its creation.

The Special Criminal Court violates the right to a jury trial, as protected by our Constitution. Defenders of the Court say that this is necessary because juries need to be protected from organised criminals. However, there are alternative means of protecting juries. Anonymised juries, for example, are used in other jurisdictions and were foreseen in Irish law by a now defunct act 'The Juries Act', dating from 1929. New technology means we could see remote hearings going forward. Juries could perhaps avail of this new technology.

The Special Court allows for a weaker standard of evidence to be used when convicting people of very serious offences. This includes the ability to draw 'inferences' or draw conclusions from indications of fact rather than from actual facts and in some cases defendants do not have proper access to evidence in order to properly test it. This undermines the basis for a trial in the first place which is to test the evidence of guilt before someone can be convicted.

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The rights to equality before the law and to equal protection of the law are also at risk. In the current system, two people who are accused of the same offence may be tried by two different systems. The 1998 Act weakens other protections too. It allows for longer detention of suspects, greater search powers for Gardaí and extended powers of interrogation.

The emergency justifying the risks to fair trial rights is over. This needs to be reflected in our law. The OASA should be repealed and the Special Criminal Court abolished.

## Introduction

In recent weeks, there has been significant focus on the question of whether a government will be formed in time to renew the Offences Against the State (Amendment) Act 1998 (“the 1998 Act”) and the Criminal Justice (Amendment) Act 2009 (“The 2009 Act”). These Acts underpin the operation of the Special Criminal Court, in particular in relation to its jurisdiction over ‘gangland crime’.

Certain sections of the Act will cease to operate unless a resolution has been passed by each House of the Oireachtas extending them.<sup>2</sup> These sections include aspects of offences relating to membership of an unlawful organisation, inferences that can be drawn and used as evidence, directing an unlawful organisation, as well as penalties for certain offences.

Section 8 of the 2009 Act declares that the ordinary courts are inadequate to secure the effective ‘administration of justice and the preservation of public peace and order’ in relation to a number of offences.<sup>3</sup> These offences deal with what is known as “gangland crime” and directs that they be scheduled offences which can be dealt with by the Special Criminal Court. Section 8(4) of the 2009 Act provides that the section should not continue for longer than 12 months from the passing of this Act unless a resolution has been passed by each House of the Oireachtas. The Dáil last passed a resolution on the 12<sup>th</sup> June 2019 that both pieces of legislation shall continue in operation for the period beginning on the 30<sup>th</sup> June 2019 and ending on the 29<sup>th</sup> June 2020.<sup>4</sup>

The continued use of the Special Criminal Court gives rise to a number of human rights concerns. In particular, a suspect’s right to a trial by jury, right to a fair trial and their right to equality before the law and to equal protection of the law are all violated by its continued use. As things stand, two people who are accused of committing the same offence may be tried by two different systems. Further, the current system deprives some people of the

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<sup>2</sup> The 1998 Act provides that sections 2 to 4, 6 to 12, 14 and 17 must be renewed by the Oireachtas.

<sup>3</sup> These are found under each of the following provisions of Part 7 of the Criminal Justice 2006, namely, sections 71A, 72, 73 and 76.

<sup>4</sup> Dáil Éireann debates, 12<sup>th</sup> June 2019, Vol 983 No. 5 available at <https://www.oireachtas.ie/ga/debates/debate/dail/2019-06-12/33/>.

ordinary constitutional entitlement to a trial by jury. The Irish Council for Civil Liberties (“ICCL”) repeats its call that the Special Criminal Court should be abolished on the basis that non-jury courts are outside the norm of the common law system, are in breach of our human rights obligations and that the continued use of such courts are no longer necessary in circumstances where Ireland is not in a time of emergency.

There are a number of alternatives available that allow for the proper administration of justice and protection of the security of the State whilst also vindicating human rights such as anonymising juries, the use of video link for juries or granting special protections for juries. The State has not demonstrated that these alternative measures, which would present lesser or no interferences with human rights standards, would not be adequate to meet the objectives of protecting the proper administration of justice. Further, in a report that was laid before the Dáil prior to the last resolution, it was noted that a number of the provisions, sections 3, 4, 6, 8, 9, 12 and 17 of the 1998, had not been utilised during the reporting period from 1 June 2018 to 31 May 2019.<sup>5</sup> Consequently, we believe that the provisions should not be renewed and focus should be on abolishing the Special Criminal Court.

### **Background to the Special Criminal Court**

Article 38.3 of the Irish Constitution provides for the establishment of special courts for the trial of offences “where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order.” The Special Criminal Court sat between 1939 and 1946; 1961 and 1962 and from May 1972 to date. Hearings before the Special Criminal Court are heard by a 3-judge panel. While earlier Special Criminal Courts were staffed by military officers, since 1972 only judges or former judges have sat on the Court and, indeed, since 1986, the practice of appointing former judges to the Special Criminal Court was discontinued and all judges since then have been sitting judges.<sup>6</sup> By order of Government dated 28 October 2015, seven judges were appointed to Special Criminal Court No 2, thereby bringing the second Special Criminal Court into existence. The ICCL is concerned by the recent expansion and the continued use of the Special Criminal Court. This is particularly so in circumstances where the numbers being dealt with by the Court are decreasing.<sup>7</sup>

Under section 18 of the Offences Against the State (Amendment) Act 1998, the Oireachtas is required to pass resolutions resolving that the provisions relating to non-jury trials should

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<sup>5</sup> Dáil Éireann debates, 12<sup>th</sup> June 2019, Vol 983 No. 5 available at <https://www.oireachtas.ie/ga/debates/debate/dail/2019-06-12/33/>.

<sup>6</sup> Harrison, *The Special Criminal Court: Practice and Procedure*, (Bloomsbury Professional, 2019), para 3.04.

<sup>7</sup>Conor Gallagher, “Second Special Criminal Court to suspend operation amid falling case numbers”, Irish Times(Dublin, 24<sup>th</sup> August 2019) available at <https://www.irishtimes.com/news/crime-and-law/second-special-criminal-court-to-suspend-operation-amid-falling-case-numbers-1.3995590>

continue in operation. This Act was introduced in the wake of the Omagh Bombing in August 1998. Similarly, the provisions of the 2009 Act must be renewed. In general, the provisions of the Act are typically renewed every year, with the Oireachtas renewing the provisions last summer until 29 June 2020. Consequently, the Oireachtas must pass a resolution prior to the 30<sup>th</sup> June 2020 if the Special Criminal Courts are to continue to operate as they currently do.

### **Issues with the Special Criminal Court**

As discussed above, the current Special Criminal Court was established in 1972 as an emergency measure in response to a unique set of circumstances then at play in Ireland. It has been noted that it would appear, however, that the court now has de-facto permanency in our criminal justice system.<sup>8</sup> There has long been worries that this emergency legislation would seep into ordinary legislation. Gerard Hogan and Clive Walker wrote in 1989 that there is “disquieting evidence of the “seepage” of emergency legislation into the ordinary law of the State. What was once seen as a radical (and purely temporary) departure from standard norms has now become an accepted feature of the criminal justice system”. This continues to be a problem today and similar comments were made by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Professor Fionnuala Ní Aoláin at a lecture hosted by ICCL and the International Network of Civil Liberties Organisations (INCLO).<sup>9</sup> Professor Ní Aoláin stated that “the Island of Ireland, more so than many parts of the world has experienced emergency law, emergency practice and the seepage of the exceptional into the ordinary in ways that has not served the rule of law nor the protection of human rights well.”. Such seepage is an inherent risk of all emergency legislation. This was further pointed out in the Hederman report:

“Yet it is plain that great dangers for human rights arise in this area. Emergency legislation may be abused for pragmatic political purposes; special powers, introduced for special reasons, may continue to be used when those reasons no longer justify this, or for purposes extending beyond those that warranted their original introduction; and powers of detention or interrogation may be used cruelly or inhumanly upon innocent (or even guilty) people.”<sup>10</sup>

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<sup>8</sup> Harrison, “Vigilance Required Against ‘Seepage’ of Emergency Legislation in Ireland”, Cassandra Voices, 31st March 2020, available at <https://cassandravoices.com/law/vigilance-required-against-seepage-of-emergency-legislation-in-ireland/>

<sup>9</sup> <https://www.iccl.ie/news/un-expert-criticises-special-criminal-court/>

<sup>10</sup> Hederman et al, Report of the Committee to Review the Offences Against the State Acts 1939–1998 (2002), at para 2.1.

While the majority of trials in the Special Criminal Court continue to involve subversive activity, prosecution of organised crime in the court is increasing and a situation has now arisen where emergency powers have become normalised.<sup>11</sup>

The traditional position under Irish constitutional law is that a person accused of a serious crime is entitled to a trial by jury in Ireland.<sup>12</sup> This is one of the cornerstones of our justice system. However the use of the Special Criminal Court is an exception to this ordinary principle. ICCL is of the view that there is no evidence that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order as required by the Constitution when prosecuting these types of crimes.<sup>13</sup> The current distinction is unjustified and disproportionately affects a suspects right to a jury. Further, it is the DPP who decides whether to certify that a trial should be conducted in the Special Criminal Court. Given that Art 38.1 of the Irish Constitution explicitly protects the right to trial by jury, the power granted to the DPP represents a strong inroad into the principle, which the courts are bound to protect.<sup>14</sup> Despite this, the courts have thus far shown great reluctance in interfering with the decision of the DPP or enquiring into whether she has exercised her decision judiciously and reasonably in a given case.<sup>15</sup> Another problem with the Court is its rules of evidence. These rules are different to ordinary courts. They compromise the right to silence and attach evidential weight to the opinion of a senior garda. The difficulty with secret and unchallenged opinion evidence of this type is that it leads to unaccountable policing. This can result in significant issues the likes of which were observed in the Morris Tribunal.

### **Special Criminal Court and International Human Rights Standards**

The use of the Special Criminal Court has been criticised by numerous human rights bodies for its continued use. While international standards do not prohibit the establishment of special courts that conform fully with fair trial standards, the UN Human Rights Committee has clarified that “the trying of civilians by such courts should be very exceptional...”. The Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, has repeatedly raised concerns about Ireland’s continued use of such courts. In its concluding observations of its 2000 review, the Committee stated “[t]he Committee expresses satisfaction that the state of emergency declared in 1976 was ended

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<sup>11</sup> Harrison, “Vigilance Required Against ‘Seepage’ of Emergency Legislation in Ireland”, Cassandra Voices, 31st March 2020, available at <https://cassandravoices.com/law/vigilance-required-against-seepage-of-emergency-legislation-in-ireland/>

<sup>12</sup> Article 38. 1 and 38.5 of Bunreacht na hÉireann.

<sup>13</sup> Article 38. 3 of Bunreacht na hÉireann.

<sup>14</sup> Harrison, *The Special Criminal Court: Practice and Procedure*, (Bloomsbury Professional, 2019), para 3.54.

<sup>15</sup> Harrison, *The Special Criminal Court: Practice and Procedure*, (Bloomsbury Professional, 2019), para 3.54.

in 1995 and that the Emergency Powers Act of 1976 has now lapsed.” The Committee went on to observe that:

436. The law establishing the Special Criminal Court does not specify clearly the cases which are to be assigned to that Court but leaves it to the broadly defined discretion of the Director of Public Prosecutions (DPP). The Committee is also concerned at the continuing operation of the Offences against the State Act, that the periods of detention without charge under the Act have been increased, that persons may be arrested on suspicion of being about to commit an offence, and that the majority of persons arrested are never charged with an offence. It is concerned that, in circumstances covered by the Act, failure to respond to questions may constitute evidence supporting the offence of belonging to a prohibited organization. The application of the Act raises problems of compatibility with articles 9 and 14, paragraph 3 (g), of the Covenant. The Committee regrets that legal assistance and advice may not be available until a person has been charged.

**437. Steps should be taken to end the jurisdiction of the Special Criminal Court and to ensure that all criminal procedures are brought into compliance with articles 9 and 14 of the Covenant.” [Emphasis added]<sup>16</sup>**

In its 2014 report on Ireland, the United Nations Human Rights Committee reiterated that it had concerns in relation to Ireland’s continued use of the Special Criminal Court. It highlighted its continued concern at “the continuing operation of the Special Criminal Court”.<sup>17</sup> The UN HR Committee called on the State to ‘consider the abolition of the Special Criminal Court completely.’<sup>18</sup> Similarly, the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, recommended that the State should monitor the need for the Special Criminal Court carefully with a view to its abolition.<sup>19</sup>

ICCL is of the view that the use of such a court in peacetime flouts Ireland’s human rights obligations and is not necessary in a democratic society. As a result, Ireland continues to be in breach of its human rights obligations and fails to properly vindicate the right to a trial by jury.

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<sup>16</sup> Report of the Human Rights Committee, Vol I, Gen Ass, 55th Sess, Supp No 40, A/55/40 (10 Oct 2000) available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2F55%2F40%5BVOL.I%5D\(SUPP\)&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2F55%2F40%5BVOL.I%5D(SUPP)&Lang=en).

<sup>17</sup> United Nations Human Rights Committee, ‘Concluding observations on the fourth periodic report of Ireland’, CCPR/C/IRL/CO/4 (19 August 2014).

<sup>18</sup> *Ibid.*

<sup>19</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 26<sup>th</sup> February 2013, UN General Assembly, available at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-47-Add-3\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-47-Add-3_en.pdf)

The ICCL is of the view that the minority of the Committee to Review the Offences Against the State Acts 1939–1998, which consisted of Mr. Justice Hederman, Professor Dermot Walsh and Professor William Binchy was correct when they called for the abolition of the Court. They wrote:

“Trial by jury is a cornerstone of the criminal law system. It ensures that the innocence or guilt of a person charged with an offence is determined by twelve randomly chosen members of the community, each of whom brings to the process the benefit of his or her life-experience and individual perspective. Lord Devlin used somewhat colourful language when he observed that trial by jury is ‘the lamp which shows that freedom lives’. His insight is, however, important in emphasising the liberal democratic basis of jury trial ... We are of the view that the case in favour of the continued existence of the Special Criminal Court has not been made out ... We consider that the arguments adduced in support of the very existence of the court do not stand up to scrutiny in the light of constitutional values and human rights norms”<sup>20</sup>

The minority went on to conclude:

“The existence of the Special Criminal Court can best be explained not by factually justified and specifically focused concerns relating to the risk of jury intimidation unique in the common law world, but by the desire to use strong means to put down violent, politically inspired crime. That desire is understandable but the means are, unfortunately, inconsistent with the values of a modern liberal democratic society and the protection of human rights. In our judgment, the best course is for Ireland to join all other common law countries with jury trial and dispense with the Special Criminal Court.”<sup>21</sup>

The Minister for Justice and Equality Charlie Flanagan in the last Dáil debate on renewing the provisions of the Act defended the use of the Special Criminal Court. Minister Flanagan stated

“I appreciate that some Members of the House are concerned about the role of the Special Criminal Court in the criminal justice system. One of the most important traits of a democratic society is a justice system that operates free from interference by anyone seeking wrongfully to influence outcomes. Our criminal justice system depends not only on judges and lawyers but also on the participation of citizens, whether as witnesses or jurors. This latter role is central to our idea of a trial by a jury

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<sup>20</sup> Hederman et al, Report of the Committee to Review the Offences Against the State Acts 1939–1998 (2002), at paras 9.88–9.89.

<sup>21</sup> Hederman et al, Report of the Committee to Review the Offences Against the State Acts 1939–1998 (2002), at paras 9.06

of one's peers. We all agree that trial by jury must be preserved to the greatest extent possible. However, none of us can be blind to the threat posed to the criminal justice process by individuals, terrorist groups and organised criminal groups who seek to subvert the system through the intimidation of citizens. We cannot allow that to happen. We are obliged to make the hard decision that sometimes, in certain limited circumstances, a trial by jury is simply not possible.”<sup>22</sup>

The Minister went on to add that “we all look forward to the day when the Special Criminal Court is no longer needed, regrettably we are not there yet.” However, the ICCL does not believe that any evidence has been put forward that adequately justifies the continued use of the Court. The current court was established in 1972 at the height of the conflict in Northern Ireland as a response to what was believed to be an existential threat to this State. Even then, it was highly contentious and throughout its history, lawyers, human rights organisations and international bodies have challenged its existence. ICCL has consistently challenged the use of a non-jury court as a denial of constitutional and human rights, as has Amnesty International and the UN Human Rights Committee. It cannot be said that the current climate poses an existential to the State.

### **Alternatives to the Special Criminal Court**

One of the main justifications that is often put forward for the continued use of the Court is jury intimidation. However alternative solutions to this problem exist in many other common law countries. Some options include using anonymous juries, screening juries from public view, special protection of juries during trials, and using video links to juries at different locations. Anonymous juries have sometimes been used in the United States as a way of dealing with high profile cases where it is deemed that there is a risk to the jury. An anonymous jury was first used in 1977 in USA in the case of *United States v. Barnes*. This was a criminal trial where the leader of a large drug trafficking network and 14 co-defendants were tried for conspiracy as well as violating narcotics and firearms laws. The U.S. Court of Appeals for the Second Circuit upheld the use of the anonymous jury, finding the step was necessary because the jurors' fear of retaliation would have hindered the deliberative process.<sup>23</sup> This has been approved in every Federal Judicial Circuit in the USA with the exception of the 10<sup>th</sup> Circuit.<sup>24</sup>

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<sup>22</sup> Dáil Éireann debate, Wednesday, 12 Jun 2019, Volume 983, No. 5, available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-06-12/33/>.

<sup>23</sup> *United States v. Barnes*, 604 F.2d 121, 141 (2d Cir. 1979).

<sup>24</sup> The Reporters Committee for Freedom of the Press, “The right of access to juror names and addresses”, available at [https://www.rcfp.org/journals/news-media-and-law-summer-2016/right-access-juror-names-an/#\\_ftn4](https://www.rcfp.org/journals/news-media-and-law-summer-2016/right-access-juror-names-an/#_ftn4). See also e.g., *United States v. Ramírez-Rivera*, 800 F.3d 1 (1st Cir. 2015); *Barnes*, 604 F.2d at 130; *United States v. Scarfo*, 850 F.2d 1015 (3d Cir. 1988); *United States v. Dinkins*, 691 F.3d 358 (4th Cir. 2012); *United States v. Krout*, 66 F.3d 1420 (5th Cir. 1995); *United States v. Deitz*, 577 F.3d 672 (6th Cir. 2009); *United States v. Crockett*, 979 F.2d 1204 (7th Cir. 1992); *United States v. Darden*, 70 F.3d 1507 (8th Cir. 1995);

Anonymous juries, screening juries or having them at a separate and secret location was something that was recognised by the minority of the Committee in the Hederman Report as something that could assist in ensuring that juries are used in trials. It was noted that while the risk of juror intimidation would be greater in some cases than others, there is no evidence from any jurisdiction that the risk is of such proportions as to warrant dispensing with trial by jury. The minority acknowledged that in a small jurisdiction such as Ireland, anonymity is difficult to secure, but suggested that if the jury is ‘anonymous and at a secure and secret location, the risk of effective jury intimidation would not be very great’.<sup>25</sup> Further, the Law Reform Commission considers that there is a strong argument in favour of the re-examination of whether the use of scheduling of offences for the purposes of the Offences Against the State Act 1939 complies with the State’s obligations under international law and whether a more individualised case-by case approach may be justified.<sup>26</sup>

Another option to prevent juror intimidation would be to limit the right to inspect the panel from which the jury is drawn, as has been done in Northern Ireland.<sup>27</sup> A similar suggestion was made by the Law Reform Commission where it recommends that access to jury lists should be possible only by the parties’ legal advisers (or the parties if they are not legally represented) and only for a period of four days prior to the trial in which the parties have an interest. The Commission also recommends that access to the jury list should not be permitted once the jury has been sworn, except for some exceptional reason and only with the sanction of the court on application; and that, where a party is legally represented he or she may be provided with the information in the jury list but not a copy of the list.<sup>28</sup>

In addition to this, in light of the COVID 19 pandemic, there has been a significant increase in the use of technology by the Courts Service to ensure that hearings can continue to run virtually.<sup>29</sup> The potential use of technology to allow a jury to watch the trial remotely is another option that should be considered. All these options should be explored with the aim of ensuring that all accused people are provide with the same rights.

Providing specific protections to juries to prevent intimidation is not something novel in Irish law. The now expired Juries Act 1929 provided for special protections for juries such as the

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United States v. Shryock, 342 F.3d 948 (9th Cir. 2003); United States v. Ross, 33 F.3d 1507 (11th Cir. 1994); United States v. Edmond, 52 F.3d 1080 (D.C. Cir. 1995)

<sup>25</sup> Hederman et al, Report of the Committee to Review the Offences Against the State Acts 1939–1998 (2002), at para 9.95.

<sup>26</sup> Law Reform Commission, Report on Jury Service, (LRC 107-2013), April 2013 at para 7.50 available at [lawreform.ie/\\_fileupload/Reports/r107.pdf](http://lawreform.ie/_fileupload/Reports/r107.pdf)

<sup>27</sup> Article 26A of the Juries (Northern Ireland) Order 1996 (SI 1996/1141 (NI 6)), as inserted by s,10 of the Northern Ireland Act 2007.

<sup>28</sup> Law Reform Commission, Report on Jury Service, (LRC 107-2013), April 2013 at para 7.51 available at [lawreform.ie/\\_fileupload/Reports/r107.pdf](http://lawreform.ie/_fileupload/Reports/r107.pdf)

<sup>29</sup> Courts Service, Virtual Remote Courts Piloted in Ireland this morning, available at <https://beta.courts.ie/content/virtual-remote-courts-piloted-ireland-morning>

secrecy of the jury panel in certain criminal trials, excluding the public during the calling of the jury panel, clearing the court during criminal trials and putting in place penalties for intimidating a member of jury. The Act also prohibited the publication of the names of jurors. However, the Act was never commenced and the concept of trial by a 'protected jury' was cast aside in favour of non-jury trials.<sup>30</sup> The Act was extended by the Juries (Protection) Act 1931 but expired on 30 September 1933. It was ultimately repealed by the Statute Law Revision Act 2016.

Finally, the use of the Court does not solve the issue of witnesses still having to give evidence in such trials. Consequently, it is arguable that the threat posed by subversive organisations and organised crime gangs is still manifest, even with the Special Criminal Court. Therefore, the justification for such a court does not ring true. The fact that it may make the prosecution of certain types of offences easier is not a justification of the continuation of the court. The ICCL is of the view that such a court is an unjustified diminishing of the right to a trial by jury of an accused person.

### Conclusions

ICCL is of the view that the current regime is unjustified and disproportionate in the current climate. ICCL believes that the ordinary judicial system is capable of dealing with the types of crimes that currently fall within the purview of the court. The Special Criminal Court is an exceptional court which operates outside of general constitutional standards of fair trial, as well as international human rights standards. We believe that if we are to effectively tackle gangland crime, the Gardaí must be placed in a position to fully enforce existing criminal laws, especially in cases where attempts are made to intimidate key witnesses.

The emphasis should be upon intelligence-led and community-based policing coupled with improved witness and jury protection, rather than on undermining the rule of law by continuing the Special Criminal Court. Consequently, we do not believe that the current provisions should be renewed by the Oireachtas. Given the short time frame prior to the lapsing of the provisions, it may be viewed as unrealistic to refuse to renew the legislation when there is insufficient time to put in place some of the potential safeguards suggested above. If this is the approach taken, any renewal should be conditional on an extensive review being carried out on the continued use of both Acts and at ways of facilitating the use of jury trials for all offences in Ireland.

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<sup>30</sup> Harrison, *The Special Criminal Court: Practice and Procedure*, (Bloomsbury Professional, 2019), para 1.65.