

# Written Evidence to the Northern Ireland Affairs Committee (NIAC) Inquiry on the Government's new approach to addressing the legacy of the past in Northern Ireland

February 2025

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its international human rights obligations. CAJ is the UK member of the International Federation of Human Rights (FIDH).
2. CAJ has a broad body of work and analysis on legacy and has regularly given oral and written evidence to Parliamentary Committees, including NIAC, who we most recently met with in December 2024. CAJ also continues to regularly engage with the Council of Europe and UN human rights monitoring mechanisms in relation to the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 ('the Legacy Act').
3. The NIAC Call for Evidence concerns the Labour Government's commitment to repeal and replace the Legacy Act. It seeks evidence on whether the approach meets the needs of victims, survivors and families and asks what steps should be taken to reform the Independent Commission for Reconciliation and Information Recovery (ICRIR).<sup>1</sup>

## The CAJ ICRIR Reform Report (November 2024)

4. In light of the commitment to reform the ICRIR, and the Irish Government's call for substantive 'root and branch' reform of the ICRIR to make it ECHR compatible and gain public trust,<sup>2</sup> CAJ published the following report in November 2024:

***What could substantive 'root and branch' reform of the ICRIR look like? and would it be enough? A CAJ analysis of the extent to which reform of the ICRIR is viable.***<sup>3</sup>

5. Whilst briefly first touching on legacy inquests, this evidence will then focus on reform of the ICRIR. Lord Caine, one of the key architects of the Legacy Act who steered its passage through the House of Lords, recently rightly referred to the ICRIR as forming the 'vast bulk' of the legislation.<sup>4</sup> In this context Government's commitment to repeal the legislation sits uneasily with the unilateral decision to retain but reform the ICRIR. We nevertheless sought to address the question of the viability of reform in our report.

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<sup>1</sup> <https://committees.parliament.uk/call-for-evidence/3525>

<sup>2</sup> Tánaiste Micheál Martin, British Irish Association Conference, September 2024. "I believe that both the British and Irish Governments agree that substantive reform [of the ICRIR], focused on ensuring compliance with the ECHR and genuinely regaining public trust, is necessary. The genesis of the Commission means that, understandably, many victims, survivors and families have deep reservations. Addressing such reservations will mean tackling fundamental questions in relation to the independence of the ICRIR, and its ability to carry out robust and thorough investigations. That will require significant effort – and, I believe, root and branch reform." <https://www.gov.ie/en/speech/6119c-tanaistes-remarks-at-the-british-irish-association-conference/>

<sup>3</sup> *What could substantive 'root and branch' reform of the ICRIR look like? and would it be enough?* (CAJ, 2024) <https://caj.org.uk/publications/reports/what-could-substantive-root-and-branch-reform-of-the-icrir-look-like-and-would-it-be-enough/>

<sup>4</sup> HL Hansard, 5 Dec 24, vol 481, c1m1284-5.

## Legacy Inquests

6. The NIAC call for evidence seeks input on the ‘restoration of effective Troubles-related inquests’ and on proposals that the ICIR could hold ‘effective public hearings.’
7. The Legacy Act shut down 38 legacy inquests on the 1 May 2024, 14 of which had not reached findings stage and 24 that had not been assigned to a coroner.<sup>5</sup> Many families had waited decades for their legacy inquest. Legacy inquests that had taken place had proved effective and hence were increasingly popular with victims’ families, strengthening confidence in the rule of law.<sup>6</sup>
8. The Court of Appeal in Northern Ireland found that the Legacy Act ban on Troubles-related inquests was incompatible with the ECHR. However, this incompatibility is not remedied by the Proposed Remedial Order tabled by the Government.<sup>7</sup> Instead, Government has appealed the ruling, arguing *inter alia*, that families should only be entitled to lower standards of investigation that are currently provided for by ECHR-compatible inquests.<sup>8</sup> To this end Government is seeking to revive and legislate for an ICIR proposal for pseudo-inquests (‘Enhanced Inquisitorial Proceedings’).<sup>9</sup>
9. The ICIR had proposed the ‘Enhanced Inquisitorial Proceedings’ model whereby it purported that it could emulate inquests in public ICIR hearings. CAJ and others had considerable scepticism over the viability and ECHR compatibility of this ICIR ‘pseudo-inquests’ model. We pointed out that:
  - There would be no independent judge and there would be no court.
  - Families would not have their own lawyers.
  - Families would not have the same rights to receive disclosure
  - The Executive branch of Government would be able to re-write the ‘judgment’ through provisions in the Legacy Act empowering ministers to redact ‘sensitive’ information out of ICIR reports to families (the ‘national security veto’.)
10. The ICIR pseudo inquests proposals were found to be incompatible with the ECHR by the Court of Appeal.<sup>10</sup>
11. CAJ is concerned that the reviving of this ICIR proposal risks creating a second-class pseudo-inquests system that could ultimately be rolled out in other scenarios. This could set a concerning precedent for regressing long-standing legal safeguards, standards and procedures for inquests that have long been a cornerstone of the UK legal system. Our concerns are outlined in greater detail in recent CAJ Written Evidence to the Joint Committee on Human Rights in their scrutiny of the Proposed Remedial Order.<sup>11</sup>

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<sup>5</sup> [The Troubles: ‘Legacy Act denies victims like me closure’ - BBC News](https://www.bbc.co.uk/news/uk-northern-ireland-68930602) <https://www.bbc.co.uk/news/uk-northern-ireland-68930602>

<sup>6</sup> For examples see see pages 27-28 of the CAJ ICIR Reform Report.

<sup>7</sup> <https://www.gov.uk/government/publications/a-proposal-for-a-remedial-order-to-amend-the-northern-ireland-troubles-legacy-and-reconciliation-act-2023>

<sup>8</sup> SOSNI, Proposed Grounds of Appeal to UKSC, paragraph 9.

<sup>9</sup> [Enhanced Inquisitorial Proceedings: A brief explanation - Independent Commission for Reconciliation & Information Recovery \(icir.independent-inquiry.uk\)](https://www.independentinquiry.uk/information-recovery)

<sup>10</sup> Court of Appeal [2024] NICA 59 (September 2024).

<sup>11</sup> JCHR Written Evidence submitted by the Committee on the Administration of Justice (NIL0002) [committees.parliament.uk/writtenevidence/134544/default/](https://committees.parliament.uk/writtenevidence/134544/default/)

## The principal conclusions of the CAJ ICRIR Reform Report

12. The *Key Findings and Recommendations* of the CAJ ICRIR Reform Report are that:

- **Only a substantive and meaningful ‘root and branch’ reform process to produce an entirely distinct institution to the ICRIR, with a different name, legal framework and leadership unrecognisable to what is presently in place could render a reformed legacy institution viable, in the context of both human rights compliance and building sufficient confidence.**
- The necessary changes to the ICRIR are already largely developed in the official and unofficial draft legislation for the Stormont House Agreement Historical Investigations Unit (HIU), as well as lessons from Operation Kenova.
- Legislative reform to ‘fix’ the ICRIR on paper is clearly going to be insufficient given a major problem the institution faces is an understandable lack of confidence and trust due to the circumstances and purpose for which the ICRIR has been created. In our view this trust deficit has also been exacerbated by certain actions of the ICRIR since its establishment, examples of which are included in the CAJ ICRIR Reform report.
- There should be significant compositional change of those running the ICRIR in which we recommend a process of internationalisation to build impartiality, confidence and to draw on numerous persons with international experience working in transitional justice, who would have been deterred from joining the ICRIR by the Legacy Act.
- Areas of legislative reform would include: independent appointments; unqualified and robust powers to receive disclosure; removal of the ‘national security veto’; guarantees of ECHR compatible investigations once the investigative threshold is met; caseload provisions to ensure outstanding cases requiring ECHR-compatible investigations are investigated; codified duties to ensure maximum permissible disclosure in reports to families; financial autonomy; independence requirements for investigators and oversight.
- Only a managed change process producing something unrecognisable to what is presently in place is likely to be viable. We do not consider this a difficult task as such a framework for independent robust legacy institutions has already been subject to intense discussion and political scrutiny over many years.
- We consider it would be a mistake to limit reforms to the ‘minimal’ and elements of the Legacy Act that are so egregious that they have already been held to meet the threshold of being unlawful under the ECHR. Rather reforms should take on and address the much broader legitimate concerns expressed by the UN, Council of Europe, the Irish Government, the Northern Ireland Human Rights Commission, human rights groups, victims and survivors, parliamentarians and others.
- It is inescapable that there is already a bilateral UK-Ireland agreement in the 2014 Stormont House Agreement, that provides for the HIU, the continuation of inquests, the continuation of civil proceedings as well as a separate cross-border information-recovery body – the ICIR, on which the two Governments concluded an agreed treaty. We recommend a ‘Stormont House Agreement+’ approach, with the HIU also empowered to investigate conflict-related cases engaging Article 3 ECHR (covering torture and serious injuries by state or non-state actors) and a counterpart HIU established by the Irish government.

## Background: The ICIR and Legacy Act

13. Prior to their closure by the Legacy Act, Northern Ireland legacy investigations were dealt with by the 'Package of Measures' established by the UK authorities in response to adverse rulings of the European Court of Human Rights (ECtHR) in the *McKerr Group of Cases*.<sup>12</sup> These included: Public Inquiries; the Police Ombudsman Legacy investigations; Legacy Inquests; PSNI investigations and reviews under first the Historical Enquiries Team (HET) and subsequently Legacy Investigation Branch (LIB); Independent 'call in' external police investigations (e.g. Operation Kenova); and changes into prosecutorial decision making. Families also took forward civil litigation on conflict related cases.
14. In the context of the piecemeal nature of the 'Package of Measures' and the then obstruction to its delivery<sup>13</sup> the British and Irish Governments and parties in the NI Executive negotiated what became the 2014 Stormont House Agreement (SHA). The SHA would have established the following new main legacy bodies to run alongside legacy inquests and civil proceedings:
  - *Historical Investigations Unit (HIU)* – independent body in NI to conduct ECHR-compliant investigations and produce information-recovery reports for families.
  - *Independent Commission on Information Retrieval (ICIR)* cross-border body to receive information in confidence in the form of Protected Statements, that cannot be used in civil or criminal proceedings.
15. An implementation treaty for the ICIR was concluded by the UK and Ireland in 2015. A public consultation on the SHA demonstrated significant levels of support. SHA implementation was derailed by the then Government's insertion of a 'national security veto' into the draft legislation which would empower Ministers to redact 'sensitive' information from reports and conceal human rights violations relating to state agents. It is this 'national security veto' that was revived in the Legacy Act for the ICIR, and found to be unlawful by the Court of Appeal.<sup>14</sup>
16. The Legacy Act shut down many hundreds of legacy investigations undertaken by the 'Package of Measures' to make way for the ICIR opening its doors on the 1 May 2024. This included curtailing 38 legacy inquests, 335 Police Ombudsman investigations, many hundreds of civil court cases, and hundreds of prospective PSNI legacy investigations, along with independent police legacy investigations. These mechanisms were closed at a time they were increasingly popular and delivering for families whilst also identifying specific patterns of human rights violations.

### The objectives behind the ICIR – replacing proper investigations with reviews?

17. The analysis in the CAJ ICIR Reform Report concludes that the previous Government's agenda was grounded in seeking to shut down proper investigations and seek to replace them with light touch 'reviews.' This is most notable in the official options paper put to

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<sup>12</sup> <https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22%3A%5B%22004-2202%22%5D%7D>

<sup>13</sup> Further detail on obstruction of the package of measures is set out on each mechanism in the CAJ/Queens University 'Apparatus of Impunity' report 2015 [No.-66-The-Apparatus-of-Impunity-Human-rights-violations-and-the-Northern-Ireland-conflict-Jan-2015.pdf](#) . See also the [Operation Kenova Interim Report](#). <https://www.psnipolice.uk/sites/default/files/2024-03/Operation%20Kenova%20Interim%20Report%202024.pdf>

<sup>14</sup> For further detail see the CAJ ICIR Reform Report, pages 73-80.

the then SOSNI Brandon Lewis prior to Written Ministerial Statement (WMS) in March 2020, which set in train the policy decision leading to the Legacy Act and the ICIR.

18. Papers revealed in the *Dillion and others* challenge to the Legacy Act included an official options paper prior to the WMS dated 9 January 2020. Immediately before this the then Government had recommitted to legislating for the SHA in the UK-Ireland *New Decade New Approach* deal. The options paper however, proposes several alternatives. This includes the options of retaining the Package of Measures or honouring the implementation of the SHA, which the paper highlighted was more victim centred. However, a core reason provided for *not* taking forward these options was expressly that they would have involved continued *investigations* of veterans. Instead, a further option of scrapping the SHA for a 'Family Report Body' which would not conduct investigations, but recover information, along with stopping inquests and limiting civil claims was favoured along with an amnesty scheme.<sup>15</sup>
19. In essence this Family Report Body designed for reviews not investigations evolved into the ICIR, with the Legacy Act expressly providing for ICIR 'reviews' not 'investigations.' By contrast the draft official SHA legislation provided for 'review' and 'investigation' approaches for the proposed HIU,<sup>16</sup> however once the investigations threshold was met the legislation build in safeguards to ensure the HIU would conduct ECHR compliant investigations.<sup>17</sup> These safeguards are stripped out of the Legacy Act and do not apply to the ICIR. Instead, the ICIR Commissioner for Investigations, has discretion to decide on the steps the Review will take. ICIR Reviews must only to 'look into' the circumstances of the death or injury in question. Even at this early stage we have heard concerns that families approaching the ICIR risk being 'funnelled' into light touch reviews rather than thorough investigations.<sup>18</sup>
20. A Labour amendment during the passage of the Bill sought to introduce some minimum standards for the ICIR reviews based on Operation Kenova investigations. Even this minimum standard was rejected by then Government, as were amendments which would have required ECHR compatible ICIR investigations, or which would have replaced the concept of an ICIR 'review' with an ICIR 'Investigation.'<sup>19</sup>
21. The UN Human Rights Committee has expressed concern regarding the weakness of the ICIR 'review' function and has called on the UK to instead '*adopt proper mechanisms with guarantees of independence, transparency, and genuine investigation power that*

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<sup>15</sup> Policy Options Paper 'New Decade New Approach – options for Addressing NI Legacy Issues' (9 January 2020) cited in Dillon [2024] NIKB 11, [95-107] <https://www.judiciaryni.uk/judicial-decisions/2024-nikb-11>

<sup>16</sup> In all cases a 'review' of papers could lead to a family report, where however there was new evidence or reasonable grounds for believing that a criminal offence relating to the death has been committed and that there are reasonable investigative steps that could lead to identification or prosecution of a suspect a full criminal investigation could be launched using police powers.

<sup>17</sup> For example, the HIU Director was obliged to issue a statement on how the investigatory function would be exercised in a manner that ensured Article 2 ECHR and other human rights obligations were complied with.

<sup>18</sup> CAJ ICIR Reform Report, p49.

<sup>19</sup> See amendments by former SOSNI Lord) Peter Hain [HL Hansard Volume 827: 24 January 2023 Column 155-6 Amendment 72](#); amendments by former Police Ombudsman Baroness Nuala O'Loan [HL Hansard Volume 827: 24 January 2023 Column 152-3](#) See also [HL Hansard Volume 827: 24 January 2023 Column 152-3](#) and [HL Hansard Volume 827: 24 January 2023 Column 168-9](#)

*discharge the State party's human rights obligations and deliver truth, justice and effective remedies, including reparations to victims of the Northern Ireland conflict.* <sup>20</sup>

22. The Council of Europe's Committee of Ministers in September 2023 assessed that there was 'minimal' support for the ICIR. <sup>21</sup> This continues to hold, with few families approaching the ICIR despite the resources put into its promotion and presently having no other alternative. <sup>22</sup> By contrast to the hundreds of investigations being delivered by the Package of Measures, the most recent figures from the ICIR stated that it only has a caseload of up to 24 ICIR reviews (this figure is provided on the basis of 24 individual requests, several of which relate to the same incident). <sup>23</sup>
23. The introduction of the Legacy Act followed a mobilisation, including a tabloid campaign, alleging a 'witch-hunt' against military veterans in legacy cases with senior politicians, including members of the previous Government, falsely alleging bias against the security forces by the justice system in Northern Ireland. By contrast in late April 2024 the Report issued by the *International Expert Panel into State Impunity and the Northern Ireland Conflict* concluded following its year-long analysis that the UK had in reality '*operated a widespread, systematic, and systemic practice of impunity.*' The Panel recommend that the Legacy Act be repealed in its entirety and replaced with a 'Stormont House+' model of mechanisms, along with an international commission to examine themes and patterns. <sup>24</sup>
24. The International Expert Panel also warned that the Legacy Act risked harming the UK's international reputation. <sup>25</sup>

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<sup>20</sup> [CCPR/C/GBR/CO/8, ICCPR Concluding Observations on the UK, 2024](#) Paragraphs 10-11.

<sup>21</sup> [CM/Del/Dec\(2023\)1475/H46-44 \(coe.int\)](#)

<sup>22</sup> In relation to broader concerns from the Council of Europe bodies, the Commissioner for Human Rights, Dunja Mijatović, raised concerns that adopting the Legacy Act would 'undermine justice for victims, truth seeking and reconciliation', and that the UK was ignoring 'the many warnings that this legislation would violate the UK's international obligations and put victims' rights at risk.' Stressing that she had 'repeatedly warned' the Legacy Act would undermine the human rights of victims, she also noted that: 'Serious concerns have also been expressed by the Council of Europe's [Committee of Ministers](#), the [Parliamentary Assembly](#) of the Council of Europe, the [UN High Commissioner for Human Rights](#), [UN Special Rapporteurs](#), national human rights institutions, parliamentary committees and civil society organisations, including victims' groups.'

<sup>23</sup> The ICIR prefers to quote the number of enquiries it has had from families, most recently standing at 120. However, this does not refer to its caseload in the sense of the exercise of the ICIR review functions provided for under the Legacy Act. Both the 120 and 24 figures were recently published on the 7 January 2025: <https://icir.independent-inquiry.uk/news/icir-is-focused-on-delivering-the-unvarnished-truth-as-it-enters-next-phase-of-its-work/>

<sup>24</sup> '*Bitter Legacy*', *The Report of the International Expert Panel into State Impunity and the Northern Ireland Conflict* (2024) <https://www.jus.uio.no/smr/english/about/id/law/nipanel.html>

The International Panel had been convened by the Norwegian Center for Human Rights at the University of Oslo at the request of CAJ and the Pat Finucane Centre. The Panel of international experts, consisting of academics, lawyers, human rights activists and former police officers, was tasked with providing an authoritative independent assessment of the extent to which there has been state impunity for human rights violations during the Northern Ireland conflict. The report contains a foreword from former UN Special Rapporteur Juan Méndez and an afterword from former South African Truth and Reconciliation member Yasmin Sooka, who had been involved in the initiation of the Panel.

<sup>25</sup> <https://www.theguardian.com/uk-news/2024/apr/29/northern-ireland-legacy-act-will-harm-britains-reputation-rights-panel-warns>

## Further Recommendations of the CAJ ICRIR Reform Report

25. The following section summarises a number of the recommendations in key areas of the CAJ ICRIR Reform Report. The detail, reasoning and rationale for each of the recommendations is elaborated on in the report.
26. The following specific recommendations related to the *Composition of the ICRIR*. This took account of how the ICRIR Commissioners were appointed by the previous Government, under a particular agenda. The toxicity of the Legacy Act itself and the unilateral nature of the appointments will have put off many well qualified applicants who could command confidence and be an asset to a reformed legacy body. The report recommends:
- ...a process of internationalisation of a reformed legacy body to build impartiality, confidence and draw on the numerous persons with international experience in transitional justice.
  - Commissioners running a reformed legacy body should all be re-recruited following an independent and international process, along with refreshing senior staff, to build confidence in the institution and augment its skills set and independence.
  - The reformed legacy body should follow the independence requirements for investigators adopted by Operation Kenova and Police Ombudsman legacy cases.
27. The following sets out a number of key areas where *the legislative framework presently established for the ICRIR could be reformed for a new legacy body*. An appendix at the end of the report also sets out key differences between the legislative framework in the Legacy Act and the Stormont House legislation.<sup>26</sup>

### *Powers of disclosure to the reformed legacy body*

- In replacement legislation for the Legacy Act do not replicate the qualification on powers of disclosure to the ICRIR.
- Ensure a reformed legacy body has a robust and unambiguous power of disclosure, including relevant sanctions, in line with recommendations in the SHA Model Bill.<sup>27</sup>

### *Powers of disclosure by the ICRIR – the national security veto*

- Do not retain any sort of ‘national security veto’ in a reformed legacy body, as a necessary requirement for human rights compliance and to gain public confidence.
- This includes repeal and non-replication of any part of the national security veto and all of its associated duties.
- Avoid any approach of seeking to retain the national security veto in another guise, such as seeking to codify the same limits, or previous regressive interpretations of the NDNA policy, into the legislative framework of the investigative body. In particular by vesting a ‘national security’ veto in alternative office holders.

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<sup>26</sup> <https://caj.org.uk/wp-content/uploads/2024/11/Appendix-to-CAJ-Reform-of-ICRIR-report.pdf>

<sup>27</sup> The unofficial SHA Model Bill, produced by CAJ and academics at Queen’s University Belfast and Ulster University can be accessed here: <https://caj.org.uk/publications/reports/stormont-house-agreement-model-implementation-bill-explanatory-notes/#:~:text=Stormont%20House%20Agreement%20%E2%80%93%20Model>

*ECHR compatible investigations:*

- The legislative framework for the investigative body should be codified ensure that when the investigative threshold is met and powers of investigation are used, then the legacy body should be legally obliged to ensure that its *investigations* meet the requirements of ECHR Articles 2 & 3.<sup>28</sup> Key learning would point to it not being sufficient for a reformed legacy body to merely be ‘capable’ of carrying out ECHR-compatible investigations at its discretion. Such a limitation allows scope for bodies like the ICRIR to conduct light touch reviews and not conduct investigations or report to an ECHR Article 2/3 compliant standard.

*Safeguards over exercise of powers:*

- Ensure powers of compulsion by the legacy body are subject to the established safeguards around police powers.

*Caseload:*

- We recommend that a reformed legacy body with the capacity to conduct ECHR compatible investigations picks up the outstanding cases that were agreed for transfer under Stormont House and also extends its remit to cover ECHR Article 3 violations.

*Content of Reports:*

- The reformed legacy body should follow the SHA Model Bill in codifying maximum permissible disclosure into its reports for families and others.<sup>29</sup>

*Oversight:*

- The reformed legacy body should have financial autonomy and independent oversight structures.

**CAJ, February 2025**

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<sup>28</sup> The above recommendation would not preclude the retention of a ‘review’ then ‘investigation’ model once a threshold is met, linked to the *Brecknell* test as provided for in the SHA legislation. The legacy body should also continue to have powers to investigate grave and exceptional officer misconduct across agencies, similar to the Police Ombudsman.

<sup>29</sup> Under the official SHA legislation, the HIU was obliged to provide ‘comprehensive family reports’ with the legislation stipulating that they must be ‘as comprehensive as possible.’ The unofficial SHA Model Bill produced by CAJ and academic colleagues further codified this approach providing for family reports that must ‘include as much information about the investigation and its findings as the HIU believe can be made public without prejudicing the administration of justice’ including matters required to ensure ECHR compliance. There are no such provisions to require maximum permissible disclosure in the legislative framework for the ICRIR, the mandatory contents of its reports are limited to a statement setting out how the review was conducted and, where practicable, responses to initial questions.