

**Supplementary Written Evidence by the Committee on the Administration of Justice (CAJ), to the Northern Ireland Affairs Committee inquiry the ‘Government’s new approach to addressing the legacy of the past in Northern Ireland’, following the introduction of Northern Ireland Troubles Bill.**

**November 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.
2. CAJ has engaged extensively through written and oral evidence with the Committee’s inquiry. Our most recent written evidence (LPNI0059)<sup>1</sup> followed the publication of the UK-Ireland Joint Framework on the 19 September 2025,<sup>2</sup> the headline commitment from which was for the: “UK Government to replace failed Legacy Act and replace the ICRIR<sup>3</sup> with a reformed Legacy Commission to find answers for families - the unfinished business of the GFA.”<sup>4</sup>
3. This further written evidence follows the introduction of the primary legislation to implement the Joint Framework into the UK Parliament on the 14 October 2025 (the *Northern Ireland Troubles Bill*).<sup>5</sup> Whilst we welcome the intention to replace the Legacy Act and ICRIR with the Legacy Commission, this submission will focus on three areas where we consider the Bill could be improved to ensure human rights compliance namely:
  - Reinstating express provisions to ensure criminal investigations conducted by the new Legacy Commission are in compliance with ECHR standards.
  - CAJ and UN experts concerns over the ‘national security veto’ powers allowing Ministers to redact Legacy Commission reports to families. As set out below these provisions have the purpose and effect of allowing Secretaries of State to conceal state involvement in killings and other violations. This is incompatible with international obligations and the rule of law.
  - Safeguards regarding the independence of the Legacy Commission, including practical independence of investigators and the role of the Secretary of State in appointments.

**Legacy Commission investigations and ECHR compliance**

4. It is welcome that the new Legacy Commission will be tasked with conducting proper investigations rather than the more limited ‘reviews’ that were envisaged for the ICRIR.
5. The Joint Framework states that the Legacy Commission will conduct investigations with a two stage process of initial ‘case review’ and where there are evidential leads a full criminal investigation will take place in line with UK investigative standards.<sup>6</sup>
6. The Bill provides that Legacy Commission investigations cover both conflict-related deaths but also incidents of ‘serious physical or mental harm’. A specific definition of the latter concept

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<sup>1</sup> <https://committees.parliament.uk/writtenevidence/150086/pdf/>

<sup>2</sup> [The Legacy of the Troubles: A Joint Framework between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland](#), 19 September 2025.

<sup>3</sup> Independent Commission for Reconciliation and Information Retrieval, ICRIR, the body established by the 2023 Legacy Act to take forward an amnesty and ‘reviews’ of cases.

<sup>4</sup> <https://www.gov.uk/government/news/uk-and-irish-governments-announce-legacy-framework-to-enable-truth-for-families-of-the-troubles>

<sup>5</sup> [Northern Ireland Troubles Bill - Parliamentary Bills - UK Parliament](#) In addition to this primary legislation the Joint Framework is also being taken forward through a UK Remedial Order ([The Northern Ireland Troubles \(Legacy and Reconciliation\) Act 2023 \(Remedial\) Order 2025 - GOV.UK](#)) In addition, once the primary legislation completes passage and is hence the final shape of what it will deliver is clear the Irish Government is then to take forward any necessary legislation to engage with the provisions of the new Act.

<sup>6</sup> Joint Framework, paragraph 3.

relating to specified injuries is provided in the Bill.<sup>7</sup> It is welcome that the role of the Legacy Commission extends beyond deaths to cover serious injuries. The current definition however does not cover all of the potential injuries where there are investigative obligations under ECHR Article 3 (where there are similar procedural investigative obligations as under Article 2).

7. Clause 36 of the Bill concerns the conduct of the investigation. This requires the Legacy Commission to conduct a criminal investigation unless there is no prospect of the investigation leading to a referral to a prosecutor, in which case a fact finding investigation will instead proceed. The clause does not expressly tie the investigation to following UK investigative standards, as per the Joint Framework, and more crucially there is no requirement that the criminal investigation must meet the procedural requirements of ECHR Articles 2 and 3.

8. UN experts in their assessment of the Joint Framework have welcomed 'with satisfaction the Joint Framework's proposed reform of the ICRIR and its replacement with the Legacy Commission' but have also spotted and raised concern regarding:

...the lack of express provisions requiring that such [Legacy Commission] investigations meet ECHR standards.<sup>8</sup>

9. The UN experts have consequently urged the adoption of measures to ensure that the Legacy Commission mechanism complies with international and ECHR standards.<sup>9</sup>

10. Under clause 26 of the Bill the Legacy Commission is to publish a Statement setting out how the Commission and its Directors of Investigation will exercise the Investigatory function. The Commission is under a statutory duty to have regard to this Statement.

11. The Statement on the Investigatory Function for the Legacy Commission emulates a similar provision in the draft Stormont House Agreement legislation. However, under the Stormont House Bill the Statement was expressly also to deal with ECHR compliance for its equivalent investigative mechanism (the HIU). The Stormont House Bill required that the Statement:

...must include statements of the manner in which the HIU is to exercise its investigatory function so as to secure—

(a) that its Article 2 [ECHR] obligations are complied with;

(b) that its other human rights obligations are complied with;

[The Statement]... must (in particular) deal with compliance with the HIU's Article 2 [ECHR] obligations, and other human rights obligations, in connection with the investigation of deaths in accordance with the conflict of interest protections.<sup>10</sup>

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<sup>7</sup> Clause 27(3) "Serious physical or mental harm" means— paraplegia; quadriplegia; severe brain injury or damage; severe psychiatric damage; total blindness; total deafness; loss of one or more limbs; severe scarring or disfigurement.

<sup>8</sup> OL GBR 18/2025, UN Special Rapporteurs Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, communication on UK and Ireland Joint Framework, 30 October 2025, page 7.

<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=30443>

<sup>9</sup> As above, page 7.

<sup>10</sup> The Draft Northern Ireland (Stormont House Agreement) Bill published for consultation in 2019 had provisions in clause 6 where by the SHA Historical Investigations Unit (HIU) Director was to set out in a formal a statement how HIU investigations would comply with the requirements of the ECHR and other human rights obligations: *6(3) The Director must issue a statement which sets out the manner in which the HIU is to exercise its investigatory function. (4) The statement must include statements of the manner in which the HIU is to exercise its investigatory function so as to secure— (a) that its Article 2 obligations are complied with; (b) that its other human rights obligations are complied with; (c) that the order in which deaths are investigated is in*

12. By contrast the provisions for the Statement of Investigatory Functions for the Legacy Commission in the current Bill remove all of the references to ECHR compliance which were in the above equivalent provision in the Stormont House Agreement Bill.
13. In opposition Labour, through former Secretary of State for Northern Ireland (SOSNI) Lord Peter Hain, also sought unsuccessfully to amend the 2023 Legacy Bill to require ICRIR investigations to be compliant with the investigative duties under the ECHR.<sup>11</sup>
14. Whilst not referenced in the Joint Framework the Legacy Commission investigations clause in the Bill contains other limitations including that the new investigation must take into account any previous investigation 'of any kind' and not duplicate any aspect of such a previous investigation unless it is 'essential' to do so.<sup>12</sup> The reference to previous investigations of 'any kind' risks including past investigations which were so flawed they did not meet basic ECHR requirements (with some such investigations having been already quashed as unlawful).<sup>13</sup>
15. The Joint Framework re-commits the two Governments to the Principles set out in the Stormont House Agreement which include 'upholding the rule of law' and 'human rights compliance'.<sup>14</sup> However, whilst clause 11 of the Bill ('Duty to exercise functions consistently with certain principles') aims to give effect to the Stormont House principles the wording has been changed. Clause 11(1)(e) provides a principle that human rights 'be respected' rather than human rights standards be complied with. This cannot be due to requirements of legislative drafting in the transfer of wording from the Joint Framework policy paper as the previous Stormont House Bill would have legislated to incorporate the provision as follows: 'the principle that human rights obligations should be complied with'.<sup>15</sup> There is no explanation in the Explanatory Notes to the current Bill as to why the wording has been changed, indeed the Notes claim that the principles are in line with those set out in the draft Stormont House Bill.<sup>16</sup>
16. The Joint Framework also provides that 'Once the [Legacy] Commission concludes its work, responsibility for the investigation of Troubles-related cases will revert to the relevant police force'.<sup>17</sup> This does not appear to be expressly provided for by the current Bill. There is a regulation making power regarding amending the prohibitions on criminal investigations in the 2023 Legacy Act.<sup>18</sup> This could leave compliance with the provision of the Joint Framework at the discretion of a future Secretary of State, rather than being triggered by the legislation.

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*accordance with section 8. (5) The statements required by subsection (4) must (in particular) deal with compliance with the HIU's Article 2 obligations, and other human rights obligations, in connection with the investigation of deaths in accordance with the conflict of interest protections.* Clause 11 then placed the Director under a 'have regard' duty regarding the statement.

<sup>11</sup> [HL Hansard Volume 827: 24 January 2023 Column 155-6 Amendment 72](#)

<sup>12</sup> Clause 36(8).

<sup>13</sup> See for example re Ombudsman legacy investigations: BBC News [Loughinisland massacre: Court quashes Police Ombudsman report](#); the court rulings regarding Royal Military Police (RMP) 'investigations' into military killings [IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND](#) [2021] NICC 3; and the HM Inspector of Constabulary report into the PSNI Historical Enquiries Team handling of state involvement cases and subsequent PSNI decisions regarding requirements to investigate such cases referred to in the Stormont House Agreement.

<sup>14</sup> Joint Framework, page 5.

<sup>15</sup> Draft Northern Ireland (Stormont House Agreement) Bill, clause 1.

<sup>16</sup> Explanatory Notes paragraphs 89-90 – "This clause sets out principles which the Legacy Commission (and in some cases relevant Legacy Commission officers) must exercise their functions in accordance with. These principles are in line with those set out in the draft Northern Ireland (Stormont House Agreement) Bill."

<sup>17</sup> Joint Framework, paragraph 17.

<sup>18</sup> Clause 25.

17. Further to the above issues we draw attention to the desirability of amending the Bill to reinstate measures which would:

- Require Legacy Commission and Inquisitorial Mechanism investigations to be conducted in a manner compatible with the ECHR.
- Ensure that limitations do not unduly prevent the Legacy Commission from initiating investigations where previous investigations have been flawed or ineffective.
- Ensure the Principle of compliance with human rights obligations is reinstated.
- Ensure that the prohibition on other mechanisms conducting investigations once the work of the Legacy Commission has concluded is repealed.

### **National Security Veto**

18. The Bill retains a power vested in a Secretary of State to redact reports to families of the Legacy Commission on grounds of UK national security interests.<sup>19</sup>

19. The concerns with this provision are that it is not limited to restricting disclosure of lawful covert methodologies but rather can be used to conceal state involvement in killings, in particular the role of state informants in killings presently solely attributed to non-state actors.

20. The Joint Framework provides that the veto powers are vested in the 'relevant' Secretary of State, indicating an intention that as well as the NI Secretary the Home Secretary and Secretary of State for Defence may also redact Legacy Commission reports despite the agencies under their control (MI5, military intelligence units) and their agents and informants being the potential subjects of the Legacy Commission investigation in question.

21. Responding to the Joint Framework UN experts and mandate holders on transitional justice, extrajudicial executions and torture, have already raised concerns that:

The veto power could lead to concealing the involvement of state agents in extrajudicial killings, torture and other violations, which is incompatible with international and ECHR standards.<sup>20</sup>

22. The UN Special Rapporteurs consequently urge review of these national security veto provisions, which they consider 'could curtail the right of victims and their families to know the truth about the cases under their purview' and be 'incompatible with international law', and point to the following interpretive instruments of international standards:

In this connection, we wish to recall that the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines) stipulate that States must adopt measures to ensure the verification of the facts and full and public disclosure of the truth about such violations to provide satisfaction to victims.

Similarly, the Updated Set of Principles stipulate that access to archives of truth commissions shall be facilitated in order to enable victims and their relatives to claim their inalienable right to know the truth about the circumstances in which violations took place, (principle 15).

As stated by the Special Rapporteur on the promotion of truth, justice, reparation and

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<sup>19</sup> For the avoidance of doubt this relates to information disclosed from the Legacy Commission in their Reports to families, victims etc. In relation to disclosure to the Legacy Commission by relevant public authorities, it is welcome that clause 13 of the Bill does not so qualify disclosure and removes a qualification that had led to concerns within the Legacy Act 2023 regarding disclosure to the ICIR.

<sup>20</sup> OL GBR 18/2025, UN Special Rapporteurs Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, communication on UK and Ireland Joint Framework, 30 October 2025; page 9.

guarantees of nonrecurrence, the right to truth entitles the victim, his or her relatives and the public at large to seek and obtain all relevant information concerning the commission of the alleged violation, the fate and whereabouts of the victim and, where appropriate, the process by which the alleged violation was officially authorized (A/HRC/24/42, para. 20). Effective measures must be taken to ensure the security, physical and psychological well-being, and, where requested, the privacy of victims and witnesses who provide information (Updated Set of Principles, principle 10). While national security concerns should be accommodated, including those affecting victims and witnesses, the Governments concerned are reminded that closed or limited disclosure regimes create a lack of transparency that could provide a real or perceived sense of impunity.<sup>21</sup>

23. In summary, the most relevant provisions of Bill relating to the national security veto over Legacy Commission investigations, are:
  - c10(1)(a) prohibits the Legacy Commission, and specifically (2) a Legacy Commission Officer conducting an investigation, from 'doing anything' which would damage or risk damaging 'the national security interests of the UK'.
  - c20 empowers the Secretary of State to issue Guidance on how the above duty is to be interpreted by the Legacy Commission.
  - c16 defines 'sensitive information' as information which if disclosed would risk damaging the national security interests of the UK.
  - c17 applies prohibitions on onward disclosure of information which has been *identified* as 'sensitive information' by the Legacy Commission OR any other relevant authority, defined (c13) as including police services, MI5, MI6, GCHQ, and the Ministry of Defence.
  - c17 also prohibits disclosure which would contravene the c10(1) duty not to 'do anything' which would risk damaging the 'national security interests of the UK'.
  - c18 creates offences of unauthorised disclosure by Legacy Commission staff, of up to two years in prison and/or a fine. This includes if the disclosure breaches the vaguely defined c10(1)(a) duty not to do 'anything' which risks damaging UK national security interests.
  - Schedule 5 then creates exemptions to duties not to disclose sensitive information. This includes provisions whereby the Legacy Commission can disclose the information to the Director of Public Prosecutions, police or Coroners – but only after giving the Secretary of State *ten days advance notice*.
  - In order to disclose sensitive information in family reports, the Legacy Commission must seek permission from the Secretary of State who can prohibit the disclosure on public interest grounds. These public interest grounds are particularly defined in the Bill around the national security interests of the UK (Sch 5). The SOS must give reasons for non disclosure, unless doing so would also risk damaging national security interests (Sch. 5).
  - There are no provisions for a merits-based appeal to the SOS decision to veto disclosure. Rather there is an appeal mechanism akin to judicial review standards (Schedule 5).
24. A national security veto also applies to the Inquisitorial Mechanism through provisions for restriction notices. In relation to the ICIR (Independent Commission for Information Retrieval) the Act will establish clause 77 provides a broad SOS national security veto over disclosure of Reports to families on general grounds of prejudice to national security.
25. It is notable that the 'national security veto' provisions in the current Bill have been included despite their equivalent provisions in the Legacy Act 2023 *already having been found to be*

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<sup>21</sup> OL GBR 18/2025, as above, p10-11.

*ECHR-incompatible and hence unlawful by the Court of Appeal in Northern Ireland.*<sup>22</sup> In this context the Government has nevertheless included the provisions in the Bill along with the statement under section 19(1)(a) of the Human Rights Act 1998 that the Bill is compatible with Convention rights. This aspect of the *Dillon* ruling was appealed by the SOSNI to the UK Supreme Court with a hearing held, but not yet determined, in October 2025.<sup>23</sup>

26. In the ECHR Memorandum accompanying the Bill makes reference to the *Dillon* Court of Appeal ruling noting that it was the SOSNI 'role in the process which appears to have been the basis for the court's finding that the regime is incompatible with Article 2 ECHR.'<sup>24</sup> Remarkably the ECHR Memorandum concludes that the NIO considers the current Bill to be nevertheless ECHR compatible as it has an 'expectation' of winning the Supreme Court appeal. This position is articulated whilst the matter is still under deliberation by the Court.<sup>25</sup>
27. The UK Government has not presented any comparative example in another jurisdiction where Ministers can redact the reports of transitional justice mechanisms on such 'national security' grounds. To give one example CAJ recently shared a seminar platform with the head of the Colombian Special Jurisdiction for Peace (JEP) who confirmed this mechanism, one of the most prominent transitional justice bodies globally, is not subject to any such veto mechanism.<sup>26</sup>
28. As set out in our previous submissions the current UK Government position on the 'Neither Confirm nor Deny' (NCND) national security doctrine is that 'the fact that agents were involved at all' in an incident should not be disclosed as a result of investigations.<sup>27</sup>
29. This position is in conflict with ECHR case law in relation to extra-judicial killings which has established that States are liable for deaths where the deceased was 'killed by State agents or with their connivance or acquiescence.'<sup>28</sup> The corresponding procedural obligation to ensure an effective official investigation where state agents are involved in deaths must be capable of leading to a (public) determination on matters including the 'use of force' by state agents.<sup>29</sup> This obligation cannot be complied with if the Legacy Commission or the judiciary cannot disclose the involvement of a state agent 'at all' in a death or other violation to the next of kin or in public.

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<sup>22</sup> *Dillon* [2024] NICA 59, [234] holding inter alia that 'The SOSNI can prohibit the ICRIR from sharing sensitive information ... There is also no provision for a merits-based appeal (although there is review akin to judicial review); and it appears that the court cannot itself permit disclosure of any sensitive material where the SOSNI's permission has been withheld'

<sup>23</sup> [In the matter of an application by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus for Judicial Review \(Respondents\) - UK Supreme Court](#)

<sup>24</sup> [NI Troubles Bill, ECHR Memorandum](#), paragraph 32.

<sup>25</sup> NI Troubles Bill, ECHR Memorandum, paragraph 33. "The judgment of the Northern Ireland Court of Appeal on this point is the subject of the ongoing appeal to the UK Supreme Court. It is the expectation of the Department that the Supreme Court will allow the appeal and conclude that the disclosure regime in the 2023 Act (including the role of the Secretary of State in it) is ECHR-compatible."

<sup>26</sup> FIDH Human Rights Forum, Bogota, 27 October 2025 seminar 'Building a lasting peace through transformative justice'

<sup>27</sup> <https://www.irishnews.com/news/northern-ireland/sensitive-british-government-document-suggests-role-of-state-agents-should-be-concealed-DEVKEALZJRAWHJM3BDJT4TACIU/>

<sup>28</sup> See ECtHR 'Guide on Article 2 of the European Convention on Human Rights: Right to life (updated 28 February 2025), paragraph 127 citing "Avşar v. Turkey, 2001, §§ 413-416; Khashiyev and Akayeva v. Russia, 2005, § 147; Estamirov and Others v. Russia, 2006, § 114; Musayeva and Others v. Russia, 2007, § 155; Amuyeva and Others v. Russia, 2010, §§ 83-84; see also Lapshin v. Azerbaijan, 2021, § 119, where the applicant survived an attempt to his life while in prison and by contrast Denizci and Others v. Cyprus, 2001, § 373; Buldan v. Turkey, 2004, § 81; Nuray Şen v. Turkey (no. 2), 2004, § 173; Seyhan v. Turkey, 2004, § 82 and Carter v. Russia, 2021, §§ 170-172).

<sup>29</sup> See Eg see (*Armani Da Silva v. the United Kingdom* [GC], 2016, § 233).

(This does not relate to disclosing the *identity* of an agent outside a criminal trial, but rather accountability for the involvement of state agents per se in a murder or other violation.)

30. Whilst the current Government may have taken a position that NCND has always required the concealment of the involvement of state agents in violations, this has not been the practice within previous Northern Ireland legacy investigations. The following are some examples:

*Police Ombudsman:* Operation Ballast report 2007, regarding RUC Special Branch agents in the UVF uncovered practices of failures to arrest informants for crimes to which those informants had allegedly confessed; subjecting informants suspected of murder to lengthy sham interviews and releasing them without charge and falsifying or failing to keep records and interview notes; finding that there was no reason to believe that the findings were isolated, recording that, on the contrary, they were highly likely to be systemic.<sup>30</sup>

*Civil cases:* the Northern Ireland High Court issued a ruling on the sectarian murder of Sean McParland in 1994, involving an RUC informant in the UVF, holding the RUC knew that the informant had already confessed to his role in other killings but had ‘not only turned a blind eye to Informant 1’s serious criminality’ but also ‘went further and took active measures to protect (him) from any effective investigation and from prosecution, despite the fact that (he) had admitted his involvement in previous murders and criminality’.<sup>31</sup>

*Call in police investigations:* The Operation Kenova Interim Report found that state agents were involved in human rights violations including murder and torture and were shielded from the criminal justice system. It also found it to be ‘abundantly clear’ state agencies had obstructed legacy investigations into same through restricting disclosure with the Kenova report stating that this “should not happen, particularly where grounds exist to indicate the state was complicit in or turned a blind eye to serious criminality”.<sup>32</sup>

31. CAJ would therefore reiterate the concerns that the national security veto provisions in the present Bill should be repealed given their purpose and effect is to enable Ministers to conceal state involvement in killings and other violations, in conflict with international law.

#### **Appointments, staffing and independence**

32. In line with the Joint Framework the Bill discontinues the roles of current ICRIR Commissioners and provides for the appointment of new office holders to run the Legacy Commission’s functions. This encompasses a Legacy Commissioner to Chair the Commission, two to five other Commissioners, two Directors of Investigations, a CEO and Judicial Panel Officers (clause 3). The latter are a panel of judges/former judges to both oversee the Inquisitorial Mechanism and to write the findings of Legacy Commission reports, including a senior judicial panel member (c6).

33. The Joint Framework provides that appointments to new roles will be made by the Secretary of State for Northern Ireland, who will be under a duty to take advice on the appointments from a ‘panel of relevant persons’, whose names will be published.<sup>33</sup>

34. The Bill consequently provides that the SOS will make the appointments of Commissioners, Directors of Investigations, Judicial Panel members and also the Victims and Survivors advisory group. The Bill (c9) provides that the SOS must consult relevant persons before making the appointment and publish the list of persons who have been consulted.

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<sup>30</sup> Statement by the Police Ombudsman for Northern Ireland into her investigation into the circumstances surrounding the death of Raymond McCord Jr and related matters’ (Operation Ballast Report), Nuala O’Loan, Police Ombudsman for Northern Ireland, 22nd January 2007.

<sup>31</sup> <https://www.belfasttelegraph.co.uk/news/courts/belfast-man-awarded-90k-damages-over-grandfathers-killing-involving-police-informant/729726937.html>

<sup>32</sup> [Operation Kenova Interim Report](#), para 37.2

<sup>33</sup> Joint Framework, paragraph 2.

35. It is common for the SOS to make appointments to public authorities, including independent accountability bodies like the Northern Ireland Human Rights Commission. However, such bodies are not tasked with conducting independent investigations into killings or acts of torture in accordance with the independence requirements of ECHR Articles 2/3.
36. In this context there was significant concern from human rights monitoring bodies regarding the concentration of power in the SOS to make appointments in the 2023 Legacy Act. In an Interim Resolution the Council of Europe Committee of Ministers, raised serious concerns and called for the SOSNI's role in the establishment of the ICRIR to be more clearly circumscribed in law to ensure the ICRIR was independent and seen to be independent.<sup>34</sup> This did not occur, and in practice the former SOSNI announced the appointment of the ICRIR Chief Commissioner to Parliament without any open recruitment process at all.
37. In relation to the current provisions UN mandate holders, recalling their concerns about the scope of powers of the SOSNI ['SSNI'] under the Legacy Act (whilst welcoming that the SOSNI will now have to 'take advice' on appointments to the Legacy Commission) have said:

However, we are concerned that according to the framework the SSNI retains power to appoint the members of the Legacy Commission, the Oversight Body, the Victims and Survivors Advisory Group, and the Inquisitorial Mechanism, and that there is no clarity as to the type of actors who will be enabled to provide advice regarding these appointments, or whether that advice would have binding force.

The discretion of the SSNI in appointing the members of these entities raises serious questions about the independence of the reformed entity as it still enables significant levels of government control over the structure of the Commission. This influence could lead to concerning situations of conflict of interest considering the political nature of this post. In this connection, we urge the signatories to consider reviewing the appointment procedure foreseen in the Joint Framework and replace it with the creation of an independent appointment mechanism that can guarantee the selection of members who possess the required competence, impartiality and practical and institutional independence, in full compliance with international and ECHR standards on the matter.

We recall that according to international standards truth-seeking and accountability mechanisms established in transitional justice contexts must be, and be perceived to be, fully independent from the Government or interested parties in order to ensure their legitimacy, impartiality and effectiveness.<sup>35</sup>

38. The provisions in the current Bill whereby the SOSNI 'takes advice' from a panel are more limited than those committed to under the draft Stormont House legislation. The Stormont House Bill provided for the Minister for Justice to make appointments on the basis of a binding recommendation from an appointments panel composed of a number of statutory office holders named in the legislation.<sup>36</sup>
39. The SOSNI appointing judges would mark a particular reversal of the judicial appointment process in Northern Ireland established following the reforms driven by the Good Friday Agreement. This led to the establishment of the independent Northern Ireland Judicial Appointments Commission (NIJAC) as 'an independent public body established to bring about a new system for appointing members of the judiciary in Northern Ireland.'<sup>37</sup>

<sup>34</sup> [Interim Resolution CM/ResDH\(2023\)148 June 2023](#)

<sup>35</sup> OL GBR 18/2025, as above, pp8-9.

<sup>36</sup> Draft Northern Ireland (Stormont House Agreement) Bill, Schedule 2 — HIU members and officers Part 1 — The appointments panel

<sup>37</sup> <https://www.nijac.gov.uk/about-nijac>

40. Whilst most appointments may be made at an initial stage the broad powers of the SOSNI increases the risk that a future SOSNI opposed to independent rule-of-law legacy investigations could make further appointments to frustrate the purpose of the Legacy Commission. This could occur for example in appointing additional judicial commissioners to write the findings of Legacy Commission reports following investigations. Northern Ireland has already had the experience of the irregular appointment of the second Police Ombudsman which was followed by a ‘lowering of independence’ of the office in legacy investigations prompting an independent inspection and suspension of the historic function of that office.<sup>38</sup>
41. It is welcome that the Bill contains (para 12, schedule 1) provisions requiring applicants to the above appointments to declare potential conflicts of interest in relation to their potential work as a commissioner, or ability to carry out such work ‘fairly and impartially.’
42. There are also broader general statutory duties on the new Legacy Commission regarding ‘conflicts of interest’ set out in clauses 44 to 47 of the Bill. These provide for the Legacy Commission to publish a policy statement on how Director for Investigations and other Legacy Commission Officers are to comply with conflict-of-interest provisions defined as whether a matter ‘might reasonably be expected to (a) give rise to a conflict of interest in respect of a person’s work’ or affect the ability to conduct work ‘fairly and impartially’ in particular ‘in connection with a person’s previous employment or previous holding of an office or position’.<sup>39</sup>
43. There are also duties to declare conflicts of interest in relation to specific investigations, and duties to ensure persons with conflicts of interest to not partake in particular investigations (c47). Whilst this is welcome, a question and difficulty does arise in relation to Officers who the Legacy Commission will inherit from the ICRIR (including those who may be recruited from the present until the Bill completes passage) who may have specific conflicts of interest relating to past roles that have not been assessed to the standard of the provisions in the current Bill, given their recruitment by the ICRIR prior to such standards being in place.
44. CAJ would therefore urge that the role of the SOSNI in making appointments is further reviewed along with the application of conflict of interest provisions to staff transitioning from the ICRIR.

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<sup>38</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-14786208>

<sup>39</sup> Clause 44.