



Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland



The 'Disappeared,' the ICLVR, and 'Dealing with the Past' in Northern Ireland

Dr. Lauren Dempster
School of Law, Queen's
University Belfast

18th April 2018

Presentation Overview

- ❑ Stormont House Agreement: ICLVR as precedent for ICIR
- ❑ ICLVR and ICIR: The Mechanics
- ❑ The ICLVR and Trust
- ❑ The Importance of Leadership
- ❑ Context, Generosity and Political Will
- ❑ Limitations of 'Truth' and the ICLVR
- ❑ Conclusion



Stormont House Agreement

'Independent Commission on Information Retrieval (ICIR)

*41. A new body, which will respect the sovereign integrity of each jurisdiction, will be established by the UK and Irish Governments, called the Independent Commission on Information Retrieval (ICIR), **building on the precedent provided by the Independent Commission on the Location of Victims' Remains.** The objective of the ICIR will be to enable victims and survivors to seek and privately receive information about the (Troubles-related) deaths of their next of kin.'*

(Stormont House Agreement (2014), p. 8)



ICLVR and ICIR: The Mechanics

- ICLVR and ICIR: to gather information in relation to conflict-related events in a confidential manner
- Like the ICLVR the ICIR is to be:
 - Established by legislation in both the British and Irish jurisdictions.
 - Independent of the justice system.
 - Unable to disclose the information provided to it to either law enforcement or intelligence agencies.
- As with the ICLVR, information passed to the ICIR:
 - Will be inadmissible in court proceedings.
 - The identities of those who provide information will not be disclosed.
 - Provision of information to the ICIR does not render an individual immune from prosecution.



The ICLVR and Trust

- Trust central to relative success of ICLVR and to this type of mechanism:
 - 1) Management of expectations
 - 2) Development of trust over time
 - 3) Demonstrates that this type of mechanism can be trusted



The ICLVR and Trust

- Trust central to relative success of ICLVR and to this type of mechanism:
 - 1) Management of expectations
 - 2) Development of trust over time
 - 3) Demonstrates that this type of mechanism can be trusted



The Irish News, 29th May 1999

“we all thought, both media and the people presenting the information, everybody thought this was going to be a very quick process...But it’s lingered on ... we all rushed in headlong...but after 24 hours everybody realised it was going to be extremely difficult, but the media still didn’t...And nobody envisaged, at least initially, that it was going to be anything – it was simply you go to a location, mark ‘X’, 10 feet from a tree and the body’s there – it wasn’t! It wasn’t the case.”

- Personal interview with former An Garda Síochána Detective Inspector, Dublin, January 2015.

The ICLVR and Trust

- Trust central to relative success of ICLVR and to this type of mechanism:
 - 1) Management of expectations
 - 2) Development of trust over time
 - 3) Demonstrates that this type of mechanism can be trusted

Year	ICLVR progress
1999	Remains of Eamonn Molloy, Brian McKinney, John McClory recovered
2003	Remains of Jean McConville recovered
2008	Remains of Danny McIlhone recovered
2010	Remains of Charlie Armstrong, Gerry Evans, Peter Wilson recovered
2014	Remains of Brendan Megraw recovered
2015	Remains of Kevin McKee and Seamus Wright recovered
2017	Remains of Seamus Ruddy recovered

The ICLVR and Trust

- Trust central to relative success of ICLVR and to this type of mechanism:
 - 1) Management of expectations
 - 2) Development of trust over time
 - 3) Demonstrates that this type of mechanism can be trusted

“It’s something practical that you can point to, to the ex-combatant or former security force constituency to say: this thing can work. Because the misgivings for them will be, well why...should we if we’re liable to be prosecuted...you can say: this worked.”

- Personal interview with community activist with over 20 years’ experience working with ex-combatants, October 2015.

“we in the political ex-prisoner community did...a series of meetings and talks with people...about...how they would feel about becoming involved in a process of truth recovery...what we had in mind was some sort of a process whereby people on a collective basis could be requested to give information to a group of very trusted and confidential comrades...And the example that we used was the process of the recovery of the remains. And in the main, most guys would have been comfortable with that.”

- Personal interview with Republican ex-combatant, April 2015



The Importance of Leadership

“an impressive character”

“a very successful appointment”

Republicans “were able to rely on Geoff Knupfer to the same extent that they were able to rely on their comrades”

“Crucial...once the Republican leadership – both Sinn Féin and the IRA – engaged with this issue properly and created their own structures in order to manage it, that’s when the issue begins to be resolved...It doesn’t work until you have that top-down commitment to making it work. So it’s absolutely central”

- Personal interview with community activist with over 20 years’ experience working with ex-combatants, October 2015.

(8) *Each Commissioner must—*

- (a) *have qualities and experience which are likely to **command the respect and confidence of all participants** in the functions of the Commission, including victims and survivors, governments, security services and former members of paramilitary organisations;*
- (b) *be **independent, and perceived to be independent**, of all persons likely to be subject to information retrieval procedures;*
- (c) *be **impartial, and perceived to be impartial**;*
- (d) *have **experience and skills** which make the Commissioner **suitable to handle sensitive information** and to make judgments about its reliability;*
- (e) *neither have nor expect to have any financial or other interests that are reasonably likely to conflict with the exercise of their functions as Commissioner.*

- Stormont House Agreement Model Bill (CAJ, QUB, UU 2015)



Context, Generosity and Political Will

- Backdrop to campaign by families of the 'disappeared' one of "generosity" and a "momentum" for change.

"We live in an imperfect world, and I cannot sit here and say that in every case of every murder, or every victim who feels a sense of loss, that you will be able to find a form of closure...however hard we try to deal with the legacy of our troubled past, the outcome will always be imperfect...**But I do think that the Commission on the 'disappeared' is a good example of how these issues can be handled sensitively, pragmatically, and in a principled way.** And I hope that that can be replicated in the new institutions that we hope will be established under the Stormont House Agreement"

- Personal interview with DUP MP, March 2015

- Political will, generosity, sensitivity, and pragmatism central to effectiveness of legacy institutions



The ICLVR and Limitations of ‘Truth’

“this has been done before...it has worked... **all those things that have been successful in the ‘disappeared’ model, can therefore be successful in the truth recovery model.** The difficulty with that in my view is that **that is a very minimal view of information recovery...**the ‘disappeared’ provides some reassurance that a confidential mechanism can be established and can be made to work. It shows that **you can get information without risking endangering prosecutions.** It shows that you can have a sort of information or sort of factual discovery process **without declaring an amnesty...**the ICIR could work in very much the same way.”

- Personal interview with a former diplomat who has been engaged in efforts to deal with the past in Northern Ireland, June 2015.



Conclusion

- ICLVR an example of a mechanism that works in the way required by the ICIR
- But, lessons are broader than the mechanics of the process:
 - Trust & management of expectations
 - Leadership
 - Context of generosity, political will, pragmatism
- The ICLVR model can and should be instructive, however it should not be constraining





Northern Ireland
Assembly



**QUEEN'S
UNIVERSITY
BELFAST**



**The Open
University**



**Ulster
University**

Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland