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

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Introduction

The Stormont House Agreement (SHA) provides the framework for a group of institutions designed to respond to 'The Past.' These are a Historical Investigations Unit (HIU) aimed at providing a prosecutorial route that families can pursue if they so choose, an Independent Commission for Information Retrieval (ICIR) – a form of truth recovery mechanism, and an Oral History Archive (OHA). An Implementation and Reconciliation Group (IRG) will have a dual role of producing a report on themes and promoting reconciliation.

The SHA states of the proposed ICIR that it will build 'on the precedent provided by the Independent Commission for the Location of Victims' Remains' (ICLVR).¹ The ICLVR was established in 1999 to locate the remains of those who were 'disappeared' during the conflict in and about Northern Ireland. The ICLVR has been relatively successful to date, and the remains of 13 of the 16 'disappeared' have been recovered and returned to their families for burial (see *Table 1* on page 3).

¹ Stormont House Agreement, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf > [accessed 4 April 2018].

This Research Paper presents the findings of research on the ‘disappeared’ and the ICLVR carried out at Queen’s University Belfast between 2012 and 2016.² This paper will outline the rationale behind using the ICLVR process as a precedent for the ICIR, by detailing the mechanics of how the ICLVR process works. Subsequently, this paper will set out a number of lessons from the ICLVR process that have broader relevance for the establishment of the ICIR. Several elements of the process: trust, leadership, context, and the spirit with which the issue has been approached, have been essential to its relative success. This can and should be instructive for the development of the SHA institutions or indeed other potential future mechanisms for responding to the legacy of conflict either in Northern Ireland or elsewhere.

ICLVR and ICIR: The Mechanics

The ICLVR and ICIR share similar purposes: the gathering of information in relation to conflict-related events in a confidential manner. Thus it follows that the mechanisms for extracting that information should be comparable.

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, with regards information passed to the ICIR:

- This information 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.

As with the ICLVR, the ICIR is not an amnesty. Rather, the legislation will provide a limited immunity from prosecution that applies solely to the passing of information to the ICIR. Individuals can still be prosecuted if evidence comes to light via other means – for example via the HIU.³

The ICLVR and Trust

The centrality of trust in relation to the process of recovering the remains of the ‘disappeared’ has manifest itself in three key ways: i) the management of expectations; ii) the importance of the development of trust; and iii) demonstrating that this type of mechanism can be trusted

i) Management of expectations

² This research was funded by a Department for Employment and Learning Strategic Award awarded by Queen’s University Belfast.

³ Stormont House Agreement, *supra* n 1.

With regards the 'disappeared,' early newspaper headlines suggested rapid recovery of remains. Yet, almost 19 years after the establishment of the ICLVR, remains continue to be found. A former *An Garda Síochána* Detective Inspector involved in the early searches explained that the roots of these expectations were genuine:

I think we all thought, both media and the people presenting the information, everybody thought this was going to be a very quick process...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.⁴

Yet given that trust is linked to expectation of outcome,⁵ the making of claims that could not realistically have been met created conditions for further mistrust to develop. The ICLVR experience suggests that one of the first steps in building trust should be managing the expectations of victims' loved ones, and being realistic about what is achievable.

ii) *The development of trust*

The legislation that established the ICLVR provided a legal foundation upon which trust could develop. On the one hand this indicates how important it is that the guarantees contained within the legislation which establishes the ICIR are comprehensive and robust. On the other, that this legislation was introduced over 18 years ago and remains continue to be recovered would suggest that legislation alone is insufficient.

<i>Year</i>	<i>ICLVR progress</i>	
1999	Remains of Eamonn Molloy, Brian McKinney, John McClory recovered	Table 1: Timeline of ICLVR progress (NB: The remains of one victim – Eugene Simons – were discovered in 1984, prior to the establishment of the ICLVR).
2003	Remains of Jean McConville recovered	
2008	Remains of Danny McIlhane 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	

⁴ Personal interview with former *An Garda Síochána* Detective Inspector, Dublin, January 2015.

⁵ Morton Deutsch, 'Trust and Suspicion,' *Journal of Conflict Resolution*, 2:4, (1958), 265-279; Geoffrey Hosking, *Trust: A History* (Oxford: Oxford University Press, 2014); Herbert W. Kee and Robert E. Knox, 'Conceptual and Methodological Considerations in the Study of Trust and Suspicion,' *Journal of Conflict Resolution*, 14:3, (1970), 357-366.

While the legislation provided the required legal guarantees, what has been equally – if not more – important is that trust has developed in that legislation, and that relationships of trust can be said to have been built between those working for the ICLVR and those providing information.

A 5-year time limit was set on the period of operation of the ICIR in the SHA. As the timeline shows (Table 1), within the first five years of operation of the ICLVR, the remains of only four of the ‘disappeared’ were recovered. It was almost 10 years after the establishment of the ICLVR that the rate of retrieval gained some momentum, with the remains of other victims recovered in 2008, 2010, 2014, 2015 and 2017. This suggests that more information was provided to the ICLVR as trust in the process increased, and that this took time.

Given the 5-year time limit on the ICIR’s operation agreed by the parties to the SHA, it is essential that in terms of the establishment and management of the ICIR process, consideration is given to how best to facilitate the development of trust, in order to maximise information provision within the set period.

iii) This type of mechanism can be trusted

The ICLVR demonstrates that this type of mechanism can be trusted. That the ICLVR has been seen to work by those intended to engage with the ICIR mechanism is important:

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.⁶

Indeed, one senior Republican ex-combatant interviewed for this research elucidated this:

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.⁷

The Importance of Leadership

Effective leadership from those involved in these processes is extremely important. With regards the ICLVR, leadership has been essential for both the ICLVR and Republicans engaging with the search process.

Leadership has been described as:

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

⁶ Personal interview with community activist with over 20 years’ experience working with ex-combatants, October 2015.

⁷ Personal interview with Republican ex-combatant, April 2015.

begins to be resolved...It doesn't work until you have that top-down commitment to making it work. So it's absolutely central.⁸

On the side of the ICLVR, many of my interviewees referred to Senior Investigating Officer Geoff Knupfer specifically. He was described as "an impressive character,"⁹ and "a very successful appointment."¹⁰ One Republican ex-combatant interviewed suggested that Republicans "were able to rely on Geoff Knupfer to the same extent that they were able to rely on their comrades."¹¹ This, he said, has been "crucial."¹²

This indicates the importance of selecting the right personnel to lead the various legacy mechanisms, as this can influence the extent to which individuals engage. This need is indicated by the inclusion in a model bill produced by a group of academics and practitioners of a list of qualities and experience that the ICIR Commissioners should have. These include being independent, impartial – and being perceived as such – and being able to handle sensitive information.¹³

Context, Generosity, and Political Will

The families of the 'disappeared' successfully mobilised support for their cause, lobbying local, national, and international political support.¹⁴ A central tenet to that success was the context of "generosity"¹⁵ and "momentum"¹⁶ for change which existed at that time.

Rather than the specific workings of the process itself, one DUP MP interviewed pointed to the importance of the spirit in which these sorts of issues are approached as one of the most significant 'lessons' to be learned from the ICLVR for the wider process:

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.¹⁷

For the SHA institutions – or indeed, any other efforts to address the legacy of the past in Northern Ireland – to be effective will also require political will, generosity, sensitivity and pragmatism from those involved.

⁸ Personal interview with community activist with over 20 years' experience working with ex-combatants, October 2015.

⁹ Personal interview with representative of human rights NGO, October 2014.

¹⁰ Personal interview with community activist with over 20 years' experience working with ex-combatants, October 2015.

¹¹ Personal interview with Republican ex-combatant, April 2015.

¹² Personal interview with Republican ex-combatant, April 2015.

¹³ Stormont House Agreement, Model Implementation Bill. Available at <<http://www.caj.org.uk/contents/1289>>.

¹⁴ Lauren Dempster, *Transitional Justice and the 'Disappeared' of Northern Ireland: Silence, Memory and Constructing the Past* (Routledge: Forthcoming).

¹⁵ Personal interview with representative of human rights NGO, October 2014.

¹⁶ Personal interviews with journalist and writer, July 2014; historian and academic, August 2014; representative of human rights NGO, October 2014; Sinn Féin MLA, April 2015.

¹⁷ Personal interview with DUP MP, March 2015

Limitations of ‘truth’ and the ICLVR

One interviewee highlighted, with regards the decision to base the ICIR on the ICLVR, that the model of the ICLVR involves “a very minimal view of information recovery.”¹⁸

The ICLVR established a ‘narrow,’ and limited, geographical ‘truth.’¹⁹ The information collected solely relates to the locations of burial sites. Therefore, while the mechanism can be instructive it should not be constraining.

With regards victims of alleged state crime in particular, concerns relating to national security and the related restrictions on disclosure of information by the British government highlight the need to ensure that the legislation establishes clearly how the ICIR can function in such a way as to protect legitimate national security concerns, and still maximise the provision of information to relatives of those killed.²⁰

Conclusion

The ICLVR provides an example of a mechanism that works in the way required by the ICIR. However, the lessons that can be learned from the ICLVR are not limited to the mechanics of that process. The experience of the ICLVR suggests that in dealing with the past, and specifically in establishing mechanisms to address the legacy of past violence, leadership, trust, pragmatism and a spirit of political generosity and goodwill are essential to progress. While the ICLVR has been relatively successful, it should also be borne in mind that the information it establishes is limited by the ICLVR’s function: the location of burial sites. The ICIR provides an opportunity for a much more comprehensive process of information recovery, and its design should facilitate this – while of course working within the boundaries set by the limited immunity mechanism.

¹⁸ Personal interview with a former diplomat who has been engaged in efforts to deal with the past in Northern Ireland, June 2015.

¹⁹ Lauren Dempster, *Transitional Justice and the ‘Disappeared’ of Northern Ireland: Silence, Memory and Constructing the Past* (Routledge: Forthcoming).

²⁰ See e.g. McEvoy, K. (2017). *Dealing with the Past in Northern Ireland: A Proposed Model for Information Redaction under the Stormont House Agreement*. QUB Human Rights Centre.

