Chapter 47
Forensic archaeology and the independent commission for the location of victims’ remains

Niamh A. McCullagh and Geoffrey C. Knupfer
ICLVR, Ireland

Introduction and context

In the course of their long and inter-related histories, Ireland and Great Britain have encountered periods of political and civil strife, focused largely on Ireland’s desire for independence from Britain. This gradual process, occasionally violent, came to a head in the late 19th and early 20th centuries and culminated in the formation of the Irish Free State in 1921 (later to become the Republic of Ireland in 1937). However, not all the then citizens of Ireland supported this development and, as part of a political accommodation, the country was partitioned along broadly religious lines, with the largely pro-British Protestant North (the ancient province of Ulster) electing to remain a province of Great Britain, rather than becoming part of an independent (Catholic) Ireland.

Many citizens of the newly formed independent Irish State, supported by numbers of the significant Catholic minority in the province of Northern Ireland, totally rejected this artificial division of their country and continued to seek independence for a fully ‘united Ireland’. Over the years, this movement prompted periods of civil unrest in Northern Ireland and phases of paramilitary activity, the latter initiated by the Irish Republican Army (IRA). In 1969, the Northern Ireland Civil Rights Movement, in its desire for true equality for all members of the population, took on the Northern Ireland State in a campaign of civil disobedience. The IRA seized this opportunity to launch a military offensive against the British State. The civil police (the Royal Ulster Constabulary), totally overwhelmed by the substantial civil rights campaign and associated paramilitary activity by the IRA, sought the support of the UK’s military forces. Thus, the seeds of Ireland’s ‘troubles’ were sown. They were to last from 1969 to 1998. In this time, in excess of 3720 individuals lost their lives (McKittrick et al. 2007).

A complex political solution involving many strands was negotiated in 1998 between the two governments and the various political factions, resulting ultimately in paramilitary disarmament and the release of ‘political’ prisoners. This landmark settlement is known as the Belfast (or Good Friday) Agreement (English 2012). It marked the beginning of the peace process, and the formulation of numerous measures to address a range of important aspects, including constitutional and political issues and also the then existing security and political difficulties. Nevertheless, human rights and humanitarian issues lie at the very heart of this peace process. One of the initiatives taken by the governments of Ireland and the United Kingdom was the establishment of the Independent Commission for the Location of Victims’ Remains (ICLVR). This is a body tasked with the search for, recovery and repatriation of a small number of individuals who had been abducted and murdered during the course of the conflict, the whereabouts of their remains being unknown (Woods 2013).

Legislation

The structure and functions of the ICLVR are set out in largely parallel legislation enacted by the two governments (Ireland: The Criminal Justice (Location of Victims’ Remains) Act, 1999 and UK/Northern Ireland: The Northern Ireland (Location of Victims’ Remains) Act, 1999). Whilst the Commission was established and is funded by the Ireland and UK governments, it is, as its title suggests, a truly independent body, its work being overseen by two appointed commissioners. To summarise, the Commission’s role and responsibilities are enshrined in the Agreement and legislation as follows:

- To facilitate the location of the remains of victims of violence;
- To receive information in relation to the location of the remains of victims;
- To disclose this information for the purpose of locating the remains of victims;
- To provide reports annually to the two governments on progress made.
Victims of violence are defined as ‘those killed before the 10 April 1998 (the date of the Belfast Agreement) by or on behalf of an unlawful (i.e. paramilitary) organisation’. Whilst there is no start date insofar as the adoption of cases by the Commission is concerned, this strict cut-off date does create some administrative ambiguities, since at least one incident involving the abduction and murder of a young man occurred after the signing of the Belfast Agreement.

To protect the work of the Commission and to encourage the flow of information, the legislation imposes strict limitations on how information received by the Commission can be used:

- Evidence obtained directly or indirectly by the Commission is not admissible in any criminal proceedings (however, this does not apply to admissions adduced in criminal proceedings).
- Any remains recovered shall not be subjected to forensic examination other than to establish the identification of same, or for safety reasons (e.g. improvised explosive devices, IEDs).
- Information received by the Commission cannot be disclosed to any person except for the purpose of facilitating the location of remains to which the information relates.

The legal provisions under which the Commission undertakes its business are wide-ranging and effective. They were framed with a view to encouraging former paramilitaries, and indeed anyone with relevant information, to provide it to the Commission in the knowledge that it would be used solely for the purpose of recovery and repatriation and, more importantly, that it would not be passed on to other agencies or the governments or result in prosecution.

The disappeared

Between 1969 and 1998, and as a result of the conflict, a number of individuals were abducted and murdered by the paramilitary groups – the majority of cases occurring in the island of Ireland, but one case, attributed to the Irish National Liberation Army (INLA), occurring in France. There is no definitive figure because new cases do come to light from time to time; however, at the time of writing, there are 17 known cases, and the remains of 11 victims have been recovered and repatriated. A total of 16 of these cases appear on the Commission’s list of victims, with 10 victims recovered and repatriated (ICLVR 2012).

Responsibility for a number of these cases has been accepted by two of the former paramilitary groups, the IRA and INLA. Other cases, however, remain unattributed, albeit they too are strongly suspected to be the work of paramilitaries, possibly individuals or groups acting without the authority of their central command.

The current list of those recognised by the ICLVR as the Disappeared (Figure 47.1) is presented in Table 47.1.

Figure 47.1 ‘The Disappeared of Northern Ireland’ families pin (© WAVE).

In terms of victimology and statistical profiling, 15 of the 16 victims are male and the total age range is from 17 to 54. The average age at the time of disappearance is the early twenties, with six of the victims being in their twenties when they disappeared.

Victims disappeared between 1972 and 1985, with 1972 and 1981 representing the highest concentration of disappearances. Within the group are two double graves and the remaining cases are of single disappearances. To date, the remains of 10 of these victims have been returned to their families and searches continue for those still missing; however in some cases, a complete absence of information has remained.

History of the search approach

On 28 May 1999, the legislation that established the ICLVR was signed and enacted by government ministers. On 29 May 1999, information was passed to the Commission via intermediaries in relation to the location of nine bodies in six locations around Ireland (Wilson and Bloomfield 1999). On this same day, one of these victims was presented to the ICLVR in a coffin at a cemetery in Faughart, County Louth (ICLVR197501).

On 30 May 1999, searches began simultaneously at all the locations disclosed via intermediaries to the Commission. Since the Commission did not, at that stage, possess its own physical search capability, this process was undertaken by officers of the Irish Police Force (An Garda Síochána) acting on behalf of the ICLVR. In the beginning, search teams began with shovels and wheelbarrows (Cusack 1999); and in a short space of time, these were exchanged for smaller mechanical diggers and finally for larger mechanical excavators (Figure 47.2). It was believed that search would be straightforward. Such was the level of confidence that in the early days of search undertakers and families...
waited at the edge of numerous sites (Cusack 1999) anticipating an early recovery. The searches continued at these locations for 30 days after which activity was suspended (Newman and Keogh 1999). In this time, one double grave was located (ICLVR197801 and ICLVR197802), but all other searches proved unsuccessful (Keogh 1999).

Over the intervening years, search was intermittent and dependent on local police. A number of cases were returned to, some more than once, for example ICLVR197204 and ICLVR197502 (Humphreys 2003; Irish Times 1999; Moriarty 2003; Moriarty 2008); and in one case, the victim’s family privately funded a search (family member, personal communication, 2008).

In 2005, a juncture was reached when calls for independent advice in the search for the disappeared came through government channels as a result of pressure from families and politicians (Irish Times 2006). The issue was debated a number of times both in the UK’s Houses of Parliament and in the Oireachtas, the Irish Parliament (Keenan 2003), as being necessary to bring closure to the families of the victims.

In 2005, a conscious decision was taken by the leadership of the Commission to progress from a reactive organisation to a proactive one. Up to that point, the Commission had relied entirely on the receipt of information from intermediaries and former paramilitary organisations, and the search capability of local

Table 47.1 ICLVR case data (Hill 2013; ICLVR 2012).

<table>
<thead>
<tr>
<th>Case reference</th>
<th>Age</th>
<th>Gender</th>
<th>Missing since</th>
<th>Located</th>
<th>Searches prior to 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICLVR197201</td>
<td>M</td>
<td></td>
<td>Mid 1972</td>
<td></td>
<td>Not applicable</td>
</tr>
<tr>
<td>ICLVR197202</td>
<td>25</td>
<td>M</td>
<td>October 1972</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>ICLVR197203</td>
<td>M</td>
<td></td>
<td>October 1972</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>ICLVR197204</td>
<td>37</td>
<td>F</td>
<td>December 1972</td>
<td>August 2003</td>
<td>Yes</td>
</tr>
<tr>
<td>ICLVR197301</td>
<td>21</td>
<td>M</td>
<td>August 1973</td>
<td>November 2010</td>
<td>No</td>
</tr>
<tr>
<td>ICLVR197501</td>
<td>M</td>
<td></td>
<td>July 1975</td>
<td>May 1999</td>
<td>No</td>
</tr>
<tr>
<td>ICLVR197502</td>
<td>17</td>
<td>M</td>
<td>October 1975</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>ICLVR197701</td>
<td>29</td>
<td>M</td>
<td>May 1977</td>
<td></td>
<td>Not applicable</td>
</tr>
<tr>
<td>ICLVR197801</td>
<td>23</td>
<td>M</td>
<td>April 1978</td>
<td>October 2014</td>
<td>Yes</td>
</tr>
<tr>
<td>ICLVR197802</td>
<td>18</td>
<td>M</td>
<td>May 1978</td>
<td>May 1999</td>
<td>Not applicable</td>
</tr>
<tr>
<td>ICLVR197803</td>
<td>22</td>
<td>M</td>
<td>May 1978</td>
<td>May 1999</td>
<td>Not applicable</td>
</tr>
<tr>
<td>ICLVR197901</td>
<td>24</td>
<td>M</td>
<td>March 1979</td>
<td>October 2010</td>
<td>No</td>
</tr>
<tr>
<td>ICLVR198102</td>
<td>M</td>
<td></td>
<td>July 1981</td>
<td>November 2008</td>
<td>Yes</td>
</tr>
<tr>
<td>ICLVR198103</td>
<td>54</td>
<td>M</td>
<td>August 1981</td>
<td>July 2010</td>
<td>Yes</td>
</tr>
<tr>
<td>ICLVR198101</td>
<td>M</td>
<td></td>
<td>January 1981</td>
<td>May 1984</td>
<td>Not applicable</td>
</tr>
<tr>
<td>ICLVR198501</td>
<td>33</td>
<td>M</td>
<td>May 1985</td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>
police forces. In 2006, an independent advisor was invited to review the Commission’s operations up to that date and make recommendations on how the organisation might more effectively undertake its role in the future. The resultant key recommendations related to the establishment of a relative’s DNA database; improving existing family liaison arrangements; adopting a proactive media strategy and, most significantly insofar as this paper is concerned, the establishment of a team of specialists and experts working directly for the Commission. On this list was the employment of advice from the field of forensic archaeology. This was the first time that independent forensic archaeologists had been consulted in the search for these victims. Following a case-by-case assessment fieldwork recommenced in late 2007 and search continued at full pace until 2011. At the time of writing, a programme of search for one victim is taking place and fresh appeals are being made for information in respect of a number of outstanding Commission cases.

**Renewed search strategy**

The search strategy is developed for each site, based on the specific information available, the value placed on the information by the investigation team and the terrain concerned. From this process, a costed project plan is then prepared and submitted to the two sponsoring governments in order to obtain the necessary funding in support of the proposed operation. This entire procedure is covered by the ICLVR confidentiality legislation; thus, the documentation concerned and details of associated discussions between the ICLVR and governments are not publicly available.

The ICLVR operates on the principal of least intrusive to most intrusive search techniques with search only taking place if there is sufficient evidence to do so (*Irish Times* 2006). A search will begin with the analysis of information available and attempts to validate or corroborate that information. Relevant contemporary records, mapping and imagery will always be sought and, where it is available, examined. Information in relation to the location of a victim can come to the Commission in a number of ways, either as a result of public contact and media appeals (Breen 2009) or via intermediaries and interlocutors acting on behalf of other organisations.

**The use of forensic archaeology**

The ICLVR is a transitional rather than a permanent body, and it does not employ a fixed workforce. It obtains the services of all its staff only on a contractual basis. The numbers of staff, including forensic archaeologists, working at any given time depends entirely on the nature and number of sites being processed at that stage. The primary roles and responsibilities of forensic archaeology as an investigative tool for the ICLVR have been in four key areas: preliminary investigations, taphonomic assessment, excavation and forensic recovery. Once a case has been established and information has been passed to the ICLVR search team, a preliminary desktop survey is undertaken, during which historic and current photographic and cartographic resources are assembled to assess and analyse landscape and environmental changes at time of burial (TOB) and time since burial (TSB). This includes the assembly of historical environmental data and geological information. The time frame of cases ranges from 30 to 40 years since victims were buried and the landscapes in which they were buried have long since been abandoned and their physical nature has changed, for example estuarine erosion and prolonged landscape saturation through extension of flood plains. In eight of the current cases, landscape assessments have been influenced heavily by previous searches prior to 2006 (Figure 47.3 and Table 47.1).

![Figure 47.3](https://example.com/figure473.jpg) **Figure 47.3** Landscape disturbance due to previous searches (© N.A. McCullagh, ICLVR).
It is also the role of the forensic archaeologist to conduct a taphonomic assessment of each location. The specific burial environment of each location has to be considered and pre-emptive studies have been undertaken at all remaining sites to evaluate the potential for human remains to survive in location.

Once a desktop assessment is complete, the next phase of assessment of the potential of the search location is to conduct field walking and a topographical survey. This survey is undertaken by members of the forensic archaeology team, acting under the overall direction and control of the head of the ICLVR investigation team. If it is deemed relevant, an auger survey will be undertaken to corroborate stratigraphic information and assist in limiting the potential search area. In the next phases, a cadaver dog search is conducted alongside a remote sensing survey, depending on the site potential for these methods. Resistivity, magnetometry, ground-penetrating radar (GPR), infrared and LIDAR are all considered at each search location. The results are collated in mapping prepared by the survey suppliers. These remote sensing methods have been deployed by the ICLVR with hugely varying degrees of success.

**Excavation**

Once a primary search area has been established by the team, the site will be taken to the invasive stage of excavation. Since 2007, 19 searches have been taken to the excavation phase of search. Excavations have taken place in three different jurisdictions – Ireland, Northern Ireland and France – and have ranged in size from 20 to 94,600 m² (Figure 47.4). During this phase, the ICLVR practises complete excavation and conclusive search (Figure 47.5).

The types of sites that the ICLVR has excavated have varied from coastal to woodland to peat bog, each with its own challenges. Relatively speaking, 90% of all time spent on site conducting excavation has been in saturated peat land. This requires significant site preparation in some cases. For example, case ICLVR197901 required the renewal of 4.2 km of drainage to allow access to a 100 × 100 m initial search area.

During the course of excavation, the forensic archaeologist must identify and establish the importance of any physical evidence encountered. For example, evidence of previous search activity (Figure 47.6, left) and the identification of human and non-human osteological remains (Figure 47.6, right). The forensic archaeologist must also establish the historic nature of illegal dumping, for example, domestic and industrial waste, and in one case a buried car.

Once human remains have been located, it is the responsibility of the forensic archaeologist to maintain the forensic integrity of the site and, working in conjunction with the pathology service concerned, it is the responsibility of the forensic archaeologist to recover human remains to the highest possible standards. Given the joint legislation under which the ICLVR operates, it does have primacy in both jurisdictions in respect of these particular cases. Notwithstanding, the coronial process (the State’s investigation into the circumstances of any sudden or unexpected death, both in Ireland and the United Kingdom) runs largely in parallel to this recovery process. For that reason, post-mortem examinations of the remains are carried out by the State Pathology Service for the jurisdiction in which the remains are discovered. Whilst the ICLVR and the Pathology Service will jointly pursue the question of identification, the cause of death is a matter solely for the pathologist. Once identified, the remains are returned to their families for formal burial.

![Figure 47.4](image-url) Size range of sites excavated (© N.A. McCullagh, ICLVR).
Conclusion

The use of forensic archaeology in the search for the Disappeared in Ireland was first called for in 2003 (Keenan 2003). It was formally introduced as a skill to the team in 2006 by the second author (GK); and since 2007, forensic archaeology has been an integral tool used in support of the ICLVR search processes. As many as 10 (forensic) archaeologists have been deployed at some stages of the search process, qualified staff being provided by specialist university departments and also private consultancies.

Since the appointment of a forensic expert to steer this renewed search approach, five victims have been found through active search. Prior to this just one grave, containing two victims, was located through active search. Search continues at the time of writing. ICLVR searches are always information led, and further assistance is always sought from members of the public and, preferably, those individuals who were directly involved in the events.

Given the complex political context and the lengthy timescales involved, it has been suggested that the ICLVR has achieved significant success in locating and...
recovering several victims of conflict. So much so that both the International Committee of the Red Cross (ICRC) and the United Nations High Commission for Refugees (UNHCR) have expressed a degree of interest in exploring further and possibly exporting this unique ‘Ireland’ model. The ICLVR maintains a regular and well-established dialogue with officials of the ICRC; and in 2012, senior representatives of the ICLVR team held meetings with members of the UNHCR in Brussels and Geneva.

Acknowledgements

This chapter would not have been possible without the consistent support and patience of our Commissioners Sir Ken Bloomfield and Mr Frank Murray and members of the ICLVR team, including Jon Hill, John McIlwaine and the University of Bradford, Robert Friel, Aidan Harte and Aidan Boyle and his dedicated staff. Thank you also to Sandra Peake, CEO of the WAVE Victims Organisation, for her unending support and enthusiasm and to the Irish Times for permission to use images.

References

