ACCOUNTABILITY AFTER CRISIS
ICELAND

Accountability after Economic Crisis

Photo: Protest on Austurvollur by Haukurth, licensed by CC BY-SA 3.0
Table of Contents

Preface ........................................................................................................................................... 3
Acknowledgements & Disclaimer ................................................................................................. 4
Executive Summary ...................................................................................................................... 5
Glossary ......................................................................................................................................... 6
Introduction .................................................................................................................................. 7
I. The Background to the Crisis .................................................................................................... 8
II. The Blame Game: Narratives of the Crisis ............................................................................. 10
III. The Tools of Accountability .................................................................................................. 12
    Truth Recovery Initiatives ........................................................................................................ 12
    Prosecutions ............................................................................................................................ 16
    Apologies .................................................................................................................................. 21
IV. Impact of Accountability ........................................................................................................ 25
V. Learning and Reform ............................................................................................................... 28
Conclusion ..................................................................................................................................... 31
Further Reading .......................................................................................................................... 33
References ...................................................................................................................................... 34
Preface

This report was commissioned as part of the Accountability After Economic Crisis project – a three-year initiative funded by the Economic & Social Research Council (ESRC-ES/M011321/1). Members of the project are based at City, University of London, Queens University Belfast, and the University of Kent.

The project explores the policies of accountability deployed in the aftermath of the global 2008 economic recession (the ‘Great Recession’). Using six case studies (Cyprus, Greece, Iceland, Ireland, Portugal, and Spain), we approach political accountability through a comparative and thematic framework that focuses on the use of specific tools of accountability following the financial crisis. The policies of accountability include prosecutions, fact-finding commissions and truth commissions and official apologies.

At base, the project hopes to make contributions both to the theory of ‘crisis governance’ as well as to the practice of how governments react to economic crises. More than 100 elected officials, civil servants, academics, journalists, and activists were interviewed for the project. We also developed a novel database with prosecutions, truth commissions and apologies in the aftermath of the crisis in the six countries. Drawing on a experts’ testimonies and the use of a new database, the project provides policy makers with concrete advice for pursuing accountability in future economic crises.

The country reports have a wide readership envisioned, including policy makers in all countries and at various levels of government (including international bodies); scholars; activists; and journalists. They have been written without academic jargon, and in both English and relevant local languages, to facilitate their practical utility.

We hope that you will find the report useful and urge you to share it amongst your colleagues and networks.

For further information about the wider project please feel free to contact us at:

https://accountabilityaftereconomiccrisis.com/contact-the-team/

Iosif Kovras, PhD
Principal Investigator, Accountability After Economic Crisis Project

March 2018
Acknowledgements & Disclaimer

This report was prepared by Mr Ragnar Hjalmarsson (Hertie School of Governance), in association with the Accountability After Economic Crisis project. All views expressed, and any errors, remain the responsibility of the author.

This report is made available free of charge. The views and opinions it contains are those of the authors, not of the Economic & Social Research Council. You may use and copy it in whole or in part for educational purposes provided that you (i) do not alter or adapt the content; (ii) use the material on a not-for-profit basis; and (iii) acknowledge the copyright owners and source in any extract from the report.

To the fullest extent permitted by law, the authors exclude all liability for your use of the report. The authors assert their moral right under the Copyright Designs and Patents Act 1988 to be identified as the authors of this work.

ISBN: 9781903957356
Executive Summary

Iceland’s experience of the Great Recession is puzzling, challenging the conventional wisdom that ‘impunity’ prevails after economic crisis. Immediately after the ‘Crash’, political elites designed two novel mechanisms to identify the causes and those responsible for the financial meltdown. First, a Special Investigation Commission (SIC), in effect a truth commission, was mandated to shed light on the collapse of the banking sector and to publish a report that would turn past policy failures into policy recommendations. At the same time a decision was taken to investigate and prosecute those individuals seen as responsible for the collapse of the banking sector, leading to the creation of the Office of the Special Prosecutor (OSP). The OSP has been very effective, securing the conviction of approximately 30 individuals; given the small population of the country and the lengthy sentences they were given, this is an important achievement.

Both mechanisms have been effective in meeting their stated objectives, while they also had a broader impact in reshaping Icelandic politics and institutions in the following ways:

• The report of the SIC established an authoritative account of the crisis, which made it impossible to deny certain facts related to the crisis.

• The prosecutions of very powerful bankers created a public understanding that no one is above the law.

• The Office of the Prosecutor has developed the expertise to investigate complex white-collar crimes, which promotes deterrence and protects the country from future wrongdoing.

• Also, there is an emerging jurisprudence which offers clear definitions of white-collar crimes, something previously missing from national legislation.

Accountability after Economic Crisis
# Glossary

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBI</td>
<td>Central Bank of Iceland</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
</tr>
<tr>
<td>FME</td>
<td>Financial Supervisory Authority (Fjármálaeftirlitíð)</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>OSP</td>
<td>Office of the Special Prosecutor</td>
</tr>
<tr>
<td>SDA</td>
<td>Social Democratic Alliance</td>
</tr>
<tr>
<td>SIC</td>
<td>Special Investigative Commission</td>
</tr>
<tr>
<td>WEG</td>
<td>Working Group on Ethics</td>
</tr>
</tbody>
</table>
Introduction

The collapse of Iceland’s banking system October 2008 became one of the symbols of the Great Recession. It was the first European country destabilized by the global financial turmoil and it was the only country that saw all of its major banks default, bringing down with them in a span of a week around 90 percent of the country’s financial system. In the following report, I trace the overall process of accountability following the crash, highlighting the particular Icelandic responses in the form of an influential truth commission, a series of high profile prosecutions, and a few pseudo-apologies with limited impact. I place these phenomena in the context of the blame game that emerged amongst political elites and in the public at large, and then offer reflections on the impact of these tools of accountability.
1. The Background to the Crisis

The main causes of the crisis are to be found in the inordinately rapid expansion and subsequent size of the newly privatized banks, as well as government policy that first facilitated the expansion and later was unable to mitigate the dynamics unleashed.

Iceland’s largely nationalized and inward-looking banking system was privatized in 2002-3 amid widespread accusations of political favouritism that saw ownership of the banks transferred to Icelandic investors with no international banking experience. The three largest banks (Landsbanki, Glitnir and Kaupthing) grew rapidly out of proportion both in Iceland and abroad, with total assets of the banking system rising from 174% of GDP at the end of 2003 to around 1000% of GDP at the time of the collapse (Benediktsdottir, Danielsson og Zoega 2011).

The expansion of the banking sector was made possible by easy access to foreign credit facilitated by their good credit ratings (to some extent inherited from the State Treasury) and their access to European markets through the EEA Agreement (SIC 2010). The banks expanded abroad through leveraged acquisitions and the financing of international companies and Icelandic multinationals. While at home the dramatic increase in lending fuelled bubbles in all asset classes, particularly the stock market and real estate (IMF, Iceland : Ex Post Evaluation of Exceptional Access Under the 2008 Stand-by Arrangement 2012, 4).

The growth of the banks was encouraged by the authorities who, after privatizing the banks, imagined Iceland developing into an international banking centre. To support that effort, the banking system was liberalized, rules and regulations were relaxed, financial supervision was neglected and regulators went without the resources and experience needed to manage a large and internationalized financial sector (Benediktsdottir, Danielsson og Zoega 2011, 186).

No later than 2006 would it have been necessary for the authorities to take action, if there was to be any chance to stave off the collapse of the banks (SIC 2010). The political will was, however, lacking and the banking system continued to grow in an ever-unhealthier manner. Specifically, non-transparent cross ownership and related party lending between the banks and holding companies – controlled by the Icelandic business ‘Vikings’ – masked poor asset quality. When international lenders started issuing margin calls the banks resorted to market manipulation to prevent their share prices from tumbling.

When the crisis hit, it hit swiftly and powerfully. Instrumental in the loss of confidence in Iceland’s highly leveraged banks, suffering from overstretched balance sheets built up in...
previous years, was the sheer size of the banking sector that made the central bank incapable of serving as a lender of last resort. The authorities depleted the central bank’s limited reserves in futile attempts to bail out the banks, though they were ultimately reduced to watch the ‘too-big-to-save’ banking system collapse.

Iceland’s banking crisis wiped out over 75% of the stock market in the first two weeks (Benediktisdóttir, Danielsson og Zoega 2011, 185). The onshore foreign exchange market dried up and the Icelandic krona depreciated by more than 70% in offshore markets (IMF, Iceland : Request for Stand-By Arrangement: Staff Report; Staff Supplement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for Iceland 2008, 5). External payment systems were severely disrupted; inflation shot up to 18% and was met with the raising of policy rates to a staggering 18.25% (IMF, Iceland : Staff Report for First Review under Stand-By Arrangement and Requests for Extension of the Arrangement, Waivers of Nonobservance of Performance Criteria, and Rephasing of Access 2009, 4). The inflation-indexation of mortgages and a crash in real estate prices caused 38% of household to go into technical bankruptcy (IMF, World Economic Outlook, Chapter 3: Dealing with Household Debt 2012, 104). The real economy was severely disrupted and the Icelandic authorities, perceived as reneging on their international obligations, were increasingly isolated abroad or met with outright hostility, as witnessed by the UK’s use of terrorist legislation to freeze Icelandic assets in the UK. That decision placed a fellow NATO member on a list together with the world’s most notorious terrorist organizations.

While Icelanders were recoiling from the shock, the centre-right government of the conservative Independence Party and the centre-left Social Democratic Alliance took a number of significant actions that framed post-crash realities. An Emergency Act (Law N°125 of 7 October 2008) was passed that allowed the authorities to seize control of the banks and divide them into foreign and domestic entities (not good and bad banks as is the usual practice when banks go into bankruptcy); capital controls were imposed that partly stabilized the economy; an IMF program was negotiated at record speed; and with cross-political support the government passed legislation establishing a Special Investigative Commission to “seek the truth behind the events leading to, and the causes of, the downfall of the Icelandic banks” (Law N°142 of 17 December 2008) and an Office of a Special Prosecutor was established (Law N°135 of 11 December 2008) to investigate and prosecute suspected crimes committed in the run up to the crash.

The shock quickly turned to anger, and in January 2009, three months after the Crash, Reykjavik was inundated with popular protest – the so-called Pots and Pan Revolution – that brought down the government and paved the way for elections and Iceland’s first purely left-wing government of the Social Democratic Alliance and the Left Green Movement. The new government now had to oversee Iceland’s economic recovery within the context of an IMF program and see through the truth- and accountability mechanisms established by the outgoing centre-right government.
II. The Blame Game: Narratives of the Crisis

When the crisis struck in early October 2008, government leaders immediately framed it as a consequence of global forces. In his address to the nation on October 6, a landmark speech that ushered in the new reality, Prime Minister Haarde of the conservative Independence Party emphasized that forces outside of Iceland were to blame for the dire state of the banking sector. The crisis had global sources, was a global problem, and Iceland was only one of its many victims (Haarde, 2008).

Later, in consequent press conferences, the national authorities stressed that the government was not to blame. The global crisis had hit Iceland worse than other countries primarily due to Iceland’s smallness and the European regulatory frameworks (adopted by Iceland through its membership of the European Economic Area, EEA) that allowed the banks to increase their foreign debt and expand their balance sheets out of proportion to the size of their home countries (Bernburg, 2016, p. 71). In short, the government had limited agency in curtailing the growth of the banks. Instead, the blame for Iceland’s vulnerability to the global financial storm now engulfing developed economies should instead be put on Icelandic bankers and business ‘Vikings’ who had acted recklessly and abused the freedoms provided to them by Iceland’s participation in flawed international economic agreements.

This narrative was adopted by the Right in Iceland. Later as the new left-wing government initiated accession talks with the European Union and grappled with the divisive Icesave dispute that saw the United Kingdom and the Netherlands hold up progress of the IMF economic program, it grew into what was termed the ‘Siege’ narrative (Gunnarsson, 2009): a nationalistic account of Iceland having been set up during the Crash by foreign governments eager to divert attention for their own failing banking systems, and later exploiting Iceland’s vulnerable position to further their own interests at Iceland’s considerable expense.

The counter narrative, which emerged in parallel both from the Left and activists from across the political spectrum, was that the crisis was a manifestation of underlying problems in Iceland’s democracy and government. Consequently, what was needed was a clean break, out with the old and in with the new, both people and established political practices. This narrative was distilled by calls for a ‘New Iceland’. Though sharing a mutual disdain with the Right of the Icelandic bankers and business ‘Vikings’ and the thirst for bringing them to justice, the ‘New Iceland’ narrative saw the Crash as a critical juncture for Iceland’s politics and society.

The Left, which had been swept into government after the popular protest of the Pots and Pans Revolution in January 2009 and which espoused demands for a ‘New Iceland’, saw the crash as a logical end result of long established patrimonial politics, mixed in the last two decades with
unfettered neoliberal policies that had transformed Icelandic society. This narrative painted a moralistic picture of Iceland that had lost its way, both in society and politics, and what was needed was a return to the principles of a Nordic welfare state and collective responsibility. This necessitated an honest account of what went wrong, accountability for bankers and people in power, and – in response for popular demands for a democratic renewal and a break with the past – a constitutional reform process that would usher in a new constitution and the desired ‘New Iceland’.

Though both blame narratives shared nationalistic undertones and both interpreted the Crash as an unmitigated national disaster, the ‘New Iceland’ narrative was less sceptical of foreign actors and their intentions. To meet the popular distrust of Icelandic elites, the left-wing government recruited foreign experts to take over the helm at the Central Bank and advise the Special Prosecutor tasked with prosecuting the bankers. Moreover, both the faithful implementation of the IMF economic program and Iceland’s 2009 application for EU membership and subsequent accession negotiations were seen as a way to attract financial and political aid from abroad and facilitate societal stability at home (Ingimundarson, 2016, p. 141). Instead of seeking blame for the Crash from abroad, Iceland could draw on its support and expertise to assist on its road to recovery.


III. The Tools of Accountability

Truth Recovery Initiatives

A central achievement in Iceland’s reckoning with its economic crash was the establishment of a parliamentary appointed, yet independent, Special Investigation Commission (SIC) that had a clear truth-seeking mandate and established an authoritative account of the crisis. Moreover, the decision to establish the SIC was swiftly made by the incumbent government. It was legitimized by ongoing cross-party consensus; it had a broad truth seeking mandate; it was largely independent and provided with exceptional investigative authorizations; and by way of its final report, provided a detailed narrative of the causes and events leading up to the crisis, setting out the parameters of a legislative reform agenda as well as setting the stage for the prosecution of the Prime Minister before a Court of Impeachment.

While the nation was still in shock, and before any protest demands arose, Icelandic elites moved quickly and pre-emptively announcing that the causes of the Crash would be investigated. Only three days after the banking-sector collapse, Prime Minister Haarðar announced that an investigative mechanism would be established to ‘be clear what happened and why’ (Morgunblaðið 2008).

Initially, the intention of the centre-right government was to produce a white paper on the causes and events leading up to the crash. However, as discussions advanced with opposition party leaders a decision was made to shift responsibility of the investigation from the executive to the legislature. As Iceland had limited experience of public inquiries, and no laws governing the conduct of such inquiries, a new legislative framework around the investigation needed to be established. In that work, political leaders agreed that establishing that framework and the terms of reference of the SIC, as well as the selection of its commissioners, would proceed on a cross-party consensus, highlighting the priority of reinstating the legitimacy of the political system (Kovras, McDaid og Hjalmarsson 2017, 10).

This cross-party consensus, a key distinguishing feature of the SIC process, held throughout the drafting and approval of the bill establishing the SIC, in the follow up activities of the cross-political parliamentary committee tasked with extracting lessons from the SIC report, and in the passing of the subsequent parliamentary resolution (N°29/138 of 28. September 2010) that set out a legislative reform agenda based on the findings of the SIC.
The bill on the SIC was tabled in Parliament on 26 November 2008, two and a half months after the crisis hit, and passed into law –unanimously –two weeks later on 12 December 2008. Thus, the Icelandic SIC became the first official public inquiry established in the aftermath of the Great Recession, and the only inquiry established by the incumbent political parties. That there was a change of government after a critical election just after the SIC began its work in January 2009 further demonstrated the strength of the consensus.

As the SIC’s primary objective was to reinstate trust in state institutions fractured by the crisis, its mandate and scope were correspondingly broad, namely to:

[S]eek the truth behind the events leading to, and the causes of, the downfall of the Icelandic banks in October 2008, and related events, [to] assess whether mistakes or negligence occurred in the course of the implementation of the laws and other rules regulating and providing for control of the Icelandic financial sector [and to determine] what persons may be responsible (Althingi, ct 142/2008: Lög um rannsókn á aðdraganda og orsökum falls íslensku bankanna 2008 og tengdra atburða [Act on the Investigation of the Background and Causes of the Collapse of the Icelandic Banks in 2008 and Related Events] 2008)

In addition to the above, and reflecting the emerging narratives of blame for the crisis, the conservative Independence Party successfully pushed for the SIC’s mandate to include a comparative analysis of Icelandic and foreign legislative frameworks governing financial markets, and for the SIC to propose amendments to legislation and governance practices that would make the Icelandic financial system “more able to respond to developments and changes in international financial markets” (Law N°142 of 17 December 2008).

On the other side of the political spectrum the hard-left opposition party the Left Green Movement successfully lobbied for the inclusion of a three-person Working Group on Ethics (WEG) in the SIC’s terms of reference, which would operate as a parallel sub-commission tasked with investigating the sociological and ethical aspects of the causes and events leading up to the crisis.

All political parties agreed and realised that for the SIC not to be seen as a whitewash of the political elite, the scope of the investigation not only needed to be open-ended but would also need to address the personal responsibility of cabinet minister and senior government officials, though with the understanding that the decision to bring politicians before courts would be in the hands of Parliament.

In an effort to bolster the independence and public credibility of the SIC the party leaders agreed in their negotiations to appoint commissioners that were seen as being irreproachable professionals, outside the grind of daily politics and reflecting key investigative institutions of
the country: a Supreme Court judge, the Parliamentary Ombudsman, and an Icelandic-born Yale economist with banking expertise.

To carry out the demanding investigative task, the commissioners were given exceptional investigative powers. This included, but was not limited to, subpoenaing witnesses, seizing evidence and searching premises. Obstructing the investigation was made punishable by up to two years’ imprisonment. Crucial for the SIC’s successful investigation was that the ‘dead bodies’ of the banks were on the table for them to dissect. That is, the banks had all collapsed and there was not the same concern for banking secrecy as if they were still in operation, nor the fear that the investigation might interfere with the operations of the banks, or the prospect of bankers mounting institutional resistance against the ongoing investigation.

Ultimately, the SIC interviewed 147 witnesses (SIC 2010). The proceedings took place behind closed doors and witnesses were given guarantees that statements made to the commission could not be used against them in any courts. This was to make participants feel comfortable enough to share their knowledge and to avoid rehearsed, standardised responses that were intended to shift responsibility on to others (Kovras, McDaid og Hjalmarsson 2017). To counter the trade-off inherent in keeping the proceedings of the investigation away from the public eye, the final report of the SIC included –often to the unpleasant surprise of the witnesses –frequent and extended verbatim excerpts of the testimonies that ranged from the disarmingly comical to the distressingly blunt. The inclusion of these excerpts gave the report a unique narrative quality, but it also, because it quoted so many individuals, served the purpose of reducing the stigma, in such a small society, of having one’s name included in the report.

In April 2010, fifteen months after it began its investigation and five months after its initial deadline, the SIC delivered its report to Parliament. Its main findings (SIC 2010) were that that explanations for the collapse of the banks were first and foremost to be found in their rapid expansion and subsequent size, facilitated by easy access to European financial markets through the EEA Agreement. Moreover, the SIC found that the largest owners of the banks had abnormal access to credit at the banks they owned and that lending to them had exceeded the banks’ Tier 1 Capital. The boundaries between the interests of the banks and their largest shareholders and clients were blurred and operations of the banks were characterised by maximising their interest rather than the interest of all shareholders. Furthermore, extensive and opaque cross-ownership structures of the Icelandic financial system by highly leveraged entities, as well as the substantial cross-financing of the banks through ownership of each other’s’ shares, concentrated the systemic risk exposure of the Icelandic banks at dangerous levels.

The SIC also found significant faults with the actions and responses of the authorities. Resources and capabilities of supervisory authorities did not grow in proportion to the banks and practices did not keep up with rapid changes and internationalisation of banks’ operations. Oversight was sorely lacking and there was regulatory capture. When the banking system had become too
large relative to the size of the economy the authorities, not later than 2006, would have needed to take action, but failed to act in a decisive way to reduce the balance sheets of the banks and or push them to move their headquarters abroad. On the contrary, government policy was to ensure financial activities would continue to grow domestically and into new fields of competition. Moreover, fiscal and monetary policy was found to have failed to address economic fluctuations, overexpansion and growing imbalances in the economy. When the situation had become dire at the beginning of 2008, the SIC found that the authorities responded in an unfocused way, ministers were found to have concentrated too much on the image crisis facing Iceland’s financial institutions rather than the obvious problems.

Lastly, in response to the personal accountability of ministers and senior officials, the SIC found the former Prime Minister and two other ministers (finance and business affairs) had shown negligence by omitting to respond in an appropriate fashion to the impending danger. The SIC also found that the three Central Bank governors and the director of the financial services had also shown negligence in the discharge of their duties. The SIC was not expected to address possible criminal conduct within the banks, but handed in a report to the State Prosecutor detailing findings that were thought to be relevant to possible future criminal investigations and prosecutions.

The Working Group on Ethics found that the primary problem of the collapse of the financial system lay in their flawed privatization, where inexperienced owners were allowed to grow the banks far beyond the authorities’ ability to supervise the banks. The working group also found that the laissez faire policy to trust the bankers to regulate themselves proved fatal and the culture within the banks severely neglected professionalism and good working practices. The main conclusion of the working group was that though a number of individuals showed negligence and sometimes reprehensible actions, the most important lessons to draw were about Iceland’s weak social structures, political culture and public institutions (Althingi, Working Group of Ethics Summary 2010).

The SIC report was met with wide public approval, and a Gallup poll conducted shortly after the publication showed that 87% were pleased with the report, 12% indifferent and 1% displeased (Morgunbladid 2010). The report also became a national bestseller, though it should be noted that certainly most people did not read the full 2,400 page, nine-volume report.

To carry the findings of the SIC forward, the left-wing government appointed a special working group of legal and public administration academics; this group made further recommendations on how the cabinet and individual governmental institutions should respond (Forsaetisraduneytid 2010). Over and above the executive’s initial response, Parliament established a cross-party parliamentary committee to ‘draw lessons from the SIC report and point to ways for reform’. In September 2010, five months after the commission delivered its findings, the all-party committee published a 265-page report distilling the SIC’s findings and
noting the lessons to be learned (Althingi, Skýrsla þingnefndar til að fjalla um skýrslu rannsóknarnefndar Alþingis [Parliamentary Report on the Report by the Icelandic Investigative Commission] 2010). Based on this report, Parliament unanimously passed a resolution (N°29/138 of 28. September 2010) setting out a legislative reform agenda. ‘It is important that the SIC report continues to be a guiding light’, it said. Furthermore, ‘it is important that everyone looks critically at their own actions and uses the opportunity that the report offers to improve society’. 

**Prosecutions**

In response to issues of accountability for the economic collapse, the Icelandic authorities established both an Office of the Special Prosecutor (OSP), tasked with investigating and prosecuting economic crimes committed in the lead-up to the crisis, and initiated the prosecution of former Prime Minster Haarde before a Court of Impeachment, for failing to take the necessary actions to respond to the coming crisis.

In the period between 2009 and 2016 the OSP, a novel prosecutorial authority that was set up immediately after the crisis has secured convictions over more than thirty bankers, many receiving lengthy sentences. The OSP has been perceived as being effective in establishing personal accountability and challenging the conventional wisdom that impunity prevails after an economic crisis.

The Court of Impeachment, an ad hoc tribunal created by the parliament to determine the level of responsibility of the former Prime Minister in the run-up to the crisis, was less successful. In the only trial of a western political leader for his pre-crisis conduct, the court acquitted the former Prime Minister the of most of the charges, though it found him guilty of gross negligence for failing to hold official ministerial meetings to inform the Cabinet formally of the major danger facing the banks and the State Treasury. More importantly, the trial of the former Prime Minster unnecessarily polarised political debates and left a mark on Iceland’s political culture of consensus-building.

**Office of the Special Prosecutor (OSP)**

Before the crisis, economic crime investigations and prosecutions were conducted by the Economic Crimes Unit of the National Commissioner of the Icelandic Police. The unit was understaffed, had limited capacity and a weak track record. Moreover, economic crimes were not a priority in the judicial system and the cases that made it to the courts were often dismissed. Iceland’s most extensive economic crime case, the so called Baugur case, had taken
on stark political dimensions and in 2007, after five years of investigations and prosecutions, resulted in a single three month suspended sentence.

After the crisis, the authorities had to choose if to work with and strengthen current structures in place or to create a new structure. Politicians opted for a new structure, what became the Office of the Special Prosecutor (OSP).

The bills establishing the OSP and the Special Investigation Commission (SIC) went concurrently through parliament and were seen as two sides of the same coin. The SIC was to establish the ‘truth’ and the OSP to investigate and prosecute possible criminal wrong doings unearthed by the SIC. As with the SIC, the OSP was established by the incumbent centre-right government and was passed with unanimous approval of parliamentarians on 10 December 2008, two days before the Act establishing the SIC was passed.

Initially the OSP was given a very short operating life, limited resources, and its mandate was limited to investigating crimes related to the economic crash. All three elements would change substantially.

What remained constant throughout the lifetime of the OSP were its wide investigation authorizations. The established judicial practice in Iceland is that court orders are needed for confiscation of evidence. However, the Act establishing the OSP included a clause that gave the OSP wide authorizations that obliged institutions under investigations (including the resolution committees of the failed banks) to hand over all data requested by the OSP. Additionally, the Act on the OSP included a novel whistle-blower clause and provided the OSP with authorizations to initiate its own investigations.

When it opened its offices on 1 February 2009, the OSP had five members of staff (to be increased to 10). The new office was given resources to investigate and bring to trial about two to five cases and was expected to seize operations by end year 2009. However, as the scope of the suspected wrong doings became clearer, and after an instrumental public appeal in March 2009 by the French Prosecutor Eva Joly hired by the left-wing government to provide advice to the OSP, more resources started to flow to the OSP. At the peak of its operation in 2012 the OSP employed 110 staff supporting its investigations. During its seven years of operation from February 2009 to end year 2015 (when the OSP was transformed into a new and permanent prosecutorial authority, the District Prosecutor) the OSP was provided with 5.9bn ISK (or around 47m EUR) in budget appropriations (Ríkisendurskoðun 2016, 13), far above and beyond what had been previously seen in the Icelandic judicial system.

Contrary to the initial expectations that investigations would either be spurred by the findings of the SIC or by the OSP’s own proactive initiative, it was primarily investigations by Iceland’s financial service authority (the FME) that proved to be the source of the largest number of cases
the OSP investigated and prosecuted. The main reason was that in regards to economic crimes under the surveillance jurisdiction of the FME – most notably laws on market manipulation, insider trading and trading in securities – initial investigations always need to be conducted by the FME, which then takes a decision whether to bring the cases to the OSP or not. The FME investigations that were brought to the OSP for further treatment were quite thorough, and quickly the OSP became overburdened with cases coming from FME’s conveyor belt.

The OSP made its first high profile arrests in May 2010 (Financial Times 2010), a month after the publication of the SIC report and almost sixteen months after the OSP began operations. The OSP secured its first ruling in April of 2011, in an insider trading case involving the former Permanent Secretary of the Ministry of Finance the only civil servant to be charged by the OSP and the only one of two insider trading case prosecuted by the OSP. In 2012 and 2013 the stream of cases brought before the courts gradually increased, the largest part involving breaches of fiduciary duty by senior management of the banks and the benefactors of the bank’s suspected illegal lending, which included both clients of the banks and bank staff. From late 2013 to 2015, the case-load before the Icelandic courts reached its crescendo at which point the OSP also prosecuted the considerably more complex market manipulation cases in which the suspects were the senior management of the three banks, and in one case also its largest shareholder.

As a reflection of the considerable expertise that had been built up in the OSP, the authorities expanded the mandate of the OSP in autumn 2011, putting the new prosecutorial authority in charge of investigations and prosecutions of all tax- and economic crimes. Then at end year 2015 the OSP was transformed into a new and permanent prosecutorial authority, the District Prosecutor. The new District Prosecutor’s Office was made responsible for all prosecutions in Iceland in the first instance and the individual selected to lead the new authority was the same prosecutor that had led the OSP from its establishment.

At the end of 2017 Icelandic courts had delivered 114 rulings on Crash related cases brought before the courts by the OSP, and the Supreme Court had handed out almost 88 years of prison sentences to over thirty individuals (Gagnsaei 2017). The sentences have ranged from five to five and a half years of prison time given to the CEOs of the three big banks and one of the bank’s major shareholders. The penalty framework for economic crimes in Iceland extends from six years of prison time to less than one year of partly suspended sentences for lower rank bankers and beneficiaries of illegal lending practices.
### Crash-Related Cases Prosecuted By The OSP

<table>
<thead>
<tr>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No. of accused individuals (some appear in two or more cases)</strong></td>
</tr>
<tr>
<td><strong>District Court rulings</strong></td>
</tr>
<tr>
<td><strong>Supreme Court rulings</strong></td>
</tr>
<tr>
<td><strong>Total number of rulings</strong></td>
</tr>
</tbody>
</table>

### Analysis Of Rulings

<table>
<thead>
<tr>
<th></th>
<th>Number (Percentage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquittals by the District Court</td>
<td>30 (48%)</td>
</tr>
<tr>
<td>Guilty verdicts by the District Court</td>
<td>32 (52%)</td>
</tr>
<tr>
<td>Acquittals by the Supreme Court</td>
<td>11 (21%)</td>
</tr>
<tr>
<td>Guilty verdicts by the Supreme Court</td>
<td>41 (79%)</td>
</tr>
</tbody>
</table>

### Analysis of Sentences

<table>
<thead>
<tr>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sentences handed out by District Court</strong></td>
</tr>
<tr>
<td><strong>Sentences handed out by Supreme Court</strong></td>
</tr>
</tbody>
</table>

Source: Ákærur og dómar vegan hrunmála, 29 December 2017, Gagnsaei available at: https://www.gagnsaei.is/2017/12/29/domar1/
At the time of writing there are three cases that still awaited a Supreme Court ruling and one case that has yet to be brought before the District Court (as of February 2018). There are still cases under investigation about which a decision on prosecution has not been made, though it is expected that all crash related cases should have cleared the courts by 2019, more than 10 years after Iceland’s economic collapse.

The Court of Impeachment

The cross-party parliamentary committee appointed to draw lessons from the SIC report and point to ways for reform tabled two parliamentary resolutions on 11 September 2010, almost two years after the collapse of the banks and almost one and a half year after the left-wing government came into power. The first parliamentary resolution (N°29/138 passed on 28. September 2010) was unanimously adopted and set out the legislative reform agenda distilled from the SIC’s findings. The other resolution (N°1502 of 11. September 2010) identified four cabinet ministers that should be brought before the Court of Impeachment – a special tribunal.

The SIC commissioners had found three cabinet ministers, the Prime Minister and the ministers for finance and business affairs, to have shown negligence by omitting to respond in an appropriate fashion to the impending danger. The cross-political consensus that had up until now characterised the SIC process shattered when the majority of five of the nine member cross-party parliamentary committee decided to table a resolution that would see the three ministers – in addition to the minister for foreign affairs and leader of the Social Democratic alliance, the junior coalition party – indicted for having shown gross negligence under the Ministerial Accountability Act and the Constitution.

In a heated and polarised vote, on 28 September 2010, there was only a majority in Parliament (33-30) for indicting the former Prime Minister Haarde. This was a result that politicians of all stripes did not anticipate and public opinion quickly turned from showing considerable support for prosecuting all four ministers to showing only 44% support for continuing with the prosecution of Haarde (Eyjan 2010).

By indicting Haarde on six points of alleged negligent behaviour, Parliament activated for the first time in Iceland’s political history the Court of Impeachment. This is a special tribunal identified in the Constitution in a clause on ministerial responsibility and whose terms of reference are for the most part based on legislation that was passed in 1905 and marginally amended in 1963 (Law N°3/1963 of 19 February). The court was constituted of five members of the Supreme Court; one was a judge of the District Court of Reykjavik, and one was professor of Law at the University of Iceland. The remaining eight judges were lay judges appointed by Parliament. Prosecuting the case on behalf of Parliament was the State Prosecutor.
The court assembled in September 2011 to rule on Haarde’s motion for dismissal. The court, by a decision of 3 October 2011, dismissed two of the six charges finding them too nebulous: for not having taken unspecified actions and commissioning unspecified analysis to respond to the looming danger.

The court however upheld four charges against Haarde that alleged that he failed to: ensure that the work of a cross-departmental committee on financial stability was effective; take proactive steps to reduce the size of the banking sector; take measures to ensure that the Icesave deposit accounts of one of Iceland’s Landsbanki were moved to the bank’s UK subsidiary; and to keep his cabinet informed of key developments during the run up to the crisis.

In its final ruling, delivered on 24. April 2012, the court unanimously acquitted Haarde of all the three first substantive charges. The fifteen-member court however split on the fourth charge with the majority (five of seven professional judges and four of eight lay judges) finding Haarde guilty for failing to keep his cabinet informed in the run up to the Crash. Haarde became the first Western politician to be found guilty on charges related to the Global Financial Crisis.

The court held that the lack of ministerial meetings had contributed to the inability to address the looming problems and that, if such a policy had been formulated and followed, it could be argued that the damage caused by the collapse of the banks could have been ameliorated. Though finding him guilty, the court did not give him a sentence and ordered the State Treasury to pay Haarde’s legal fees.

Haarde appealed the ruling to the European Court of Human Rights (ECHR), citing that the trial had been politicized, unfair and that though the Constitution stated that the cabinet should be kept informed of “important government matters,” he had, in line with established political practices and culture, kept the cabinet ministers informed though through more informal channels and under the agenda item “other issues” at cabinet meetings. In a ruling on 23 November 2017 (Haarde v. Iceland 66847/12), the ECHR found that the Court of Impeachment trial had met requirements of independence and impartiality, that the arguments of the Court of Impeachment guilty verdict had been sound, and that overall Haarde had received a fair trial (Hjalmarsson & Kovras 2017).

**Apologies**

In Iceland, leaders of both coalition parties of the government in place when the crisis hit presented public apologies and addressed their and their party’s responsibility for the economic crisis.
Speaking at his Independence Party national convention on 26 March 2009, former Prime Minister Haarde announced his departure from active politics due to health reasons as he had been diagnosed with cancer. The party convention was held in the run up to Iceland’s first post-Crash election, scheduled in mid-April 2009, just over three months after the Independence Party led government coalition had imploded following the Pots and Pan Revolution and was replaced by a left-wing minority caretaker government.

In his speech, Haarde asked what the responsibility was of the party for the shocks that hit the country. What mistakes were made and who is responsible for them? And finally he asked if the ideology of the party had suffered a “shipwreck”. (Morgunbladid 2009)

In short, Haarde accepted in his apology only limited responsibility for what had transpired. Addressing his party’s responsibility Haarde maintained that it was not party’s actions or mistakes that caused the collapse of the banks, but that the party failed a nation who had trusted the party to prevent such a thing from happening. In hindsight, Haarde stated (and keeping to the narrative his government presented from the outset of the crisis), that in light of developments in international markets, there was little if anything that the government could have done to prevent the banks becoming the “victims” of the Global Recession. His government’s and the party’s mistake was primarily to “keep faith and try with all possible means to prevent the inevitable”.

The former Prime Minister listed a number of policy issues he considered had contributed to the crisis. Namely, allowing 90% loans to value mortgages, implementing generous and badly timed tax cuts and reverting from a policy of dispersed ownership when the banks were privatized (handing them instead to a few inexperienced investors amid accusations of political favouritism). Haarde said that he shouldered responsibility for these decisions and “it is right to apologize for them and I do that here and now” adding that he however could not apologize for the “malpractices and law-breaking” of the bankers. He further qualified the apology by saying that he and his party had just not been strong enough to withstand pressures from centrist Progressive Party – the Independence Party’s junior coalition partner from 1995 to 2007 – who had pushed for these policies.

Lastly, Haarde maintained that the ideology of the Independence Party had not suffered a shipwreck: the policy of the party was “ingrained with the soul of the nation” and now more than ever was a need to “hoist high the truths that private enterprise and respect for individuals is exactly what is needed to build Iceland”.

Two years later and a week after the SIC report was published, on 17 April 2010, the Central Committee of the Social Democratic Alliance (SDA, now leading a government coalition with the Left Green Movement) convened to discuss reactions to the SIC report. At the meeting Ingibjörg Sólrún Gísladóttir, the party’s former leader (she had left politics in early 2009 after,
also, being diagnosed with cancer) and minister for foreign affairs in the party’s 2007-2009 coalition with the Independence Party, gave an unscheduled speech where she presented an unreserved apology for her role in the run up to the Crash.

In her speech she said that when she looked back at her two years in government with the Independence Party she felt that she had “failed” (RUV State Broadcaster 2010). She failed herself for not holding on “tightly to fundamental ideas on needed changes in Icelandic politics and governance”. She had failed the party for bringing it into a coalition that was not able to “take on a financial system” that had been created by “political corruption”. And she had failed the voters who had trusted the SDA to address issues of corruption and bad governance. Lastly she added that she had something to say to her defence, but that now was not the time for that, now was the “time for atonement, not explanations”.

Five days before Gisladóttirs apology and two days after the publishing of the SIC report, on 12 April 2010, the Johanna Sigurdardottir, Prime Minister and leader of the Social Democratic Alliance spoke in Parliament (Althingi 2010), where she as Prime Minister apologised to the nation for “our collective shipwreck”. She said that the SIC report with its damning verdict of the administration, politics, surveillance institution and financial institutions, should usher in a “new chapter” where there needed to be an “honest reckoning, changes to the rules of politics and new and clearer working procedures in the public administration”. She did not accept personal responsibility for any actions (though having been minister for welfare in the incumbent government). She however maintained that her party had lost its way, but that the party shouldered its responsibility by exiting the previous government and entering into a new one – led by her – that would be based on the “values of a Nordic welfare state”.

The publishing of the SIC report also prompted apologies from two of Iceland’s leading business ‘Vikings’ who were leading shareholders in two of Iceland’s three banks. Two days after the report came out, on 14 April 2010, Björgólfur Thor Björgólfsson (the largest shareholder of Landsbanki) wrote an op-ed “I apologise to you all”, its headline signalling an unreserved apology (Vísir 2010). In his article, Björgólfsson apologised to “all Icelanders” for his role in the “asset and debt bubble that led to the collapse of the Icelandic banking system”. Specifically, he apologised for his “complacency” when warning bells became louder and for not following his “instincts” when he became aware of the risks. Moreover, Björgólfsson wrote that he “welcomed” the SIC’s report and added that the faults of the Icelandic economy were “obvious” and “deep-seated”. Therefore, it was “regrettable”, and an indication of the “same lack of responsibility that led to the Crash”, when it is maintained that nothing could have been done or done better. Björgólfsson stated he had not broken any laws, and that no action he, and no single individual, could have taken would have staved off the impending collapse. He had however been amongst the select few that had influence on the way things were heading and
Iceland’s current situation “says everything about how I did my job”. For that he apologised to “all Icelanders for not having done better”.

Just over a week after Björgólfsson’s apology, on 22 April 2010, another business ‘Viking’ Jón Ásger Jóhannesson (largest shareholder of Glitnir bank) wrote an op-ed “Lost sight of good values” (Visir 2010). Johannesson wrote that the global crisis had unmasked “unrealistic” economic theories and “blown over” and “inflated” system like a “house of cards”. His fault was to have gone “too fast too quickly” in a faulty environment and to have lost sight of “what matters in life” without stating what that may be. The word ‘apology’ is not to be found, only that Johannesson felt “bad” about his mistakes and that he intended to “do my share” in rebuilding Iceland.

Despite the great social pressure after the publishing of the SIC report that key actors in the lead up to the crisis expressed remorse and presented their apologies, no further apologies were forthcoming and after the momentum that followed the publishing of the SIC report dissipated so did the social pressure –the general perception being (despite the above listed apologies) that no apologies had been given and no responsibility willingly shouldered.
IV. Impact of Accountability

Iceland’s experience is puzzling, challenging the conventional wisdom that ‘impunity’ prevails after economic crisis. The country deployed a very proactive agenda of accountability in the aftermath of the crisis, contravening the experience of other major countries. The impact of the tools of accountability described above has been mixed. The SIC report provided a detailed and much needed narrative of the events leading up to the crash, and though providing the substance for a legislative reform agenda that agenda has remained largely unimplemented. The prosecutions of bankers have shown that nobody is above the law in Iceland and that the judicial system could meet the enormous challenge posed by the crisis. Both mechanisms created a public feeling of ‘catharsis’, while the report of the SIC became embedded in the political memory of the Icelanders. The prosecution of the former Prime Minister, however, polarised Icelandic politics and to this day haunts political debates. Lastly, despite publicly presented apologies, they were not heard and the general perception remains that key actors in the run up to the crash remain unrepentant.

The report of the SIC provided Icelandic society with a much needed foundational document that offered both an accepted and simplified narrative of a complex crisis, and delimited the number of permissible lies about the crisis. Moreover it managed to give, to a degree, a collective identity to a divided nation and politics (Ingimundarson 2016, 145), though one where the Left could point to the politicized privatization of the banks and neoliberal liberalization as root causes while the Right could focus on the corrupt practices of the business elite and single it out as the main culprit for Iceland’s crisis.

Though the report revealed the falsehoods of the official truth of the preceding period it arguably failed to foster a lasting reconciliation. In a politically polarised environment the SIC report has achieved a reified status and as such is frequently used by political actors of all stripes – who may or may not have a good grasp of its findings – as a new truth that can be instrumentally used to silence political opponents and score political points. This practice should not be seen as an indication of the quality of the SIC report, but rather an indication of the post-crisis polarization of Icelandic politics.

The lessons of the report as captured by the cross-parliamentary committee established to bring its findings forward resulted in a comprehensive legislative reform agenda. That agenda however remains largely unimplemented, including laws on ministerial responsibility and laws setting out the Court of Impeachment. As such, the opportunity provided by the SIC – and the commendable political consensus that prevailed from its inception to the outlining of the reform agenda – was not adequately used, or more correctly could not be adequately used. The economic expediency of having to deal with the multitude and pressing consequences of the
crisis, and divisive issues such as the Icesave issue and the pending prosecution of the former Prime Minister, wrestled the agenda setting from the government and raised the toxicity and polarization of Icelandic politics and public discussion.

Before the Crash Iceland had no previous experience to speak of in regards to officially appointed truth-seeking commissions. As a direct consequence of the SIC experience, Iceland now has a new legislative framework governing parliamentary appointed investigation committees (Law N°68/2011 of 16. June 2011), which has been used to establish investigations into the collapse of Iceland’s savings bank system; the public mortgage provider; and the 2002 privatization of one of the state owned banks. Perhaps the most lasting achievement of the SIC will be that the use of parliamentary committees to establish the truth on political and economic events has entered the sub-consciousness of Icelandic society as an accepted and desirable practice.

Lastly, contrary to original expectations, the SIC report was of limited use to the investigations and prosecution of the OSP and though cited in courts (as a reference source for the larger narrative surrounding individual cases), it was not used as evidence in any of the OSP cases. That said, the SIC lifted the veil, giving a damning description of practices in the banks. The consequent acceptance of the wider public of the SIC’s findings ensured both a strong momentum for the investigations and prosecutions of the OSP as well as it created considerable public pressure for the OSP to be given the resources needed to hold bankers to account.

The lasting legacy of the OSP and its successful prosecution of Iceland’s most senior bankers is to establish –in a society where economic crimes were not a priority for the prosecution and were seldom brought before the courts –that nobody is above the law and impunity does not prevail for white collar crimes. The second main achievement is that prior to the crisis, Icelandic case law on the most significant clauses under which the bankers were prosecuted was either very limited or non-existing. The creation of extensive jurisprudence has been a significant source of learning and has established a deep understanding of criminal clauses pertaining to economic activities and white-collar crimes.

Another lasting impact of the OSP has been the creation of much needed capacity within the judicial system to deal with complex economic crimes. Both in regard to knowledge how to investigate such suspected crimes and how to present them to the courts. Moreover, the strong defences put up by the defendants shone a bright light on the operations of the prosecution, requiring it to constantly review and improve practices. The main challenge for securing this impact, in a small society like in Iceland’s, relates to how to retain that capacity and institutional knowledge as it is to considerable extent bound in present human capital and may erode when individuals leave their posts.
The impact of Iceland’s other accountability mechanisms – the trial of the former Prime Minister – turned out to be supremely detrimental to Icelandic politics. The trial haunts the political debate in Iceland. Even members of the opposition parties believe it was a mistake, unnecessarily polarizing political debates, leaving a mark on Iceland’s political culture of consensus-building and slowing down the nation’s healing. The trial produced limited new information on the events leading up to the crash. Witness statements were largely rehearsed finger pointing exercises, and though the trial has led to improved record keeping of cabinet meetings (the issue the former Prime Minister was found guilty of), there are no successes to point to. The trial’s only arguably success is in the negative, i.e. that Iceland’s future politicians have been given a stark warning of the pitfalls of attempting to criminalize political decision-making in times of crisis.

Lastly, in regards to the impact of apologies the general perception is that no sincere apologies were given. Iceland’s political culture has not allowed for second acts and in small society an admission of guilt for wrongdoings can have immediate and often intimate social consequences for individuals. For politicians they spell the end of their political life, and as shown above, the apologies of the leaders of the centre-right government were not given until their political lives had come to an end. The personal apologies given after the crisis and after the publication of the SIC report remain to this day an abbreviation in Iceland’s political history. Though they varied in sincerity, these apologies did not enter the public consciousness, a consciousness that was arguably overwhelmed by the nation’s tragedy and angered by the unrepentance of the vast majority of the drama’s key actors.
V. Learning and Reform

Iceland’s crisis stimulated wide ranging structural reforms of Iceland’s Central Bank (CBI) whose Governance Act was amended quickly after the crisis, and the judiciary that saw the establishment of a new prosecutorial authority, the OSP. The crisis also spurred changes aimed at strengthening the oversight role of Parliament, by way of amending Parliament’s standing orders, the establishment of a new law on Public Finances and, as previously mentioned, by the creation of a new legislative framework governing parliamentary investigation committees.

In February 2009 the Act on the Central Bank of Iceland was extensively amended (Law N°5/2009 of 26. February 2009). One of the main change was that one Governor (and one Vice Governor) was appointed instead of three. Prior to the crisis the governorships had frequently been occupied by former leading politicians and seen as a comfortable sinecure in return for them leaving active politics. The politicization of the CBI, resulting from this practice, was later identified by the SIC as having proven to be an obstacle to the government’s ability to form an effective policy response to the crisis. Moreover, for the first time qualification criteria for the Governor were put into law (including the requirement of an academic background in economics) and the recruitment process was professionalised and made more transparent. The other main amendment –and in line with international best practices– was the creation of a Monetary Policy Committee, consisting of five members (the Governor, Vice-Governor and three academics) who were tasked with setting policy interest rates.

The next round of reforms at the CBI began in early 2012 when a new financial stability department was established, and selected to head the new department was the former SIC Commissioner and Yale-economist Sigríður Benediktsdóttir. Then in July 2013 the Act on the Central Bank was further amended and the CBI was given an explicit mandate to promote financial stability (Law N°96/2013 of 16. July 2013). This led to the creation in 2014 of a Financial Stability Council, made up of the minister of finance, the CBI Governor and the Director of the Financial Supervisory Authority. The Council’s main tasks are to shape public policies on financial stability, to assess economic imbalances, to identify the systemic risks those imbalances present, and to define needed actions.

These effective and major reforms of the CBI took place, initially, within the context of an IMF program and drew on the technical expertise provided by the fund. The second round of changes were made, not as a result of the truth and accountability mechanisms established by the authorities, but rather as the result of the authorities political will to move the CBI as close to what is seen as best international practice, with special attention paid to the practices of the other Nordic Central Banks.
The judiciary also went through reforms after the crisis. Most notably, and as discussed above, substantial resources were expended to create and operate the OSP. As a reflection of the successes of the OSP and its growing expertise in both conducting investigations and prosecutions the authority’s mandate was extended to cover all tax- and economic crimes in Iceland. At the end of 2015, the OSP was transformed into a new and permanent prosecutorial authority, the District Prosecutor, which pursues all prosecutions in the first instance in Iceland. The OSP experience has therefore proved to be a transformative experience for the structure and execution of prosecutorial authority in Iceland. Though the prosecution of crisis-related cases has wound down, the District Commissioner retains a robust economic crimes division, and a new asset recovery and money laundering division has been established within the authority. Currently Iceland has developed the skills and expertise to investigate white-collar crime effectively, thereby protecting the country from a future crisis.

Iceland’s two-tier court system has also been reformed and a new middle judiciary tier, a Court of Appeals, was established at end year 2017 (Law N°90/2017 of 27 December 2017). The creation of the Court of Appeals did not come about as a direct consequence of the crisis; the effort preceeded the crisis and was put on hold because of the fiscal impact of the crisis. However, the experience of bringing the numerous crisis-related cases through the courts, and in particular the immense pressure the case load put on the Supreme Court, who delivered rulings on nearly all the crisis-related cases, provided a strong incentive finally to establish the Court of Appeals.

Parliament, in a direct response to the crisis and the findings of the SIC, amended its standing orders in June 2011 (Law N°§4/2011 of 23 June 2011) with the aim of improving Parliament’s oversight and supervisory role and more generally to strengthen it vis-à-vis the executive. The reforms included the creation of a new Constitutional and Supervisory Standing Committee; stricter frameworks for the executive’s obligation to inform and MPs ability in requesting information; and measures to improve the opposition’s agency, including allowing it to chair Standing Committees and improving the research and analysis capacity of Parliament.

Parliament also, and through cross-party consensus, passed in 2015 a new law on Public Finances (Law N°123/2015 of 28. December 2015) that strengthens Parliament’s ability to hold the executive to account. The new law, which was composed with the assistance of the IMF, requires the government to table five year medium term fiscal plans, establishes an Independent Fiscal Council that reviews the plans and allows for more streamlined and effective parliamentary oversight.

Though the legislative reform agenda emanating from the SIC report’s findings remains largely unimplemented, the SIC experience ushered in a new legislative framework governing parliamentary appointed investigation committee. Three such committees have been appointed
since the SIC completed its work, and this new tool in Parliament’s toolbox has been firmly established and is set to provide genuine learning and reform proposals in the future.

After the parliamentary elections of October 2017, a new three party government came into power that was led by the Left Green Movement (who’s first term in power was in 2009-13 cleaning up after the crisis) and joined by the Independence Party and Progressive Party (the two parties that ruled from 1995-2007 and were largely seen as responsible for the crisis). In January 2018 the new government established a special working group (Forsaetisraduneytid 2018) to formulate proposals ahead of the ten year anniversary of the crisis aimed at increasing the public’s trust in Iceland’s politics and public administration, indicating that the political will of Iceland’s political elite to learn lessons from the crisis is still alive and well.
Conclusion

Faced with the unprecedented calamities brought on by the 2008 crisis, Iceland’s political elite showed noteworthy willingness to innovate and experiment with new forms of truth seeking and accountability mechanisms. There were institutional innovations worthy of attention, as well as mistakes made that should not be emulated.

With no previous experience of official truth-seeking commissions and no track record to speak of in prosecuting economic crimes, political elites – guided by cross-political consensus – established both a successful economic truth commission and established a novel prosecutorial authority that has successfully prosecuted most of the key actors that led Iceland’s failed banks to dramatic ruin.

In contrast with other economic truth commissions established after the Great Recession (most notably in Ireland, Greece and Cyprus) the Icelandic commission was not used instrumentally for party political purposes. Rather, the swift establishment of the SIC entailed a genuine willingness to convert failures into lessons and the political consensus guiding the process showed the short-term party political considerations were trumped by the political elite’s desire to secure the long-term democratic legitimacy of the political system.

The political consensus guiding the SIC process held until it came to the implementation of the legislative reform agenda set out by the SIC’s findings – one and a half years after the crisis hit. The exigencies of the economic crisis, the polarizing and divisive issues it presented (which steadily increased the toxicity of political discussions), and the ill-advised trial of the former Prime Minister all exerted their influence and contributed to important reforms being left by the wayside. One lesson emerging from Iceland’s experience was that political elites need to act and act fast as the window of opportunity for implementing meaningful reforms – in Iceland’s case – was conditioned by the political culture’s ability to withstand the inevitable and polarizing pressures brought on by the consequences of the economic crisis.

Iceland’s political elites also showed considerable responsiveness to public calls for accountability by creating the OSP. As with the SIC, this was a completely new and innovative mechanism made up from scratch. Central to the OSP’s success were its wide ranging investigative authorizations and extraordinary access the authority had to information from the banks – that lay dead in a financial morgue and consequently allowed for penetrative forensic investigations. Moreover, and a lesson for other crisis hit countries, strong authorizations need to go hand in hand with generous budgetary appropriations. The OSP was able to hire the staff it needed, expanding to over 110 staff members at the peak of its operations. Though economic crimes are not as such complex, they just take place in a very complex environment, the OSP
had the fortune of being able to draw on the resources needed investigate, prosecute and successfully present these cases before the courts.

Contrary to the SIC and the OSP, Iceland’s experience with prosecuting its former Prime Minister should only provide lessons in the negative. The trial had detrimental impact on Iceland’s political culture, and it polarised political and public discussions and at an important time, shifting the focus from needed restorative institutional reforms to a retributive trial criminalized political decision-making. The comparative lessons (Hjalmarsson og Kovras 2017) from this one and only trial of a Western leader for actions in the run up of the Great Recession have to do with whether the courts should hold policy-makers to account for their decisions or whether the voters should hold them accountable at the ballot box. In effect, is this the remit of the law or politics? Secondly, should courts apportion criminal liability retrospectively based on the consequences of actions or omissions? Lastly, is the excessive focus on scoring political points for past actions or omissions worth the consequent polarisation of political debates and erosion of consensus building, something necessary for forward-looking policies of reform? Iceland’s experience answers all three questions in the negative.

The final emerging lesson from Iceland is that times of crisis provide a unique environment where everything and nothing seems possible. The freedom and willingness to innovate, be creative, and establish never before seen mechanisms and institutions, proved to be a blessing for Iceland as seen by the successes of the SIC and the OSP. Making use of an existing, outmoded and behind the times mechanisms as the Court of Impeachment, served Iceland and its politics badly. The takeaway being: in a crisis…innovate.
Further Reading

References


Haarde, Geir H. Special Broadcast: Prime Minister’s Address Due to Special Circumstances in the Financial Market Iceland’s State Radio and Television, (October 6, 2008).


IMF. Iceland: Request for Stand-By Arrangement: Staff Report; Staff Supplement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for Iceland. Washington: International Monetary Fund, 2008.


