

## **Amnesty, Accountability and Victims' Rights in Peace Processes**

### **1. Summary of the impact**

This case study demonstrates that TJI peace process research has substantially impacted on key stakeholders in multiple conflicted and post-conflict states. Impacts include developing sustained relationships with public officials to inform policymaking, making recommendations for legal changes, capacity building with local NGOs on peace process issues and addressing conflict-related abuses, informing public debate, and raising awareness of international and comparative legal standards among local judiciaries subsequently applied in their work. Impacts have benefited a range of users and contributed to growing sensitivity to victims' needs in conflict resolution.

### **2. Underpinning research**

#### **Research Context**

Transitional justice theory and practice emerged through political transitions from dictatorship to democracy in Latin America. However, the Cold War's end focused greater international attention on transitions from conflict and communal violence. This resulted from the endurance of seemingly intractable wars and the need to respond to the disintegration of fragile states. The perceived failure of Cold War peace agreements to deliver lasting peace and address core grievances contributed to new peacebuilding programmes emphasising longer-term projects to ensure sustainable peace through transitional justice, amnesty and reconciliation measures (e.g. Report of the Panel on UN Peace Operations 2000, and Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies 2004). Concurrently, a revitalised law of peace took on a new importance and vitality. The increased emphasis on transitional justice reflected a recognition that claims over justice often lie at the heart of conflict and must be addressed in negotiating its end. Debates about amnesty, accountability and victims' rights are some of the most significant, yet contentious, elements of peace negotiations.

This context also motivated the establishment of a praxis-driven TJI in 2003, with the study of the relationship between justice and peace among its core aims. Since its creation, TJI has played a leading role in developing theory and practice that informed and shaped international policy developments. Within Northern Ireland (NI), TJI and Law researchers participated directly in the peace negotiations (e.g. McWilliams led the Women's Coalition political party) and worked with stakeholders to implement the terms of the agreements (e.g. O'Rawe worked with the PSNI on the implementation of the Patten Report on Policing). TJI continues to lead efforts to evaluate the implementation of the various NI peace agreements (e.g. 2013 'Mapping the Rollback of the Belfast/Good Friday Agreement', conference co-sponsored with the Committee for the Administration of Justice, and Queen's University Belfast). Internationally, TJI staff's expertise regularly prompts calls for our engagement with international and foreign policymakers, mediators and NGOs, advising on design, implementation and evaluation of peace agreements and providing training for negotiators, judges, diplomats and civil society activists. Within this REF cycle, TJI researchers have worked with international mediators (e.g. Center for Humanitarian Dialogue) and have been involved in peace processes in Afghanistan (e.g. McWilliams' engagement with training women politicians and TJI's collaboration with Afghan Analysts Network), Liberia, Mozambique, Zimbabwe (e.g. Moyo's work with Zimbabwe Human Rights NGO Forum), Bosnia, the Basque Country, Philippines, Sierra Leone, Syria, the DRC, and Uganda. Information on our broader peace process engagement is available on the TJI website. This case study illustrates how TJI has maximised the impact of its research insights for non-academic users by exploring three indicative examples: Hamber's engagement with the Basque peace process, Bell's work in the Philippines and Mallinder's involvement in amnesty and transitional justice debates in Uganda.

## Impactful Research Insights

Where TJI researchers engage in peace processes, common themes that motivate their work are elucidating legal obligations incumbent on states during transitions with particular respect to justice claims, and exploring how victims' rights can be balanced against the need for political compromise. Hamber draws on his core disciplinary home in psychology to identify the needs of individuals and communities traumatised by conflict and to explore how victims' needs should be addressed in peace agreements. In particular, he emphasises that these needs extend beyond service delivery to encompass truth and justice demands. Bell's work uniquely identifies three phases of peace negotiations: pre-negotiation agreements, framework/substantive agreements and implementation/renegotiation agreements. Her research stresses how human rights strengthen peace processes at different stages exploring ways in which negotiators can creatively implement human rights standards. Mallinder's research reveals ways in which amnesties can be designed to fulfil states' legal obligations and complement transitional justice programmes.

## Outline of Underpinning Research

The origins of Hamber's research culminating in his monograph *Transforming Societies after Political Violence* lie in his experiences of working in and about the South African Truth and Reconciliation Commission from 1995-2003. The monograph is based on 15 years of research and practical experience in transitional sites. This considerable body of work also gave rise to several journal articles, book chapters and other outputs. The chapter listed below provides a synopsis of these broader findings by reviewing the range and impacts of transitional justice mechanisms commonly used in response to conflict, including trials, truth commissions, and amnesties.

Bell's publications on peace agreements drew on the Peace Agreement Database created by Bell & O'Rourke (2000-8). It is hosted on the TJI website and contains details of over 640 peace agreements signed since 1990, addressing conflicts that affect over 85 jurisdictions. Her monograph brings together a body of work that began with her earlier book *Peace Agreements and Human Rights* (2000) and continued through her subsequent writing.

Mallinder's amnesty work began with her doctoral studies from 2003 for which she created the Amnesty Law Database. This database is also housed on TJI website and contains information on over 530 amnesties in 130 countries since 1945. This database, inter alia, revealed examples of how amnesties can complement efforts to reveal truth about violations, provide remedies to victims and encourage combatants to disarm and reintegrate. Since joining TJI, Mallinder has developed this work in a series of publications exploring how amnesties can be designed to deliver accountability and charting the evolution of international standards on the use of amnesties.

The research environment at TJI routinely fosters collaboration between researchers working on peacebuilding. For example, Mallinder, Hamber and Bell participated with other TJI colleagues (Hadden, Campbell) in the development of the *Guidelines on Amnesty and Accountability*.

## Details of Key Researchers

Key Researchers	Position at time of research	Dates of Joining or Departing
Bell, C.	Professor	Joined 2000 and departed 2011
Hamber, B.	Professor	Joined July 2007
Mallinder, L.	Lecturer and reader (from May 2012)	Joined 1 November 2009

### 3. References to the research

1. Mallinder, L., 'Amnesties in Transition: Punishment, Restoration and the Governance of Mercy' (2012) 39 J. Law & Soc. 410-40 (with K. McEvoy) DOI: 10.1111/j.1467-6478.2012.00591.x
2. Mallinder, L., 'Amnesties' Challenge to the Global Accountability Norm? Interpreting Regional and International Trends in Amnesty Enactment' in L.A. Payne & F. Lessa (eds), *Amnesty in the Age of Human Rights Accountability* (2012)
3. Bell, C., *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (2008)
4. Bell, C., 'Peace Agreements: Their Nature and Legal Status' (2006) 100 Amer. J. Int'l L. 373
5. Hamber, B., *Transforming Societies after Political Violence: Truth, Reconciliation and Mental Health* (2009) DOI: 10.1007/978-0-387-89427-0\_1
6. Hamber, B., 'Transitional Justice and Intergroup Conflict' in L.R. Tropp (ed), *Handbook of Intergroup Conflict* (2012), DOI:10.1093/oxfordhb/9780199747672.013.0019

### Evidence of Research Quality

Mallinder's work has received broad peer acknowledgement (e.g. Hart Socio-Legal Prize for Early Career Academics 2009), and she continues to be prolific and influential (e.g. Mallinder's papers on SSRN have been downloaded 2,581 times and her SSRN ranking in 2013 is in the top 2% of SSRN's 236,255 authors). Her amnesty research has been funded by the AHRC (named researcher 2007-9 and CI 2012-14) and the Nuffield Foundation (PI 2011-13). Bell's research was supported by the Nuffield Foundation, the British Academy and SPUR funding. She also benefited from a Fernand Braudel Senior Fellowship at the European University Institute (2007). Her monograph was awarded the Hart Socio-Legal Book Prize in 2009 and her 2006 AJIL article was awarded the ASIL Déake Prize in 2007. Hamber's research was supported by prestigious external funding from the ESRC and Atlantic Philanthropies. Leading expert on truth commissions and Senior Adviser to the Centre for Humanitarian Dialogue, Hayner endorsed his book saying 'With plentiful, poignant stories, and clear policy recommendations, this book should help shape – and greatly improve – future endeavors to confront unimaginable memories and pain'. Southern Africa Project Director of International Crisis Group Pigou described it as 'an extremely valuable contribution and a must read to those working in this fast evolving field'.

### 4. Details of the impact

#### Activities and Impacts Achieved

All three examples evidence high quality published research prompting non-academic users to seek TJ assistance with a variety of political initiatives, revealing the extent to which TJ is an established 'go to' academic centre for knowledge of peace processes and transitional justice. In the Basque peace process Hamber provided ad hoc assistance to various Basque agencies

- He supported the development and implementation of the peace plan of the former Basque President, Juan José Ibarretxe Markuartu. Hamber was consulted at various stages of the process, and visited the region on several occasions to share knowledge with NGOs, academic institutions and government bodies. Hamber worked with the Basque government in Konpondu Participatory Process (2007-8) aiming at bringing together all political traditions around the same dialogue table, feeding directly into the Basque government's Peace and Reconciliation Plan. Hamber's expertise was considered so valuable that with the collaboration of Basque government, Hamber's monograph was translated into Spanish. In his testimonial, President Ibarretxe states Hamber's work 'has had a significant impact on the Basque Peace Process'
- March 2013, Hamber participated in social forum to promote the Basque Peace Process. Enabled by contribution of Hamber and others, after the social forum, Lokarri published a series of recommendations to promote the peace process. Hamber supported the preparation of a publication by Lokarri about ideas and principles for reconciliation in the Basque Country

TJI ensures the sustainability of these relationships through a partnership with the Agirre Center for Social and Political Studies, Uni. Basque Country (founded by Ibarretxe) and a scholarship programme funded by the Basque government for two students to participate in TJI's LLM. TJI hosted workshops in 2004 and 2012 at the Oñati International Institute for the Sociology of Law, which was co-founded by the Basque government, and participants included Basque politicians.

Based on her international scholarly reputation Bell was invited to intervene in the Philippines peace process by Conciliation Resources (CR), as her research was well known in the country (2006 AJIL article cited by the Supreme Court). CR is a peacebuilding NGO and member of the International Contact Group on Mindanao. Bell's engagement had multiple stages and dimensions:

- She was commissioned by International Alert to write a report on the law of peace made available to Conciliation Resources and circulated to all key stakeholders before the site visit.
- April 2011, Bell was sponsored by the Norwegian government to visit Manila and Cotabato (in Mindanao) where she discussed the applicability of her research insights to the peace process in 16 meetings that were attended by some 300 people. The visit's purpose was to expose different audiences to reflections from a scholar-practitioner who has vast academic and practical experiences in comparative analysis of peace agreements. Participants in the meetings included: all the negotiating parties of the government and of non-state groups MILF, and NDP (the Chief government negotiator held direct second meeting to explore further Bell's ideas); the Supreme Court; national Defence College & International Monitoring Team (a peacekeeping force); civil society organisations in Cotabato; international community representatives, e.g. meeting with North Cotabato governors was hosted by British Ambassador, seminar with embassy staff from multiple countries; and Judges of the Supreme Court on the law of peace. Evidence supplied by CR confirms their view that the trip was 'a big success' and government and the MILF peace panels expressed their satisfaction.
- Bell also met the Negotiating Panel of the National Democratic Front of the Philippines in Utrecht (31 May 2011). As the testimonial email from Garcia notes that 'The meeting with the NDFP negotiating panel was significant since it was probably the first time they discussed the possible constitutional ramifications of a potential peace agreement'

As Herbolzheimer's testimonial notes, Bell's work continues to be cited by both sides in peace process and by civil society groups, and has become 'an important reference for the Mindanao peace negotiations'. In 2013, TJI welcomed Yasmin Nao, (a member Government Peace Negotiating Panel for talks with the Moro Islamic Liberation Front) as a summer school student and arranged for her to have series of private meetings with women involved in the NI peace process.

Amnesties are used during or after conflicts around the world to encourage combatants to surrender and disarm, to facilitate peace agreements and to incentivise combatants to engage with transitional justice processes. Uganda provides one of the most high profile examples of amnesties being used during a conflict. Prior to joining TJI, Mallinder conducted fieldwork in Uganda and produced an open access report on amnesty, conflict resolution and transitional justice in Uganda that has been viewed 878 times. During 2011, there were extensive local debates on the role of war crimes prosecutions and amnesty for armed groups fighting the government, including the Lord's Resistance Army. On the basis of her international expertise on amnesty and knowledge of the local context, a series of local actors consulted Mallinder resulting in the following activities:

- She participated in a training programme for judges from the International Crimes Division and Constitutional Court on the legal status of amnesties in June 2011. Her presentation explored the status of amnesties under international criminal law and the case law of national and international

courts. It questioned the emergence of a prohibition on amnesties for international crimes. The Constitutional Court does not generally cite academic research but Mallinder's approach was reflected in the court's decision in the leading Kwoyelo case.

- In 2012, she engaged in a consultation led by the Ugandan Coalition of the ICC (UCICC) and HURINET-U. This required Mallinder to take the findings from her research on how amnesties can link to other forms of transitional justice and adapt them into a series of country-specific briefs for non-academic audiences. One brief entitled 'Implications of the Expiry of the Amnesty Law' that was published in the UCICC's magazine, *The Forum* (2012). Ndifuna's testimonial notes that these engagements fostered discussion among stakeholders in Uganda on the future form that the amnesty could take and recommendations proposed by Mallinder were incorporated into a report for the Government of Uganda, produced by the Justice Law and Order Sector's Transitional Justice Working Group, which is composed of representatives of key government departments. Responding to requests from the US State Dept, Mallinder shared the brief on the expiry of the amnesty with American policymakers.
- Mallinder was asked to contribute to the research and drafting of *Avocats Sans Frontières*, 'Amnesty: An Olive Branch in Justice' (2012) The testimonial from ASF affirms that Mallinder's contribution enabled ASF to identify loopholes in Uganda's amnesty legal framework and to develop practical recommendations ensuring that amnesty can contribute to peace and justice. This document was widely used by policymakers and civil society actors within Uganda.
- In 2013, the amnesty was reinstated and work has begun on drafting comprehensive transitional justice legislation. Mallinder re-engaged by providing a brief on the linkages between amnesty and TJ mechanisms for *Avocats Sans Frontières* as part of the ongoing debates in Uganda on developing holistic approaches to justice (Aug 2013).

### **Evidence or Indicators**

This case study demonstrates a range of activities to maximise impact on difference audiences, and multiple types of evidence are used to demonstrate the links between the underpinning research and impact claimed. These include citations by national courts and in policy documents, audience numbers for events, documented evidence of impact in NGO reports, user testimonial letters, several of which provide evidence of the research being influential in public discussion and debate among practitioners, and evidence of ongoing engagement with range of users. Sources demonstrate sustained global engagement by TJI researchers with peace processes.

### **5. Sources to corroborate the impact**

1. Letter from International and Transitional Justice Expert, *Avocats Sans Frontières*
2. Letter from Chief Executive Officer, HURINET-U, Uganda
3. Justice Law and Order Sector, *Amnesty Act (2000) Issues Paper (2012)* [http://www.jlos.go.ug/index.php/document-centre/document-centre/cat\\_view/10-transitional-justice/100-amnesty?limitstart=0](http://www.jlos.go.ug/index.php/document-centre/document-centre/cat_view/10-transitional-justice/100-amnesty?limitstart=0)
4. *Thomas Kwoyelo alias Latoni v Uganda* (Const. Pet.No. 036 Of 2011) c. line 595
5. Letter from Director, Lokarri
6. Letter from Juan Jose Ibarretxe Markuartu, President of the Basque Country (1999-2009)
7. Conciliation Resources, *Report on the Dialogue Series nr. 1: Christine Bell, Philippines, April 11-15 2011*
8. Supreme Court (2008) on the Memorandum of Agreement on Ancestral Domain (MOA-AD)
9. Ed Garcia, Notes on Discussions with the Negotiating Panel of the National Democratic Front of the Philippines (NDFP) On "Peace Agreements and the Law of Peace, A Consultative Paper Exploring Issues Relevant to Peace Processes in the Philippines" (June 2011)

10. Email from Director of the Philippines and Colombia Programmes, Conciliation Resources