

Institution: University of Edinburgh		
Unit of Assessment: Law		
Title of case study: Case Study 1: Constitution-Making as a Tool for Ending Conflict and Supporting Peace Processes		
Period when the underpinning research was undertaken: 2012-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Christine Bell	Professor of Constitutional Law	01-Aug-2011 to present
Stephen Tierney	Professor of Constitutional Theory	01-Oct-1999 to present
Asanga Welikala	Lecturer in Public Law	29-Apr-2013 to present
Period when the claimed impact occurred: 2013-2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Research by Bell, Tierney and Welikala provided a novel mapping of the connections between peace processes and constitution-making, with multiple impacts including: (i) facilitating solutions to legal logjams in Colombia and Ethiopia to enable peace agreements; (ii) supporting ongoing constitutional development to address the sub-state claims of ethnic armed organisations in Myanmar; and (iii) proposing strategies to support the peaceful conduct of a controversial referendum in Bougainville/Papua New Guinea. Researchers actively engaged with governments and non-state armed opponents involved in peace and transition processes; and supported key non-governmental and inter-governmental organisations as well as third-party states facilitating those processes.</p>		
2. Underpinning research		
<p>Peace process commitments to a new political settlement have to be institutionalised in constitutional or other legal form. Yet in post-settlement contexts, the legitimacy of constitutions and law is deeply contested between the conflict-parties.</p> <p>Since 2013, Bell, Tierney and Welikala have produced the first body of work to comprehensively map the complex relationship of peace and transition processes to constitution-making. Collaboration took place in close partnership with research end-users by co-creating the 'Edinburgh Post-Conflict Constitution-Making Dialogues'. This forum brought together academic experts, expert practitioners and mediators, and governmental, opposition and civil society actors from conflict countries to co-design research that would bring together and support the mediation and constitution-making fields. Findings in three main areas have underpinned the impact detailed in this case study.</p>		
<p>i. Process design for peace agreements and constitution-making: Research demonstrates the different ways in which constitution-making becomes a critical part of peace and transition processes. Bell's extended work on the <i>lex pacificatoria</i> (or 'law of</p>		

the peacemakers') (3.1) and co-authored work on sequencing of constitutions and peace agreements (3.2) offer the first major analysis of the relationship of peace settlements to constitutions. This research has demonstrated innovative ways in which constitutional and international legal standards can be used to fashion 'hybrid' legal status for agreements, and also to underpin creative solutions to contentious issues such as self-determination; political, military and territorial power-sharing; international legal accountability; and land reform and displacement issues (3.1).

- ii. **Territorial power-sharing, sub-state constitutionalism and minority accommodation:** Bell (3.2) and Welikala (3.3) highlight the distinctive forms of constitutionalisation used in peace processes and put forward practical theories for constitutional design in response. For example, Welikala advances theories on sub-state constitutionalism, reflecting when and how sub-state regions are permitted to have their own constitutions, as well as the consequences for the state's ambition to be sovereign and unitary (3.3). He identifies the critical issues that determine and shape how sub-state devolution of power can be used to accommodate national minorities and self-determination claims that lie at the heart of ethnic conflict. His work also elaborates the types of federalism, regional autonomy and sub-state constitutionalism that can institutionalise any agreements reached.
- iii. **Implementation, sequencing and referendums:** Tierney's extensive work on referendums (3.4) has set out the main difficulties that referendums present, including how to manage who should vote and who should design the questions for a referendum. He considered the implications of these issues specifically for conflict contexts (3.5). Bell developed and applied that research to the challenge of a referendum on independence provided for in the Bougainville Peace Agreement in Papua New Guinea, which was critical for continuing successful implementation of the Agreement. Her work anticipated peace process threats, and suggested mitigating actions in terms of how the referendum was planned for and implemented (3.6).

3. References to the research

3.1: Bell, C. (2014) 'Of Jus Post Bellum and Lex Pacificatoria: What's in a Name?', in Carsten Stahn C., Easterday, J.S., and Iverson, J. (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Oxford: Oxford University Press), pp. 181-206. Can be supplied by HEI on request. <https://doi.org/10.1093/acprof:oso/9780199685899.001.0001>

3.2: Bell, C. and Zulueta-Fülscher, K. (2016) 'Sequencing Peace Agreements and Constitutions in the Political Settlement Process', PSRP Report in Cooperation with IDEA.* <https://web.archive.org/web/20201112102306/https://www.politicalsettlements.org/publications-database/sequencing-peace-agreements-and-constitutions-in-the-political-settlement-process/>

*This report was peer reviewed by four leading academic constitutional lawyers with practice-experience. It has been cited in Catherine Turner and Martin Wählisch (eds) (2021), *Rethinking Peace Mediation: Challenges of Contemporary Peacemaking Practice*, (Bristol: Bristol University Press); and S.M.G. Koopmans, (2018) *Negotiating Peace: A Guide to the Practice, Politics, and Law of International Mediation* (Oxford: Oxford University Press).

3.3: Welikala, A. and Zulueta-Fülscher, K. (2017) 'Substate Constitutions in Fragile and Conflict-affected Settings', International IDEA.* <https://web.archive.org/web/20201112102516/https://www.politicalsettlements.org/publications-database/substate-constitutions-in-fragile-and-conflict-affected-settings/>

*This report was peer reviewed by four leading academic constitutional lawyers.

3.4: Tierney, S. (2012) *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford: Oxford University Press). Can be supplied by HEI on request.

<https://doi.org/10.1093/acprof:oso/9780199592791.001.0001>

3.5: Tierney, S. (2018) 'Reflections on Referendums', International IDEA.*

<https://web.archive.org/web/20210128091244/https://www.politicalsettlements.org/publications-database/reflections-on-referendums/>

*This report was peer reviewed by leading constitutional lawyers with academic and practice backgrounds.

3.6: Bell C. and McVeigh, R. (2018) 'Bougainville Referendum Outcome Issues', The National Research Institute, Papua New Guinea.*

<https://web.archive.org/web/20201108100619/https://pngnri.org/images/Publications/Bougainville-Referendum-Outcome-Issues-.pdf>

*This report was peer reviewed by an academic in the field of economics and political science with expertise on Bougainville/Papua New Guinea and by senior researchers in the National Research Institute of Papua New Guinea.

4. Details of the impact

(i) Facilitating solutions to legal logjams

Ethiopia/Ogaden: From 2013 to 2018, Bell supported the peace process to end long-running conflict between the Ethiopian Government and the Ogaden National Liberation Front (ONLF), through workshops, legal briefings, and meetings with parties and the Kenyan facilitation team. Her research (3.1) supported the ONLF to construe international self-determination law and the Ethiopian constitution as linked rather than in opposition (5.1, 5.2), overcoming the key logjam preventing negotiations. The ONLF Chairman (lead negotiator) confirmed that Bell's research: "clarified to ONLF key issues regarding their rights and helped formulate ONLF positions and decisions. Previously, ONLF rejected the Ethiopian constitution, however, after deliberating on Christine Bell's legal opinion and the legal impact of accepting the constitution the ONLF accepted the formula suggested by Ms Bell that facilitated the impasse between the two parties and paved the way eventually for the peace agreement" (5.1). The Chairman further stated: "Christine Bell's research played a decisive fact in the Ogaden peace agreement...The peace agreement made [Ogaden] the most peaceful area in Ethiopia today and the war has stopped...The ONLF is a registered political party that is preparing to take part in the coming Ethiopian elections" (5.1).

Colombia: Bell's research (3.1, 3.2) was used by both the Colombian Government and Revolutionary Armed Forces of Colombia (FARC) to reach a comprehensive peace agreement. As an eminent Colombian scholar and human rights activist stated: "Her idea of *Lex Pacificatoria* was explicitly used during the negotiations and was instrumental to the idea of understanding the peace agreement as a *sui generis* special agreement of humanitarian law, that would be accompanied by an international statement by the president to confer some international legal status to the peace agreement" (5.3). According to lead negotiator and Colombian High Commissioner for Peace: "The issue of legal guarantees came towards the end of the [negotiations], when much was agreed, and without a solution could have risked the entire process. Bell's work was used...in the highly technical work of designing and agreeing the layered legal status of the [2016 Colombian peace] agreement" (5.4). A lawyer for the FARC confirmed (translated from original Spanish): "We needed tools of law applicable to post-conflict settings, and the work of Bell opened important avenues for the creation of a stable legal system" (5.5). The lasting impact was the final peace agreement between the Government and the FARC. This ended one of the longest-running conflicts in Latin America and has survived difficult implementation moments because "the issue of legal status had been given a clear track through the Congress and Constitutional Court" (5.4).

(ii) Supporting constitutional development to address sub-state claims

Myanmar: Since 2018, Welikala has supported Myanmar's complex and prolonged 'twin transition' from authoritarianism to democracy and from conflict to peace. In particular, his sub-state constitution-making research (3.3) was, as evidenced by the Acting Head of the Constitutional Building Programme for International IDEA, "*extensively used*" to support meetings of Ethnic Armed Organisations (EAOs) to engage in sub-state constitution drafting, which was "*a key element of peace-building and federalisation in Myanmar*" (5.6). He supported EAOs to formulate common positions on the need to negotiate a constitutional amendment to permit sub-state constitutions, thereby meeting military concerns relating to secession (5.6, referring to 3.3). He also advised on federal constitutionalism with key institutions of the state including judges and staff of the Constitutional Tribunal and Supreme Court, and the Attorney General's Office. His work "*had a crucial impact on the peace process*" by "*creating legal dialogue on the types of sub-state constitution-making that will be a necessary part of any accommodation with the claim of ethnic armed organisations*" (5.6).

(iii) Supporting peaceful referendums

Bougainville/Papua New Guinea (PNG): Tierney and Bell's work (3.4, 3.5, 3.6) supported the design of an independence referendum process to ensure a successful peace agreement. Her context-specific recommendations addressing conflict risks (3.6) were adopted, including: consultation about the question; a joint inter-governmental 'post-referendum' task force; simple majority threshold; public information; and use of an international force (5.7, 5.8). These recommendations, as affirmed by the South East Asia and the Pacific Programme Director for Conciliation Resources, "*contributed greatly to a peaceful referendum through enabling both governments to analyse and plan for conflict threats*" and to reaching "*an agreed negotiation process...for the post-referendum period*" (5.8). As a result, Bell was appointed to a four-person expert team by the Governments of Bougainville and PNG to review legal and constitutional aspects of the peace agreement's implementation, in anticipation of the referendum (5.7, 5.8).

5. Sources to corroborate the impact

5.1: Testimonial letter from the Chairman of the Ogaden National Liberation Front and Vice-Chair of Multinational Federal Democratic Alliance.

5.2: Testimonial letter from the Horn of Africa Programme Director, Conciliation Resources.

5.3: Testimonial letter from Professor Emeritus at the National University in Bogotá and former Executive Director of the Center of Studies Dejusticia.

5.4: Testimonial letter from the former Colombian High Commissioner of Peace under President Juan Manuel Santos.

5.5: Testimonial from the legal advisor to the Revolutionary Armed Forces of Colombia peace delegation (provided in Spanish).

5.6: Testimonial letter from the Acting Head of the Constitution Building Programme and Former Programme Manager, Myanmar, International IDEA.

5.7: Testimonial letter from the former Government Advisor to the Autonomous Region of Bougainville on implementation of the Bougainville Peace Agreement.

5.8: Testimonial from the South East Asia and the Pacific Programme Director, Conciliation Resources.