

Report: Dialogue Series nr. 1: Christine Bell

Philippines, April 11–15 2011

Summary

Conciliation Resources organised a visit to Manila and Cotabato (Mindanao) for professor Christine Bell¹, as the first of a round of *Dialogue Series* that will address some of the most relevant issues for the peace processes in the Philippines².

The purpose was to expose a number of different audiences to reflections from a scholar-practitioner who has vast academic and practical experiences in comparative analysis of peace agreements, and specifically in the fields of the **legal and constitutional dimensions**, **human rights**, and **public participation / role of women** in peace processes.

Most activities were co-organised with co-convenors³. International Alert had commissioned and distributed a paper on “The Law of Peace” ahead of Bell’s visit, which increased the impact of both the visit and the paper.

During the five days of her visit, Christine Bell had 16 meetings that were attended by a total of some 300 people. She gave formal presentations in nine occasions, adjusting the lecture to the different audiences⁴.

Christine Bell’s writings are well-known in the Philippines. Her work had been referenced in the ruling of the Supreme Court (2008) on the Memorandum of Agreement on Ancestral Domain (MOA-AD).

According to feedback from participants, presentations and discussions lived up to the expectations, which turned this Dialogue into a big success. Especially the Government and the MILF peace panels expressed their satisfaction for the timely contributions. The sessions at the National Defense College, International Monitoring Team, Civil Society in Cotabato, international community, the network of Women Engaged in Action on 1325 and, especially, the Supreme Court, produced lively and very constructive discussions.

The visit was made possible with the financial support of the Royal Norwegian Government.

¹ Director, Transitional Justice Institute, University of Ulster.

² The Dialogue Series is part of Conciliation Resources’ commitment to the International Contact Group (ICG) on Mindanao. The terms of reference of the ICG call upon the four international NGOs to: a) provide technical assistance to parties and the facilitator; b) bridge relations between the parties and other stakeholders; and c) conduct communications for peace.

³ The Mindanao Peace Weavers, the Consortium of Bangsamoro Civil Society, Initiatives for International Dialogue, the Office of the Presidential Adviser on the Peace Process (OPAPP), the School of Law of the University of the Philippines, the Commission of Human Rights, The Institute for Bangsamoro Studies, The Asia Institute of Management, the newly established Peace Process Office of the Armed Forces, the Ateneo School of Law, the Philippine Judicial Academy, The Asia Foundation, the International Monitoring Team, and International Alert. The British embassy, and the ambassador personally, played a leading role in supporting Bell’s visit.

⁴ See annexed itinerary.

The section that follows is an attempt to capture Bell's core messages and, at the same time, Conciliation Resources' considerations on some of the challenges and opportunities ahead.

Current challenges in the peace processes

After years of on-off negotiations, peace talks are now a priority for the Government as well as for the two main insurgencies (MILF and NDF). All sides have committed to fast-track the negotiations and to sign comprehensive agreements in the shortest possible time. This necessarily entails moving from confidence building gestures and from discussing less contentious issues to addressing the core aspects of the conflict. Procedure is important, to keep dissenting sectors of the rebels on board, as well as to strengthen legitimacy and to increase the peace constituency. But substance has now to be tackled, and "political, moral and legal imagination" is more needed than ever.

The Government panels for talks with the Moros feel they step on uncharted ground when trying to address the grievances of two different rebel groups (MILF and MNLF) who claim the same territory and fight for the same people.

The Moro Islamic Liberation Front is concerned with its own constituency running out of patience, after 14 years of negotiations. The threat by Commander Kato to create a new and independent group of Bangsamoro Islamic Freedom Fighters (BIFF) is an issue of the highest concern for the Government as much as for the MILF.

Another challenge is how to communicate the peace process outside of the room, and to identify the concerns of people. A recent clever move by MILF has been to reach out to people beyond their constituency, which is allowing MILF to identify and address some of the main misperceptions about the purpose for their struggle and, thus, prevent or limit the impact of possible spoiling actions by those who benefit from status quo.

The new GPH panel for talks with the NDF has been able to break a deadlock that had lasted for six years, although progress will be difficult.

All peace panels seem to keep Bell's words of warning in mind: that windows of opportunity are rare, and they close quickly.

Legal and constitutional dimensions of peace agreements

Christine Bell is professor in constitutional law and a leading scholar in the field of peace processes. She has observed the recurrent challenge to address demands for constitutional reform, and the increasing body of literature and practice that deals with this controversial issue. She argues that "peace agreements demonstrate common elements and common approaches to conflict resolution which amount to a new form of constitutionalism, involving new interpretations of constitutional law, and have created a *lex pacificatoria* or 'law of the peacemaker'"⁵.

In the Philippines, discussions on the need for constitutional change are so far focused on the Mindanao peace process. Mainstream opinion may not be aware that the agenda with the NDF also includes charter amendment. OPAPP is dealing with the **challenge of a process of**

⁵ Bell, Christine (2011). *Peace Agreements and the Law of Peace. A Consultative Paper Exploring Issues Relevant to Peace Processes in the Philippines*. Paragraph 4. Unpublished paper, commissioned by International Alert.

double convergence: on one hand, the need to find common ground between the remaining implementation of the 1996 agreement with the MNLF, and the new agreement with the MILF. In parallel, the need to find a creative way for addressing demands for constitutional change by the NDF.

With enough moral, legal and constitutional imagination, Bell argues, paradoxes can be bridged and positions conciled. “In peace processes a new form of unity is often achieved by disaggregating power from central control to different sectors of society and/or regions of the country.” (§12). “The state achieves unity through diversifying the modalities of government. Rather than seeing the constitution as a once-off social contract, **the constitution** is seen more as a **process document**, reconstituting the state as a set of mechanisms and processes for on-going participation in decision-making.” (§14).

In discussions on Mindanao, Bell referred to the ideas of “blurring the concept of sovereignty”. Devolution to a sub-state entity, dual citizenship, provisions for providing for ‘parity of esteem’ of different national groupings, etc. are mechanism for achieving bi or pluri-nationalism which, combined in various matrices, produce arrangements that unravel the conventional link of sovereignty to territory and to national citizenry. (§18).

Bell also discussed international cases where the justice system had had an impact on the peace talks, and mentioned that the ruling of the Supreme Court against the MOA-AD in 2008 is now an international reference for rigid interpretations of the Constitution. Discussions with legal experts nevertheless suggested a recent tendency in the Philippines to break away from that rigid interpretation in the past and, thus, be open to new approaches in support of the peace processes.

In the past MILF did not necessarily suggest procedures for the government to implement any agreement they could reach. But given the stumbling blocks in the peace talks, at some point they included constitutional reform in their list of demands. The draft peace agreement includes initial suggestions on how this could happen. In the light of Bell’s analysis, more simple solutions could probably be found.

Discussing Constitutional reform with the NDF can be at least equally challenging, considering that the NDF does not accept the Philippine Constitution as theirs. Here, again, the meta-legal approach of *lex pacificatoria* could become an interesting frame for the NDF.

The President has yet to announce whether he supports constitutional reform or not, a key message for the continuity of the talks.

Human rights (HR) and transitional justice (TJ)

Human rights have been a priority in the agenda of the GPH-NDF peace talks. Ever since the time of Marcos, HR has actually been a political instrument. Leftist organisations highlight and criticise the state for illegal detention, torture, forced disappearances, etc. The state has also accused leftist organisations for their shadow justice system and for internal purges and executions of alleged infiltrated elements. Lack of trust makes progress in independent monitoring of the CARHRIHL very challenging. The Joint Monitoring Commission has actually been blocked for several years.

As Christine Bell pointed out, it is hard to defend HR in the absence of a ceasefire. At the same time, NDF has repeatedly pointed out that a ceasefire will be part of the substantive talks, not a previous confidence building measure.

Transitional Justice in the frame of peace with the communists seems at points **to be limited to compensation for victims of atrocities committed by the Marcos regime**.

Several thousands of victims signed a petition many years ago, and American tribunals ruled that Marcos' financial assets should be handed over to these victims. This monetary reparation began taking place a few months ago.

HR and TJ in the context of Mindanao are far less an issue. Atrocities in past decades that eventually could be labeled as ethnic cleansing are deeply entrenched in Moro narratives, but have not been well documented: there seems to be a big gap in literature on this topic. The two years old Mindanao Human Rights Action Center (MinHRAC) is the first serious attempt to address the issue of HR in Moro territories. MILF's references to transitional justice in their draft documents are rather vague and confusing.

MILF nevertheless acknowledges the importance of some kind of **Truth Commission** at some point in the peace process. So does OPAPP. Thus, despite the absence of public debate on the issue, both sides agree that there is a need to acknowledge and identify atrocities and other HR violations, and to find some ways of **dealing with the past**. The international community is slowly also taking some steps in this direction, notably with the EU's appointment of a person in the International Monitoring Team (Cynthia Petrich), who is in charge of HR and IHL. MILF has recently responded to Petrich's demands for a formal interlocutor, and has appointed a group of three persons to address HR and humanitarian issues with the IMT.

Bell's message was to highlight the importance of HR in a peace process. Although HR and peace sometimes appear as competing and mutually excluding priorities, Bell highlighted the different ways in which a HR focus could strengthen the peace process at different stages. "While HR standards are un-negotiable, the structure and institutions and commitments which give effect to them are all negotiable." The most difficult parts of transitional justice, such as getting the full truth and some degree of accountability, remain an open process even in contexts of successful peace processes like Northern Ireland.

Public participation and the role of women

Peace negotiations are an essential component of any *peace process*, to a point where people sometimes confuse both concepts. Peace agreements don't automatically deliver peace dividends and thus, most often peace agreements don't live up to people's expectations. Bell highlights that a peace agreement is only one step in a long process that will require multiple further negotiations.

Two main reasons for the difficulty in implementing peace agreements are:

- a. Lack of a sense of ownership by society at large.
- b. Difficulties in translating the political agreements into effective practical actions.

The **trend** in peace processes is therefore to design **more inclusive procedures** where discussions at the negotiating table are informed by people's concerns and technical advice, and people who will be affected by the peace agreement take part in the decision-making process.

There is therefore an increasing need to link the formal (track 1) and the informal (track 2) peace initiatives. Peace negotiations lead to agreements on social, economic, security and other reforms. But they will need additional inputs on how to make change happen in

practice. Civil society and other actors can convene discussions on the best approaches for implementation and, thereby, play an essential role in the overall peace process.

This trend to inclusivity inevitably encourages a more active role of women, based on two core arguments: numbers and expertise⁶.

Representing half of the society, it is difficult to justify exclusion of women. As Bell highlighted, arguments for *parity of esteem* between peoples (a key concept in the struggle of ethnic minorities) can hardly ignore the need for parity of esteem between men and women.

Women's differential expertise in peacemaking and peacebuilding is based on their differential experience of conflict, as well as on the role society attributes them. In many contexts violence against women is a tool of war. In most societies, women have specific roles that also give them a specific expertise in areas where men have limited knowledge. In all contexts, women have to take on roles of higher responsibility in the household (often IDP camps), while men are fighting. Women thus develop skills of survival, negotiation and development that are different to men's.

Therefore, any negotiation concerned with the quality of an agreement, cannot afford ignoring women's expertise. **Any agreement that claims to be just, cannot exclude half of the population.**

The need for implementing measures to prevent violence against women and to increase women's participation in decision-making is a normative development sanctioned by the Security Council of the United Nations⁷. Bell's research has shown how much still needs to be done to move from words to deeds.⁸ Therefore, progress in one peace process will certainly have an impact on other peace processes elsewhere.

In Mindanao there is now an opportunity for local civil society to actively engage all peace panels and make sure negotiations and eventual agreements are more gender sensitive. There is also a need to engage with the IMT and discuss options for documenting and addressing actions of violence against women that so far have gone unnoticed.

During the dialogue with the internationals at the British embassy, Conciliation Resources launched the suggestion of working on an **International Action Plan** on Women, Peace and Security, to live up to developing standards at international level (UN Security Council resolutions) as well as national level (Philippines National Action Plan on WPS). Conciliation Resources, the Centre for Humanitarian Dialogue, as well as The Asia Foundation have individually taken important steps in this direction. A collective, inclusive and coordinated approach is now needed. A first step could be to organise training sessions for ICG and IMT on the UN resolutions and the National Action Plan, together with UN Women, OPAPP, and the network of Women Engaged in Action on 1325 (We Act 1325).

⁶ See a recent publication by The Center for Humanitarian Dialogue: "Peacemaking in Asia and the Pacific: Women's participation, perspectives and priorities" (April 2011), which highlights the relevance of "numbers" and "substance".

⁷ Resolutions 1325, 1820, 1889 and 1890.

⁸ Christine Bell and Catherine O'Rourke (2010). PEACE AGREEMENTS OR PIECES OF PAPER? THE IMPACT OF UNSC RESOLUTION 1325 ON PEACE PROCESSES AND THEIR AGREEMENTS. *International and Comparative Law Quarterly*, 59, pp 941–980.

Continuity

Having set an extremely high standard with this first Dialogue Series, Conciliation Resources' main challenge will be to identify the most appropriate topics and resource persons for the second and third rounds in the coming months.

Some initial suggestions that have been raised by partners and friends include:

- The right to self determination
- Transitional justice and dealing with the past
- Muslim women in peace processes
- Addressing land conflict in peace processes
- Security sector reform and autonomous security forces
- Dialogue within and among the judiciary

Decisions will be made based on suggestions from peace panels and partners and friends and also on available funding.

Priority will be given to resource persons from conflict-affected countries.