



*Working Group on  
Peace and Development*

## **REPORT**

FriEnt Workshop

**Reparations, Land and Natural Resources**

**14 February 2014**

Venue: Evangelisches Werk für Diakonie und Entwicklung  
Caroline-Michaelis-Str.1 | 10115 Berlin

## FriEnt

FriEnt is a Working Group of: Bread for the World – Protestant Development Service | Center for International Peace Operations (ZIF) | Civil Peace Service Group | Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH | Federal Ministry for Economic Cooperation and Development (BMZ) | Friedrich-Ebert-Stiftung (FES) | Heinrich Böll Foundation (hbs) | Misereor/Catholic Central Agency for Development Aid | Platform for Peaceful Conflict Management/Institute for Development and Peace (INEF)

FriEnt aims to pool capacities, support networking and cooperation, and contribute to conflict-sensitive development cooperation. FriEnt's members are committed to working together to promote a range of approaches and highlight the potential of development-oriented peace work to policy-makers and the public at large.

FriEnt's members are united by their great commitment to peace and development. They vary, however, in their size, mandate, international partners, projects and approaches. They aim to utilise their diverse perspectives and experience as an asset for their shared productive work on peace building in the context of development cooperation.

### Imprint

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## 1. INTRODUCTION

Loss of land, displacement and eviction, changed land ownership and tenure patterns and general loss of access to a broad range of natural resources may be consequences of wars and violent conflicts. Climate change, environmental degradation, large-scale investments, urbanisation and industrialisation sometimes have similar effects as well. As access to land and natural resources forms the livelihood base in most developing countries, the loss of access to these resources puts lives at risk.

Reparations, including restitution and compensation schemes, are crucial for reconstruction, rehabilitation and development after war or violent conflicts. Hence, the 'right to reparations' constitutes one of the pillars of Transitional Justice (TJ), which proposes various mechanisms to deal with past atrocities. In practice, however, these mechanisms often deal primarily with mass violations of physical integrity. Loss of land and natural resources seldom have a prominent role in TJ mechanisms<sup>1</sup>, although compensation for the losses resulting from war and violence is considered an important step in coming to terms with the violent past and in securing livelihoods for local communities and a broad range of victim groups.

There are various linkages between development cooperation in post-conflict contexts and Transitional Justice (TJ). The international conference 'New Horizons - Linking Development Cooperation and Transitional Justice for Sustainable Peace', which took place in Berlin in 2010, thematically linked TJ and classic development sectors such as health, education, land and resources. As a follow-up to this conference, FriEnt explores in more depth the nexus between TJ, particularly aspects of reparations, and land and related natural resources.

The FriEnt Workshop on Reparations, Land and Natural Resources with Ruben Carranza, Director of the Reparative Justice Program at the International Centre for Transitional Justice (ICTJ), starts from his rich experience with reparations in the field of TJ, and identifies lessons learned, including major challenges and best practices, for contexts of violations linked to natural resources and land.

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<sup>1</sup> The aspect of land has been included in Transitional Justice processes and institutions in various ways. In South Africa, an independent Land Commission had been established. The mandate of the Kenyan Truth, Justice and Reconciliation Commission includes examining violations linked to land. In Colombia, legislation has been adopted in the form of the Colombia Victims and Land Restitution Law, enacted in 2011.

## 2. PRESENTATION ON REPARATIONS AND LAND BY RUBEN CARRANZA

An important lesson learned from designing and implementing TJ measures and processes is that there are no clear and simple answers, no general rights and wrongs, but context dependency, dilemmas and conflicting aims. The context is not a background against which the same TJ measures can always be applied. Since TJ measures often deal primarily with violations of physical integrity and human rights, the (social and economic) background to these violations and, hence, violations of social and economic rights are often not sufficiently taken into account. Reparations can only be effective as part of a comprehensive approach to Transitional Justice (institutional reform, truth-seeking, criminal justice and reparations), increasing the likelihood that not only the symptoms but also the root causes of conflict (social and economic inequalities, amongst others) are treated.

The *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation* define different forms of reparations: compensation, restitution, rehabilitation, satisfaction, and guarantee of non-repetition. Reparations can be material (e.g. housing promised to victims in Colombia) or symbolic (e.g. the visit by the then President Ben Ali to Mohamed Bouazizi just before he died as a consequence of self-immolation), and can be assigned to individuals or communities. A crucial aspect of reparations is acknowledgement of responsibility by the perpetrators and recognition of the victims. By acknowledging the victims' loss, material reparations have a symbolic dimension.

One fundamental question that has to be answered with respect to compensation is whether and how harm can be quantified. Do the payments by the UK government compensate for the torture and deaths of the Mau Mau in the 1950s? More technical questions arise in respect to compensation: for example, should they be paid over a longer period of time, as in Chile, for example, in order to support more sustainable livelihoods? What effects do lump-sum payments have, such as those provided by the Nepal Relief Program? What is true is that in generally poor and divided societies, relatively large sums of money have the potential to exacerbate existing tensions or create new ones.

In most contexts of human rights violations, much of the population has limited access to goods (employment, land, education). This is an important aspect to keep in mind when restitution is considered. Members of the Ennahda Movement were reemployed after the fall of the Ben Ali regime in Tunisia. The assigned salary corresponded to the salary at the moment of their removal. Rival candidates claimed that the members of the Ennahda Movement did not have the required qualifications and professional experience. The Tunisian example illustrates how restitution has the potential to increase social tensions.

Symbolic reparations that do not meet social and economic needs might also raise further questions, as the monument in Halabja, Iraq, acknowledging and commemorating the victims of the gas attack in 1988, shows: The monument and the streets surrounding it are far better off than many streets in the city itself. Furthermore, there are contexts where ignoring violations of social and economic rights within TJ processes is particularly difficult because they constitute the major violations, as occurred during the Japanese occupation of Indonesia in the 1940s, for example. At the same time, in generally poor contexts, it is challenging to identify victims of social and economic rights violations.

The *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation* define victims as persons who have suffered “harm due to gross violations of international human rights law”. Immediate family can be victims. Being a victim does not require any verdict that defines a perpetrator. A highly sensitive question is whether categories of victims should be defined, as the Philippines Reparation Law has done, for example, in order to be able to determine the amount of compensation.

Funding is always a major challenge for reparation programmes. The amounts of funding and the institutions that provide it (the government in Chile, the World Bank in Nepal, the UN Peacebuilding Fund in Sierra Leone, etc.) vary. High-level perpetrators often enrich themselves while in office. When recovered, these assets can be used to fund reparations; this approach was adopted in the Philippines.

Successful recovery greatly depends on local capacities to trace and freeze these assets or raise international attention (*naming and shaming*) as the *asset recovery coalition* in Egypt did, forcing the Spanish government to freeze assets held by members of Mubarak’s family and regime. Local capacities are also crucial to assign and allocate reparations or assess actual needs in order to avoid misconceived reparations.

Once funding is assured, institutional hurdles might hamper its allocation. In contexts of large-scale violence, trust in state institutions is often lacking. In Sierra Leone, several registration rounds for reparations were needed. The process was also hampered by the lack of trust between different social groups, related to factors such as age and gender. Illiteracy and lack of information can be an obstacle as well; this is the case for many Nepalese widows, who are entitled to reparations but have not defended their claims.

Unanswered questions remain:

- When should a truth commission examine grievances involving access to land?
- Should there be reparations for the denial of access to land (and resources) and its consequences?
- What would ‘restitution’ and ‘compensation’ mean in relation to violations involving land?
- Should the massive, deliberate and systematic denial of access to land be characterised as a crime at both domestic and international level – or should, at the least, the violence accompanying denial of access be examined?
- What institutions should be covered by the reference to ‘institutional reforms’ as a mechanism of TJ?

Participation in design, implementation and monitoring is important for civil society and victim groups. It is crucial to ensure inclusion of marginalised victims and women. Documentation to support claims, drafting of legislation and input and, last but not least, coalition-building and networking are also important.

### 3. DISCUSSION

- The restitution of land can face challenges since land is an immovable and limited resource within a given territory. Security concerns of victims of forced displacement may hamper their return and the actual restitution of land. In these cases, other forms of reparation may be more accessible to victims. Furthermore, it is particularly important to have a very well-informed and clear idea of the historical dimensions of violence and conflict and of the possibly competing claims to land.
- Managing expectations of what reparations can do and what they are meant for is very important. This is especially true in generally poor contexts where reparations most likely concern highly contested goods (employment, land, money) and where funding is a major challenge. In Colombia, for example, where so many people consider themselves to be victims, the land restitution law has the potential to promise too much. When reparations programmes are likely not to meet the needs of all victims, the participation of victims in the process is crucial. The process itself can be reparative when the victims are heard and acknowledged.
- TJ processes are meant to tackle the root causes of conflict, which often include social and economic marginalisation. Furthermore, in many conflict and post-conflict societies, large sections of the population are facing a lack of fulfilment of their social and economic needs. Accordingly, TJ and reparation programmes should be linked to general livelihood improvements, not least in order to avoid further (perceived) injustice.
- It is important to keep in mind that the definition of victims is often related to specific periods of conflict. Hence, it is essential to be well-informed about the history of conflict. It should be transparent how far the dealing with the past goes back in history. This is especially true of restitution or reparations for violations and violence linked to land. Often competing claims to land, which are based on different legal sources and different periods of conflict, exist.
- Avoid exacerbating ethnic and class-related identities. In Myanmar, victims of land grabbing are often peasants living in rural areas, whereas political detainees and victims of political violence are often from the urban middle class. In Iraq, it is, first and foremost, those who opposed the Ba'ath regime who were considered victims and benefited from reparations, and this was perceived as privileging one community compared to others (mainly Shiites over Kurds and Sunnites). When setting up reparation programmes, reparations should be allocated across identities and should not reinforce group identities.
- The implementation of reparation programmes can be premature. In Palestine, reparations are already being discussed although land grabbing is still ongoing, and in Colombia a law for land restitution has already been enacted despite the continuing armed conflict in the North. The example of the Democratic Republic of the Congo, however, shows that these programmes are unlikely to be sustainable. The ongoing conflict renders the acknowledgement of the harm suffered by victims less credible.

-  Involving private actors and companies in the provision of funding often faces severe challenges. Recourse to the courts, which is the most common approach, can be complicated by administrative and legal factors, as in the case of companies that operated in South Africa and were dissolved before they could be brought to trial. The case of the South African Khulumani Support Group in South Africa, which is suing 23 transnational corporations in a US court for the role they played during apartheid, depends on the good will of the US authorities. Negotiation processes are often successful if corporate interests (economic interests, reputation) are addressed.

## 4. CONCLUSION

Reparations are, by and large, the least implemented Transitional Justice measure. Furthermore, design and implementation of Transitional Justice processes are often focused on physical violations and not on the violations of social and economic rights. Hence, when dealing with specific questions, such as reparations of violations linked to land and natural resources, there is limited experience to draw on. However, summarizing the discussion, the following key challenges for the design and implementation of reparation programmes and compensation schemes should be taken into consideration:

**Who?** Who are the victims? Taking different periods of conflict into account might shift the focus to other victims. Furthermore, other social groups might feel marginalised and discriminated against regarding their claims (e.g. for access to social services, land and resources). Material and symbolic reparations for experienced losses have the potential to create further social tensions and divides if they are perceived as unfair and inequitable or if they contribute to further exclusion.

**How?** Consequently, reparations programmes should be designed and implemented as part of broader development programmes and TJ processes in order to improve the general livelihood of the population while addressing the root causes of the conflict.

**By whom?** Legitimate structures, institutions and actors play a crucial role in the design and implementation of reparations programmes. It is not enough to create formal, centralised institutions and build up administrative capacities. Trust in state institutions is often lacking in post-war contexts and in respect to politically sensitive concerns such as access to land and natural resources.

**What?** Furthermore, it is crucial to address the particular nature of the resources concerned. Land, for example, is an immovable and a limited resource within a given territory. Security concerns of victims might be especially important. Furthermore, the question of access to land and resources is itself often highly politicised and competing claims to land and resources might be a constituent element of (violent) conflict.

### Links & Literature

[UN Basic Principles and Guidelines on the Right to a Remedy and Reparation](#)

[ICTJ: Reparative Justice Program](#)

[FriEnt audio interview with Ruben Carranca on the relationship among transitional justice, corruption and economic crimes](#)

[FriEnt website: Transitional Justice](#)

[FriEnt website: Land Conflicts](#)

**...and options for further exploration:**

- 1) How can reparations for the loss of access to land (and resources) and its consequences lead to justice and durable peace? What are the necessary elements for recovery, trust and a new start?
- 2) What do compensation and restitution mean with regard to access to land and natural resources? And how should this be taken up in the management of land and natural resources?
- 3) What are the most relevant aspects regarding reparations for loss of land/natural resources within 'responsible investment strategies'? What are the duties and responsibilities of the governments, and what are the duties of the investors?

## 5. ANNEX

### 5.1 Speaker

**Ruben Carranza** is Director of the Reparative Justice Program at the International Centre of Transitional Justice (ICTJ).

He is from the Philippines. He obtained his B.A. and LL.B. degrees from the University of the Philippines and an LL.M. from New York University (NYU) in 2005 as a Global Public Service Law Program scholar.

He currently works with victims' communities and reparations policymakers in Nepal, Timor-Leste, Indonesia, the Philippines, Iraq, Palestine, Liberia, Ghana, South Africa, and Kenya. He also provides advice on issues involving reparations and war crimes tribunals including the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the International Criminal Court (ICC).

From 2001–2004, he was the commissioner in charge of litigation and investigation in the Philippine commission that successfully recovered \$680 Million in ill-gotten assets of the family of Ferdinand Marcos hidden in banks in Switzerland, the U.S. and other foreign countries. He concurrently served in the UN Ad Hoc Committee that drafted the 2003 UN Convention Against Corruption. He was involved in litigation against the Marcos family filed in the U.S. by victims of human rights violations of the Marcos dictatorship based on the Alien Tort Claims Act (ATCA). He worked with civil society on proposed reparations measures for victims of the Marcos dictatorship and counseled families of the disappeared, former political detainees and other victims groups.

From 1998–2000, he was an assistant secretary of national defense in the Philippines, where he developed his expertise in security, peacebuilding and conflict issues in Asia, including those involving China, Japan and members of the Association of Southeast Asian Nations (ASEAN). He has done significant research, writing and field work on the relationship among transitional justice, corruption, and economic crimes.

## 5.2 List of Participants

Ilona Auer-Frege	Misereor
Charlotte Beckh	Institute for Advanced Sustainability Studies
Victoria Cochrane-Buchmüller	Genocide Alert
Caroline Kruckow	FriEnt/Bread for the World – Protestant Development Service
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