

# Measuring Up: A Dialogical Model for Assuring a Reparative Process

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*International law obliges governments to assure adequate and effective reparations for human rights violations. To date, most evaluations of such programs focus on outcomes while overlooking the process of how the state engaged victims, or not, in the determination of what they needed to feel repaired. A consensus now points toward the need to better involve beneficiaries in reparations programs in the process of determining these outcomes, yet there remains a need to better understand how to assure meaningful and effective participation. In response, the authors present an expansive view of the right to participation that would oblige governments to assure the quality of this participation in all stages of reparation programming, including design, implementation, and evaluation. They argue that reparative processes are, in themselves, forms of reparation, which go toward citizen restitution. They offer preliminary guidelines on how to assure reparative processes, as well as their evaluation, through a dialogical model that helps reorient the view of “victims” to being active agents in determining not only appropriate reparations but also larger transformations. Reparative processes shift the focus of evaluation to look beyond outcomes and toward the quality of the design and implementation processes, which, if flawed, may ultimately undermine the overall impact of any reparation program.*

## INTRODUCTION

How do we evaluate the success of reparation programs that are designed to redress harms caused by violations of fundamental human rights? Historically, such evaluations have occurred when looking only at the tangible outcomes of redress programs, such as the distribution of compensation, services, commemorative objects, or policy reforms intended to prevent future violations. Certainly, a foundational principle in human rights law posits that the right to remedy consists of such tangible provisions. Yet, even though such outcomes are important, empirical research demonstrates that they often fail to leave victims feeling repaired and, at times, can even cause further harm if implemented in a top-down manner that ignores what author Lisa Laplante (2015, 539) refers to as the “felt justice needs” of the intended beneficiaries. Yet, even so, the state may continue to deem as “successful” or “complete” reparation deliverables,

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not understanding why recipients of these programs continue to feel unrepaired and may even reject the government's reparation program.

As the study of reparations for human rights violations has grown over the last several decades, scholars and practitioners have come to agree that this dissatisfaction often arises out of flawed participatory processes, or, in some cases, the lack of any participatory process, in the design and implementation of reparation programs (Laplante 2010–11). The response has been to call for a victim-centered approach that can assure more participation of the intended beneficiaries of these programs.<sup>1</sup> However, such discussions have fallen short of offering a deeper understanding of what exactly this victim involvement should entail. Indeed, through their scoping review of the literature on victim participation in transitional justice, scholars Pamina Firchow and Yvette Selim (2022) argue that, while there is now a consensus that such programs must include more victim participation, there needs to be better theorizing and problematizing on how to assure beneficiary participation is not just more prevalent or “greater” but also more “meaningful.”

In response, we engage in this pursuit of unpacking the concept of meaningful participation by first offering the justification for such an inquiry as it pertains specifically to reparation programming for human rights violations, which occurs in a range of settings involving human rights enforcement, including but not limited to transitional justice and human rights litigation. In particular, we recognize that most of the literature still focuses on presenting victim participation as good policy (Méndez 2016). We take a different approach and propose that the notion of participation should be reconceptualized to be a reparative process that, in itself, is a part of the reparations owed to the victims of human rights violations and an additional right of victims. This reconceptualization presents two important functions.

First, it moves the idea of victim participation away from being merely good practice recommendations still left to state discretion and good will and thus runs the risk of being done poorly or not at all. In these situations, governments may adopt minimalist approaches to participation by merely checking off the box of completion regardless of the quality of victim involvement. Furthermore, there is no standard against which governments can be held accountable for such deficient implementation processes. In contrast, we argue that victims have a right to reparative processes grounded in international human rights law, which in turn obligates states to follow minimum standards that go toward assuring the quality of the approach taken to involve victims in the design, implementation, and evaluation of reparation programs. Thus, this shift in conceptualizing participation as a right, and, thus, intrinsic to reparations, helps to guard against governments resorting to tokenism and the mere consultation of victims as they come under more pressure to devote the appropriate resources toward assuring truly reparative processes.

Second, in reconceptualizing participation as a more comprehensive reparative process, governments must guarantee subjects the process to some agreed upon evaluation criteria, which may grow out of the same standards used to evaluate the outcomes of reparation programs. Responding to the fact that, at the time of writing, there has still been minimal exploration of approaches to evaluating the quality of participatory

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1. See, for example, Engole 2012; Laplante 2013, 230; Butti and McGonigle Leyh 2019.

processes used to implement reparations for human rights violations, which in turn has resulted in less clarity on what steps are needed to reach this goal, we present one possible approach. We aim to contribute to the nascent effort to better conceptualize what it might look like to truly assess whether meaningful participation has been achieved or, in the case of our proposal, a reparative process.

We begin this presentation by arguing that, in contemplating any evaluation of a reparative process, it is first important to identify what should be evaluated before deciding how it should be evaluated. Thus, the authors present a model of a holistic reparative process that draws from dialogical aesthetics and pedagogy and that aims to level asymmetrical power relations through interpersonal engagement over a significant period of time. In proposing this approach, we highlight the central need to recognize the intrinsic value and dignity of the victims, the harm they have suffered, and the responsibility of the perpetrator, which arises through the co-creation of trust, community, and the conditions for non-repetition that accompany the delivery of reparation outcomes.

These dialogical processes offer greater potential to fulfill the standards that would be used to determine the ultimate success of the reparative process used to design, implement, and evaluate reparation programs by governments, interstate institutions, or hybrid state-private cooperation. Ultimately, the proposed methodology could be used in any scenario that involves the delivery of reparations for human rights harms. Again, responding to a still minimal exploration of what meaningful participation in a reparative process entails, we offer baseline requirements for what we deem to be a reparative process, while recognizing that these suggested procedural steps would need to be adapted to each new situation given that inherent to any reparative process is the need to first assess the context-specific needs of the individuals and communities awaiting redress and that this assessment would be co-directed by those same people. Where appropriate, we draw on the work of other practitioners and scholars who have also begun to flesh out approaches to meaningful participation, while also drawing from our own direct experiences and research.

## THE RIGHT TO REPARATIONS: REFOCUSING FROM OUTCOMES TO PROCESS

Reparations play a central role in the protection and vindication of our human rights. They retroactively assure justice and redress for victims suffering violations of these rights. Although the study of reparations is interdisciplinary, it is grounded in international human rights law, which recognizes that those who suffer violations of their fundamental rights become entitled to remedies, including accessing the mechanisms to redress the harm as well as the reparations to respond to the harms.<sup>2</sup> Significantly, the topic of reparations comes up in a wide range of fields, including transitional justice, international human rights adjudication, mediation between communities and companies, and international criminal law.

Practitioners in these varied settings face a common challenge in determining the best approaches to assuring the success of a reparation program, especially given the

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2. United Nations High Commissioner for Human Rights 2005.

seriousness of the harms suffered by those seeking a remedy. Indeed, the jurisprudence arising out of international human rights bodies recognizes the impossibility of truly calculating damages for the type of harm suffered through serious human rights violations realizing that no type or number of reparations can truly make a person whole (Roht-Arriaza 2004, 157–58). In recognizing this challenge, the Inter-American Court of Human Rights (IACtHR) developed the concept of *restitutio in integrum* to contemplate the provision of a variety of modalities to approximate restoring the *status quo ante*, such as through restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>3</sup> States, in turn, view compliance with reparation judgments in terms of whether they have provided these types of reparations (Huneus 2011, 501; Contesse 2019; Zuloaga 2020). As follows, case studies, critical accounts, and other commentary about reparations for human rights violations often focus on reparation outcomes in their analysis.<sup>4</sup>

A focus on the categories of reparations, however, leads to a focus on evaluating the success (or not) of reparation programs based on the delivery of outcomes only: money is paid, memorials are built, apologies are issued, health care and therapy are received, and laws are reformed. Thus, in evaluating the success of these programs, the tendency is to check off a box of “complete” if such outcomes are met. In the extreme, such evaluations may risk just looking only to the presence or absence of the delivery of such goods and services, while overlooking the process taken to reach that outcome, such as the negotiating, designing, implementing, and evaluating the reparations in coordination with the intended beneficiaries. This outcome-led form of evaluation may miss the mark in terms of assuring victim satisfaction, especially since this narrow focus renders the beneficiary of these packages and programs inert, passive, and even invisible. Their suffering and harm factors into a calculation of damages, but they do not necessarily call for, or define, their role in determining actively how these outcomes should be determined, delivered, or even evaluated. Critical studies of reparation programming around the world reveal that overlooking victim participation is not harmless or negligible. Rather, the exclusion of beneficiaries in the process may lead to revictimization and the recreation of negative power dynamics that underlie the initial human rights violations being redressed (Waterhouse 2009, 270; Triponek and Pearson 2010, 103; Yarwood 2014; Walker 2016).

One can see this dynamic in the instance of a friendly settlement brokered by the Inter-American Commission on Human Rights in the case of *Villatina v Colombia*, in which the families of children and young men murdered by police in a poor *comuna* of Medellín sought redress (Reyes 2019).<sup>5</sup> The families, in consultation with the Grupo Interdisciplinario de Derechos Humanos and the Archdiocese of Medellín, established

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3. IACtHR, *Velásquez-Rodríguez v. Honduras*, Reparations and Costs, Judgment, Series C, No. 7, July 21, 1989, para. 26. See IACtHR, *Moiwana Cmty. v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Series C, No. 124, June 15, 2005, para. 170 (for a more recent discussion). See generally Antkowiak 2008, 351 (for an overview of the development of the court’s reparation jurisprudence since 1989).

4. See, for example, De Greiff 2006; Johnston and Slyomovics 2009; Bhabha, Matache, and Elkins 2021.

5. Inter-American Commission on Human Rights, Caso 11.141: Solución Amistosa Masacre Villatina Colombia, Informe no. 105/05, October 27, 2005, <http://www.cidh.oas.org/annualrep/2005sp/colombia1141.sp.htm>.

the criteria for the design and location of the monument.<sup>6</sup> While the government consulted with the mothers of the victims about how they wanted to commemorate their children, they ultimately interpreted the requests in a way that would neutralize the aims of the mothers. Although the mothers petitioned to hire an artist with a track record of engaging human rights in their work to produce full body portraits of their murdered children, mostly youths aged seventeen to twenty-two, the government instead summoned a design competition directed only at artists who worked in public sculpture. The resulting monument represented the victims at a much younger age, approximately eight to twelve years old, performing emblematic childlike activities, such as playing soccer, reading, and dancing ballet. Most of the figures are encased inside a spheric cage, suggesting a benevolent state that protects innocent children, but tacitly not the young adults that were targeted during social cleansing campaigns. These depictions varied greatly from the portraits that the mothers requested since the majority of those murdered were older (Reyes 2019, 10–11).

Arguably, the placement of the monument was the most contentious part of the negotiations. The mothers requested nine bronze sculptures at the Parque Berrío metro station, each one inscribed with the name of a victim of the massacre. They considered it imperative to position the sculptures in the epicenter of regional power. They wanted the memory of their murdered loved ones to continually remind governing elites about the tragedy committed by state officers. Conversely, the government wanted to erect the monument in the *comuna* where the victims lived and were murdered. The mothers rejected this proposal, letting the government know that it was not the inhabitants of Villatina that needed to remember but, rather, those individuals who were in positions of power and who had ordered the social cleansing missions. In the end, the sculpture was placed in the Parque del Periodista—a small unknown delta in downtown Medellín—barely visible from the busy street as it is covered by trees, poster kiosks, and the visual congestion of a large metropolis. While the government delivered the “monument in the name of the victims,” it did so by controlling both the process of designing and implementing the reparations and ultimately by disregarded the mothers’ requests.

In evaluating their experience, these mothers consider the process of reparations with mixed emotions (Zamora Prieto 2009, 406). While they made the ritual of the monument’s inauguration momentous, the process of their creation only deepened their sense of distrust of the government. When asked what part of the broader reparations program was reparative, most of the families described a luncheon at the National Palace in Bogotá, where the president of the republic delivered a formal apology. The victims considered this recognition and dignified treatment to be the most effective form of reparation, more so than the monument that was central to the friendly settlement brokered by the Inter-American Commission of Human Rights.

As the *Villatina* case exemplifies, even when a government technically reaches the objective of delivering reparations, the process of engaging the intended beneficiaries

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6. Marleny Miranda, mother of Ángel Alberto Barón Miranda, declared the requirements for the reparations including the criteria for the design of the monument, according to Acto no 8: Registro de la novena reunion del “Comité de impulso a la administración de Justicia, en los Casos de Villatina, Los Uvos y Caloto.” See Fuenmayor and Fallon 2014, 39.

can still fall short of truly involving them in the process effectively, thus undermining full satisfaction for the victims and even causing new injuries. Regrettably, as mentioned earlier, when it comes to flawed processes, the negative experience of the families in the *Villatina* case is not uncommon. As Carlton Waterhouse (2009, 258) observes, the lack of a meaningful role for victims in the negotiation process often undermines the outcomes of these programs.

In the following section, we explore how the chronic failure of governments to assure meaningful victim participation in reparation processes may be due to the narrow, legalistic understanding of participation that arises out of the institutional, legal framework for reparations. We then propose a broader understanding of the right to participation to lay the foundation for obligating governments to assure reparative processes that better engage those intended to benefit from reparation programs.

### Paucity of Practice on the Right to Participatory Processes

Undoubtedly, part of the failure to attend to the process of implementing reparations for human rights violations arises out of the legal framework established by international instruments and interpreted and applied by human rights enforcement and monitoring bodies. While international legal standards generally recognize the right to victim participation in reparation programming, there are few international, or case-specific, recommendations on how to assure such participation entails quality-driven, meaningful processes that are reparative in nature (Suchkova 2011). For example, the United Nations' (UN) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law take an outcome-focused approach to evaluating reparations, indicating that they should be "adequate, effective and prompt," but provide no guidance on the potential participatory role of beneficiaries in applying these criteria.<sup>7</sup> The only reference to the process of implementing reparations appears in the preamble, which refers to the International Criminal Court's (ICC) mandate regarding reparations that "permit the participation of victims at all 'stages of the proceedings determined to be appropriate by the Court'."<sup>8</sup> Similar to the ICC, the history of the Inter-American human rights system has evolved to take a legalistic view of victim involvement in proceedings related to reparations (Schönsteiner 2011). For instance, the Rules of Procedure of the IACtHR embody this approach by calling on victims and their next of kin to "independently submit their own arguments" during the reparations stage of a case.<sup>9</sup>

Significantly, this reference highlights how international human rights instruments and enforcement bodies involved in reparation processes tend to imagine victim participation in legalistic terms within legal proceedings. Further, victim involvement tends to be viewed as arising out of the right to due process and procedural justice within

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7. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 60/147, UN Doc. AfRES/60/147, March 21, 2006, principle 2 (Basic Principles).

8. Resolution 60/147, preamble.

9. See Rules of Procedure of the Inter-American Court of Human Rights, November 2009, Art. 23.

traditional legal procedures. But this focus on victim participation as part of a legal transaction falls short of capturing the less legalized, or “softer,” aspects of involving victims in state sponsored reparation programs or negotiations.<sup>10</sup> In viewing participation in these minimalist terms, a process of negotiating and implementing reparations misses the subjective experience of the person or community awaiting redress and involved in the process from start to finish.

While guaranteeing victims access to reparation proceedings as right holders is important, this focus overlooks the larger question of how to best involve them in extra-judicial processes of implementing reparations, especially when they occur outside of official proceedings as is the case in friendly settlement discussions such as occurred in *Villatina*. The same would be true when a government begins to implement a reparation judgment ordered by an international human rights body. Similarly, administrative reparation programs in transitional justice settings also face challenges when contemplating participatory processes while designing programs to offer reparations to hundreds of people harmed during war, repression, and other violent conflict (de Waardt and Weber 2019). In these settings, such programs might flow from the recommendations of truth commissions that do have greater opportunities for engaging victims in the initial discussions on reparations, but which may fail to continue to engage them once they conclude their work (Magarrell 2003).

Notably, while international human rights bodies may review some of these national reparation programs that arise out of domestic negotiations and proceedings, there is still minimal guidance on how to evaluate whether the process used to engage victims entails meaningful participation, although recognizing its importance (Sandoval 2017). For instance, in 2021, the Inter-American Commission on Human Rights (2021, paras. 83–84) issued its *Compendium on Truth, Memory, Justice, and Reparations in Transitional Contexts*, in which it devoted a small section on victim and family participation. While, significantly, it does recognize the importance of “real and effective participation of victims” in the different “procedural stages” of seeking justice, the commission offers minimal guidance on how governments can assure those standards.

Interestingly, a contrary directive arising out of international law suggests that participation should go beyond legalistic notions traditionally espoused in legal proceedings. Indeed, UN directives call for reparations to be “victim oriented,” suggesting that they always be conscious of the centrality of the victim in redress processes.<sup>11</sup> On this point, the former UN Secretary General Kofi Annan recognized in 2004 that “most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out” (UN Secretary-General 2004, para. 16). In a follow up report issued in 2011, Annan stressed the importance of participation, declaring that

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10. The authors thank Carolina Silva Portero for sharing the idea of this approach being grounded in a “legal transaction.”

11. The UN Basic Principles recognizes this concept including in its preamble that “in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law.” Basic Principles, preamble.

[r]obust national consultations are now understood to be essential prerequisites to ensure that transitional justice mechanisms reflect the needs of conflict-affected communities, including victims. There is also growing evidence that transitional justice measures that evolve over time and involve strong national ownership result in greater political stability in post-conflict settings. (UN Secretary-General 2011, para. 18)

The report views reparations, in particular, as a way in which to “strengthen victims’ participation in reconstruction efforts” (para. 26). Yet even this directive falls short of providing robust guidance on how states can assure that such meaningful participation moves beyond mere consultation.

### A Broad Understanding of the Right to Participation

In taking a legalistic view of participation that is caged within notions of procedural fairness and due process rights, international guidance does not elaborate on the softer aspects of negotiating the design and implementation of reparations. In doing so, it misses how participation, if done poorly, will fail to address the power imbalances inherent in any engagement with the state regarding redress for human rights violations.<sup>12</sup> It also risks that the state will engage in mere consultation with petitioners to explain what they would like to receive for reparations, while still having the discretion to determine the content of the various modalities of reparations, as seen in the *Villatina* case above.<sup>13</sup>

A broader view of the right to participation in reparation processes can be justified when drawing from other specialized areas of international human rights law that also have direct impact on the lives and well-being of individuals and communities.<sup>14</sup> For example, the right to participation is recognized as a first principle in assuring the realization of the right to health, enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights.<sup>15</sup> Interpreting that provision,

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12. The court has established that “from Article 8 of the Convention, what can be gathered is that victims of human rights violations, or their next of kin, should have ample possibilities to be heard and act in the respective procedures, in the search to ascertain the facts and in the punishment of those responsible, as well as the search for due reparation.” IACtHR, *Gomes Lund (Guerrilha do Araguaia) v. Brazil*, Merits, Reparations, and Costs, Judgment, Series C, No. 219, November 24, 2010, para. 139; see also IACtHR, *Castillo Páez v. Peru*, Reparations and Costs, Judgment, Series C, No. 34, November 27, 1998, para. 40.

13. For example, in *Velásquez Rodríguez v. Honduras* and in *Godínez Cruz v. Honduras*, the commission provided, for the first time, opportunities for the family of the victims to express their demands on compensatory damages independently from the commission, during which the court “took note of the points of view . . . of the petitioners.” IACtHR, *Velásquez-Rodríguez v. Honduras*, Reparations and Costs, Judgment, Series C, No. 7, July 21, 1989, para. 25; IACtHR, *Godínez Cruz v. Honduras*, Reparations and Costs, Judgment, Series C, No. 8, July 21, 1989.

14. For example, in the area of displaced populations, see, for example, Grace and Mooney 2010; Laplante 2013, 230; on housing, see, for example, Wolf 2006, 269, 270. On persons with disabilities, see, for example, Afflerbach and Garabagiu 2007, 463, 464; on Indigenous peoples, see, for example, Kawashima 2004, 21, 22; on minorities, see, for example, Verstichel 2005, 25, 26; on the elderly, see, for example, Moses 2007, 335, 347–48; on the environment, see, for example, Peel 2001, 47, 48; Kumabe 2010, 181, 182.

15. International Covenant on Economic, Social and Cultural Rights, 1966, 993 UNTS 3; UN Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of*



the UN Committee on Economic, Social and Cultural Rights (2000, para. 43(d)) has recognized that meaningful participation in decision-making and monitoring processes is not only a valued right in itself but also provides the most effective means of holding the state accountable for the fulfillment of the right to health. Participation, in this regard, is viewed as increasing the populations' control over their health, allowing them to better "reach a state of complete physical, mental and social well-being" (para. 11). The right to participation also plays a central role in development. Article 1 of the Declaration on the Right to Development establishes that "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."<sup>16</sup> As a result of this framing, these fields have more guidance with regard to assuring the meaningful participation of the intended beneficiaries.<sup>17</sup>

We can draw from these other areas of human rights to develop a more robust understanding of the right to participation in reparation programming. We also take the position that the right to participation should be understood as, itself, a form of reparation. One way to understand participatory processes to be reparative is to view them as a form of "citizen restitution" that realigns the power dynamic between the harmed citizen and the government that inflicted, or failed to protect against, the suffering (Bundschuh 2015; Laplante 2015, 556). In this regard, we argue that attention to process, and assuring meaningful participation in the ongoing process of designing, implementing, and evaluating reparations, becomes an obligation of the government in the redress of human rights violations.

The proposal to reframe the right to participation also draws from theories of deliberative democracy, which focuses on consultation, public participation, and civic engagement that takes as its starting point that "citizens want to have a say in matters which affect them, complemented by the policy makers' quest to legitimate their actions" (Carson and Lubensky 2010, 34–43). In this way, a reparative process goes beyond the immediate function of determining appropriate reparations and additionally starts to prepare the victim survivors to become active citizens within the society that formerly marginalized them as legitimate political actors. Reparative processes address not only formal legal equality but also actual social and class inequalities (Nussbaum 1999; I. Young 2000; Hudson 2007). It achieves what political and legal theorists have recognized as the symbiosis between democracy and the rule of law, which requires cultivating a culture of rights and equality before the law despite legal and political status (Dworkin 1977, 132–49; Habermas 1995, 12).

A reparative process serves as a means of recognition and acknowledgment that the government failed to respect and protect the rights of its citizens, thus symbolizing

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*the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C. 12.2000/4, August 11, 2000, para. 11.

16. UN General Assembly Resolution 41/128, Declaration on the Right to Development, Doc. A/RES/41/128, December 4, 1986, annex.

17. See, for example, Asian Development Bank 2012; Desai and Goel 2018.

the check on arbitrary government power, which should be guaranteed through the rule of law (Doolin 2007, 437).<sup>18</sup> As author Laplante argues,

[o]n the one hand, [participation] promotes the legitimacy of the reparation package by fostering beneficiary buy-in and willingness to compromise [which is often necessary when there are limited State resources]. On the other, it supports more macro-level, democracy building initiatives in society at large, both by helping to re-integrate formerly disenfranchised populations into the polity and by promoting better government responses to the structural inequalities that often cause conflict and political violence in the first place. (Laplante 2013, 217)

This form of civic justice builds on the consent-based nature of a “social contract” with the government to protect fundamental rights of citizens from arbitrary abuse at the hands of its own agents as well as of non-state actors.<sup>19</sup> We must also gauge a given state’s responsibility for adequate infrastructural goods as part of those rights, including venues for political participation (Lykes and Mersky 2006, 590; Butler 2014, 2016). Erin Daly (2002, 74) reveals the transformative potential of participatory process, commenting that

[if] new democratic governments aim to secure their authority and their values, then it is necessary for them to transform their societies from ones that tolerated or fostered oppression to ones that respect human rights and democratic values. In other words, if the public was involved in some way in the original oppression, then the culture that allowed the oppression to take place or actively pursued it must be changed. Simply changing the governors won’t cure a problem that resides as well in the governed.

Importantly, transformation is not just a destination but, rather, a political-legal process of getting there, one that never ends but is ongoing. Indeed, this idea of an ongoing process reflects the very nature of a healthy society in which a culture of rights and the rule of law needs to always be tended to rather than addressed in one fixed moment in order to be sustained to assure that new cycles of violence and human rights harms do not occur again.

Broadening the interpretation of the right to participation also allows for more creativity in theorizing how and in what capacity victims should participate in these processes. With this broader framework, we offer benchmarks or methodologies for first assuring there are participatory processes that lend themselves to being reparative and then showing how to build into these processes approaches to evaluating the quality of participation in relation to the reparative dimension.

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18. See also Ogletree Jr. 2003, 1051, 1056 (where the author, writing on reparations for civil rights violations of African Americans, recognizes reparations as providing “acceptance, acknowledgment, and accounting” to emphasize that “the present is not an accident or fortuity”).

19. See Gardner 1992, 347, 362 (Rousseau noted that “no government was legitimate in which the general will of all people does not control the effective lawmaking power”); Rousseau and Cranston 2004, 29–30.

## FACILITATING REPARATIVE PROCESSES THROUGH A DIALOGICAL MODEL

Starting with the premise that victim participation and participatory processes should go beyond mere involvement, or even greater involvement, but, instead, attend to the quality of the process itself to assure the success of reparative programs, we offer an expansive understanding of reparative processes and propose one possible approach to facilitating them. While we recognize that participatory processes are crucial to the success of reparative programs, we differentiate forms of participation that reaffirm hierarchical relations to those that foster horizontal intersubjective exchanges or parity. At its foundation, the reparative process recognizes the fact that human rights violations most often arise out of an imbalanced relationship between the state and the victims and that harms often occur due to this unequal power that leaves victims vulnerable and without agency. As Laplante (2013, 232) recognizes,

[u]sing participation to address power paradigms makes particular sense considering that it is usually political and economic marginalization and disempowerment that makes certain populations more vulnerable to becoming victims of human rights violations in the first place. Political violence communicates to its victims that they are less than human; that they are sub-citizens. Participatory engagement that gives meaningful voice to the historically underserved, if followed by concrete government measures.

Notably, this same power imbalance can also occur with other entities, including private actors, called upon to deliver reparations. Thus, one essential aim of a reparation program should be to restore power to the victim to be a co-creator in the measures designed to repair their harm and restore their dignity, while starting to carve out a safe place in society. Part of this restoration speaks to repairing the relationship between the state and the victim. This approach helps to avoid the rendering of mere passive recipients of benefits, which may undermine the potential of reparations to be empowering, transformative, and truly reparative. Certainly, if a reparation program is implemented in a manner that replicates the same underlying power dynamics that led to the original harm, victims will continue to feel vulnerable, unsafe, and disempowered. They will even suffer new dignity harms.

In response to this concern, we suggest revisiting static understandings of the term “participation” to incorporate certain minimum aspects to assure that victim involvement is truly reparative. Specifically, we propose that dialogical processes—not just participative—are crucial to the success of reparations programs and their evaluation.<sup>20</sup> Dialogical techniques, which date back to Greek antiquity, refer to intersubjective exchanges that co-create knowledge, such as ethical knowledge.<sup>21</sup> Dialogics can be understood as a form of generative collaboration where equals come together to

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20. Doris Sommer’s analysis of dialogical aesthetic, pedagogical, and political processes in her book *The Work of Art in the World: Civic Agency and Public Humanities*, (2014) as well as her program *Pre-Texts* (<https://pre-texts.org/>) have influenced our conception of dialogical reparative processes.

21. See, for example, Wolfsdorf 2008; see also Michelini 2009, 377–79 (for a great review of this book focusing on the dialogic method).

formulate solutions to certain problems. In order to combat the instrumentalizing effects of hierarchic epistemologies, theorists have adopted dialogical methods in literary studies (Mikhail Bakhtin), political theory (Jürgen Habermas), pedagogy (Paolo Freire), and aesthetics (Augusto Boal), among many others.<sup>22</sup>

Dialogism must be differentiated from both dialectics and agonism in relation to aesthetics and politics to theorize the creative effects of conflict. We acknowledge that creative conflict is an integral form of democratic practice, as in political agonism,<sup>23</sup> and that historical changes develop through dialectical forces. However, reparations aim to heal wounds that result from conflict. That is, reparations take place when conflict, which to some level is healthy in functioning societies, becomes abusive and violent. Thus, reparation programs must restore political agon to become respectful and inclusive exchanges and negotiations or, put differently, to amend relations between the state and victims. In order to do so within the context of post-violent conflict, we consider next the potential of dialogical methods within government processes to implement reparation programs in order to level asymmetrical power relations and to generate ethical knowledge, practices, and relations.

With regard to reparations, the dialogical processes occur when the intended beneficiaries of a government reparation program are fully involved in co-designing, implementing, and evaluating reparation outcomes through meaningful dialogues with the provider of the reparations, whether it be local or federal governments, along or in collaboration with other perpetrators such as non-state actors, whether they be ex-combatants, businesses, or other entities. This dialogue orients toward how to best fulfill the right to reparation and making sure the content of this right truly reflects localized and victim-centered understandings of repair (Laplante 2015, 270). Thus, victims and survivors should not just be consulted on their understandings of redress (Matsuda 1987) but, rather, be engaged as co-authors of programs that they consider to be appropriate, adequate, effective, and prompt both in terms of the process of design and implementation as well as the final reparative outcomes.

Importantly, drawing from dialogics helps to assure a reparative process by reinstating the agency of “victims” to be protagonists in their own redress in a process where

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22. See, for example, Boal 1985; Hirschkop 1999; Freire 2014. If we agree that transformative justice requires social and cultural change, then there are lessons to be learned from pedagogy and the arts. Since the 1960s, intellectuals from the so-called “Third World” have realized that political decolonization alone cannot bring about social equality or emancipation. In Brazil, Paulo Freire (1968) articulated a strategy to “decolonize the mind” through dialogical pedagogy, especially through his influential book *Pedagogy of the Oppressed*. Since then, many avant-garde artists have envisioned their role as being akin to that of engaged critical pedagogues who propose situations, replacing the traditional form of unidirectional education/communication with interactive, participatory situations. Artist Luis Camnitzer, for example, has written extensively about how valuable art might be to critical learning since it stresses creativity and is an active way of making, instead of just receiving or decoding, meaning. Camnitzer, like many Latin American artists of his generation, has been deeply influenced by Freire’s consideration of students as partners in knowledge creation, which demonstrates the influence of critical pedagogy on contemporary art. Many contemporary artists view their production as a means of stimulating critical thought and action and conceptualize their artwork as an open work that the viewer completes. From these artistic practices, we look to the emancipatory and pedagogical possibilities of interactive art and question whether avant-garde practices can work toward reparative practices.

23. On political agonism, see, for example, Mouffe 1999, 2013; Honig 2013.

the state respects them as empowered citizens with rights and agency. More specifically, a dialogical process fosters trust, recognition, and respect, which are both relational and symbolic gestures. Although symbolic reparations are often viewed as static “measures of satisfaction” within a reparations program, such as through public apologies, publishing of court sentences or investigations, and commemorative practices, among others, there are also symbolic dimensions that thread through every component and step of a reparations program.<sup>24</sup> Indeed, a reparative process may turn to some forms of these measures of satisfaction, especially commemorative practices, in order to understand how the symbolic operates within creative processes and how they can foster recognition, respect, and horizontal power relations. Here too, dynamic rituals and commemoration processes keep collective memories alive more effectively than material outcomes such as static public sculptures.<sup>25</sup>

The delivery of symbolic reparations, in particular, illustrates how flawed participatory processes occur, as shared in the friendly settlement process in the *Villatina* case. Often while focusing on victim memorialization, states still prioritize the outcome, or the material monument, over the process of its conception and execution. Oftentimes, victims are not even consulted, or the process itself is insulting.<sup>26</sup> For this reason, scholars of Holocaust studies have given great attention to the importance of the process of memorialization, especially following James Young’s (1991, 30; 1992; 1993; 2000; 2002) studies of counter-memorial practices in Germany. Young (2002, 65–80) famously describes how debates over memorialization were in themselves more effective commemorative acts “than any single ‘final solution’ to Germany’s memorial problem.” Edward Linenthal (2001, 229; emphasis in original) describes one such process in the aftermath of the Oklahoma City bombing in 1995 when the committee for the memorial developed into a process of healing and community-building:

The Oklahoma memorial *process* represented something quite significant in the history of public memorialization [in the United States]. Many memorials exist to offer comfort, assuage grief, and inspire future generations to emulate the virtues ostensibly enshrined in memorials. It would be hard to find a memorial process that included over 300 people, many of whom had just suffered traumatic loss. It would be hard to find a memorial process consciously designed to be therapeutic, to help individuals become a bereaved community and to engage mass murder through memorial planning. “So many people have been changed by the process,” Phillip Thompson [son of a victim and member of the Oklahoma City National Memorial Foundation], observed. “We have moved from a desire to see our loved ones memorialized in stone to a larger vision of what a memorial is and what it

24. See Greeley et al. 2020, 165–92.

25. Historian Henrik Kraay (2005, 165–94) demonstrates convincingly that dynamic commemorative processions in Brazil are much more effective in maintaining civic keeping historic moments alive and adaptable to new circumstances, whereas the monuments built by the governing elites to memorialize those same events have become meaningless landmarks.

26. See Mabel Casas Caro (2017) for a discussion of the case *19 Comerciantes v. Colombia* and how the process of memorializing the murdered merchants by paramilitaries in Barrancabermeja, Colombia, was offensive and altogether dismissive of the victims. IACtHR, *Case of the 19 Merchants v. Colombia*, Merits, Reparations and Costs, Judgment, July 5, 2004.

does. We moved from unfocused emotion to reflections on what it means to us, and from ‘what do I want; to ‘what do we want to give as a gift to the world.’”

The memorial committee experience in Oklahoma City serves as a mode of social organization that bonded via a mission and that recognized every participant as equals and equally integral to its success. It is also illustrative of the durational and fraught intersubjective exchanges that were devoid neither of conflict nor of duress but, rather, constitutive of grief work itself (229). We can learn from this example and apply it not only to a process of monument building or memorialization but also to an entire national reparations program if we consider how an outcome or the monument’s formal design was potentially less significant in healing than the process of its becoming.

In proposing that dialogical processes inform the facilitation of a reparative process, we recognize the need in the field for more insight into what exactly would respond to the general criticism that it is imperative to move away from just expecting more participation and, instead, beginning to develop best practices for assuring that they are also meaningful.

### Facilitating a Dialogical Participatory Approach

Although we do not set out to propose an absolute or final protocol for a reparative participatory process, we do argue that there are some essential steps that should be included in any such process. Employing an interdisciplinary approach while also drawing from experiences in other fields that try to assure robust participation in relation to other areas involving beneficiaries and possible uneven power dynamics, we suggest some minimum requirements for a reparative process protocol.<sup>27</sup> This comparative approach allows us to surmise certain relational criteria central to best practices, which include several steps discussed in the pages ahead: developing relational competence and community; choosing a site for reparations; co-creating a mission statement with clear objectives and criteria for evaluation throughout the process; vetting that implementation follows the mission statement directives (compliance); and co-authored evaluation that includes the creation of indicators to measure the impact or repercussions of the program over time. The location of this process could be adapted to all levels of government-victim engagement, whether they are decentralized at the municipal level or centralized through a national government office. That said, we fall in line with other scholars and recommend that such processes be decentralized to assure maximum benefits, especially when navigating complex situations with multiple victims and human rights violations (Arriaza and Roht-Arriaza 2008).

At the initial stages of a reparations negotiations between the victims(s) and the state, we propose that the main objectives must include, at a minimum, preparation to

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27. We recognize that there is a now growing number of scholars generating more structured guidance on assuring meaningful participation, although often addressing the theme more broadly as it relates to transitional justice as opposed to just reparations. See, for example, Vinck and Pham 2008; Gready and Robins 2014, 339–61; Bundschuh 2015; Sprenkels 2017; Shefik 2018; de Waardt and Weber 2019; Correa, Guillerot, and Magarrell 2020.

allow for effective engagement. In effect, a reparative process requires a pre-process to assure its success. This preparation sets the tone for the eventual discussion of what would constitute adequate, appropriate, and effective remedies. While not exhaustive, we propose preliminary steps that could go toward providing this type of minimum assurance of facilitating a reparative process.

### *Choosing a Site for Reparations and an Organizing Body to Begin the Process*

Acknowledging the site contingency of reparations, we recognize that the meeting place for actors in reparations program can deeply impact dialogical processes. In order to select the best possible setting for dialogical reparation processes to take place, there is a need to gauge the intersectionality of social and physical spaces.<sup>28</sup> In discussing context-sensitive transformative justice policies, Elke Evrard, Gretel Mejía Bonifazi, and Tine Destrooper (2021, 440) explain:

When one acknowledges that victims move through multiple spaces that are connected in an ecosystemic rather than a binary fashion, one can start to understand how these spaces are at once bounded and permeable, and how power characterizes each of them differently, not only in terms of who may enter, but also to what extent different stakeholders can shape the boundaries and dynamics of the space. Victim participants may travel between invited, claimed, and everyday spaces and carry with them identities, capabilities, experiences, and expectations that influence what is say-able and do-able within any of these spaces.

Since dialogical processes require levelling power asymmetries as best possible, it is significant to understand how sites operate on the emotional state of the participants. Ultimately, in order to address this imbalance, victims themselves should determine which sites are most appropriate for them to feel supported and comfortable.

These sites are what Jennifer Tsai and Simon Robins (2018) call “claimed spaces” that develop “out of sets of common concerns or identifications” and “may come into being as a result of popular mobilization, such as around identity or issue-based concerns, or may consist of spaces in which like-minded people join together in common pursuits.” Some sites already hold symbolic charge. However, the state representatives can anticipate that the process itself will symbolically code a site in such a way that it could catalyze future processes of community building, conflict resolution, and social healing (Reyes 2020). Nonetheless, Jennifer Tsai and Simon Robins (2018) caution that the “victims often live in communities that are far from institutions in the capital where transitional justice processes happen, and even when they can access such spaces, they are often disempowered in their relationship with them.”

The Justice and Peace Transitional Justice process in Colombia offers an example in which one judge relocated the tribunals in order to accommodate victims’ needs. Magistrate Judge Uldi Jiménez noticed that conducting hearings in the courtrooms

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28. See Roque and Shankland (2007) for a discussion on formal and informal spaces and how citizens interact with these spaces.

of Bogotá was an intimidating experience for victims from rural areas.<sup>29</sup> This discomfort exacerbated their fear and trauma and reinforced power asymmetries. The judge soon adapted by moving the tribunals to the different territories where victimized communities could feel at home and comfortable, and, thus, the power imbalances were diminished. Hence, this step allowed the victims to identify how these sites can better accommodate the socioeconomic challenges of their involvement in these processes (Laplante 2007, 166–67).

In sum, if we are to conceive of processes as reparative, and the sites where these processes occur as having an impact on those very processes, then selecting or creating safe meeting places are integral parts of reparations themselves. This initial consultation on location may also include discussions on representation when involving collective reparation processes, especially to attend to the now well-documented risk of further marginalizing members of a collective, especially women and other vulnerable populations (Weber 2018). Finally, using this step to decentralize the process to the extent possible offers an approach to handling complex situations with multiple victims and rights violations. Even if based on a national “centralized” plan, the implementation process can be localized in multiple sites to assure more inclusion of the beneficiaries in the process.

One example can be found in the Program *Entrelazando* or Interlacing from the Unidad de Víctimas (Victim’s Unit), Colombia’s transitional justice organization in charge of implementing integral reparations according to Law no. 1448 of Victims (Rondón Daza 2018).<sup>30</sup> The *Entrelazando* program sets up three types of “weavers.” The first group is called the *tejedores/tejedoras* (weavers) and is comprised of trained community representatives who have been selected because of their resilience during adversity. The *entrelazadores* (interlacers) include the skilled experts that accompany the communities and who serve as liaisons between the communities and the Victims Unit in Bogotá. The third group at the capital’s Victim’s Center designs methodological guidelines through a feedback loop with the two other groups. According to the program director, Lina Rondón Daza (2018), the Interlacing Program co-creates a woven design that “repairs the social fabric” at the local and national levels. The *Entrelazando* program gives us a theoretical model for envisioning how the dialogic approach can be used even in a large-scale reparations program, where a network of community-led committees can enter into a dialogical relation with the program’s central administration and thus open dialogical paths that directly and indirectly nourish each other. *Entrelazando* gives us a structural model but remains theoretical for our purposes since we do not have a thorough sense of the process by which these relations were established or maintained in order to assess the quality of this particular case study.

### ***Acknowledging Roles and Positioning***

Once the place of encounter has been determined, defining an organizing body and each member’s role within the process is central to building trust. First and foremost,

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29. Interview with Magistrate Uldi Jimenez, Bogotá, August 2016 (on file with author).

30. Law no. 1448 of Victims, 2011.



victims, survivors, and their families must be recognized as site and situation experts. In further defining these roles, we consider it imperative to include capacity building regarding individuals' positioning within the reparations process, including that of the state representatives and any other actor involved in the process to deliver reparations. These different actors in the reparations design organizing body should make clear why they were selected for a specific role. The professional competence of state agents responds to the seriousness with which the state takes on a process (Linenthal 2001, 178), conveys respect to victims, and, in return, produces institutional confidence. If representatives are not experienced or competent in their roles, victims may consider that the state is not giving sufficient importance to the process. Moreover, much distrust can emerge from a sense that "outsiders" are ill-equipped to empathize with the victims or to represent their interests.

Social psychology can provide valuable insights into the distinction between roles and positioning within intersubjective exchanges (Hirvonen 2016). While the role of each actor will be predetermined in relation to the reparations program, such as "victim," "legal representative," "state agent," "mediator," and so on, their positionings—that is, hierarchical social norms—need to be addressed through training. For instance, a state agent, lawyer, or other urban professional may hold authority over a rural peasant or an economically marginalized victim, not to mention the complex intersectional registers of gender, race, and class, and yet lack the self-awareness of that dynamic or lack the tools to navigate the challenges it presents. On the contrary, a truly reparative process requires that these positions be levelled as close to parity as possible in order to open the way for true dialogical co-creation. That is, the state agent and lawyers are there to amend for their failures; the non-government agents are there to facilitate negotiations among the different participants; the psychologists are present to attend to the emotional needs of victims; and any other actors would need to be clear in their role. Therefore, the hierarchies are flattened, if not inversed, so that victims are treated with respect and as central authorial voices, and the other parties are present in service to them.

In essence, all parties to the negotiations need to learn skills that allow them to engage effectively with one another. While roles are defined based on a person's reasons for participating, we acknowledge the difficulty in addressing the social positions that people embody within these complex processes. It would seem almost impossible for those participating in negotiations to voluntarily leave their biases, prejudices, or social dispositions that sustain hierarchies and authorities in an easy way without intervention. However, as we develop below, we consider how professional facilitators can play decisive roles in helping to navigate this difficult social terrain and can mediate intersubjective exchanges so that each member is acknowledged as being integral to the process and respected as a valuable contributor.

### *Relational Competence Capacity Building*

Building from the last section on roles and positioning, the dialogical process, as the term suggests, requires that those engaged in the negotiation process are trained to engage in intense attention, speaking, and listening. It is imperative to carve out the time and space necessary for victims to express their pain and anger without

consequence or fear (Danieli 2020). Only in validating all emotions as necessary and productive can a reparative process move forward. Discomfort and conflict over painful emotions need to be anticipated and respected as a productive part of grief work. Furthermore, actors in a reparative process should not speak with hierarchical authority, even with the intention of informing or instructing victims. Rather, they should engage in attentive listening, which can be as productive, active, and complex as speech (Kester 2004).

According to philosopher Gemma Corradi Fiumara (1995), the act of listening is not the passive reception of potentially instrumentalizing directives but, rather, a creative action in itself. Art historian Grant Kester (2004, 114) considers “discursive interaction [a form of] empathetic identification.”<sup>31</sup> Complete empathy is an impossibility, yet the attempt is worthwhile, as Kester explains:

[W]e can never claim to fully inhabit the other’s subject position . . . we can imagine it, and this imagination, this approximation, can radically alter our sense of who we are. It can become a basis for communication and understanding across differences of race, sexuality, ethnicity, and so on. . . . [While] empathy is subject to its own kind of ethical abuse—the arrogance of speaking for others . . . the process of collaborative production . . . can help generate [ethical] insight. (115)

Through empathizing with another, Kester argues, the subject redefines selfhood “to both know and feel our connectedness with others” (114). The symmetry of the dialogical exchange can rehearse an ethical relationship. This exercise, which acknowledges the victim’s right to speech and the state’s duty to listen, contributes toward recognizing the victim’s agency and nurtures co-creation.<sup>32</sup> Notably, this requirement also reinforces the idea that this is a form of restitution and reparation in itself, as discussed above.

Trust building is a durational activity that is constitutive of the dialogical process throughout every stage (Hosie 2017). There are many different forms of trust building that have been developed in other areas of participative action, such as participative research action, participative budgeting and development, dialogical pedagogy and theater.<sup>33</sup> The skill building of all participants, including the government actors and beneficiaries, also may draw from the fields of alternative dispute resolution. Ultimately, these skills will serve to facilitate ongoing creative problem solving in the relation between the government and the citizens they serve to avoid future escalation

31. Grant Kester (2004) picks up on Corradi Fiumara’s reassessment listening and the feminist notion of “connected knowing” to evaluate contemporary dialogical art practices.

32. Luis Carlos Sotelo has developed the Acts of Listening Lab (ALLab), which “investigates listening as a live act for social change.” ALLab works with victims of the Colombian armed conflict exiled in Canada. Sotelo is the director of the Centre for Oral History and Digital Storytelling at the University of Concordia. “Acts of Listening Lab,” Concordia University, <https://www.concordia.ca/finearts/research/labs/acts-of-listening/about.html>.

33. Dialogical practices in participative research or action and participative budgeting, dialogical pedagogy, or theater co-creation require forms of durational trust building, especially in zones of conflict, illegitimacy of the state, or in the context of human rights violations. For an analysis of Orlando Fals Borda’s participation action research, see Rappaport 2020.

of conflicts, thus affirming the ultimate goal of non-repetition. These skills will also serve victim organizations that often experience fragmentation and internal conflict when engaging with the state, especially with respect to limited resources (Rudling 2019).

In adopting orientations from alternative dispute resolution (ADR) and restorative justice, the reparative process that includes dialogical participation holds central the understanding that the “purpose of dialogue is neither to attain an absolute consensus nor to reach a universal principle, but to recognize differences and similarities and to reach agreements where participants can agree, whilst still preserving their differences” (Kawashima 2004, 21–25). Other methodologies and approaches can be drawn from ADR to also assure the quality of restitution and the reparative process as well as the respect for the dignity of the participants, while teaching them the skills of negotiation and compromise (Woolford and Ratner 2008; Hicks 2021).

### ***Co-creating a Mission Statement***

To assure a reparative process, all parties to the negotiation ideally create a shared vision and roadmap for the deliberations, including procedural groundrules for participation. Robert Johnson (chairman of the Oklahoma City National Memorial Trust Board of Directors) considered it an “absolute necessity” to craft a mission statement “that would serve as the group’s constitution, a document that would provide enduring orientation for the memorial process” (Linenthal 2001, 174–82). The mission statement should act as a blueprint to which participants can return in moments of indecision, uncertainty, or divisiveness. Given that the process of implementation is dictated by the preliminary preparation, the mission statement is wholly a creature of this co-creation. However, victims, survivors, and their families, ideally with the help of third-party facilitators, can articulate how these categories would best be achieved. Indeed, co-authoring the mission statement goes toward ensuring the felt justice needs since this first act of co-creation is a form of mutual recognition. When the state trusts victims to determine their own justice needs, it legitimizes the state in its service to citizens and inhabitants. The state’s trust in the victims fosters trust in the state and, thus, becomes an integral part of repairing that relationship as well as accruing lasting institutional and nation-building capital.

We propose a few key considerations in drafting the mission statement. Keeping in mind the objective of non-repetition, and like medical doctors who must take the Hippocratic Oath before beginning their practice, architects of reparations programs must “first do no harm” (*primere non nocere*). No dimension of a reparations program should rehearse the social problems that have led to human rights violations (such as ethnic, race, gender, political, or class discrimination), nor can they serve as retaliation that would contribute to cycles of violence (Reyes 2019). The mission statement must acknowledge the underlying causes of the violations so that, above all else, reparations programs can avoid reproducing or being complicit with the structural problems. Therefore, directing reparations programs toward guarantees of non-repetition, especially in designing the symbolic terrain or the measures of satisfaction, could steer the process toward a purposeful transformation of these biased structures and assuring its fidelity to the ideals of truly being a reparative process.

In setting transformative objectives, an emerging reparations community can consolidate around problem solving instead of fragmenting a community through passively receiving benefits or attending to differentiated individual needs, although these also need to be addressed. In cases of individual reparations, aiming at non-recurrence opens an opportunity for victims to be recognized by society as active agents and not passive recipients. In cases of lethal stigmatization, transforming the pain of loss and discrimination into civic engagement can have a dignifying effect for victims and can educate society as a whole about its own complicity in that stigmatization.<sup>34</sup> For example, part of a mission statement may include the creation of subcommittees. By reassigning roles to all the actors, the reparations community rearticulates roles in a way that expands previously unimaginable possibilities of social organization. This choice, of course, presupposes a strategic awareness of social roles in distinction from positioning, perhaps inculcated through third-party capability training.

Indeed, one could take this further by presenting situations of strategic role reversals that demonstrate the state's servitude to the victims, which in many hierarchical societies produces ethical insights about state formation. The rearticulation of roles with attention to parity in positioning serves as an important metaphorical reenactment of the transformational opportunity that reparations programs offer at both the personal and national levels. The proposed mission statement co-creation process that uses a dialogical approach better accommodates the plurality of views on notions of redress and repair. Martha Minow and Joseph William Singer (2010, 903–9) espouse upon the relevance of plural values, and the plural method that they inspire, to allow more people “to participate in the creation and re-creation of desirable shared worlds.” They argue that the plural view is “more inclusive, more democratic, more educative, more persuasive, and we believe, more true” (920). As explained by Sally Engle Merry (1988, 869), “viewing situations as legally plural leads to an examination of the cultural or ideological nature of law and systems of normative ordering. Rather than focusing on the particular rules applied in situations of dispute, this perspective examines the ways social groups conceive of ordering, of social relationships, and of ways of determining truth and justice.”<sup>35</sup>

Merry (2006, 38) has helped to reveal how local communities “vernacularize”—or translate—international norms into local meanings.<sup>36</sup> While her observations have

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34. Sociologist Verónica Zubillaga describes the urban male youths of Caracas as lethally stigmatized. This phenomenon adequately describes the circumstances of Medellín youths in the 1990s. Zubillaga, Llorens, and Souto 2015.

35. Similarly, anthropologist Clifford Geertz (1983, 167) emphasizes that the interpretative lens of legal pluralism helps to highlight how cultural diversity forms and communicates symbols and structures of meanings. Sally Engle Merry (1988, 887) discusses how Geertz argued that competing visions of social reality help to construct alternative visions of the world, and this hermeneutic approach sees coherence in a process that mingles “different senses of law” and “legal sensibilities” embedded in individual and social consciousness. Geertz (1983, 167) viewed law as “as a system of meanings, a cultural code for interpreting the world.”

36. Sally Engle Merry 2006, 38 (“[a]s ideas from transnational sources travel to small communities, they are typically *vernacularized*, or adapted to local institutions and meanings”); see also Griffiths 1996, 93, 100 (“rules are not self-contained in the sense that they can be said to be immune from what is going on around them, particularly as they take shape from the contexts in which people seek to apply and manipulate them”); Von Benda-Beckmann, 31 (“[t]he ways in which notions of western law are interpreted, manipulated and applied often have little in common with what legislators, legal scientists and philosophers stated to be the form and content of these laws”). Classical legal theorists have suggested this same pluralist

referred mostly to collectivities or groups and how they interface with norms generated by states, state-imposed norms can also integrate the individual perspective of those receiving reparations (Laplante 2015, 538). As author Laplante has argued, a plural account of reparations and felt justice needs “recognizes that a victim may call forth a variety of concepts of justice that are personal to him or her in the event that this person is asked to envision what he or she would need to repair the harm caused by a human rights violation. Thus, there is a subjective element to understanding the *appropriate, effective, and prompt* criteria established by the U.N. Basic Principles” (538).

Embedding within a mission statement the ideals of a dialogic process helps at a practical level to make reparation programs more adaptable and responsive to the actual felt just needs of survivors, while also helping to restore dignity and confidence of the recipients. Economist Amartya Sen (1995, 77–79), who developed and started the movement surrounding the capability approach, recognized that beneficiary populations should not be mere passive recipients of external government decisions but, rather, should be regarded as active agents in designing policies that impact their lives, such as how to overcome poverty.<sup>37</sup> Building the political power of the victims brings more equilibrium to the power relationship between the government and the governed, helping to “cast off notions of their ‘inability’ or ‘dependence,’ and instead compels the public and government actors to see them as human beings with dignity, agency, and a drive to be treated on the basis of equal opportunity—not charity or paternalism” (Melish 2010).<sup>38</sup>

### ***Managing Expectations: Knowledge Building on Not Just Legal Rights but Also Legal Limits***

Beneficiaries of reparations often need to receive knowledge training on the legal limits of reparations, which includes an understanding not only of what reparations may consist but also of what they may not. Part of the limitation is due to the budgetary and political strains on governments in attending to the needs of victims as well as other social groups within society (Ladisch and Yakinthou 2020, 88). A reparative process more adequately creates a safe space for reaching necessary compromises that may inevitably arise in light of multiple demands, budget constraints, and other factors that will make full redress difficult, if not impossible, to reach (Laplante 2013, 230). Victim survivors are more likely to accept this outcome and still view a reparation package favorably if they are appropriately listened to, enlisted to design, and treated with

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effect through interpretation, see, for example, Fuller 1968, 59 (“the interpretation of statutes is, then, not simply a process of drawing out of the statute what its maker put into it but is also in part, and in varying degrees, a process of adjusting the statute to the implicit demands and values of the society to which it is to be applied”); Fuller 1969, 1 (discussing an interactional theory of law). Interestingly, a few non-international contemporary scholars have begun to propose a plural account of more traditional bed and butter areas of law, like contract law. See, for example, Shaffer 2009, 147, 149.

37. See also Nussbaum 2011, 117–18.

38. Tara Melish (2010) describes this principle as one of four primary rationales underlying “maximum feasible participation” paradigm and core aims of modern new accountability movement in the 1964 Economic Opportunity Act, August 20, 1964, 78 Stat 508, which mobilized the human and financial resources of the nation to combat poverty in the United States.

respect during an inclusive reparative process (Laplante 2015).<sup>39</sup> For example, governments may need to explain to victim groups the reason why they need to attend to the “needs of the bottom,” such as those who are elderly and infirm (Laplante 2013, 239). In Peru, most victims entitled to participate in that country’s reparation program accepted a “needs of the bottom” arrangement because ongoing consultation by the truth commission introduced them to the logic of this policy, making the on-the-face discrimination less problematic (239). A fair, inclusive process can better lead to the acceptance of compromise.

When victims, survivors, and their families are more knowledgeable of local social norms, relationships, and practices, they are in a better position to help ensure that distribution of reparations benefits does not have adverse effects on the community by generating competition and resentment. When victims participate as co-designers of reparations programs, they contribute more nuanced site and situation expertise that helps to safeguard against further community fragmentation (Robins 2011; Firchow 2018, 26, 136, 153). It should not be left to enlightened government officers or bureaucrats but, instead, considered a legal principle essential to assuring the right to redress (Thomson and Nagy 2011, 11). Consistent with the plural account of reparations, however, there may be variation in how to assure a reparative process that is context specific and even have beneficiary input into the approach to participation.

When the expectations are not managed properly, they can undermine the reparation’s objectives by deepening social division. Eva Ottendoerfer (2018, 930) studied the effects and perceptions of reparations in Sierra Leone and found that beneficiaries perceived the process “as not transforming but even reinforcing the existing power structures on the local level.” Rather than improving their daily lives, the process of implementation became an obstacle to social repair. By offering differential benefits, the program fostered envy and social fragmentation. One woman lamented that “a housing project for victims of war by the Norwegian NGO [non-governmental organization] Friends of Sierra Leone was ‘now full of ex-combatants while we, the victims, have to fight for our lives every day’” (927). Rather than striving for empathic bonds or fostering mutual recognition, the reparations program perpetuated stigmas and other divisive rhetoric.<sup>40</sup>

Ideally, a dialogical process assures that participants will not only have more ownership over the reparative process to help avoid or mitigate potentially unfair results, but also facilitate acceptance of some necessary compromised outcomes within the arguably rigid limits of the law that, without a reparative process, could lead to survivors rejecting government reparation programs (Laplante 2013, 230). On this point, Jaya Ramji-Nogales (2010, 13) observes that, “[i]f an institution is viewed as legitimate,

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39. See also Atuahene 2014, 902 (concluding that the dominant procedural justice findings about fairness are relevant in the transitional justice context and determining through empirical research that beneficiaries of land restitution found the outcomes fairer if they were able to sustain conversations with commissioners without communication breakdown).

40. Angélica Zamora Prieto (2009, 406) also found that when benefits were differentially allocated without the program addressing their rationale, it caused beneficiaries to resent each other, thus reproducing patterns of distrust and social isolation within the communities.

actors will defer to its decisions even when they disagree with the substance of these decisions.” Related to reparation programming, viewing the beneficiaries of reparations as active and respected participants in decision making allows for a negotiation of the content of the right “without actually undermining the general sanctity of that right” (Laplante 2013, 230).

Thus, the reparative process allows for a form of full, free, and informed consent that can guard against feelings of unfairness that may arise in determining the feasible and fair parameters of reparations. Likewise, the process of engaging beneficiaries in the process of determining reparations goes toward the democracy-building aspects of reparations and contributes to the goals of non-repetition, especially as it allows for conflicts to be resolved through active and public dialogue that may include political contestation and bargains that require habits of citizenship (Malena 2009, 3). The reparative process thus constitutes and institutionalizes “new channels for inclusive dialogue with affected populations, which can in turn lead to better responses to their needs.” They help government actors avoid imposing a “one-size-fits-all” approach to reparations and instead respond more appropriately to the unique demands and needs of individuals and communities (Daly 2002, 77; Laplante 2013, 230).

### *Participatory Initial and Ongoing Evaluation*

While we consider that dialogical processes are potentially reparative if they fulfill certain criteria, especially if they foster recognition, respect, and trust, we agree that the criteria for evaluation must be crafted by the victims and local participants. In this way, we have suggested a process of involving beneficiaries dialogically in the design and implementation of reparations as what should be evaluated, but we now turn to how it should be evaluated. Notably, there is still minimal discussion on how to involve victims directly in evaluating the process of implementing reparation programs including the role of victims in that process.<sup>41</sup> However, we draw from some initial contributions on evaluation. Moreover, our focus on process compliments Pamina Firchow’s (2018) endorsement of locally generated indicators for peace. That is, we suggest that best practice processes where victims are co-authors of reparation programs will generate their own evaluation criteria. Firchow’s “everyday peace indicators” (EPI) are assessment criteria generated through a hybrid of scientific and Indigenous technical knowledge in order “to integrate the knowledge and needs of local communities with the priorities of policymakers and practitioners” (67). Evaluating the success or shortcomings of a reparative program requires that we structure the dialogical process in the mission statement before deciding what dimensions are to be evaluated. Considering that dialogical processes are necessarily site and situation contingent and that they aim to avoid the pitfalls of one size fits all, we nevertheless consider that certain

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41. A review of the literature on proposals for evaluating participatory processes reveals only a few on point proposals. See, for example, Ottendoerfer 2018. Others have proposed frameworks for evaluation or empirical research related to transitional justice, of which reparations figure centrally. See, for example, Evrard, Mejía Bonifazi, and Destrooper 2021. Others offer proposals for participatory action research that can be conceived as another approach to evaluation. See, for example, Pastor and Santamaria 2021, 86–107.

criteria are important to guide processes toward the recognition, respect, and balancing of power relations. These are all relational categories that carry powerful symbolic charge.

In contrast to an exclusively retroactive assessment conducted by third parties or outside observers as a final step, our proposed model requires a reconfiguration of the notion of evaluation to be integrated throughout the reparative process and to include ongoing assessments over time. Notably, these integrated evaluations should be measured by the organizing body created through the preparation steps, which includes the victims themselves. That said, ongoing processes can generate important insights and lessons that can be assessed with hindsight. Here, we offer some preliminary benchmarks for this final assessment to determine whether a reparative process at every stage has been effective and adequate. Some questions to ask would be:

- What are the criteria for the success of a reparations program with regard to both the process and outcome?
- What does it mean to feel repaired?
- Do victims feel recognized and respected during the process?
- Did their trust in the state increase or decrease?
- Did their civic engagement increase or decrease?
- Did the reparative process strengthen or fragment the community?

These sample questions, among others that would be developed by the beneficiaries, incorporate a focus on reparative processes to avoid a purely outcome-generated approach to reparations. The approach to answering these questions also takes a necessarily qualitative approach that requires engaging with the beneficiaries through dialogue, conversation, and perhaps interviews. Importantly, these questions should not just shape the backward-looking assessment but also shape the preliminary planning steps discussed above to ensure that the process itself meets these process outcomes.

## CONCLUSION

We recognize that our proposal for a dialogical model in facilitating reparative processes that better engage victims in reparation programs remains largely theoretical. To our knowledge, there is no one case study that exemplifies this approach perfectly, although a handful demonstrate aspects of it and with mixed results. For that reason, this proposal might meet with resistance as being far too aspirational and thus impossible to achieve, especially from governments that have made a good faith effort to implement a participatory process but have encountered great challenges and even failures. We respond to such skepticism by pointing out that change must begin with a shift in thinking and a commitment to resources, and while this approach would not be easy to apply, it promises to redirect government policy and action toward better dignifying those who have suffered great harm. In the long run, striving toward these ideals ultimately serves the victim-centered vision of reparations for human rights violations.



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