


# Repairing Symbolic Reparations: Assessing the Effectiveness of Memorialization in the Inter-American System of Human Rights

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## ABSTRACT<sup>∞</sup>

The power of memorialization is widely recognized as a form of symbolic reparation aimed at overcoming deep social divisions in the aftermath of mass violence. Yet memorialization as a juridical tool of repair lacks systematic conceptual elaboration, and its potential remains underutilized. This often results in ineffective, even detrimental monuments, and in programmatic failures to integrate memorial practices into multilayered strategies for justice and social reconciliation. This article explores three case studies from the Inter-American Human Rights System in order to examine the strengths and shortcomings of existing approaches to memorialization. We then offer recommendations for expanding the reparative and transformative capacities of symbolic reparations. We conclude by summarizing our observations on how the fundamentally *expressive* nature of symbolic reparations provides a potentially powerful tool of repair and transformation.

**KEYWORDS:** symbolic reparation, memorials, memorialization, Inter-American System of Human Rights, aesthetics

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∞ As authors and members of the Symbolic Reparations Research Project (SRRP), we thank Doris Sommer, Marco Abarca, Yolanda Sierra, Viviana Krsticevic, Elizabeth Abi-Mershed, Francisco Quintana, Luisa Ferreira, Diana Acosta, Mabel Casas Caro, Juan Francisco Vargas, Cristina Lleras, Alvaro Santos, Lilie Chouliaraki, Paola Ibarra, Julian Bonder and the anonymous reviewers for their comments and support. We also acknowledge the support of the David Rockefeller Center for Latin American Studies, Harvard University; the University of Connecticut School of Fine Arts Dean's Grant; and the University of Connecticut Humanities Institute.

Like other reparations measures, symbolic benefits are, at least in part, geared towards fostering recognition. However, in contrast to other benefits, symbolic measures derive their great potential from the fact that they are carriers of meaning, and therefore can help victims in particular and society in general to make sense of the painful events of the past. Symbolic measures usually turn out to be so significant because, by making the memory of the victims a public matter, they disburden their families from their sense of obligation to keep the memory alive and allow them to move on. This is essential if reparations are to provide recognition to victims not only as *victims* but also as citizens and as *rights holders* more generally.

—UN Office of the High Commissioner for Human Rights<sup>1</sup>

We want to build a memorial museum in Rabinal so that future generations know the truth about what happened in our community.

—Carlos Chen Osorio, victim, *Río Negro v. Guatemala*<sup>2</sup>

## INTRODUCTION

Symbolic reparations are a common juridical measure used to address human rights violations in the context of international law. Broadly distinguished from material and monetary measures, symbolic reparations are generally defined as non-pecuniary and can take many forms. They may be tangible, such as monuments, commemorative sites, memory museums and re/naming public spaces. Or they may involve more performative or ephemeral gestures of recognition and atonement, such as public apologies, annual ceremonies and rituals or performances.

Symbolic reparations respond to victims' demands for truth, recognition, redignification, justice and accountability, and therefore play an important role in creating the conditions for civic trust and social solidarity between victims and others in society. 'Symbolic measures,' writes Carlos Martín Beristain, 'are aimed at recognizing the dignity of the victims, fostering the memory of relevant historical facts, expressing a criticism or moral sanction towards the perpetrators, and pointing out the importance of prevention.'<sup>3</sup> As such, observes Brandon Hamber, they act as an 'expression of potential,' the aspiration for a more moral and just society.<sup>4</sup>

In international law contexts, such as the Inter-American Human Rights System (IAHRS), symbolic reparations form a significant dimension of integral reparations designed to 'recognize multiple modes of repair in different registers – material,

1 UN Office of the High Commissioner for Human Rights (OHCHR), *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes* (2008), 23 (emphasis in original).

2 Carlos Chen Osorio, victim, *Río Negro v. Guatemala*. 'An Interview with Carlos Chen, a Survivor of the Río Negro Community,' *Probe International*, 28 September 2000, <https://journal.probeinternational.org/2000/09/28/interview-carlos-chen-survivor-rio-negro-community/> (accessed 16 September 2019).

3 Carlos Martín Beristain, *Diálogos sobre la reparación: Experiencias en el sistema interamericano de derechos humanos*, vol. 2 (San José: Instituto Interamericano de Derechos Humanos, 2008), 115. Translations by authors, unless otherwise noted.

4 Brandon Hamber, 'Transformation and Reconciliation,' in *Contemporary Peace Making: Conflict, Violence and Peace Processes*, ed. John Darby and Roger Mac Ginty (New York: Palgrave Macmillan, 2003), 230.

monetary, moral, symbolic and institutional' in redressing the interconnected harms generated by violations.<sup>5</sup> While the material and monetary components of reparations are important in mitigating the repercussions of violence, so too are the symbolic aspects, especially in addressing materially irreparable harms.

The IAHRs, composed of the Inter-American Court of Human Rights (the Court) and the Inter-American Commission on Human Rights (the Commission), has developed 'the most comprehensive legal regime on reparations' in international human rights law, an innovative 'victim-centered' model of integral reparations to which victims can claim recourse.<sup>6</sup> Within this model, symbolic reparations act as a powerful aid to 'remember[ing] the events that resulted in human rights violations, keep[ing] alive the memory of the victims and to rais[ing] public awareness in order to prevent and avoid such serious incidents occurring in the future.'<sup>7</sup> The IAHRs regularly orders states to construct memorials and museums, offer public apologies, or enact other commemorative practices designed to redress past moral injuries, preserve historical memory and restore victims' dignity.<sup>8</sup>

Yet as a juridical tool, symbolic reparation, especially memorialization practices, lacks adequate conceptual elaboration, and its potential remains underutilized. This often results not only in ineffective, even detrimental monuments, but also in programmatic failures to integrate memorial practices into multilayered strategies for honoring victims, and advancing justice and social reconciliation.<sup>9</sup> This issue is particularly urgent for the IAHRs,<sup>10</sup> which faces three interwoven challenges in how to conceptualize and implement memorialization within the framework of symbolic reparations.

- 5 Margaret Urban Walker, 'Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations,' *International Journal of Transitional Justice* 10(1) (2016): 117. The UN Basic Principles define integral reparations around five categories: restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition. '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,' UN Doc. A/RES/60/147 (21 March 2006), preamble, sec. IX [hereafter 'Basic Principles'].
- 6 Claudio Grossman et al., 'Reparations in the Inter-American System: A Comparative Approach,' *American University Law Review* 56(6) (2007): 1376; Thomas Antkowiak, 'An Emerging Mandate for International Courts: Victim-Centered Remedies and Restorative Justice,' *Stanford Journal of International Law* 47(2) (2011): 281.
- 7 I/A Court H.R., *Caso Rochac Hernández y Otros vs El Salvador. Fondo, Reparaciones y Costas*. Series C No. 285 (14 October 2014), para. 235.
- 8 A keyword search of the 369 Court judgments delivered from 1987 to 2019, around the terms 'monumento,' 'simbólico,' 'memorial,' 'placa conmemorativa' and 'perdonar/perdón/pedido de perdón,' found mentions in the reparations of 149 judgments. The phrase 'acto público de reconocimiento' appeared in 120 judgments. The Commission ordered symbolic reparations more sparingly, as it processes far more cases than the Court. However, of the 114 friendly settlements handled by the Commission from 1984 to 2013, 78 included 'measures of satisfaction,' indicating an active use of symbolic reparations in this type of resolution. See, [https://www.oas.org/es/cidh/soluciones\\_amistosas/catalogo-acuerdos-reparacion.asp](https://www.oas.org/es/cidh/soluciones_amistosas/catalogo-acuerdos-reparacion.asp) (accessed 15 October 2019).
- 9 Kris Brown, 'Commemoration as Symbolic Reparation: New Narratives or Spaces of Conflict?' *Human Rights Review* 14(3) (2013): 276.
- 10 Francisco Quintana, unpublished talk, Symbolic Reparations in the Americas Roundtable, Georgetown University Law School, 28 March 2018; Beristain, *supra* n 3 at vol. 1, 226.

### Political Conceptualization

Memorialization, and symbolic reparations generally, are ‘too often understood as outside the political process, relegated to the “soft” cultural sphere as art objects, to the private sphere of personal mourning, or to the margins of power and politics.’<sup>11</sup> Often implemented as merely a secondary form of redress, memorialization is rarely considered vital to promoting the active participation of victims as equal partners in a political community.<sup>12</sup> This risks underestimating victims’ agency or, worse, treating their perspective as ‘a complication, an inconvenience’ rather than central to the reparations process.<sup>13</sup> This is often further complicated by lack of effective follow-through by state actors.<sup>14</sup>

### Aesthetics

IAHRS recommendations, like those of many institutional bodies in transitional justice contexts, tend to focus on the physical structures of memorialization without explicitly attending to the processes and contexts that lead to their materialization. This results in an inclination to conceptualize memorials simplistically in conventional mimetic terms – the stereotypical bronze statue of a hero (or here, a victim) on a pedestal. In this paradigm, the viewer is detrimentally positioned as a *passive* spectator rather than an *active* agent and co-creator of meaning. This passivity is further compounded by a tendency to conceive of memorialization as producing fixed, inanimate *objects*, rather than initiating dynamic *processes* generated through the unique experiences that art engenders.<sup>15</sup>

### Satisfaction and Non-Repetition

In contexts of international law, symbolic reparations – especially when involving memorialization practices – are conventionally associated with the reparatory category of satisfaction, principally focused on restoring the dignity and rights of victims, on public disclosure of the truth, on state acknowledgement of responsibility and sanctions against perpetrators.<sup>16</sup> We propose that these *restorative* goals should be complemented by guarantees of non-repetition, which are principally *preventative* and *transformative*, aimed at creating the structural conditions for civic confidence

11 Sebastian Brett, Louis Bickford, Liz Ševčenko and Marcela Ríos, *Memorialization and Democracy: State Policy and Civic Action* (New York: International Center for Transitional Justice, 2007), 2.

12 Roger Mac Ginty, ‘The Role of Symbols in Peacemaking,’ in *Contemporary Peace Making: Conflict, Violence and Peace Processes*, ed. John Darby and Roger Mac Ginty (New York: Palgrave Macmillan, 2003), 235; Frédéric Mégret, ‘Of Shrines, Memorials and Museums: Using the International Criminal Court’s Victim Reparation and Assistance Regime to Promote Transitional Justice,’ *Buffalo Human Rights Law Review* 16 (2010): 35.

13 Theo van Boven, ‘Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,’ UN Doc. E/CN.4/Sub.2/1993/8 (2 July 1993), 53.

14 I/A Commission H.R. *Strategic Plan 2017–2021*. OEA/Ser.L/V/II.161 Doc. 27/17 (20 March 2017), 62. Campo Algodonero exemplifies this problem.

15 Brandon Hamber and Richard A. Wilson, ‘Symbolic Closure through Memory, Reparation and Revenge in Post-Conflict Societies,’ *Journal of Human Rights* 1(1) (2002): 36; Carlos Martín Beristain, ‘Verdad, Justicia y Reparación: Democracia y Derechos Humanos en América Latina,’ in *Contribución de las políticas de verdad, justicia y reparación a las democracias en América Latina* (San José: Instituto Interamericano de Derechos Humanos, 2011), 28.

16 Basic Principles, sec. IX.

and an inclusive political community among all members of society.<sup>17</sup> Yet the means by which these two goals are to be effectively linked in actual practices of memorialization remains to be fully developed.

This article evaluates these challenges in a specific context – memorialization practices mandated by the IAHRs – in order to pinpoint ways in which those reparations could be made more effective. We examine three emblematic IAHRs cases in which memorialization played a central role – *González y Otras ('Campo Algodonero') v. México* (2009), *Masacre Villatina v. Colombia* (2002) and *Penal Castro Castro v. Perú* (2006) – to show the strengths and shortcomings of current modes of formulating and implementing IAHRs-ordered symbolic reparations. We then propose guidelines for expanding the reparative and transformative capacities of symbolic reparations, centered on victim agency, process, aesthetics, and activating the connection between repair and transformation. We conclude by summarizing how the fundamentally *expressive* nature of symbolic reparations makes them a potentially powerful tool of repair and transformation.

### CASE STUDY: CAMPO ALGODONERO

In 2009, the Inter-American Court of Human Rights judged the Mexican state guilty of violating its international responsibility to safeguard the lives, personal integrity and liberty of the three young female victims at the center of the landmark femicide case *González y Otras ('Campo Algodonero') v. Mexico*.<sup>18</sup> In a precedent-setting decision, the Court adopted an expressly gender-based perspective, with the imperative of preventing the structural discrimination that normalized violence against women and girls in Ciudad Juárez. It not only judged the merits of the case through a gendered standpoint, but also extended that interpretation to the victims' reparations. The Court argued that in place of the normative 'restitutive' model of reparations geared to restoring victims' status quo ante, symbolic reparations had to be designed to effect deeper structural changes.<sup>19</sup>

The *Campo Algodonero* judgment is one of the rare instances in which the Court overtly linked the categories of 'satisfaction' with 'guarantees of non-repetition'.<sup>20</sup> In determining symbolic reparations, it asserted that

it is pertinent for the state to erect a monument to commemorate the women victims of gender-based murder in Ciudad Juárez, who include the victims in

17 Lisa Laplante, 'Bringing Effective Remedies Home: The Inter-American Human Rights System, Reparations, and the Duty of Prevention,' *Netherlands Quarterly of Human Rights* 22 (2004): 347–388.

18 I/A Court H.R., *Caso González y Otras ('Campo Algodonero') v. México. Excepción Preliminar, Fondo, Reparaciones y Costas*. Series C No. 205 (16 November 2009). Translations from the English version, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf) (accessed 3 August 2017). The victims were Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez.

19 *Ibid.*, para. 450. See also, Elizabeth Abi-Mershed, 'Notes from the Inter-American System for the Panel Discussion on Reparations for Women Subjected to Violence,' [https://www2.ohchr.org/english/issues/women/rapporteur/docs/side\\_event\\_june2010/ElizabethAbiMershed.pdf](https://www2.ohchr.org/english/issues/women/rapporteur/docs/side_event_june2010/ElizabethAbiMershed.pdf) (accessed 10 December 2019).

20 For an extended discussion, see, Robin Greeley and Michael Orwicz, 'Conceptualizing the Public: Memorialization and Human Rights Law in Mexico,' in *Re-Public: New Public Space in Mexico*, ed. Mara Polgovsky (Duke University Press, forthcoming).



**Figure 1:** Verónica Leiton, *Flor de Arena*, Campo Algodonero Memorial Park, Ciudad Juárez, Mexico 2012. © Photograph courtesy of Rosa-Linda Fregoso

this case, as a way of dignifying them and as a reminder of the context of violence they experience, *which the state undertakes to prevent in the future.*<sup>21</sup>

For the Court, the monument would serve as a focal point for a number of symbolic acts: the state's public apology, its acknowledgement of international human rights violations, and its pledge to prevent future violence against women.<sup>22</sup> Commemorative practices, and in this case the monument and its memorial complex, were conceived as a tangible, and persistent, expression of the Mexican state's obligation to repair victims and simultaneously transform the social conditions that foster gender discrimination.

Located in the field where the girls' bodies were found, the Campo Algodonero memorial is a winding strip of pavement enclosed on three sides by a high pink concrete wall. At one end is a monumental bronze statue representing an idealized female figure, *Flor de Arena*, mounted on a tall pedestal (Figure 1). Emerging from an immense desert flower, the figure's youthful body becomes increasingly graceful as it rises upward – a metaphor, asserts the statue's artist Verónica Leiton, 'for moving from intense suffering to peace.'<sup>23</sup> Water was intended to flow down her body and over flowers on her dress that signify the more than 1,000 women victims of femicide in Ciudad Juárez. This liquid flow, notes Leiton, symbolizes 'cleansing away the

21 *Campo Algodonero*, supra n 18 at para. 471 (emphasis added).

22 Ibid.

23 Personal interview with Robin Greeley and Michael Orwicz, Ciudad Juárez, Mexico, 6 July 2015.

victims' pain.' Surrounding the figure is a long shawl inscribed with the names Alicia, Elena, María, and so on, each designating all of the Alicias, Elenas, Marías who were victims of gender-based murders in the city since the early 1990s.

Leiton describes *Flor de Arena* as a figure of 'hope and reconciliation.'<sup>24</sup> Yet since its inauguration in 2011, the Campo Algodonero monument has been the site not of public commemoration, but of vociferous contestation by the principal audience for which it was intended: the families and representatives of the murdered women. Indeed, the memorial has generated neither repair nor reconciliation, but rather increased tensions between the Mexican state and the victims' families and supporters who see it as diverting attention from the state's failure to address the structural conditions that continue to fuel systemic violence and discrimination against women.<sup>25</sup> But it is also a failure of the reparations process itself to envision how its procedures, and especially the aesthetic elements central to them, could operate as an effective medium of repair and a means of promoting positive social change.

### Failures of Process and Victim Centeredness

Despite the Court's innovative approach to symbolic reparations, it failed to bind the state to fully integrating the victims and their representatives in the process of determining the memorial's nature, form and execution. Although it required the state to consult the victims' next of kin in planning the public ceremony of apology and recognition of its international human rights violations, the Court had few mechanisms for ensuring the state's compliance, and little recourse when it glaringly failed. As for the monument itself, consultation with victims' families was minimal. Since, in the Court's view, the monument transcended the immediate plaintiffs and encompassed the collectivity of all 'the women victims of gender-based murder in Ciudad Juárez,' the Court placed the memorial's design, construction and installation in the hands of state bureaucracies (local and federal) and civil society.<sup>26</sup> While the Court explicitly required 'open, public' consultation with the victims' representatives, the state appears to have made little effort to do so.<sup>27</sup> Leiton notes that while she had long contemplated some artistic response to the Ciudad Juárez femicides, her winning entry was hastily pulled together, apparently without extended discussion with the victims' families.<sup>28</sup>

The state's dereliction of duty was further evidenced at both the memorial's 2011 inauguration and the statue's unveiling in 2012.<sup>29</sup> The 2011 ceremony comprised a

24 Ibid.

25 Gloria Muñoz Ramírez, 'Monumento en el campo algodouero, símbolo de las "culpas del Estado" en los feminicidios,' *La Jornada*, 4 December 2011, <http://www.jornada.unam.mx/2011/12/04/politica/006n1pol> (accessed 27 July 2017).

26 *Campo Algodonero*, supra n 18 at paras. 471, 472.

27 Ibid., para. 472. While Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres (CONAVIM) records indicate that the statue's design was 'chosen by relatives of women victims of femicide,' no reference is made to the families of the particular victims in the case. CONAVIM, *Informe de Actividades 2011–2012* (CONAVIM-SEGOB, 2012), 28.

28 Personal interview, Verónica Leiton, Ciudad Juárez, Mexico, 6 July 2015. Leiton only learned of the competition at the last moment, while she was traveling in Chile.

29 Rubén Villalpando, 'Incumple el Estado 50% de resolutivos de la CIDH por el caso Campo Algodonero,' *La Jornada*, 29 August 2015, <http://www.jornada.unam.mx/2015/08/29/estados/027n2est> (accessed 10 June 2017).



group of mid-level government functionaries (not the president or senior officials, as the families had demanded) whose apologies were tightly scripted to avoid interaction with the audience. The victims' families and supporters clearly understood this as *simulated* compliance.<sup>30</sup> Outraged, they boycotted the inauguration and criticized the entire project.<sup>31</sup> Audience members, including families of other murdered women, heckled and booed the speakers throughout, such that the state representative, a deputy secretary of the Ministry of the Interior, had to shout the official apology.<sup>32</sup> Spectators demanded that instead of building expensive 'mausoleums,' the government should investigate the disappearance and murder of their loved ones and bring the guilty to justice.<sup>33</sup> At the unveiling of *Flor de Arena* the following year, the families again denounced the statue and the government. The ceremony was suspended after just 12 minutes because irate audience members shouted down the principal speakers.<sup>34</sup>

### Failures of Aesthetic Form

The victims' outrage brings us to a pivotal issue – the memorial's aesthetics, which turns around three vectors: the stereotype, the monument form, and the problem of visibility. First, the statue itself: despite Leiton's reverence for the female body, *Flor de Arena* all too easily slides into familiar patriarchal stereotypes – ideal beauty, sensuality, youthfulness, innocence, identification with nature – that reduce women's social identities to their physical bodies. Despite the artist's wish to evoke the transcendence of suffering, the statue effectively reiterates the formulaic clichés of femininity that are the common currency of a repressive masculinist culture. Indeed, the Court explicitly argued that derogatory stereotypes, central to structural inequality, were a predominant cause and consequence of the 'discriminatory and dilatory' attitude of police and government authorities towards the victims and their families.<sup>35</sup>

Representations such as these form part of patriarchal ideology that demands women remain subservient and in the traditional domestic sphere when, in fact, the economic and social realities in northern Mexico had radically changed. The Mexican state acknowledged during the trial that labor conditions in Ciudad Juárez had pulled women of all ages into the workforce, resulting in a range of social and

30 'Aclare ya asesinatos en Juárez, exigen a Peña Nieto,' *Cimacnoticias*, 1 February 2013, <http://www.cimacnoticias.com.mx/node/62487> (accessed 2 August 2017).

31 'Inauguran memorial dedicado a las muertas de Juárez sin aval de familiares,' *Notisistemas México*, November 2011, <https://notisistemasmexico.blogspot.com/2011/11/inauguran-memorial-dedicado-las-muertas.html> (accessed 10 September 2019).

32 'Víctimas abuchean a autoridades durante inauguración contra feminicidios en Cd. Juárez,' *Metatube*, 8 November 2011, <https://www.metatube.com/en/videos/84275/Victimas-abuchean-a-autoridades-durante-inauguracion-contrafeminicidios-en-Cd-Juarez/> (accessed 15 July 2017).

33 Mauricio Rodríguez, 'Víctimas abuchean a autoridades por inauguración de monumento en Juárez,' *Proceso*, 7 November 2011, <https://www.proceso.com.mx/287406/victimas-abuchean-a-autoridades-por-inauguracion-de-monumento-en-juarez> (accessed 8 June 2018).

34 Rubén Villalpando, 'Increpan a Poiré madres de asesinadas en Juárez; indaguen los casos, le exigen,' *La Jornada*, 31 August 2012, <http://www.jornada.unam.mx/2012/08/31/politica/015n2pol> (accessed 10 June 2017).

35 *Campo Algodonero*, supra n 18 at paras. 401, 151.



domestic tensions.<sup>36</sup> Yet, despite the artist's laudable aim to dignify the victims, the statue's visual form does not draw the spectator into any critical consideration of linking gender stereotypes with sexual violence. The sculpture's form not only falls short of promoting the transformative goals set out in the Court's decision, but also actively, if unwittingly, reinforces negative views that constitute the context for violence against women.

Second, *Flor de Arena* adopts the conventional monument form – the traditional statue of a hero or allegorical figure on a pedestal – replicating all of the problems inherent in this outmoded representational model.<sup>37</sup> Towering over the spectator, the statue literalizes meaning in the human body. Rejecting any overt participatory engagement of the spectator, it effectively relegates the viewer to a position of *passively* contemplating an already given meaning, rather than of active, self-reflective *agency* in the elaboration of meaning.

Leiton's reiteration of this traditional sculptural trope historically embeds it in the narrative conventions of the national monument form. Holocaust memorial scholar James Young has harshly criticized this model, arguing that such state-sponsored public monuments are, by definition, official claims upon the past that function to contain, fix and secure history in the state's image. Too often they serve 'either [to] console viewers...or [to] indulge in a facile *Wiedergutmachung*...Instead of searing memory into public consciousness, conventional memorials seal memory off from awareness altogether.'<sup>38</sup> Such monuments leave little room for public reflection, dialogue or questioning the past, and even less for counter-memories that self-consciously challenge the ideological premises concerning what exactly is being remembered and memorialized.

While Leiton intended the sculpture to represent the families' ability to overcome the tragedy, the statue's form and context ultimately undermine this goal. Ostensibly aimed at commemorating the victims of the Mexican state's failure to protect women, the memorial actually functions to distance the state from those very failures. *Flor de Arena's* form, compounded with its iconographic emphasis on rebirth and renewal, effectively obfuscates references to the state's culpability.

This brings us to our third point regarding the Campo Algodonero memorial's aesthetics: the public space of memorialization, which turns on the problem of visibility. Public space, as Jürgen Habermas and others assert, is intimately connected to the constitution of the modern public sphere – a critical space of political discussion regarding the common good, where the state is held accountable to its citizens.<sup>39</sup>

36 Ibid., para. 129.

37 This model has long been superseded in both contemporary art and popular memorialization practices. Both have been extraordinarily inventive in generating performative and participatory aesthetics that posit new anti-hierarchical modes of engagement with the human body and new activations of the spectator in relation to the artwork. Consistently at the heart of such practices is the 'restoration of the social bond through a collective elaboration of meaning.' Claire Bishop, ed., *Participation* (London: Whitechapel, 2006), 12. On participatory forms of popular memorialization in Mexico, see, Rosa-Linda Fregoso, 'The Art of Witness,' *Chiricú Journal: Latina/o Literatures, Arts, and Cultures* 2(1) (2017): 118–136.

38 James E. Young, 'The Counter-Monument: Memory against Itself in Germany Today,' *Critical Inquiry* 18(2) (1992): 272.

39 See, Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Cambridge, MA: MIT Press, 1991); Setha Low and Neil Smith, eds., *The Politics of Public Space* (New York: Routledge, 2006), 3–7.

Ostensibly, this was the aim of the Campo Algodonero monument as a public marker of mourning and of reconciliation between the Mexican state and the victims' families. But the memorial suffers from the problem of invisibility because of its deliberate peripheralization. Stranded between a hotel parking lot and a vast empty field at the confluence of two major national highways, it is impractical to access and dangerous to visit. The site is 'badly planned [and] unwelcoming; there's no greenery, no water. The monument has been made invisible. It is isolated off [from the city] and abandoned.'<sup>40</sup> In addition, it suffers from a lack of national presence and outreach. There has been no educational programming, no official internet presence, and, despite offers to exhibit the memorial in Mexico City, this was never realized.<sup>41</sup>

Marginalizing the memorial as a site of public memory is a mark of what Salvador Salazar Gutiérrez and Héctor Rivero Peña call a 'cynicism of forgetting': a state-sponsored politics of forgetting which has minimized the atrocity of the femicides to a decontextualized, isolated event of local liability.<sup>42</sup> Official public memory, embodied in the physical space of the Campo Algodonero memorial and its fulcrum, *Flor de Arena*, declares the events of Campo Algodonero resolved. The history of the events themselves, consigned to two deteriorating plaques affixed to the walls nearest the memorial's entrance, is formally detached from the monumental statue at the site's opposite end. While this symbolic ordering of spatial distribution works to visualize the state's will to demarcate the past from the future, *Flor de Arena's* phoenix-like figure of rebirth and renewal equally serves to give material form to the state's blind determination to 'move on.'

#### CASE STUDY: VILLATINA

Our second example involves *Masacre Villatina v. Colombia*, a case that resulted in a friendly settlement between victims, their representatives and the Colombian state, negotiated by the Inter-American Commission of Human Rights in 2002.<sup>43</sup> An out-of-court procedure, friendly settlements often allow the Commission to obtain some of the most effective forms of symbolic reparations, especially regarding dialogue and process.<sup>44</sup> Yet the Villatina case demonstrates the difficulties of maintaining a level of productive complexity regarding process and victim-centeredness, aesthetics, and linking satisfaction with non-repetition in implementing such settlements.

In 1992, the Colombian police murdered eight youths as they were leaving a religious service in the Villatina neighborhood of Medellín. While the victims were

40 Personal interview, Verónica Leiton, Ciudad Juárez, Mexico, 6 July 2015.

41 *Subcomisión de Coordinación y Enlace para Prevenir y Erradicar la Violencia contra las Mujeres en Ciudad Juárez, Chihuahua. XXXVII sesión ordinaria* (23 August 2013), [https://www.gob.mx/cms/uploads/attachment/file/88160/Versi\\_n\\_estenografica\\_37.pdf](https://www.gob.mx/cms/uploads/attachment/file/88160/Versi_n_estenografica_37.pdf) (accessed 29 July 2017), 18, 20.

42 Salvador Salazar Gutiérrez and Héctor Rivero Peña, 'Ciudad dramatizada: la erosión de la memoria y el dominio de la eventualidad en el escenario de Ciudad Juárez, México,' *Espiral: Estudios sobre Estado y Sociedad* 20(59) (2014): 89.

43 I/A Commission H.R., *Caso Masacre de Villatina v. Colombia*. Informe No. 105/05. Solución amistosa (27 October 2005). For an extended version of this section, see, Ana María Reyes, 'The Monument to the Children of Villatina: Commemorating Innocent Child Victims in the Context of Lethally Stigmatized Youth in Colombia,' *Visual Communication* 18(3) (2019): 379–398.

44 Beristain, supra n 3 at vol. 1, 358; Elizabeth Abi-Mershed, 'Process and Actors in the Adoption of Reparations within the Inter-American System,' unpublished talk, Symbolic Reparations in the Americas Roundtable, Georgetown University Law School, 28 March 2018.

young and poor, they hardly fit the criminal stereotypes of *sicarios* or young ‘undesirables’ that police routinely targeted.<sup>45</sup> Unlike the thousands of ‘non-innocent’ children caught up in Colombia’s violence and executed by state forces, the murder of these ‘innocent’ victims caused considerable public outrage. When the Colombian government failed to respond, the families took their case to the Commission.<sup>46</sup>

After a decade of negotiations, the Commission brokered a settlement between the families and the state that set a precedent regarding the importance of symbolic reparations, memorialization practices and collaborative processes.<sup>47</sup> The friendly settlement mandated a comprehensive reparations program whose symbolic forms aimed at redressing both the afflicted families and the Villatina community. Among these was a commemorative ‘monument of atonement’ that the state agreed to erect in a public park in downtown Medellín.<sup>48</sup> Inaugurated in 2004 in Medellín’s Parque del Periodista, *Monument to the Children of Villatina* adopts the conventional urban sculptural grammar of innocent children at play. It consists of four mimetic bronze statues of children, who play and read in and around a ribbed enclosure that evokes a park carousel (Figure 2). Built on a circular base, nine meridians are each inscribed with the name of one of the victims. Inside the ribbed globe is a bronze ballerina, about eight years old, the age of the youngest, Johanna Mazo Ramírez, at the time of her murder. Because of her age and gender, Mazo becomes the emblematic face of childhood innocence.<sup>49</sup> The artist, Edgar Gamboa, captured the girl in mid-dance, elegantly raising her chin and gazing towards the sky. Two statues of boys echo her pose: one, a soccer player, deftly balances a ball with his left foot; another sits on steps outside the sphere, boom box raised to his ear. A third bronze boy, seated on a bench with space for spectators, reads a book. A plaque affixed to the monument lists the victims’ names, the state’s acknowledgement of responsibility for the killings, and outlines the memorial’s objectives:

This monument represents a form of recovery of the victims’ memory, to morally repair and redress their families, and, while it is not sufficient to ease the

45 Human Rights Watch, *Generation under Fire: Children and Violence in Colombia* (1994). The victims were Marlon Alberto Álvarez (17 years old), Ángel Alberto Barón Miranda (16), Johny Alexander Cardona Ramírez (17), Nelson Duván Flórez Villa (17), Ricardo Alexander Hernández (17), Mauricio Antonio Higueta Ramírez (22), Johanna Mazo Ramírez (8), Oscar Andrés Ortiz Toro (17) and Giovanni Alberto Vallejo Restrepo (15). Most belonged to a Catholic youth group.

46 Angélica Zamora Prieto, ‘La reparación a partir de la experiencia de las víctimas: los casos de Villatina y Trujillo,’ in *Reparar en Colombia: Los dilemas en contextos de conflicto, pobreza, y exclusion*, ed. Catalina Díaz Gómez, Nelson Camilo Sánchez and Rodrigo Uprimny Yepes (Bogotá: Centro Internacional de la Justicia Transicional y Centros de Estudios de Derecho, Justicia y Sociedad, 2009), 407.

47 *Ibid.*, 437.

48 *Villatina*, supra n 43 at para. 11a.

49 Not only is Mazo the central figure of the memorial, but as the youngest and only girl among the victims, she is also listed first in all documents, commemorative plaques and the memorial’s inauguration; Mauricio Antonio Higueta Ramírez (22) is always mentioned last. This suggests an assumption that Johanna’s gender and age would generate the maximum moral outrage. The girl’s distance from the stigmatized category of defiant male youth helped elicit condemnation of the police’s error, but not horror at the systemic extermination of youths who did not conform to an idealized image of childhood innocence.



**Figure 2:** Edgar Gamboa, *Monument to the Children of Villatina*, Parque del Periodista, Medellín, Colombia 2004. © Photograph: Camila Mora. Reproduced with permission

pain produced by these actions, it becomes a fundamental step towards justice and to remind Colombians that events such as these cannot be repeated.<sup>50</sup>

The plaque's text clearly envisions the monument as both a 'measure of satisfaction' for the victims' families and as a 'guarantee of non-repetition' aimed at broader societal prevention activated through the transformative expressiveness of the

50 *Villatina*, supra n 43 at para. 25(4) (emphasis added).

memorial form. However, by failing to address the complex social and historical factors related to pervasive rights violations in marginal areas of Colombia, the symbolic reparations – in particular the monument – did not adequately contribute to creating the conditions for non-repetition. Although the monument was designed to recognize the dignity of the youthful victims, its uncritical visual emphasis on innocence tacitly endorsed the extermination of non-innocent youth caught in the vortex of war. As a result, despite the efforts of the families both to commemorate their children and to remind the Colombian state of its responsibility, and despite the unusual lengths to which the Commission went in detailing the design and form of the memorial in accordance with the victims' wishes, the monument failed to deliver the transformative effect the families envisioned.<sup>51</sup>

### Failures of Process, Victim-Centeredness and Aesthetics

While the negotiation over measures of satisfaction appears to have taken the form of a dialogical collaboration among the state, human rights defenders and the victims' families, the state exercised a high level of control over the final outcome and potential effects of that process. Consequently, it resulted not in a sense of redress, but in the families' dissatisfaction. This was compounded by the monument's visual form – a highly realist mimesis aimed at integrating the memorial into the life of its urban surroundings that ultimately literalized its theme of remembrance and childhood innocence to the detriment of its symbolic effect. Instead of defamiliarizing the space in which it is located so as to prompt the viewer to engaged interaction and self-reflection, *Monument to the Children of Villatina* reiterates the ubiquitous and familiar form of urban statuary that often decorates civic spaces.

In determining the monument's design and placement, the families requested nine bronze statues, each inscribed with a victim's name, to be placed at the Parque Berrío metro station in downtown Medellín, the most trafficked plaza in the regional capital. They also petitioned the state to hire an artist experienced in human rights. Nevertheless, state officials solicited proposals only from artists with expertise in public art.<sup>52</sup> Of the three models submitted, all parties unanimously chose the one designed by Gamboa, even though it did not fully conform to the mothers' request.<sup>53</sup>

Gamboa's memorial presents the viewer with an idealized vision of childhood: a fantasy in which children play and study in tranquil safety, protected by a benevolent state. The ribbed sphere physically and metaphorically shields the two younger children, slotting the memorial into a long history of state-sponsored monuments that project an idealized view of a state safeguarding its citizens and affirm the nation's virtues without acknowledging its crimes.<sup>54</sup> Yet Gamboa's vision bears little resemblance to the lived experience of youths in poor neighborhoods like Villatina, where

51 Mégret, supra n 12 at 42–43.

52 Zamora, supra n 46 at 440–441.

53 Edgar Gamboa, known in Medellín for his public urban sculpture, concentrates on (in his own words) 'the quotidian' rendered in a mimetic realist style. See, <https://www.artistasplasticosgenesis.com/edgar-gamboa> (accessed 2 October 2019).

54 On state-sponsored monuments routinely erected as 'self-aggrandizing locus[es] for national memory,' see, Young, supra n 38 at 270.

police routinely patrol the streets, and risks, prohibitions and the lack of state infrastructure create conditions of precarity and stigmatization. Indeed, the memorial's form does little to prompt viewers to reflect on either the tragedy of the massacre or the social conditions that led to it. Rather, Gamboa's decision to blend the memorial's depiction of children playing into the life of the square effectively relegates it to being merely 'part of the street scenery.'<sup>55</sup> Although the square is a lively meeting place for counterculture youth, visitors habitually sit on the memorial step with their backs to the statues, treating it no differently than the low walls surrounding the square's various planters. The monument's symbolic impact is muted, its call to honor the victims ignored. Like other monuments in Robert Musil's famous analysis, it has become 'conspicuously inconspicuous,' nothing more than the 'backdrop of our consciousness. . . forfeit[ing] its capacity to play a role in that consciousness.'<sup>56</sup> Present but barely noticeable, the bronze children merge into the visual cacophony of the urban landscape.

The monument's physical location also played a decisive role in determining the success or failure of the reparations, particularly their capacity to bridge the categories of 'satisfaction' and 'non-repetition' central to the settlement. By insisting that the sculpture be located in the city's administrative and commercial center, the families intended not only a broad civic audience to remember their children, but also a permanent symbolic reminder to the state actors responsible for their murder, and a rebuke of city officials for their complicity in policies of social cleansing.<sup>57</sup> Yet, the state rejected the victims' request, ordering the monument to be placed in the Villatina neighborhood to contain the tragedy within its specific locality. The mothers, arguing that 'no one in Villatina needs to be reminded' of the massacre, demanded that the state erect it in downtown Medellín.<sup>58</sup> Their insistence demonstrates their understanding that the measures of satisfaction mandated by the friendly settlement would be socially transformative; that they could play a role in halting violence against other children.

The state nevertheless refused to locate the monument in the city center, instead relegating it to a small peripheral plaza – a decision that frustrated and angered the families. Later interviewed by Angélica Zamora of the International Center for Transitional Justice, many of the mothers opposed the monument. Some lamented their own economic precarity and considered the memorial to be unjustifiably expensive. Others preferred more ritualistic acts like religious ceremonies to mark the anniversaries of the massacre, or to have their stories widely disseminated by mass media. And, significantly, many deplored the monument's location, the illicit activities that took place around it and its state of disrepair.<sup>59</sup> Indeed, as Zamora notes, it was precisely those aspects which the families were

55 Robert Musil, 'Monuments,' in *Posthumous Papers of a Living Author*, trans. Peter Wortsman (Hygiene, CO: Eridanos Press, 1988), 62.

56 Ibid.

57 Zamora, supra n 46 at 382.

58 Patricia Fuenmayor and María Victoria Fallon, *10 Años Monumento los Niños de Villatina: Tras los Pasos de la Construcción de la Memoria* (Medellín: Grupo Interdisciplinario por los Derechos Humanos, 2014), 5.

59 Zamora, supra n 46 at 437–442.



denied – the location of the work and the choice of artist – ‘that accentuated the dissatisfaction of the victims.’<sup>60</sup> Thus *Masacre Villatina v. Colombia* demonstrates that, despite what superficially seems to have been a well-conducted negotiation and agreement between the Colombian state and the families of the victims, ‘the participation of the families in the process of making the monument was not enough for them to appropriate the work.’<sup>61</sup> The families expressed clear recognition that, in order to provide true justice, ‘satisfaction’ had to be tied to ‘guarantees of non-repetition’; yet this was effectively undermined in determining the central component of the symbolic reparations – the memorial.

### CASE STUDY: OJO QUE LLORA

In 2006, the Inter-American Court of Human Rights decreed 42 suspected members of Sendero Luminoso (Shining Path), extrajudicially killed by the Peruvian military while incarcerated in the Miguel Castro Castro prison in 1992, to be victims of human rights violations perpetrated by the state during Peru’s internal armed conflict.<sup>62</sup> Among the reparations awarded to their survivors, the Court ordered the state to commemorate the victims in a public memorial. Although widely believed to be ‘terrorists’ guilty of committing mass atrocities, their names were to be added to the *Ojo que Llora* (‘Eye that Cries’) memorial honoring the more than 69,000 victims of Peru’s decades of violence.<sup>63</sup>

This abrupt shift in status from ‘perpetrator’ to ‘victim’ prompted fierce public debate, resulting in physical desecration of the memorial, and violent attacks against its guard and visitors to the site. Instead of helping to repair Peru’s damaged social contract, collapsing the categories ‘perpetrator’ and ‘victim’ seemed to threaten the prospect of national reconciliation. Yet the *Ojo que Llora* came to embody less the failure of the Court-mandated reparatory process, than both the achievements and the formidable complexities of activating the potential of symbolic reparations within a political–historical context riven by debate.

Here, we trace the *Ojo que Llora*’s ongoing negotiation of these complexities. On the one hand, the memorial failed to include any participation of the victims’ families. Unlike most memorials resulting from Court judgments, the *Ojo que Llora* already existed prior to the Court’s decision in *Castro Castro v. Peru*. Nevertheless, it is one of the few IAHRs symbolic reparations in which aesthetic form enacts those processes of civic engagement and constant construction of memory that we advocate. Unlike *Campo Algodonero* and *Villatina*, the *Ojo que Llora* is able to incorporate different and contentious points of view into its very form. As such, it has helped keep

60 Ibid., 440.

61 Ibid.

62 I/A Court H.R., *Caso del Penal Miguel Castro Castro v. Perú. Fondo, Reparaciones y Costas*. Series C No. 160 (25 November 2006). For an extended version of this section, see, Robin Greeley and Michael Orwicz, ‘An Aesthetics of the Human: Peru’s *Ojo que Llora* Memorial,’ *Journal of Visual Communication* 18(3) (2019): 353–377.

63 *Castro Castro*, supra n 62 at para. 454. On the conflict, see, Carlos Iván Degregori, *How Difficult It Is to Be God: Shining Path’s Politics of War in Peru, 1980–1999*, ed. Steve Stern, trans. Nancy Appelbaum et al. (Madison, WI: University of Wisconsin Press, 2012); Kimberly Theidon, *Intimate Enemies: Violence and Reconciliation in Peru* (Philadelphia, PA: University of Pennsylvania Press, 2013); Steve Stern, ed., *Shining and Other Paths: War and Society in Peru, 1980–1995* (Durham, NC: Duke University Press, 1998).





**Figure 3:** Lika Mutal, *El Ojo que Lloro*, Lima, Peru, 2005. © Photograph: Robin Adele Greeley

in the public eye contentious debates around how Peru's conflict should be remembered and interpreted.

### **The Memorial: Activated Aesthetics and National Debate**

In 2005, the artist Lika Mutal created the *Ojo que Lloro*, a memorial inspired by the 2003 report of Peru's Truth and Reconciliation Commission (TRC) documenting the human rights abuses committed during the country's two decades of internal conflict (1980–2000). Although neither a state- nor a Court-generated initiative (Mutal produced the memorial herself, on land offered by a Lima neighborhood council), the *Ojo que Lloro* gives public form to national struggles over the collective memory of Peru's conflict. Located in Lima's Campo de Marte, a large park organized around triumphal military monuments eulogizing the nation's victories, the memorial acts as a material reminder of the country's recent traumatic past situated in a landscape otherwise tailored to erase public memory of it.

Nestled in a hollow carved out of the surrounding park, an extensive maze of 32,000 small rounded stones, laid out in winding curves, traces a vast labyrinth (Figure 3). At its center, the labyrinth is pinioned by a large natural unshaped rock, a *huaca* evoking Pachamama, the ancient Andean Mother Earth.<sup>64</sup> Inserted in the *huaca* is a small rounded stone from which seeps water, as though shedding tears of sorrow into the pool below. Visitors walk the winding paths in a circuitous meander

64 In the ancient Andean world, *huacas* were conceptually tied to symbols and objects – often stones – that embodied a notion of sacredness.



**Figure 4:** Lika Mutal, *El Ojo que Lloro*, Lima, Peru, 2005. © Photograph courtesy of the Advocacy Project/Catherine Binet, CC BY-NC-SA 2.0. Available at [https://www.flickr.com/photos/advocacy\\_project/6119615248](https://www.flickr.com/photos/advocacy_project/6119615248)

of mourning and remembrance, stooping to touch the stones, often leaving tributes or photographs of loved ones (Figure 4).<sup>65</sup> Their downward gazes seek out

65 Mourners often note that they have no other place to grieve, especially in cases where their loved ones have been disappeared. Miguel Angel Cárdenas, 'En el ojo de la memoria,' *El Comercio*, 10 December 2006, <http://blog.pucp.edu.pe/blog/irina/2007/01/08/en-el-ojo-de-la-memoria/> (accessed 9 February 2019).





numbers of victims whose identities remain lost. The repetition of tens of thousands of small stones of nearly identical shape signals the magnitude of this human tragedy. The *Ojo que Lloro* makes no distinctions among the dead and recognizes no political positions regarding the conflict: all the dead are victims. The effect is an overwhelming sense of loss. The sweeping display of stones seems to spiral immeasurably outward from the central monolith, testifying both to the suffering and death of thousands of individuals and to a catastrophic collective decimation of humanity across the whole body of the nation.

Arguing before the Court during the 2006 trial, the Peruvian state contended that the Castro Castro killings were not a breach of human rights, but a legitimate part of 'a logic of war' against Sendero Luminoso.<sup>66</sup> Nevertheless, the Court found the state guilty of violating the human right to life and ordered that the victims' names be added to the *Ojo que Lloro*.<sup>67</sup> In complying with the Court order, however, it was discovered that the artist had already inadvertently incorporated the names of several Castro Castro victims in the monument.<sup>68</sup> The sudden revelation that certain of the memorial's 'victims' were also 'perpetrators' upset the fixity of those categories as a binary opposition in the public imaginary. This triggered a large and ongoing public debate not only over definitions of victim and perpetrator, but also over the wider roles of institutional, state, civil and oppositional actors in the conflict.

Thus, the *Ojo que Lloro* was precipitously thrust into a national debate over how Peru's conflict should be understood, what its causes were, and where responsibility for its atrocities lies. Inseparable from this was the question of how to forge an inclusive social pact in 'a country where exclusion is so absolute that it is possible for tens of thousands of citizens to disappear without anyone. . . in the society of the non-excluded taking note of it.'<sup>69</sup> Opponents called the *Ojo que Lloro* 'a monument to terror' and demanded its demolition.<sup>70</sup> City officials called for the names' removal.<sup>71</sup>

Massive demonstrations in support of the memorial ensued. Family members of victims on all sides of the conflict, along with public intellectuals, human rights advocates and the artist herself, marched to show their support for the memorial.<sup>72</sup> TRC Commissioner Salomón Lerner and Nobel laureate Mario Vargas Llosa called for national reconciliation, and human rights organizations demanded an investigation.<sup>73</sup>

66 *Castro Castro*, supra n 62 at para. 135.

67 *Ibid.*, para. 454.

68 Lika Mutal and Veronica Crousse, 'El Ojo que Lloro: Monumento contemporáneo de Lika Mutal,' in *Lima: Espacio público, arte y ciudad*, ed. Johanna Hamann Mazuré (Lima: Pontificia Universidad Católica de Perú, 2013), 171. The names had been included in the TRC Final Report's list of victims, from which Mutal was working.

69 Salomón Lerner Febres, 'Discurso de presentación del informe final de la Comisión de la Verdad y Reconciliación,' 2003, <http://www.cverdad.org.pe/informacion/discursos/enceremonias05.php> (accessed 21 January 2019).

70 '¡Existe un monumento a terroristas!' *Expreso*, 3 January 2007, cited in Cynthia Milton, 'Defacing Memory: (Un)tying Peru's Memory Knots,' *Memory Studies* 4(2) (2011): 203.

71 Katherine Hite, "'The Eye that Cries': The Politics of Representing Victims in Contemporary Peru,' *A Contracorriente: una revista de estudios latinoamericanos* 5(1) (2007): 111.

72 Katherine Hite, *Politics and the Art of Commemoration: Memorials to Struggle in Latin America and Spain* (New York: Routledge, 2011), 54.

73 Mario Vargas Llosa, 'El ojo que llora,' *El País*, 14 January 2007, [https://elpais.com/diario/2007/01/14/opinion/1168729205\\_850215.html](https://elpais.com/diario/2007/01/14/opinion/1168729205_850215.html) (accessed 10 December 2019); Hite, supra n 71 at 133.

In the most dramatic incident, supporters of former president Alberto Fujimori vandalized the memorial, smashing stones and defacing the central obelisk. On 22 September 2007, under the cover of darkness, attackers broke into the *Ojo que Lloro*, beat and tied up the police guard, and sledgehammered numerous stones. They then threw buckets of bright orange paint – a color associated with Fujimori – over the stones and the central *huaca*, desecrating the site.<sup>74</sup> Fujimori supporters applauded the attack, calling the memorial ‘garbage.’ ‘If civic leaders and defenders of the human rights of terrorists want to place victims and victimizers together,’ remarked one official, ‘then let them make their monuments to terrorists in their offices, but they cannot use a public park.’<sup>75</sup>

### Memorial as Process: Three Iterations

Since the *Ojo que Lloro* pre-existed the *Castro Castro v. Peru* case, neither the Court nor the state anticipated any process of memorialization more complex than simply adding names to an already constructed memorial.<sup>76</sup> Yet the Court’s decision inadvertently precipitated fierce dispute over the *Ojo que Lloro*’s design and an ongoing process of construction–destruction–reconstruction resulting in several aesthetic iterations of the memorial. This, combined with the participatory process elicited by the memorial’s aesthetic form, has made the *Ojo que Lloro* a potent incarnation of memorialization centered not on consensus about the past (and even less the enforced imposition of one historical narrative over others), but on continual struggles over memory.

In her original conception for the *Ojo que Lloro*, Mutal relied on the TRC’s list of 23,969 confirmed victims out of the estimated total of 69,280.<sup>77</sup> Yet the memorial’s aesthetic form mirrored not the TRC’s convoluted efforts to ‘reconcile the political with the legal’ in defining victimhood in the volatile case of Sendero victims, so much as the Court’s *refusal* to hierarchize victims according to political affiliations, previous crimes or membership in ‘terrorist’ organizations.<sup>78</sup> By laying out tens of thousands of nigh-identical stones in alphabetical order, each marked solely with a name and a date of death, Mutal suppressed any social, economic or political hierarchies among the victims, emphasizing instead the commonality of victimhood. Offering a space to mourn the immensity of the conflict’s human cost, the memorial was intended to help all Peruvians overcome the divisions that had torn the nation apart. In providing a panorama of the violence’s enormous human toll, the memorial brought shockingly to the fore the double exclusion from the categories of both ‘citizen’ and ‘human’ of overwhelming numbers of victims.<sup>79</sup>

74 Hite, *supra* n 71 at 133.

75 *Ibid.*

76 The Court had acceded to the state’s request to add the names to the existing *Ojo que Lloro* rather than construct a new monument. *Castro Castro*, *supra* n 62 at para. 453.

77 Jaymie Heilman, ‘Truth and Reconciliation Commission of Peru,’ in *Oxford Research Encyclopedia of Latin American History* (Oxford: Oxford University Press, 2018), 13.

78 Lisa Laplante, ‘The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru’s Political Transition,’ *American University International Law Review* 23(1) (2009): 75–76.

79 Paulo Drinot, ‘For Whom the Eye Cries: Memory, Monumentality, and the Ontologies of Violence in Peru,’ *Journal of Latin American Cultural Studies* 18(1) (2009): 18.

Yet, after the Court's 2006 ruling and resultant controversy, Mutal abruptly shifted her position. In 2008, contradicting her original non-discriminatory concept of victimhood, Mutal called for the monument *not* to be inscribed with 'the victims of the Castro Castro Penitentiary. . .not with those people who have a proven criminal record of human rights violations.'<sup>80</sup> The artist then repudiated the TRC list in favor of the more restrictive Registro Único de Víctimas. Produced in 2005 by Peru's National Reparations Council, the Registro explicitly excluded 'member of subversive organizations' from its definition of victim.<sup>81</sup> In 2009, Mutal began reinscribing the stones with names derived from the Registro list, and the *Ojo que Llorá* 'entered a new stage.'<sup>82</sup> In this second iteration, the memorial's concept of victimhood shifted from an inclusive model intended to commemorate *all* victims equally, to one in which some categories of 'guilty victims' (e.g. Sendero) were excluded, while others (e.g. state armed forces) were not.<sup>83</sup>

Mutal's decision was a response to the political exigencies of a Peru still very far from achieving meaningful reconciliation. What the attacks against the *Ojo que Llorá* disclosed was the transformation of an undifferentiated category of victim into one that was concretized as historically diverse. 'Until the court ruling,' notes Katherine Hite, 'the term "victim" in relation to the "Eye that Cries" memorial conveyed a generic quality, a remote, passive, depoliticized character.'<sup>84</sup> However, the Court's ruling triggered a sudden recognition of the victims as diverse actors with multilayered roles in the conflict:

The ruling laid bare that the victims of the violence represented by the memorial included combatants, sympathizers, and resisters, as well as men, women and children in a time of terror. The victims included those assassinated in extrajudicial killings while under arrest, those who had been formally charged as terrorists, as well as those awaiting sentencing.<sup>85</sup>

By inadvertently exposing the heterogeneity of victims, the *Ojo que Llorá* came to embody the potentially explosive political tensions involved in constructing a symbolic space of collective remembrance and national reconciliation.

Indeed, a third iteration of the *Ojo que Llorá*'s address to this vexed problem is the ongoing performative inscription–defacement–reinscription of names on the memorial's stones.<sup>86</sup> From the artist's original, almost ritualized labor of writing and

80 I/A Court H.R. (2008) *Case of the Miguel Castro Castro Prison v. Peru*. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of 2 August 2008. Series C No. 181, 4, para. 12. Mutal submitted this statement in a letter to the Peruvian state, which the state used to challenge the Court's 2006 decision.

81 Registro Único de Víctimas, 'Definición y propósito,' 2005, <http://www.ruv.gob.pe/registro.html> (accessed 10 February 2019).

82 Mutal and Crousse, supra n 68 at 153.

83 Hite, supra n 71 at 111; Luke Moffett, 'Reparations for "Guilty Victims": Navigating Complex Identities of Victim–Perpetrators in Reparation Mechanisms,' *International Journal of Transitional Justice* 10(1) (2016): 146.

84 Hite, supra n 71 at 111.

85 Ibid.

86 Milton, supra n 70 at 192, argues this point.

rewriting the names, carried out with a phalanx of volunteers, to visitors' personal gestures of adding missing names of loved ones on blank stones, to the rewriting of names after vandalisms, writing becomes a performative act that unites body and word in the present, in the service of revivifying those erased from history. By contrast, the destruction of names – whether the rampant attacks by Fujimori's supporters, or the targeted defacements of specific names by unknown assailants – epitomizes a determination to obliterate those narratives in favor of others.<sup>87</sup>

Thus the oscillation between writing and unwriting in the *Ojo que Lloro* both spatializes and performatively embodies the high stakes regarding whose memories can be put forward and under what conditions, and how narratives of history are constructed.<sup>88</sup> Although not part of the artist's original intention, this corporealized contestation of memories and narratives forms a significant aspect of the *Ojo que Lloro*'s capacity to animate what Young calls the 'interactive, dialogical quality of memorial space.'<sup>89</sup> As such, the memorial's writing–unwriting–rewriting dialectic forms part of its public grappling with the unhealed wounds that continue to undermine Peru's efforts at national reconciliation.

The alternations of inscription–defacement–reinscription operate, in fact, as another facet of the multivalenced performative engagements prompted by the *Ojo que Lloro*'s aesthetic form. Unlike the Campo Algodonero monument, whose static, mimetic form relegates the spectator to a position of passive contemplation of an already given meaning, the *Ojo que Lloro* activates viewers, making them pivotal participants in the generation of meaning. Like many contemporary memorials that banish overt mimetic figuration, the *Ojo que Lloro* casts the process of bodily enactment back onto the spectator, making 'the public part of the sculpture itself.'<sup>90</sup> The memorial elicits performative repertoires of perambulations, glances and participatory actions – embodied behaviors situated in space and time, and choreographed by the memorial's labyrinth even as those winding paths allow for spontaneous variation.<sup>91</sup> In so doing, the *Ojo que Lloro* joins in dialogue with other powerful memory sites such as the *Vietnam Veterans Memorial* (Washington DC, 1982), the *Monumento a las Víctimas del Terrorismo de Estado* (Buenos Aires, 2014), the *National Memorial for Peace and Justice* (Montgomery, Alabama, 2018), and the *Mémorial de l'Abolition de l'Esclavage* (Nantes, 2012), whose combination of a spare, anti-mimetic aesthetics, horizontal integration into the landscape, and a spectator-centered performativity urge the spectator to a self-reflective process through the material form of the memorial itself.<sup>92</sup>

87 Ibid., 199.

88 Ibid., 202.

89 James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven, CT: Yale University Press, 1994), xii.

90 Michael North, 'The Public as Sculpture: From Heavenly City to Mass Ornament,' *Critical Inquiry* 16(4) (1990): 877.

91 Taylor notes how such performative acts 'enact embodied memory,' opening up links between memory and corporeal experience. Diana Taylor, *The Archive and the Repertoire: Performing Cultural Memory in the Americas* (Durham, NC: Duke University Press, 2003), 20.

92 Andreas Huyssen, *Present Pasts: Urban Palimpsests and the Politics of Memory* (Stanford, CA: Stanford University Press, 2003), 94–109.



#### Fourth Iteration: Failures of Process and Non-Repetition

Paulo Drinot and others note that the ongoing attacks on the *Ojo que Lloro* aim to silence debates over the causes and historical interpretations of Peru's violence, especially those that seek to hold the state accountable for its perpetration of human rights abuses.<sup>93</sup> The attacks form part of a hegemonic 'will to forget' based in a long history of 'repressing subaltern memories.'<sup>94</sup> However, many people stridently resist these efforts to suppress the memory of the nation's recent past.<sup>95</sup> The polemic generated by the *Ojo que Lloro* thus 'offers a privileged perspective from which to consider the ways in which two opposing interpretations of Peru's recent violent past have emerged.'<sup>96</sup>

On the one hand, the *Ojo que Lloro* suggests the potential of an activated aesthetics to link the reparative character of symbolic reparations to the challenges of mending a torn social contract. Yet, on the other, the memorial has also succumbed, at least partially, to the widespread lack of political will to engage in transformative national debate regarding the armed conflict. This is materially and symbolically represented by the fence that now cordons off the memorial. Ostensibly erected to protect the memorial from vandalism after the 2007 attacks, in not allowing visitors to the site without official permission the fence neutralizes the memorial's interactive experience and suppresses constructive polyvocal debate.

#### SYMBOLIC REPARATIONS GUIDELINES

In the face of these and other challenges to mobilizing the full potential of symbolic reparations, in 2014 we formed the Symbolic Reparations Research Project (SRRP), a group of legal and humanities scholars specializing in human rights, art and culture, committed to analyzing how practices of memorialization can act as a crucial means of developing the efficacy of symbolic reparations within the framework of the IAHRs. We offer here some guidelines regarding the use of art and aesthetics in symbolic reparations that aim to bring together the discourse of international law with that of aesthetic theory and practice in contemporary art.<sup>97</sup> These recommendations are a work in progress, and we welcome comments on them. Whereas the IAHRs has generally focused on the reparative capacity of symbolic reparations, our guidelines expand this understanding to include their transformative potential in creating conditions of non-repetition.

Key to this is an expansive understanding of the 'symbolic' and how it can be mobilized in relation to reparations. We define the symbolic as the shared framework of interpretations through which the material conditions of human existence are rendered intelligible and given meaning. It shapes how individuals and communities interact, and how social formations are created. The symbolic, therefore, has material ramifications that spread across all aspects of human life and community. In the

93 Drinot, supra n 79 at 16.

94 Degregori, supra n 63 at 180, 181.

95 Ibid., 181. Each attack has prompted public condemnations and calls for collective repair of the memorial.

96 Drinot, supra n 79 at 16.

97 This article draws upon SRRP, 'Guidelines on the Use of Art in Symbolic Reparations,' 2017, <http://symbolicreparations.org/projects-publications-/588/> (accessed 6 September 2019).

context of reparations, it plays a particularly important role not only for victims but also for greater society. As the UN high commissioner observed, ‘symbolic measures. . . make the memory of the victims a public matter.’<sup>98</sup>

Many scholars argue that *all* reparations are symbolic in that all, whether monetary or non-monetary, necessarily express ‘a message of acknowledgment, responsibility, and intent to do justice.’<sup>99</sup> Yet while all forms of reparation entail a recognition of the injured that is inherently symbolic, we consider symbolic reparations unique inasmuch as they both provide measures of satisfaction for victims and help create the broader conditions for non-repetition of human rights violations for society as a whole. As such, they aim to repair individual victims through mechanisms that are designed simultaneously to share out their moral and social values among the wider community and to connect individual victims and the rest of society.

Our guidelines center around four key criteria for unleashing the potential of symbolic reparations: victim agency, process, aesthetics, and linking satisfaction to non-repetition.

### **Symbolic Reparations should be Victim-Centered and Promote Victim Agency**

Symbolic reparations ‘provide recognition to victims not only as *victims* but also as citizens and as *rights holders*.’<sup>100</sup> Victims should be at the heart of the entire process of reparation. Symbolic reparations ‘should transform the victim into an active participant and beneficiary in the dual process of redressing individual violations and of positive transformation of society in the interests of collective healing.’<sup>101</sup>

States must therefore facilitate the initiation of symbolic reparations projects by victims’ groups and civil society. Victims must be fully integrated from the start in determining the nature, objectives and forms of symbolic reparations. Furthermore, to ensure that communities can effectively articulate their needs, education programs around symbolic reparations should be integrated into all projects. These programs should include information and training regarding memorialization, such that victims have access to a wide variety of processes and forms.

Moreover, victims should not be left to shoulder the burden of becoming experts in all areas of symbolic reparation and memorialization. Rather, ‘successful memorialization draws upon specialists from many fields – transitional justice experts, historians, museum designers, public artists, trauma specialists, and human rights activists, among others.’<sup>102</sup>

98 OHCHR, *supra* n 1 at 23.

99 Margaret Urban Walker, ‘How Can Truth Telling Count as Reparations?’ in *Historical Justice and Memory*, ed. Klaus Neumann and Janna Thompson (Madison, WI: University of Wisconsin Press, 2015), 133.

100 OHCHR, *supra* n 1 at 23.

101 SRRP, *supra* n 97.

102 Judy Barsalou and Victoria Baxter, ‘The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice,’ *Stabilization and Reconstruction Series* no. 5 (US Institute of Peace, January 2007), 2.

### Process

Beyond producing material objects such as monuments or plaques, to be truly reparative, memorialization must be framed as an ongoing *process*. As Young and others have emphasized, the process through which a commemorative act comes to exist is of prime importance.<sup>103</sup> For symbolic reparations to be effective, they must address three areas. First, their design and implementation must center on genuine dialogue with victims. This process should be inclusive, representative, open and transparent, such that the reparations function as a dialogic space for fostering trust and mutual recognition among the immediate stakeholders, and broader society. Furthermore, if the reparations are to remain relevant, victims, their communities and other stakeholders must have a sense of ownership of the process and its outcomes. Memorialization projects must actively and constructively support victims in determining whose memories can be put forward and under what conditions, how narratives of history are constructed, and which are ‘the stories that matter.’<sup>104</sup>

Second is the participatory process elicited by the material form of the symbolic reparations themselves. Whether ceremonies of public apology, monuments or other symbolic gestures, acts of memorialization should promote ‘dynamic performances of civic engagement.’<sup>105</sup> Too often, monuments, memorials and commemorative acts position audiences – including victims – as *passive recipients* of a preconstructed meaning, rather than as *active participants* in creating meaning. This can too easily lead to a perception of the reparations being top-down affairs that further disenfranchise victims.

The third form of process is that of gesturing toward the future, or to paraphrase Hamber, of expressing a potential, an aspiration for positive social transformation.<sup>106</sup> We advocate a critical, living memorialization that delves into the past in order to project into the future. Against the frozen or stagnant social memory that too often afflicts official memorials and commemorations, we understand memory not as a fossilized object, but as a constant construction, open and active. Correspondingly, we urge conceptualizing symbolic reparations as polyvalent processes of reactivation and reactualization of memory in the service of imagining possible new futures.

### Aesthetics

Insofar as symbolic reparations imply the production of an object or gesture, they necessarily require taking into consideration the formal qualities of that object or gesture. Therefore, for symbolic reparations to reach their full expressive power, their formal elements need to be understood, evaluated and effectively mobilized. All commemorative acts include aesthetic considerations, whether they be memorials, public rituals, performances, documentary films, museums, even decisions as to how, where and in what form to publish public apologies and truth commission reports – witness the Peruvian TRC’s photo exhibition, *Yuyanapaq: Para Recordar* (2003), and other

103 Young, *supra* n 38; Beristain, *supra* n 3 at vol. 2, 120.

104 Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston, MA: Beacon Press, 1995), 52.

105 Barsalou and Baxter, *supra* n 102 at 13.

106 Hamber, *supra* n 4 at 230.

forms of symbolic reparations included in the TRC's process. In all these instances, aesthetic form matters because it is a primary means of materializing historical memory and symbolic import. It also matters because, insofar as it can constructively 'defamiliarize' our surroundings, alter our modes of perception and refresh our capacity for critical and creative thinking, aesthetic form can redefine our potential for transformative action.<sup>107</sup> In their very form, writes Martha Minow, memorials can 'usefully disturb congealed memories and mark important junctions between the past and a newly invented present.'<sup>108</sup>

Too often, memorial aesthetics are rendered formulaic, risking the trivialization of human suffering. Yet when innovative, aesthetics can act as a powerful mode of sustaining individual and collective reflection on the human condition, and of linking individual memory to collective public experience, social belonging and citizenship. It can open up a space for dialogue and debate, a mode of experience that 'provides a concrete and polemical grounds for rethinking our relationship to the world and to one another.'<sup>109</sup> This aesthetic experience – what Margaret Urban Walker calls the 'expressive dimension' of symbolic reparations, 'the communicative act of expressing acknowledgement, responsibility, and the intent to do justice' lodged in memorials, the performance of public apologies, etc. – is what gives such reparations their transformative potential.<sup>110</sup> It represents a powerful opportunity to engage spectators of commemorative practices with victims in a transformative experience, linking the victim and the spectator, the individual and the collective, memory to reparation, justice to social change.

### Conjoin Measures of Satisfaction with Guarantees of Non-Repetition

While the principle of integral reparations already connects these two categories, their links should be explicitly articulated, more firmly integrated and causally joined toward fostering social transformation. The Court's decision in *Campo Algodonero* did exactly that – explicitly mobilize symbolic reparations toward socially transformative ends – even as its materialization failed to live up to its ambitions. While 'guarantees of non-repetition' provide legal and procedural mechanisms that contribute to preventing human rights violations, it is the inherently symbolic acts of social recognition that provide the moral foundation for non-repetition. Indeed, Catalina Botero and Esteban Restrepo remark that 'the efficacy of material reparations and the sustainability of measures of non-repetition can come to depend, in good part, on symbolic reparations.'<sup>111</sup>

107 Viktor Shklovsky, 'Art as Device,' in *Viktor Shklovsky: A Reader*, ed. and trans. Alexandra Berlina (New York: Bloomsbury, 2017).

108 Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998), 140.

109 Claire Bishop, 'Antagonism and Relational Aesthetics,' *October* 110 (2004): 79.

110 Walker, *supra* n 99 at 133.

111 Catalina Botero Marino and Esteban Restrepo Saldarriaga, 'Estándares internacionales y procesos de transición en Colombia,' in *¿Justicia transicional sin transición?* Rodrigo Uprimny Yepes, María Paula Saffon Sanín, Catalina Botero Marino and Esteban Restrepo Saldarriaga (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, 2006), 79.

Ensuring non-repetition therefore involves conceptualizing symbolic reparations as *both* restorative *and* transformative, and entails mobilizing public memorials and commemorative acts to enact this synthesis. After all, argues Hamber, memorials ‘may result in lessons from the past being carried into the future and convince victims of the possibility of non-repetition. They are... a materialization of society’s willingness to do things differently.’<sup>112</sup> Indeed, it is precisely through its aesthetic dimension that public memorialization has a singular ability to bring together satisfaction and non-repetition. The dialogical capacity of memorials, enacted through the aesthetic, can broaden the public dimension of symbolic reparations to recognize victims ‘not only as *victims* but also as citizens and as *rights holders*.’<sup>113</sup> Concomitantly, symbolic reparations can act as a dialogic space for constructing shared symbolic meanings, forms of mutual recognition that bind societies together.

Symbolic reparations aim to repair individual victims through measures that are designed simultaneously to distribute their social and moral benefits among the wider community, and to bridge between individual victims and larger collective society. As such, contends Walker, ‘they model a kind of moral relationship that assures those formerly disregarded, disrespected, and grossly mistreated that wrongs are acknowledged, standards shared, responsibilities accepted, and obligations of repair perceived as requirements of justice.’<sup>114</sup>

## CONCLUSION

In contexts of international human rights law, symbolic reparations have emerged as a compelling mode of embodying both the duty to repair victims of human rights violations and aspirations toward a more moral and just society. For the IAHRs, symbolic reparations have become an innovative juridical tool in the promotion and protection of human rights. Yet the translation of those values into effective results remains a challenge.

For victims of human rights violations, it is clear that memorials and other forms of commemoration can function not only as a means of concluding a process of repair and reconciliation, but also as a way of *representing* that process to themselves and to society. Such achievements seem to require a tangible symbol of expression. And it is this belief in the expressive quality embedded in the representational character of the commemorative act itself, its aesthetic evocation of a transformative process, already beginning to materialize in the very creation and form of the commemoration, that can enable victims to move beyond their victimhood.

Thus a core tenet of symbolic reparations that has made it a singularly important resource for transformative visions of justice is contained in the notion of *expressiveness* – that notion which has driven victims to demand the production of memorials and other commemorative acts as a central part of processes of reparation and which has propelled the IAHRs to incorporate those demands into its jurisprudence. Marking the reparative process with a tangible symbol not only serves as recognition

112 Brandon Hamber, ‘Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition,’ in *The Handbook of Reparations*, ed. Pablo de Greiff (New York: Oxford University Press, 2006), 567. See also, Brown, *supra* n 9 at 276.

113 OHCHR, *supra* n 1 at 23.

114 Walker, *supra* n 99 at 135.

of the harms victims have suffered in the past. Its creation also expresses the *will* to transform those victims into something more. With a deeper understanding of the transformative capacity loosed through the processes of memorialization, the IAHRs can better aid victims to cease being simply victims, and help them also become recognized as rights holders, dignified citizens and communicators. Through the commemorative gesture, they can become invested in telling present and subsequent generations what happened and why it should never happen again.

By virtue of their 'expressive dimension,' symbolic reparations can also act as a crucial point of connection among victims, the state and civil society, sharing out the transformative potential of those reparative measures across the broader social community. Memorialization has the capacity to spark a transformative process that engages collective society in a commitment to justice, social responsibility and reconciliation. Its expressive character can remind us that embedded in remembrance is a call to duty: to repair an ethical reciprocal relation among victims, the state and society. By generating an evocative aesthetic experience, it also has the capacity to maintain that process through time, for this and future generations.