Apologies in transitional justice (invited report for UN Special Rapporteur on Transitional Justice)

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of truth, justice, reparation and guarantees of non-recurrence

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, submitted in accordance with Human Rights Council resolution 36/7.

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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Summary

The present report on apologies for gross human rights violations and serious violations of international humanitarian law contains an assessment by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence of the legal and conceptual framework, existing practices and lessons learned on the issue and his recommendations for the design and implementation of apologies.

Contents

		Page
I.	Introduction	4
II.	General considerations	4
	A. Definition of a public apology	4
	B. Taking a victim-centred approach to apologies	5
	C. Integrating a gender perspective into apologies	5
III.	International legal framework and jurisprudence regarding apologies	6
IV.	Conceptual framework for apologies	10
	A. Apologies and motivation	10
	B. Apologies, acknowledgement and truth	11
	C. Apologies and timing	13
	D. Preparing the apology: speaker status, victim engagement and style of delivery	15
	E. After the apology: follow through, non-recurrence and reconciliation	17
V.	Conclusions and recommendations	19

I. Introduction

1. The present report is submitted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence pursuant to Human Rights Council resolution 36/7. The Special Rapporteur devoted the present report to an assessment of practices and lessons learned in relation to the adoption of apologies for gross human rights violations and serious violations of international humanitarian law. To inform the assessment, the Special Rapporteur consulted with experts and relevant stakeholders and held an open consultation. He thanks them and the respondents to his questionnaire for their contributions.

II. General considerations

2. For the purposes of the present report, the apologies under discussion are public apologies, rather than private communications between individuals. Such a focus is not to suggest that private apologies are unimportant. Indeed private apologies from those responsible for past harms may play a valuable role for some victims in coming to terms with the consequences of those harms.[1] Therefore, nothing in the report on the role of the public apology should be interpreted as discouraging private apologies.

A. Definition of a public apology

3. Public apologies, including acknowledgement of the facts and acceptance of responsibility, have been previously defined by the United Nations as a component of "satisfaction" that may be considered as reparation for harm suffered by victims (see General Assembly resolution 60/147, annex, art. 22 (e)). Having reviewed a wide variety of apologies, as well as an extensive range of academic and policy resources (ibid., arts. 8 and 12–23), it is possible to offer herein the following more fulsome definition of a public apology for past human rights violations of the type considered in the present document:

(a) An acknowledgement of a wrong deliberately or negligently inflicted that is named;

(b) A truthful admission of individual, organizational or collective responsibility for that hurt;

(c) A public statement of remorse or regret related to the wrongful act or acts, or omission, that is delivered with due respect, dignity and sensitivity to the victims;

(d) A guarantee of non-recurrence.[2]

4. The prominence of apologies in terms of dealing with past human rights violations has led some commentators to suggest that we are now living through "the age of apology".[3] Presidents and prime ministers, military leaders, senior religious figures and representatives of non-State armed groups or the political movements with which they are affiliated and others have made public apologies for past harms in transitional justice contexts. The present report contains an exploration of some of

[1] See, for example, Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford, California, Stanford University Press, 1991).

[2] See also Kieran McEvoy and others, *Apologies, Abuses and Dealing With The Past: How To Say Sorry* (Belfast, Queens University Belfast, 2019).

[3] Rhoda E. Howard-Hassmann and Mark Gibney, "Introduction" in *The Age of Apology: Facing Up to the Past*, Mark Gibney and others, eds., (Philadelphia, Pennsylvania, University of Pennsylvania Press, 2008).

the key themes of relevance in the consideration of public apologies, with a view to developing a practical schema to assist in the design and delivery of more effective apologies.

5. Two main themes underpin the guidance set out in the present report, namely, that apologies must be victim-centred and that a gender perspective must be integrated into all apologies.

B. Taking a victim-centred approach to apologies

6. There is quite a significant discussion within the academic and policy-focused literature in the area of transitional justice on victim-centred approaches to the topic. In a victim-centred approach to apologies, primary emphasis is placed on the rights, agency and perspectives of victims. In practice, under such an approach, apologies cannot be used to obviate or otherwise interfere with the rights of victims to justice, truth or reparations, but should instead be viewed as one route to the delivery of those rights, including by enabling victims to exercise their agency in the preparation and delivery of apologies. Their perspectives and feedback must be taken into account and respected in the context of choosing the words used in apologies and the style and context of their delivery.[4] Moreover, they cannot be coerced or otherwise pressurized into the acceptance of apologies in the name of reconciliation or other larger goals in the name of social unity.

C. Integrating a gender perspective into apologies

7. To incorporate a gender perspective into transitional justice processes, gender-related considerations must be taken into account throughout the process, from inception to delivery, including at the design, remit, review, analysis and decision stages.[5] In particular, it involves: recognizing the gender-related nature of past harms; being aware of the risks of perpetuating gender inequalities through transitional justice mechanisms, including public apologies; removing barriers to participation, especially for women; and appropriately addressing gender-specific needs. Harms that have a clear gender dimension, such as wartime sexual violence, may be obscured if they are referred to obliquely under the broad umbrella of human rights violations.[6] Gender-specific harms should therefore be unambiguously addressed in public apologies, and victims and survivors should be involved in any consultation regarding

[4] For example, the Ministry of National Defence of Ecuador was commended for the apology it issued in 2017 for the illegal deprivation of liberty and torture of the commandos believed to have participated in the kidnapping of the President at the Taura air base in 1987, owing to the fact that the apology was coordinated through teams of representatives from the Human Rights Office of the Ministry, the Ombudsman's Office and relevant victims' representative organizations. The achievement of consensus with direct victims and their families was deemed central to the success of the apology and its restoration of dignity to victims. (Submission to the Special Rapporteur by the Office of the Ombudsman of Ecuador). See also www.dpe.gob.ec/defensoria-del-pueblo-presente-disculpas-publicas-los-excomandos-la-base-aerea-taura-guayaquil (Spanish only).

[5] Yasmine Ahmed and others, "Developing gender principles for dealing with the legacy of the past", *International Journal of Transitional Justice*, vol. 10, No. 3.

[6] Catharine A MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, Massachusetts, Harvard University Press, 2006), p. 180.

the contents, context or delivery of apologies for such harms.[7] In some cases, it may also be relevant to consider the gender of the person delivering the apology. More generally, a incorporating a gender perspective into apologies requires that women be involved in all stages of the apology process, rather than being viewed as passive recipients of apologies.

III. International legal framework and jurisprudence regarding apologies

8. There are some domestic settings in which apologies have been placed on a statutory footing.[8] Transitional justice is defined by the United Nations as the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation (S/2004/616, para. 8). The United Nations framework sets out the four pillars of transitional justice: truth, justice, reparation and guarantees of non-recurrence (ibid.). Public apologies are usually considered within the reparations pillar (see General Assembly resolution 60/147, art. 22 (e)).

9. The 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 are secondary legal sources of international law and an influential document in helping Member States, as well as international and domestic courts, to interpret the right to reparation under international law. The Committee against Torture relies on the definition of reparation therein to interpret the right to redress of torture victims (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14) as including public apologies as a mean of "satisfaction".[9] A similar approach was adopted regarding the interpretation of reparations within the scope of the International Covenant on Civil and Political Rights.[10] The International Law Commission has drafted articles on Responsibility of States for internationally wrongful acts (General Assembly resolution 56/83, annex), including apologies as a form of reparation for the injury caused by the internationally wrongful act (see ibid., art. 37). Various other United Nations reports and commentaries have also considered apologies as a symbolic and collective reparation measure aimed at providing satisfaction to victims, by recognizing their victimhood and the societal norms transgressed (see A/69/518; A/HRC/14/22; A/HRC/21/46; and CCPR/C/158).[11]

[7] Alice MacLachlan, "Gender and public apology", *Transitional Justice Review*, vol. 1, No. 2. For a notable exception, see the specifically gender-oriented apology in the statement made on International Women's Day in 2010 by then President of Sierra Leone, Ernest Bai Koroma, who apologized to all women who were victimized during the brutal 1990 civil war, followed by the implementation of the gender justice laws of Sierra Leone and the creation of a national strategic plan on gender. (Submission by the Sierra Leone National Human Rights Institution. See also International Centre for Transitional Justice, "More than words: apologies as a form of reparation" (December 2015), p. 9.

[8] For example, the Apologies (Scotland) Act 2016 provides that an apology cannot be used in certain civil proceedings as evidence to determine liability or to otherwise prejudice the person making the apology or on whose behalf it is made. The explanatory notes to the Act indicate that it was introduced for the broader purpose of encouraging a cultural and social change in attitudes towards apologizing.

[9] Committee Against Torture, general comment No. 3 (2012) on the implementation of article 14.

[10] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

[11] See, for example, *Rule-of-Law Tools for Post-Conflict States: Reparations programmes* United Nations publication, Sales No. E.08.XIV.3); see also Pablo de Greiff, "The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted" in *The Age of Apology*.

Certain special procedures mandate holders have gone so far as to argue that official apologies and official recognition of State responsibility can be more effective than monetary compensation for victims of violent crimes, such as torture or sexual violence (see A/HRC/4/33; and A/HRC/14/22).

10. Apologies have also featured in the jurisprudence of a number of international courts, albeit normally in the context of mitigation by the defendants at the sentencing phase. For example, at the International Criminal Tribunal for the former Yugoslavia, one third of the 90 sentenced defendants made statements of apology, 19 of which were part of their guilty pleas. In one notorious case, former President of Republika Srpska, Biljana Plavšić, as the defendant, pleaded guilty to crimes against humanity and made what was regarded by the court as a statement of apology and was sentenced to 11 years imprisonment.[12] Her statement and guilty plea led to the prosecution dropping some of the charges against her, in particular that of genocide. However, after being granted early release from prison, Plavšić confessed that it had been a strategic move to avoid a harsher sentence and that she "had done nothing wrong".[13] Senior political and transitional justice figures, including former Secretary of State of the United States of America, Madeleine Albright, and a former Chair of the South African Truth and Reconciliation Commission, Alex Boraine, gave evidence in support of Plavšić, in the light of her statement, stressing its importance for reconciliation in the region. At the International Criminal Tribunal for Rwanda, one sixth of the 62 defendants ultimately expressed some remorse for their past crimes.[14] In contrast to the International Criminal Tribunal for the former Yugoslavia, none of the highest-ranking defendants apologized. For example, former Prime Minister of Rwanda at the time of the genocide, Jean Kambanda, neither apologized for his active involvement in the genocide nor "expressed contrition, regret or sympathy for the victims in Rwanda", despite being given an opportunity by the court to do so.[15]

11. In the Extraordinary Chambers in the Courts of Cambodia, an apology was made by Kaing Guek Eav, known as "Duch", the former head of the infamous S-21 detention centre Tuol Sleng Prison, where up to 20,000 people were tortured and killed. During his trial for war crimes and crimes against humanity, he expressed remorse for crimes he committed under the Khmer Rouge regime, acknowledged his responsibility and directly apologized to the few survivors of the S-21 detention centre. The court acceded to a request by victims to compile and publish his statements of apology as a reparative measure. Civil parties were not fully aware, however, of the fact that the court could grant only collective and moral reparations, which upset and frustrated them when they learned that they could not receive individual monetary reparations. Moreover, the success of the apology and its wider impact on reconciliation in Cambodia have been questioned. No other defendants apologized at the court.

[12] A number of those present disputed whether Plavšić's statement amounted to an apology, despite it's having been lauded as such. As Prosecutor of the International Criminal Tribunal for the former Yugoslavia Carla Del Ponte recounted: "[Plavšić] got up during her sentencing hearing and read out a statement full of generalized mea culpas but lacking compelling detail. I listened to her admissions in horror, knowing she was saying nothing." Carla Del Ponte with Chuck Sudetić, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity* (New York, Other Press, 2008), p. 161.

[13] See Jelena Subotić, "The cruelty of false remorse: Biljana Plavšić at The Hague", *Southeastern Europe*, vol. 36, No. 1.

[14] Oliver Diggelmann, "International criminal tribunals and reconciliation: reflections on the role of remorse and apology", *Journal of International Criminal Justice*, vol. 14, No. 5. See also Alan Tieger, "Remorse and mitigation in the International Criminal Tribunal for the former Yugoslavia", *Leiden Journal of International Law*, vol. 16, No. 4.

[15] International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Jean Kambanda*, case No. ICTR 97-23-S, Judgment and sentence, 4 September 1998, para. 51.

12. A statement of apology was included as part of a reparation order in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi* before the International Criminal Court. Following a guilty plea, the defendant was sentenced to 9 years' imprisonment for the war crime of intentionally directing attacks against historic monuments and buildings dedicated to religion, including nine mausoleums and one mosque in Tombouctou, Mali, in July 2012.[16] At the sentencing hearing, he said that he was "truly remorseful" and regretted all the damage his actions had caused.[17] The Court ordered the statement of apology to be published on the Court's website, with an excerpt of the video and corresponding translated transcripts, as a symbolic reparation measure.[18] Although the Court considered the apology to be "genuine, categorical and empathetic", some victims questioned its timing, its location in the courtroom and the sincerity of the displayed remorse, and publicly rejected it.[19] In the case of *The Prosecutor v. Germain Katanga*, in which the defendant was sentenced to 12 years' imprisonment for crimes against humanity and war crimes in the Democratic Republic of the Congo,[20] he did not apologize during the trial or sentencing phases.[21] However, while in detention, he changed his attitude and made public a video of apology, accompanied by transcripts for the sentence review hearing in 2015.[22] Victims did not welcome the apology, arguing that it was not specific to the crimes that Katanga committed and victims he harmed – and again, that it was a strategic calculation to avoid a harsher sentence.[23]

13. The most developed jurisprudence on apologies from regional human rights courts has come from the Inter-American Court of Human Rights.[24] The Court has ordered public apologies as a form of satisfaction in its decisions on reparations, ruling, in a number of notable cases, that States must not only acknowledge their responsibility for past human rights violations but also apologize to victims.[25] For example, in the *Case of the Plan de Sánchez Massacre v. Guatemala*, the Court addressed the killing of 268, mostly Mayan, villagers by the armed forces of

[16] International Criminal Court, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, case No. ICC-01/12-01/15-171, Judgment and Sentence, Trial Chamber VII, 27 September 2016.

[17] See www.icc-cpi.int/mali/al-mahdi/Documents/Al-Mahdi-Admission-of-guilt-transcript-ENG.pdf.

[18] International Criminal Court, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, case No. ICC-01/12-01/15-236, Reparations Order, Trial Chamber VII, 17 August 2017, para. 71. For further discussion of reparations in the *Al Mahdi* case, see Francesca Capone, "An appraisal of the Al Mahdi order on reparations and its innovative elements: redress for crimes against cultural heritage", *Journal of International Criminal Justice*, vol. 16, No. 3.

[19] International Criminal Court, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, para. 70.

[20] International Criminal Court, *The Prosecutor v. Germain Katanga*, case No. ICC-01/04-01/07-3436, Judgment pursuant to article 74 of the Statute, Trial Chamber II, 7 March 2014.

[21] International Criminal Court, *The Prosecutor v. Germain Katanga*, case No. ICC-01/04-01/07-3728, Order for Reparations pursuant to Article 75 of the Statute, Trial Chamber II, 24 March 2017, para. 315.

[22] International Criminal Court, *The Prosecutor v. Germain Katanga*, case No. ICC-01/04-01/07-3615, Decision on the review concerning reduction of sentence of Germain Katanga, Appeals Chamber, 13 November 2015, paras. 14 and 46.

[23] Ibid., paras. 41, 80 and 84.

[24] There is very limited relevant jurisprudence of the European Court of Human Rights relating to apologies in a transitional context. One Court ruling contains mention of an apology, albeit in the context of institutional child abuse in Ireland. See – European Court of Human Rights, Grand Chamber, *O'Keeffe v. Ireland*, No. 35810/09, Judgment (Merits and Satisfaction), 28 January 2014. The African Commission on Human and Peoples' Rights has issued reparation orders, but none have required an official apology. See, for example, communication No. 295/04, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, paras. 131 and 136; and communication No. 368/09, *Abdel Hadi and others v. Sudan*.

[25] Inter-American Court of Human Rights, *Case of Bámaca-Velásquez v. Guatemala*, Judgment (Reparations and Costs), 22 February 2002, para. 84.

Guatemala in 1982.[26] Despite a previous State apology, made by the former Vice-President of Guatemala, public acknowledgment of State responsibility and commitment to repairing the harm done,[27] the Court nevertheless held that: "to be fully effective as reparation to the victims and serve as a guarantee of non-recurrence, … the State must organize a public act acknowledging its responsibility for the events that occurred".[28] The Court also ordered that the memory of those executed should be honoured, that traditions and customs of the indigenous communities concerned should be respected and that the judgment should be translated in their language.[29]

14. In another ruling on apologies as a reparation measure for grave human rights violations, the Inter-American Court of Human Rights addressed the massacres of almost 1,000 civilians, including many children, by the armed forces of El Salvador in and around El Mozote in 1981.[30] As in the *Case of the Plan de Sánchez Massacre*, the State had previously apologized for the abuses. On the twentieth anniversary of the peace agreement, then President of El Salvador, Mauricio Funes delivered a speech in El Mozote, in which he recognized the State responsibility in the massacre, presented a list of the victims and apologized to victims on behalf of the State.[31] In its judgment, the Court determined the following necessary criteria for the apology: (a) it should be agreed upon with the victims; (b) it should take place in public; (c) it should take place where the crimes were perpetrated; (d) it should include an acknowledgment of responsibility for all human rights violations that were committed; (e) victims and survivors should be present during the ceremony or participate in it; (f) the highest senior officials should make the apology and take part in the ceremony; and (g) the ceremony should be recorded and disseminated throughout the country.[32] Those criteria are widely used throughout the jurisprudence of the Court.[33] In the *Case of the Plan de Sánchez Massacre*, the Court considered that the criteria had been met and therefore accepted the statement of apology made by the State and did not order a new public apology.[34]

15. The Special Rapporteur notes that some international criminal courts have tended to welcome public apologies generously, without being overly prescriptive about their contents, delivery or follow-up. As evidenced in the Plavšić case, there is a strong gravitational pull towards reconciliation in international legal hearings. However, that impulse should not lead to a suspension of critical judgment regarding the quality and efficacy of apologies. The jurisprudence of both the European Court of Human Rights and the African Court on Human and Peoples' Rights is underdeveloped with regard to the use of apologies for serious human rights violations. However, as detailed above, the Inter American Court of Human Rights has given much more serious consideration to the use of apologies. Together with the schema proposed in section V below, the Special Rapporteur is of the view that

[26] Inter-American Court of Human Rights, *Case of the Plan de Sánchez Massacre v. Guatemala*, Judgment (Reparations), 19 November 2004.

[27] Ibid., para. 92.

[28] Ibid., para. 100.

[29] Ibid., paras. 101–102. See also Inter-American Court of Human Rights, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment (Merits and Reparations), 27 June 2012.

[30] Inter-American Court of Human Rights, *Case of the Massacres of El Mozote and nearby places v. El Salvador*, Judgment (Merits, Reparations and Costs), 25 October 2012.

[31] Ibid., para. 19.

[32] Ibid., para. 357.

[33] Inter-American Court of Human Rights, *Case of Goiburú and others v. Paraguay*, Judgment (Merits, Reparations and Costs), 22 September 2006, para. 173; and Inter-American Court of Human Rights, *Case of the "Las Dos Erres" Massacre v. Guatemala*, Judgment (Preliminary Objection, Merits, Reparations and Costs), 24 November 2009, paras. 261–263.

[34] Inter-American Court of Human Rights, *Case of the Massacres of El Mozote*, para. 357.

experience should inform the deliberations of any international – or indeed national – court that is considering apologies in transitional justice contexts.

IV. Conceptual framework for apologies

A. Apologies and motivation

16. The motivation for issuing a public apology in a transitional justice context is often crucial to determining the effectiveness or legitimacy of the public apology. Apologies in such contexts are often motivated by some or all of the following factors: (a) the desire on the part of a State, armed group or organization to make a clean break with the past and herald a new era; (b) the need of an individual or the collective leadership to exercise moral authority and "do the right thing" in addressing past human rights violations; (c) pressure from direct victims or victims' representative bodies or the media; (d) legal or political pressure associated with either a criminal investigation or truth and recovery process.[35]

17. As is evidenced by the diversity of those motivations, apologies are generally both backward- and forward-looking, acknowledging past harms but also signalling a better future.[36] The backward-looking elements include the taking of responsibility for past human rights violations, the honest acknowledgement of what occurred and naming the wrongness of those harms.[37] The forward-looking components address the image of a "redeemed individual or nation",[38] the beginning of a new era and a break from past cultures of violence,[39] but also signal the social and political transformation required to ensure that such atrocities will never be repeated.[40] It has been described as the norm-affirming function of apologies.[41] In Albania, for example, the State apology was issued in 1991, in conjunction with the passing of legislation designed to establish a "fair and honest legal system based on human rights" and to compensate, rehabilitate and reintegrate into society all those who had suffered violations of their rights.[42]

18. The transitional apology made by former President of Chile, Patricio Aylwin, is often cited as an exemplary case of how an apology can aid in the reparative process.[43] Following 17 years of rule by the military regime headed by General Augusto Pinochet, marked by brutalities, persecution, murder and repression, Mr. Aylwin authorized the Rettig Commission to document abuses and provide recommendations of reparations and legislative measures to ensure non-recurrence. When the Commission had concluded its work, Mr. Aylwin delivered an emotional, televised address in which he fully acknowledged the abuses that took place and apologized on behalf of the State to victims and their families. Commentators have argued that that

[35] See Nick Smith, *I Was Wrong: The Meanings of Apologies* (New York, Cambridge University Press, 2008).
[36] Pablo De Greiff, "The Role of Apologies" in *The Age of Apology*.
[37] Nicholas Tavuchis, *Mea Culpa*.
[38] Jason A. Edwards, "Community-focused apologia in international affairs: Japanese Prime Minister Tomiichi Murayama's apology", *Howard Journal of Communications*, vol. 16, No. 4; Joy Koesten and Robert C. Rowland, "The rhetoric of atonement", *Communication Studies*, vol. 55, No. 1.
[39] Ruti G. Teitel, *Transitional Justice* (Oxford, Oxford University Press, 2000).
[40] Melissa Nobles, *The Politics of Official Apologies* (New York, Cambridge University Press, 2008).
[41] Pablo De Greiff, "The Role of Apologies" in *The Age of Apology*.
[42] Submission by the People's Advocate Institution of Albania.
[43] Ernesto Verdeja, "Official apologies in the aftermath of political violence", *Metaphilosophy*, vol. 41, No. 4.

represented a "turning point in gaining respect for victims and advancing public understanding of the country's past".[44]

19. In many transitional contexts, there are often compelling reasons why leaders are reluctant to apologize. Legal considerations, such as the impact of an apology in terms of potential criminal or civil liability, will almost always be taken into account by apologizing organizations or institutions.[45] In addition, State or non-State groups may believe that some of their past actions were justified. An apology could suggest that all past actions were unjustified. Moreover, as considered further below, it may also have consequences for the management of one's own constituency, with any apology being viewed as an insult to the sacrifice and bravery of those who died, were injured or were imprisoned for the nation or cause associated with the apologizer – what has been termed a "remembrance backlash".[46] Apologies are closely associated with notions of honour, national or organizational self-image and reputation.[47] Understanding the variables that may inhibit the offer of apologies or limit them are important for victims or campaigning organizations that are seeking apologies.

20. The Special Rapporteur reiterates that those seeking apologies must understand the motivation of apologizing States, non-State groups or other organizations and the variables working against fulsome public apologies. In particular, such an understanding should inform any negotiations or discussions about the nature, content and delivery of apologies. A degree of cynicism about the underlying motives for a public apology does not automatically negate the effectiveness or legitimacy of a public apology, in particular if the benchmarks outlined below are met in practice.

B. Apologies, acknowledgement and truth

21. Acknowledgment of the truth of past wrongdoing is a fundamental prerequisite for an effective apology.[48] The Special Rapporteur underscores that truthful apologies are required in order to validate the experience of victims and restore their dignity. Dehumanization is often a necessary element of the process of rationalizing and inflicting suffering on others. Truthful apologies are a fundamental part of humanizing – or "rehumanizing" – those who have suffered past abuses and re-establishing their human worth, dignity and self-respect.[49] More broadly, the truth-telling function of public apology is required in order to establish an accurate public record of the past, educating the wider community on the nature and extent of past injustices and contributing towards reconciliation.[50] Scholars have described the two key truth-telling parts of an effective apology as "reckoning" and "naming".

[44] Priscilla B. Hayner, "Past truths, present dangers: the role of official truth seeking in conflict resolution and prevention" in Paul C. Stern and Daniel Druckman, eds., *International Conflict Resolution After the Cold War* (Washington, D.C., National Academy Press, 2000), p. 352.

[45] Mark Gibney and Erik Roxstrom, "The status of State apologies", *Human Rights Quarterly*, vol. 23, No. 4.

[46] Jennifer M. Lind, *Sorry States: Apologies in International Politics* (Ithaca, Cornell University Press, 2008); and Keith M. Hearit, *Crisis Management by Apology: Corporate Responses to Allegations of Wrongdoing* (Mahwah, New Jersey, Lawrence Erlbaum Associates, 2006), p. 74.

[47] Azuolas Bagdonas, "The practice of State apologies: the role of demands for historical apologies and refusals to apologize in the construction of State identity", doctoral dissertation, Central European University, 2011. See also Richard B. Bilder, "The Role of Apology in International Law and Diplomacy", *Virginia Journal of International Law*, vol. 46 No. 3; and Elizabeth S. Dahl, "Is Japan facing its past? The case of Japan and its neighbours" in *The Age of Apology*.

[48] Nicholas Tavuchis, *Mea Culpa*, p. 19.

[49] Jean-Marc Coicaud and Jibecke Jönsson, "Elements of a Road Map for a Politics of Apology" in *The Age of Apology*.

[50] Girma Negash, *Apologia Politica: States and Their Apologies by Proxy* (Lanham, Maryland, Lexington Books, 2006); Michael Murphy, "Apology, recognition and reconciliation", *Human Rights Review*, vol. 12, No. 1; and Rhoda Howard-Hassmann, "Official Apologies", *Transitional Justice Review*, vol. 1, No. 1.

Reckoning involves the unequivocal acknowledgement of events, without justification or explanation, in order to demonstrate awareness of each injustice committed. Naming specifies who the victims of injustices were and to whom the apology is addressed.[51] By explicitly acknowledging each wrong and naming the victims, the possibility of providing vague or euphemistic apologies, or minimizing the severity of the wrongs, is reduced. A truthful apology is the opposite of "drawing a line under the past"; it should be part of a broader process of coming to terms with past human rights violations – and the antithesis of "the slippery slope of forgetting".[52]

22. Apologies are just one method of truth recovery in transitional justice. Truth commissions or analogous mechanisms such as public inquiries, international or domestic criminal trials, reparations programmes, memorials, remembrance days and other transitional justice mechanisms or processes all have important truth recovery functions. The value added of an apology is that it represents a "singular, concentrated moment of public attention" designed to inscribe past events into living public memory.[53] Scholars have noted that a public and officially sanctioned apology is part of the process designed to reduce "the number of permissible lies in a society".[54] As has been argued with regard to the apology by the former Prime Minister of Australia, Kevin Rudd, for the "stolen generations" of Aboriginal children or the apology by the former Prime Minister of the United Kingdom of Great Britain and Northern Ireland, David Cameron, for the "unjustified and unjustifiable killing" of civilians in Derry/Londonderry, Northern Ireland, the nature of the apology made intellectually and politically untenable any future efforts to continue to deny the wrong of what had occurred.[55]

23. Of course, not all apologies are offered in a spirit of truthfulness or generosity. Sometimes apologies are employed to evade blame and responsibility, to obfuscate, to minimize legal culpability or indeed to close down a conversation that may lead to more fulsome truth recovery. States, armed groups, corporations or organizations can sometimes use apologies as a technique of denial whereby past abuses and their responsibility for same are minimized, obscured or reinterpreted.[56] For example, critics of the apology issued by the President of Togo in April 2012, in conjunction with the submission of the report of the Truth, Justice and Reconciliation Commission, argue that the apology must be judged in the light of the fact that the State continues to withhold publication of three volumes of the Commission's findings.[57]

[51] Eneko Sanz, "National apologies: mapping the complexities of validity" paper prepared for the Centre for Peace and Conflict Studies, 2012; and Girma Negash, *Apologia Politica*.

[52] Elazar Barkan and Alexander Karn, eds., *Taking Wrongs Seriously: Apologies and Reconciliation* (Redwood City, California, Stanford University Press, 2006), p. 6.

[53] Michael Murphy, "Apology, recognition and reconciliation", *Human Rights Review*, vol. 12, No. 1, p. 56.

[54] Robert R Weyeneth, "The power of apology and the process of historical reconciliation", *The Public Historian*, vol. 23, No. 3, p. 33. See also Michael Ignatieff "Articles of faith", *Index on Censorship*, No. 5.

[55] Michael J. A. Wohl and others, "A critical review of official public apologies: aims, pitfalls, and a staircase model of effectiveness: intergroup apologies", *Social Issues and Policy Review*, vol. 5, No. 1.

[56] Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Cambridge, Polity Press, 2001).

[57] Submission from civil society. See also Edoh Agbehonou, "Truth, Justice and Reconciliation Commission in Togo: a tool for regime maintenance or a tool for healing the wounds of the past and for a peaceful democratic alternative" in Brandon Lundy and others, eds., *Atone: Religion, Conflict and Reconciliation* (Lanham, Maryland, Lexington Books, 2018).

24. In a similar vein, the failure to identify and name specific harms was a key criticism of the apology issued in March 2015 by then President of Kenya, Uhuru Kenyatta. Prompted by a recommendation in the final report of the Truth, Justice and Reconciliation Commission, he made a very general public apology in parliament to "all compatriots" for "all past wrongs". Critics have argued that the apology should have clearly acknowledged specific issues such as systemic historical sexual violence and that all relevant parties, including law enforcement agencies and the judiciary should have apologized for their roles in enabling such harms.[58]

25. Former President of South Africa, F. W. de Klerk, was accused of similar tactics in his apology made in 1993, in which he suggested that apartheid was a "well-intentioned" system that went wrong.[59] In Northern Ireland, critics argued that apologies resulting from police-led historical investigations undertaken by the Historical Enquiries Team into conflict-related deaths became a substitute for accountability and a more fulsome truth recovery process and that qualifications were added to the official apologies that victims received from the Ministry of Defence of the United Kingdom in order to minimize the risks of legal liability.[60]

26. The Special Rapporteur notes that apologies may form an important part of a society's efforts to establish the truth about a violent or abusive past and can bring added value to other truth-seeking transitional justice mechanisms or processes. He also stresses the risks of apologies being used to deny or minimize the extent of past wrongs or the culpability of those involved, which is why guidance on the truthful component of a public apology is so important.

C. Apologies and timing

27. The Special Rapporteur underscores that the timing of an apology can have a significant bearing on its reception. Victims will often want evidence that the apology has been given appropriate, careful and sincere consideration by the apologizing State or organization and not simply "rushed out" for the sake of political expediency.[61] However, an apology that has apparently had to be "dragged out" of the State or organization responsible can be seen as "a manipulative attempt to placate victims rather than as a genuine admission of remorse",[62] or as "too little, too late".[63]

28. As noted above, the sequencing of an apology in terms of whether it should appear before, during or after other transitional justice processes, such as a truth commission or trial, is an important variable. At one level, an apology before the full truth of past violations has been established may appear illogical. For example, in the case in Northern Ireland of Patrick Finucane, a human rights lawyer killed by loyalist

[58] Submission by the Kenya National Commission on Human Rights.

[59] Mia Swart, "Sorry seems to be the hardest word: apology as a form of symbolic reparation", *South African Journal of Human Rights*, vol. 24, No. 1, p. 63.

[60] Patricia Lundy and Bill Rolston, "Redress for past harms? Official apologies in Northern Ireland", *The International Journal of Human Rights*, vol. 20, No. 1, p. 115. In a case relating to the killing of a civilian by the British army, the family received a letter from the Ministry of Defence "expressing deep regret", which the family interpreted as an apology, had it framed and hung it, giving it pride of place in their home. It was only after the family lawyer wrote to seek clarification of the status of the letter that the Ministry confirmed that the letter was not an official apology.

[61] Cynthia M. Frantz and Courtney Bennigson, "Better late than early: the influence of timing on apology effectiveness", *Journal of Experimental Social Psychology*, vol. 41, No. 2.

[62] Craig Blatz and Catherine Philpot, "On the outcomes of intergroup apologies: a review", *Social and Personality Psychology Compass*, vol. 4, No. 11, p. 999.

[63] Stephen Fineman and Yiannis Gabriel, "Chapter 6: Apologies and remorse in organizations: saying sorry and meaning it?" in Chris Steyaert and Bart Van Looy, eds., *Relational Practices, Participative Organizing* (Bingley, United Kingdom, Emerald Group Publishing, 2010), p. 104.

paramilitary members, but with the extensive collusive involvement of British State actors, Mr. Cameron apologized for the State collusion in the murder but refused to grant the full public inquiry that had been long campaigned for by the family. In response, Geraldine Finucane, the wife of Mr. Finucane, rejected the apology, saying that "it doesn't really go far enough, because I don't really know what he is apologizing for".[64] In other contexts, as was the case with Mr. De Klerk analysed above, truth commission hearings themselves have offered the opportunity for apologies before the commission has finished its work. In a similar vein, during the public hearings of the Truth and Reconciliation Commission of Peru, videotaped statements were shown from imprisoned former members of the Shining Path and Túpac Amaru Revolutionary Movement, some of whom offered apologies to their victims.[65] Some State actors who were previously members of armed groups have used truth commission hearings to apologize for actions they have taken in their past roles. For example, then President of Timor-Leste, Xanana Gusmão appeared before the Commission for Reception, Truth and Reconciliation in his capacity as leader of the resistance army Falintil-Forças Armadas de Defesa de Timor-Leste, along with the leaders of other political parties and armed movements that had resisted the occupation by Indonesia, and apologized for killings and other violence directed at rival groups and civilians.[66] Even when apologies are offered during the work of a transitional mechanism such as a truth commission, that does not preclude a formal public apology once its work has been completed and the full truthful record of what occurred has been established.

29. It may also be symbolically important for apologies to be offered in such a way that they coincide with the anniversary or other important dates set aside to commemorate the memory of victims of past abuses. In January 2012, which marked 70 years since the largest deportation of Norwegian Jews from Oslo, the Prime Minister of Norway, Jens Stoltenberg, apologized for the participation of the Norwegian police force in the deportation and for the fact that the event had occurred on Norwegian soil.[67] In 1997, the King of Norway used the opening of the Sami Parliament as an opportunity to apologize for the Government's "Norwegianization" policy towards the Sami people.[68] In a similar vein, in 2002, marking thirty years since a series of bomb explosions throughout Belfast, in which nine people were killed (5 of whom were civilians) and 130 people were injured, the Irish Republican Army issued a statement in which they offered its "sincere apologies and condolences" to the families of those killed.[69] In Sierra Leone, following repeated calls from the Human Rights Commission and women's groups for a State apology for the sexual violence during the conflict, the Government chose to issue an apology to the women of Sierra Leone on International Women's Day, in front of a diverse group of women, civil society actors, representatives of the international community

[64] The Government of the United Kingdom established a review of the papers in the Finucane case, rather than a public inquiry in which witnesses could be cross-examined. See Sir Desmond de Silva, *The Report of the Patrick Finucane Review*, House of Commons, United Kingdom (London: The Stationery Office, 2012). See also Owen Bowcott, "Pat Finucane's widow calls de Silva report a 'whitewash'", *The Guardian*, 12 December 2012.

[65] Priscilla Hayner, *Unspeakable Truths: Truth Commissions and the Challenge of Transitional Justice*, 2nd ed. (London, Routledge, 2011).

[66] International Centre for Transitional Justice, "More than words", p. 10.

[67] For the full text of the apology see www.regjeringen.no/en/historical-archive/Stoltenbergs-2nd-Government/Office-of-the-Prime-Minister/taler-og-artikler/2012/speech-on-international-holocaust-rememb/id670621.

[68] Submission by the Royal Norwegian Ministry of Local Government and Modernization. On International Roma Day in 2015, Prime Minister of Norway, Erna Solberg, apologized to the Norwegian Roma for the racist exclusion policy practiced by Norway in the decades before and after the Second World War.

[69] Irish Republican Army statement, *An Phoblacht*, 16 July 2002.

and the media.[70] In those cases, the actors involved were highly conscious of the symbolic importance of timing in terms of maximizing the impact of the public apologies in question.

D. Preparing the apology: speaker status, victim engagement and style of delivery

30. There are a number of additional important dimensions related to the preparatory work required to maximize the effectiveness of public apologies in transitional justice contexts.

31. The first element is sometimes referred to as the "who question". The individual who delivers the apology must have the necessary authority to speak on behalf of the State or organization responsible for the past wrong. The "moral authority" of the chosen speaker as a leader signals the level of recognition and respect that the victim group is being accorded.[71] The apology by then head of the Bureau of Indian Affairs of the United States, Kevin Gover, for that agency's role in the "ethnic cleansing" of the western tribes and its "legacy of racism and inhumanity" towards Native Americans was rejected by some tribes because "it came from the wrong person", since he did not speak on behalf of the federal Government as a whole.[72] By contrast, the apology issued by the President of Sierra Leone in 2010 was deemed appropriate, because he spoke on behalf of all perpetrators of human rights violations, especially those against women, in his capacity as the President, the Commander-in-Chief of the Armed Forces, the Fountain of Honour of the Republic and as a man.[73]

32. For non-State armed groups, similar challenges arise, such as, when a political/military movement is apologizing for past atrocities, whether it should be delivered by someone speaking on behalf of the military movement or from the political side of that organization. When Nelson Mandela responded to the findings of the Skweyiya Commission, in which abuses by the African National Congress against its own members was documented, referring to such abuses as "inexcusable", while not formally apologizing for them, his status as a leader of both the political and military wings of that movement was never in doubt.[74] However, in contemporary Northern Ireland, where there has been a generational shift in Sinn Féin, the political wing of the Irish Republican Army, neither the President nor Vice-President of Sinn Féin have any Irish Republican Army background, so their statuses to apologize for its past actions would inevitably be called into question.[75] It is particularly important because, for an apology to be effective, the constituency of the apologizing institution or organization must also be properly prepared and managed. If an apology is issued by a leader and is then contradicted by others from within that constituency, such as by their questioning the status of the apologizer, it will inevitably undermine the

[70] Commentators noted that, with the apology, "Sierra Leone took an important symbolic step. A formal apology by the head of state is one of the simplest yet most fundamental measures that a government can take in fulfilling the right to reparations". See "Sierra Leone: apology to women victims a welcome step". Available at www.peacewomen.org/content/sierra-leone-apology-women-victims-welcome-step.

[71] Cels Sanderijn, "Saying sorry: ethical leadership and the act of public apology", *The Leadership Quarterly*, vol. 28, No. 6.

[72] Christopher Buck, "'Never again': Kevin Gover's apology for the Bureau of Indian Affairs", *Wicazo Sa Review*, vol. 21, No. 1.

[73] Submission by the Sierra Leone National Human Rights Institution.

[74] "ANC admits torture of its own prisoners: S. Africa: Mandela terms 'inexcusable' documented atrocities committed on black inmates at detention camp in Angola in 1980s", *Los Angeles Times*, 20 October 1992.

[75] Kieran McEvoy, "Apologies, acknowledgement and dealing with the past in Northern Ireland", discussion document, Healing Through Remembering (2015, unpublished).

effectiveness of the apology. The position and authority of the speaker is therefore vital to an apology's delivery, perceived sincerity and effectiveness.

33. The second key preparatory element required for an effective apology is extensive prior engagement with the victims or their representatives, either directly or through an interlocutor. The rationale for engagement with victims before the issuance of a public apology is to ensure that the apologizing State, non-State armed group or other organization must be clear about what precisely victims need or expect to hear in such a statement.

34. Before Mr. Cameron's public apology in the wake of the issuance of the report of the Saville (Bloody Sunday) Inquiry, discussions took place not only about the wording to be used but also the choreography of the launch of the report on the Inquiry.[76] Similarly, the apology issued by the President of Sierra Leone in 2010 was endorsed by most women's rights and human rights organizations precisely because they had been involved in the process of developing the apology.[77] The process of consulting and negotiating the contents and the style of delivery of an apology offers some agency and symbolic respect to victims. It also provides a mechanism for ensuring that victims are under no pressure to "forgive" the apologizer, providing an opportunity for victims to outline how they are likely to respond to the apology, should they so wish. Moreover, such communication is vital to ensuring that the content of an apology becomes more than a "wrongdoer's narrative" and that the language used or the way in which the apology is delivered does not further insult victims of past harms.

35. Other elements that should be considered in the preparation of effective apologies are giving due consideration to the way in which the apology will be delivered, its location and the nature of the ceremony involved. Effective public apologies require careful planning and choreography in order to maximize their effectiveness. For example, Mr. Rudd's apology for the "stolen generations" in 2008 was televised live and broadcast in public squares throughout the country.[78] Similarly, Mr. Cameron's apology was made in the House of Commons and broadcast live on a large screen outside of the Guildhall in Derry/Londonderry, the city in which the killings took place.[79] It was preceded by a march retracing the steps of the original civil rights march and was followed immediately by emotional scenes, with family members of those killed speaking to the crowd about the exoneration of their loved ones by the Saville Inquiry.

36. In some contexts, the location of the apology event can be symbolically very important. For example, the apology made by former Vice-President of Guatemala, Eduardo Stein, to survivors of the Plan de Sánchez massacre was delivered locally, at the site where the massacre took place. Similarly, the Revolutionary Armed Forces of Colombia chose to deliver an apology for the killing of 79 civilians hiding in a church during a firefight with right-wing paramilitaries in Bojayá, Colombia, the town where it occurred, vowing to "compensate [for] the damage done, repair the victims of these acts, as well as not ever repeat situations like this".[80]

[76] See Jason A. Edwards and Amber Luckie, "British Prime Minister David Cameron's Apology for Bloody Sunday" in Hilde Van Belle and others, eds., *Argumentation in Context* (Amsterdam, John Benjamins Publishing Company, 2014), pp. 115–129.

[77] Submission by the National Human Rights Institute of Sierra Leone.

[78] Danielle Celermajer, *The Sins of the Nation and the Ritual of Apologies* (New York, Cambridge University Press, 2009).

[79] See "Bloody Sunday report: David Cameron apologises for 'unjustifiable' shootings", *The Guardian*, 15 June 2010.

[80] International Centre for Transitional Justice, "More than words", p. 10.

37. In addition to location, appropriate ceremonial aspects of public apologies may also contribute significantly to their impact. In 2014, four ministers of the Government of Ecuador and the Attorney General went into the Amazon rainforest and took part in a ceremony to apologize to the indigenous population for past human rights violations.[81] Apologies have also featured as part of traditional ceremonies designed to heal relations between victims, communities and former combatants from the Lord's Resistance Army in northern Uganda as part of public restorative justice ceremonies.[82]

38. More generally, an appropriately dignified ceremony, which involves victims in the planning and delivery of the public apology, is required in order to maximize the dignity, solemnity and seriousness of purpose of such events. The decision by former Chancellor of the Federal Republic of Germany, Willy Brandt, to kneel before a memorial dedicated to victims of the Warsaw ghetto uprising is still widely revered as an important ceremonial apology for the atrocities committed during the Second World War.[83] Conversely, the apology delivered by the President of Togo, Faure Essozimna Gnassingbé, in April 2012, prompted by a recommendation contained in the initial report of the Truth, Justice and Reconciliation Commission, has been criticized for its lack of solemnity and the fact that it was buried in a long speech that effectively obscured the substance of the apology. The venue, the great banquet hall of the presidential palace, was also deemed highly inappropriate given its inaccessibility to direct victims.[84]

39. The Special Rapporteur underscores that careful consideration of the identity and authority of the person delivering the apology, the nature of the engagement with victims and survivors before the apology is made public and the context and style of the presentation of the apology and the dissemination strategy are required before an apology is delivered, in order to maximize its effectiveness.

E. After the apology: follow through, non-recurrence and reconciliation

40. The Special Rapporteur warns that, unless a public apology is accompanied by appropriate follow through, it risks being dismissed as "gestural politics" or "empty rhetoric". Apologies are adequate and effective when accompanied by other State actions, such as erecting a monument that displays the text and date of the apology. Follow-up actions may include truth recovery, or further truth recovery, reparations, different forms of memorialization and the reform of the institutions involved in violations or that failed to protect the human rights of victims, in order to realize the guarantees of non-recurrence. Without addressing such structural issues, the promise contained in a public apology may soon appear hollow to the victims and affected communities. For example, the pledge made by Mr. Kenyatta, in 2015, to set aside 10 billion Kenya shillings for restorative justice has yet to be put into practice. In effect, that apology "has not yielded significant remedies".[85] Failure to comprehensively deliver on promises of reparation can undermine even the most carefully worded and choreographed apologies.

[81] Ibid. p. 15.

[82] Tim Allen as cited in Erin Wilson and Roland Bleiker, "Performing political apologies" in *Memory and Trauma in International Relations: Theories, Cases and Debates*, Erica Resende and Dovile Budryte, eds. (London, Routledge, 2013), p. 8.

[83] Danielle Celermajer, *The Sins of the Nation*.

[84] Submission from civil society.

[85] Submission by the Kenya National Commission on Human Rights.

41. In contrast, the fact that the apology made by the State of Albania in 1991 was underpinned by financial compensation for survivors of the communist regime, including relatives of those who were executed, imprisoned or expelled, legal redress and symbolic reparations added significant weight to the remorse expressed to those who endured political punishment and suffering.[86] Similarly, the effectiveness of three significant public apologies issued by the Government of Switzerland, for its refugee policy during the Second World War, negligence during the post-war restitution process and past family policies that violated human dignity, was judged in the light of the mechanisms that were subsequently put into place for recognition, redress and reparations.[87]

42. The Special Rapporteur stresses that living up to the guarantees of non-recurrence of human rights abuse are a fundamental prerequisite for an effective apology. The duty of States to adopt measures to protect and ensure the realization of human rights implies not only a general obligation to prevent any form of future violation, but also a specific obligation to prevent the recurrence of a particular violation that has already taken place.[88] Although guarantees of non-recurrence are a distinct legal obligation from direct reparations to victims and survivors, in practical and political terms, any repeat of similar human rights violations by a State or non-State armed group will inevitably undermine a public apology for similar past abuses.

43. In addition to taking the range of legal and policy measures designed to realize the guarantee of non-recurrence, such as prosecutions of past abusers, truth recovery processes, reforms to the judicial or criminal justice system, vetting measures designed to remove abusers from public office, memory work is also an important part of post-apology follow through. The construction of memorials, appropriate exhibitions in museums and the instigation of days of remembrance all have important roles to play in the realizing the expressions of remorse or regret in a public apology.

44. Other forms of memory work may include changes to the school curriculum in the teaching of history, as well as in subjects such as politics or civics, referred to in some countries as citizenship. As was noted above, subsequent to the completion of the work of the truth commission in Chile, a public apology was issued by Mr. Aylwin. However, the report of that truth commission also contained recommendations that the educational curriculum in Chile should include an honest consideration of the abuses of the past and should inculcate a "culture of human rights" throughout Chilean society to ensure that such abuses did not occur again.[89] In a similar vein, although the initial response of the Government of Guatemala to the truth commission and ensuing apology was widely viewed as half-hearted at best, the effect of the report and the apology was that it opened up "spaces for teachers and schools to consider treating topics that a few years ago would have been taboo".[90]

45. The final post-apology follow through issue to consider is that of reconciliation. For most commentators, an obvious key function of public apologies is to contribute

[86] Submission by the People's Advocate Institution of Albania. The national human rights institution notes that more work remains to be done to advance the process of transitional justice and in particular to ensure that former political prisoners are adequately compensated and that research is completed on all those who were disappeared under the former communist regime.

[87] Submission by the Task force dealing with the past and prevention of atrocities, of Switzerland.

[88] Alexander Mayer-Rieckh "Guarantees of non-recurrence: an approximation", *Human Rights Quarterly*, (2017) vol. 39, No. 2, p. 422.

[89] Elizabeth Cole, "Transitional justice and the reform of history education", *International Journal of Transitional Justice* vol. 1, No. 1.

[90] Elizabeth Oglesby, "Education and the politics of history in Guatemala: integrating 'memory of silence' into the curriculum" in Elizabeth Cole, ed., *Teaching the Violent Past: History Education and Reconciliation* (Lanham, Maryland, Rowman and Littlefield, 2007).

to reconciliation in post-conflict or post-authoritarian societies.[91] However, that contribution is often rather vague and unspecified.[92] It is very important not to make the assumption that a public apology will automatically lead to improved relations between individuals, communities, States or former members of armed groups. As indicated above, no representative of a State or non-State armed group should offer an apology in expectation of forgiveness on the part of victims or survivors. However, a properly crafted and delivered public apology may represent one important contribution to reconciliation for some individuals, communities and societies, in some circumstances, in particular when accompanied by other transitional justice processes such as justice, truth, reparations and institutional reform.

46. The Special Rapporteur recalls that reconciliation entails the restoration of victims' trust in the State and its institutions and of conditions under which individuals can trust one another as equal rights holders. Reconciliation cannot be achieved without comprehensive progress in all transitional justice areas. Therefore, reconciliation should not be seen as a substitute for justice or lead to impunity for the perpetrators of gross human rights and humanitarian law violations (A/HRC/21/46, para. 66).

47. The Special Rapporteur underscores that apologies must constitute an institutional policy, which must be publicly and unequivocally sustained and reaffirmed by high-ranking and other State authorities. The apologies pronounced by the State in the framework of its acknowledgement of responsibility for past violations should not be subsequently distorted by counteractions carried out by State officials, because they can cause the revictimization of victims and lead to new violations of the State's human rights obligations. Should actions contrary to the original apology take place, the relevant authorities must publicly reaffirm the State's apology and other transitional justice policies, in compliance with the principle of non-regression with regard to human rights obligations.

V. Conclusions and recommendations

48. **The Special Rapporteur summarizes below his main findings and recommended actions for the design and implementation of effective apologies.**

Consultation with those to whom apology is addressed

49. **Comprehensive and effective consultation with those affected by harms inflicted is key to the delivery of a victim-centred apology. It enables the apologizer to establish what victims want and need to hear and what they do not want to hear. Victims should ideally be afforded the opportunity to read draft apologies and to offer feedback on the appropriateness of the language used and on the setting and context of the delivery of the apology, which helps to avoid unnecessary pitfalls and the possibility of an apology causing more harm than good. In situations in which collective apologies are being issued, it is important that victims groups consult internally and agree, insofar as possible, upon the parameters of what they would like the apology to include.**

Consultation within the apologizing constituency

50. **In order to deliver a meaningful apology that is not subsequently qualified, rescinded or undermined, apologizers should consult widely within their own constituencies. If there are limits to what the apologizer can say, the apology**

[91] Pablo De Greiff, "The Role of Apologies" in *The Age of Apology*.
[92] Melissa Nobles, *The Politics of Official Apologies*, p. 31.

should at least be communicated clearly to victims and their representatives as part of the consultation process, in order to manage the expectations of victims.

Naming and acknowledging of harm deliberately or negligently inflicted

51. **A public apology should commence with a clear acknowledgment of the nature, scale and duration of the harm inflicted. It should specify clearly whether the harm was inflicted deliberately, with intent, or negligently. The direct and indirect impacts of the harm on different categories of victim should be acknowledged. The gender dimensions of the harm should be clearly articulated. Under no circumstances should the apology be used as a platform to minimize or obfuscate culpability.**

Truthful admission of individual, organizational or collective responsibility

52. **Truthful apologies are necessary in order to validate the experience of victims and to restore their dignity. Establishing the truth of what occurred is almost always a prerequisite, but in some instances, an apology can effectively provoke a truth recovery process. In the light of the truth, the apology should clearly admit responsibility – individual, organizational and/or collective – and blame should be accepted for the infliction of the harm. There should be no attempt to justify, explain, rationalize or contextualize the harm. In circumstances in which the apologizer believes that some elements of past harms or human rights violations were justifiable, the public apology is not the time or place to restate that belief.**

Statement of remorse and regret related to the wrongful acts or omissions

53. **The apology should include a clear statement of regret for the named harms. The language used should be carefully chosen to communicate sincere remorse. It must be unqualified and unreserved.**

Delivered in a context designed to maximize the potential of the apology

54. **The timing and context for the delivery of the apology should be carefully considered, ideally in consultation with the victims and, when appropriate, arranged with other events. In some cases, it may be appropriate for the apology to coincide with an anniversary or other date deemed significant by the victims. In others, it would be most appropriate for an apology to be issued at the conclusion of an investigation designed to establish the truth of what occurred, such as internal organizational review, a criminal trial, a truth recovery process or a public inquiry. The setting for the apology should also be designed to maximize its impact and effectiveness.**

Delivered by those with the credibility to speak for the organization or institution

55. **The person or persons selected to deliver the apology must have the necessary leadership and credibility to effectively represent those who inflicted the harms. The individual chosen should have the authority to speak on behalf of the State, institution or organization responsible for the harm. It is important that both the victims and the apologizing organization or institution recognize the authority of the apologizer – an essential element for avoiding the subsequent diminution, rejection or undermining of an apology.**

Delivered with due respect, dignity and sensitivity to the victimized

56. **The manner in which an apology is delivered is centrally important. The apologizer should speak clearly, using terms that are clear and unambiguous. Insensitive terminology and language should be avoided at all costs. Victims are highly alert to overly staged or hollow apologies. Honesty, sincerity and humility are essential components of their effective delivery. In some instances, it may be appropriate for the public apology to be linked to broader political, societal, religious or communal events or rituals, to maximize the symbolic power of the public apology.**

Credible promise of non-recurrence

57. **Apologies on their own are unlikely to be effective, unless they are underpinned by a credible promise of non-recurrence. The apology should clearly indicate the practical steps that have been taken to ensure that the apologizing individual, organization or institution will not inflict the same harms again. There must be no sense of entitlement to or expectation of forgiveness, acceptance or reconciliation on the part of the apologizer.**

Appropriate compensation or reparations

58. **Apologies should be accompanied, as appropriate, by reparative measures designed to assist those who have been affected by past harms. They may include accepting legal liability, commitment to provide monetary compensation, restoration of the rights of victims and/or appropriate commemorations or acts of memorialization. Reparative measures may also include a commitment to fulsomely and effectively pursue justice, truth and information recovery.**

Non-regression

59. **Apologies should be part of a State policy, which is sustained and reaffirmed over time, under which regressions or actions that counter the effect of the original apology are not permitted.**

Apologies and reconciliation

60. **Properly crafted and delivered public apologies may contribute to reconciliation processes, when accompanied by a comprehensive transitional justice strategy. Reconciliation, understood as the restoration of victims' trust in the State and its institutions and conditions under which individuals can trust one another as equal rights holders, and apologies adopted in that context should not be used as a substitute for criminal justice or other transitional justice measures.**