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# Apologies in Transitional Justice

Kieran McEvoy and Anna Bryson

## Introduction

Public apologies by presidents, prime ministers, military leaders, clerical figures, corporations, and other organizational leaders have become an increasingly common way of addressing past wrongs, prompting some to suggest that we are living through ‘the age of apology’.<sup>1</sup> In the specific context of transitional justice, states as well as representatives of non-state armed groups (or the political movements to which they are affiliated) and others have also made public apologies for past harms.<sup>2</sup> While there is a rich literature on apologies in general, it is (with notable exceptions) quite theoretical, with relatively little detailed empirical exploration of: the views of victims or affected communities on the utility of apologies; the motivations of apologising institutions or organisations; and the intersection between apologies and other ways of addressing past injustices.<sup>3</sup>

This chapter will draw upon original research conducted by the authors to explore some of the practices and lessons learned from different transitional contexts concerning apologies for gross human rights violations and serious violations of international humanitarian law in transitional justice.<sup>4</sup> We first offer a brief definitional discussion of the apologies discussed in this chapter. We then explore the justice/apology axis by drawing on the relevant international legal framework for the delivery of apologies and critically assess some of the most relevant case-law. We then examine a number of key conceptual and practical apology-related themes including: the intersection between apologies, acknowledgement and truth recovery; the timing of apologies; the preparation of apologies including the status of the speaker; the nature of victim engagement; the form and context of their delivery; and what happens after an apology, including ‘follow through’, non-recurrence and reconciliation. The chapter concludes with a practical template on how to maximise the effectiveness and legitimacy of an apology in any transitional justice context.

## Defining Apologies

As noted, there is a rich interdisciplinary literature on apologies spanning law, anthropology, management, sociology, political science, psychology and other disciplines. The most common definition of an apology across these disciplines derives from Tavuchis’ concept of

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<sup>1</sup> Roy L. Brooks, *When Sorry Isn’t Enough: The Controversy over Apologies and Reparations for Human Injustice*, (New York University Press 1999).

<sup>2</sup> Fabián Salvioli, *Report of the Special Rapporteur on the Promotion of Truth Justice, Reparations and Guarantees of Non-recurrence*, A/74/147, (United Nations 2019).

<sup>3</sup> One notable exception is James Gallen, Jesus Wept: The Roman Catholic Church, Child Sexual Abuse and Transitional Justice, *International Journal of Transitional Justice* 10(2) (2016), 332-349.

<sup>4</sup> The research for this chapter was undertaken as part of a research project conducted by the authors for the UN Special Rapporteur on Transitional Justice, a report from which was presented to the UN Human Rights Committee in 2019. We would like to thank Brenda Vukovic and Fabián Salvioli for their comments and guidance on that research. It also drew from an ESRC funded project titled ‘Apologies Abuses and Dealing with the Past’ ES/N010825/1. We would like to thank Carine Placzek, Julia Volkmar, Emma Catterall and Allely Albert for their excellent research assistance. We would also like to thank our colleagues Anne Marie McAlinden, Shadd Maruna, Muiris MacCarthaigh, Lauren Dempster and Ashleigh McFeeters who worked with us on the larger ESRC project as well as the Handbook editors, Cheryl Lawther and Luke Moffett, for their comments and their patience.

‘acknowledgment and painful embracement of our deeds, coupled with a declaration of regret’, usually involving an acknowledgement that there is no ‘excuse, defense or justification for the act’ and often framed as designed to achieve reconciliation between two or more parties.<sup>5</sup> For the purposes of this chapter, the apologies under discussion are public apologies issued by state or non-state groups, often premised on the assumption that the apologies are relevant to the public at large, not solely victims.<sup>6</sup> They are therefore officially sanctioned and collective apologies issued on behalf of an apologising organisation. Such a focus does not diminish the importance of individual or private apologies, but simply acknowledges that they are beyond the scope of our current analysis.

Having reviewed the relevant literature and engaged in extensive fieldwork with apologizers and victims and the general public, we offer herein a more fulsome definition of what a more successful or legitimate public apology for past human rights violations in transitional justice should entail.<sup>7</sup> In short, an apology should include an acknowledgment of a wrong deliberately or negligently inflicted that is named, a truthful admission of individual, organisational, or collective responsibility for that hurt, a public statement of remorse or regret related to the wrongful act(s) or omission which is delivered with due respect, dignity, and sensitivity to the victimized, and a guarantee of non-repetition. Moreover, such apologies should be both *victim-centered* and informed by a *gendered and intersectional understanding* of past harms.<sup>8</sup>

Whilst a ‘victim-centred’ approach is often presented as the central rationale for doing transitional justice, the term remains contested.<sup>9</sup> For current purposes, a victim-centered approach to apologies places primary emphasis on the *rights, agency, and voice* of victims.<sup>10</sup> What this means in practice is that apologies cannot be used to obviate or otherwise interfere with the rights of victims to justice, truth, or reparations. Rather apologies should be viewed as one route to the delivery of those rights. It means that victims must be facilitated in exercising their agency in the preparation and delivery of apologies. Their voices need to be heard and respected - they must be consulted with on the words used, the style, and the context of the delivery of apologies. Moreover, they cannot be coerced or otherwise pressurized into the acceptance of apologies or indeed forgiveness in the name of reconciliation or other larger social goals. How victim-centredness can be implemented in practice is discussed in more detail below when reflecting upon apologies and victim engagement.

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<sup>5</sup> Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*, (Stanford University Press 1991) at 19, 17.

<sup>6</sup> Trudy Govier and Wilhelm Verwoerd, The Promise and Pitfalls of Apology, *Journal of Social Philosophy* 33(1) (2002), 67-82 at 67-68.

<sup>7</sup> Space does not permit us to do justice in this chapter to the qualitative interviews, focus groups and general population survey we conducted as part of the ‘Apologies, Abuse and Dealing with the Past’ project but that research has directly informed our general reflections and the apologies template we present in this article.

<sup>8</sup> A broader ‘intersectionality’ critique acknowledges the dangers of essentialising, for example, how women experience oppressive systems of racism and sexism simultaneously. See K Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color’ *Stanford Law Review* 43 (1991), 1241-1300.

<sup>9</sup> Kieran McEvoy and Kirsten McConnachie, Victims and Transitional Justice: Voice, Agency and Blame, *Social and Legal Studies* 22(4) (2013), 489–513; Cheryl Lawther, ‘Let Me Tell You’: Transitional Justice, Victimhood and Dealing with a Contested Past, *Social and Legal Studies* 30(6) (2021), 890-912.

<sup>10</sup> McEvoy and McConnachie, *supra* note 8; Anna Bryson, ‘Victims, Violence and Voice: Transitional Justice, Oral History, and Dealing with the Past, *Hastings International and Comparative Law Review* 39 (2016): 299-353.

Applying a gendered and intersectional lens to transitional justice underlines the importance of considering underlying power dynamics at each and every stage of the process, from inception to delivery (e.g. design, remit, review, analysis, decision, impact).<sup>11</sup> In particular, it involves being alive to typically ‘hidden’ crimes such as conflict-related sexual violence which are often silenced due to stigma and shame. Acknowledging the specific harms associated with these complex and understated crimes is essential for effective acknowledgement and broader societal repair.<sup>12</sup> With regard to the apology process, it is also important to consider: the risk of perpetuating gender inequalities through transitional justice mechanisms (including public apologies); removing barriers to participation (particularly concerning women); and appropriately addressing gender-specific needs that arise during the engagement process. Gendered harms should therefore be specifically addressed in public apologies and victims and survivors should be involved in any consultation regarding the contents, context, or delivery of apologies for such harms.<sup>13</sup> More generally, a gendered perspective on apologies requires that women be involved in all stages of the apology process rather than being viewed as passive recipients of such apologies.<sup>14</sup>

## The International Legal Framework Regarding Apologies

Although there are some domestic settings in which apologies have been placed on a statutory footing,<sup>15</sup> there are no binding international legal instruments dealing specifically with public apologies. Transitional justice is defined by UN instruments 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*’.<sup>16</sup> The UN framework defines four pillars of transitional justice: truth, justice, reparation and guarantees of non-recurrence.<sup>17</sup> Public apologies are usually considered within the reparations pillar as measures of satisfaction to remedy victims’ moral harm.<sup>18</sup>

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<sup>11</sup> Yasmine Ahmed et al., Developing Gender Principles for Dealing with the Legacy of the Past, *International Journal of Transition Justice* 10(3) (2016), 527-537.

<sup>12</sup> See for example Catherine A. MacKinnon, *Are Women Human? And Other International Dialogues*, (Belknap Press of Harvard University 2006) at 180; You-Me Park, Comforting The Nation: ‘Comfort Women,’ the Politics of Apology and the Workings of Gender, *The International Journal of Postcolonial Studies* 2(2) (2000), 199-211.

<sup>13</sup> Alice MacLachlan, Gender and Public Apology, *Transitional Justice Review* 1(2) (2013), 126-147. See further Ruben Carranza, Cristián Correa, and Elena Naughton, *More than Words: Apologies as a Form of Reparation*, (International Centre for Transitional Justice 2015), available at: <https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf> at 9.

<sup>14</sup> Emma Dolan, *Gender and Political Apology: When the Patriarchal State Says ‘Sorry’*, (Routledge, 1<sup>st</sup> ed. 2021).

<sup>15</sup> 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 state that it was introduced for ‘*the broader purpose of encouraging a cultural and social change in attitudes towards apologising.*’

<sup>16</sup> UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, (United Nations 2004) at para. 8.

<sup>17</sup> UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, (United Nations 2004). A more recent UN report suggests that memorialisation processes should be considered as a fifth pillar of transitional justice. See Fabián Salvioli, *UN Special Rapporteur on Transitional Justice Report on Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice*, A/74/147, A/HRC/45/45 (United Nations 2020).

<sup>18</sup> UN General Assembly, *General Assembly Resolution 60/14: 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*, A/RES/60/147 (United Nations 2005).

While the UN Basic Principles and Guidelines are a non-binding ‘soft law’ instrument, they are nonetheless an influential document in helping member states as well as international and domestic courts interpret the right to reparation under international law. For example, the Committee against Torture has included public apologies as a mean of ‘satisfaction’ for torture related violations.<sup>19</sup> A similar approach has been adopted concerning the meaning of reparations vis a vis violations of the International Covenant on Civil and Political Rights.<sup>20</sup> Various other UN reports and commentaries have also discussed apologies as a symbolic and collective reparation measure aiming at providing satisfaction to victims, by recognizing their victimhood and the societal norms transgressed.<sup>21</sup> Indeed some reports 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, as they serve to vindicate an individual’s victim status and counter the stigma around such violations.<sup>22</sup>

Apologies have also featured in the jurisprudence of several international courts, albeit normally in mitigation by the defendants at the sentencing phase. For example, at the International Criminal Tribunal for the former Yugoslavia (ICTY) a third of the 90 sentenced defendants made statements of apologies, 19 of which were part of guilty pleas. In one notorious case, Biljana Plavšić (former President of Republika Srpska), 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. Once granted early release, she redacted her statement.<sup>23</sup> At the International Criminal Tribunal for Rwanda, one-sixth of the 62 defendants ultimately expressed some remorse for their past crimes.<sup>24</sup> In contrast to the ICTY, none of the highest-ranking Rwandan defendants apologized. For example, Jean Kambanda (former Prime Minister of Rwanda at the time of the genocide) neither apologized for his active involvement in the genocide or “expressed contrition, regret or sympathy for the victims in Rwanda” despite being given an opportunity by the court to do so.<sup>25</sup> At the Extraordinary Chambers in the Court of Cambodia (ECCC) the former head of the infamous S-21 detention

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<sup>19</sup> UN Committee Against Torture, *General Comment No. 3: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation of Article 14 by States Parties*, CAT/C/GC/3 (United Nations 2012).

<sup>20</sup> UN Human Rights Committee, *General Comment No. 31 (80): The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (United Nations 2004).

<sup>21</sup> See Pablo de Greiff, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence*, A/21/46 (UN Human Rights Council 2012); Pablo de Greiff, *Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence: Note by the Secretary-General*, A/69/518 (UN Human Rights Council 2014); Rashida Manjoo, *Report of the Special Rapporteur on Violence against Women, Its causes and Consequences*, A/HRC/14/22 (UN Human Rights Council 2010); UN Office of the High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States: Reparations Programmes*, HR/PUB/08/1 (UN High Commissioner for Human Rights 2008); see also Pablo de Greiff, *The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted*, in Mark Gibney et al. (eds.), *The Age of Apology: Facing Up to the Past*, (University of Pennsylvania Press 2008).

<sup>22</sup> See Manfred Nowak, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/HRC/4/33 (UN Human Rights Council 2007); Rashida Manjoo, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, A/HRC/14/22 (UN Human Rights Council 2010).

<sup>23</sup> Carla Del Ponte with Chuck Sudetić, *Madame Prosecutor: Confrontations with Humanity’s Worst Criminals and the Culture of Impunity*, (Other Press 2008) at 161. See Jelena Subotić, *The Cruelty of False Remorse: Bijana Plavšić at The Hague*, *Southeastern Europe* 39(1) (2012), 39-59 at 36.

<sup>24</sup> Oliver Diggelmann, *International Criminal Tribunals and Reconciliation: Reflections on the Role of Remorse and Apology*, *Journal of International Criminal Justice* 14(5) (2016), 1073-1097. See also Alan Tieger, *Remorse and Mitigation in the International Criminal Tribunal for the Former Yugoslavia*, *Leiden Journal of International Law* 16 (2003), 777-784.

<sup>25</sup> ICTR, *Prosecutor v. Jean Kambanda*, ICTR 97-23-S, *Judgement and Sentence*, 4 September 1998, para. 51.

centre, Kaing Guek Eav (known as Duch), expressed remorse for crimes he committed during the Khmer Rouge regime, acknowledged his responsibility, and directly apologized to the few S-21 survivors. No other defendants apologized at the ECCC.<sup>26</sup> In the Ahmad Al Faqi Al Mahdi case at the International Criminal Court (ICC) regarding the destruction of historic monuments and religious buildings, the defendant pleaded guilty and made an apology to the community of Timbuktu, Mali and the international community stating that he was ‘truly remorseful’ and regretted all the damage his actions have caused. The Court subsequently conveyed this to the victims in the reparation order.<sup>27</sup> Similarly in the *Germain Katanga* case, in which the defendant was sentenced to 12 years imprisonment for crimes against humanity and war crimes for his role in the Bogoro massacre in the DRC,<sup>28</sup> a public apology was made as part of the sentence review hearing.<sup>29</sup> In such arguably self-serving contexts, victims of international crimes have not surprisingly remained cynical about the genuineness of the apologies being offered.

The most developed jurisprudence from regional human rights courts on apologies has come from the Inter-American Court of Human Rights (IACHR).<sup>30</sup> The IACHR has ordered public apologies as a form of satisfaction in a number of its decisions on reparations, ruling that States have to not only acknowledge their responsibility for past human rights violations but also to apologize to victims in a number of notable cases. For example, in the case of the Plan de Sánchez Massacre in Guatemala, the Court addressed the killing of 268 (mostly Mayan) villagers by the Guatemalan armed forces in 1982.<sup>31</sup> Despite a previous state apology and commitment to repairing the harm done, the IACHR held that “*to be fully effective as reparation to the victims and serve as a guarantee of non-repetition, (...) the State must organize a public act acknowledging its responsibility for the events that occurred*”.<sup>32</sup> The IACHR also ordered that the memory of those executed should be honored, that traditions and customs of the concerned indigenous communities should be respected and that the judgement should be translated in their language.<sup>33</sup> In another seminal ruling on apologies as a reparation measure for grave human rights violations, the IACHR addressed the massacres of almost 1000 civilians including many children by El Salvador’s armed forces in and around El Mozote in

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<sup>26</sup> ECCC, Co-Prosecutors v. Kaing Guek Eav alias Duch, Case No. 001/18-07-2007/ECCC/SC, Judgment, Supreme Court Chamber, 3 February 2012. Apology statements available at: [https://www.eccc.gov.kh/sites/default/files/publications/Case001Apology\\_En\\_low\\_res.pdf](https://www.eccc.gov.kh/sites/default/files/publications/Case001Apology_En_low_res.pdf)

<sup>27</sup> ICC, Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15-171, Judgment and Sentence, Trial Chamber VII, 27 September 2016. Transcript of Hearing, ICC-01/12-01/15-T-4-Red-ENG, 22 August 2016, lines 13-14, available at: <https://www.icc-cpi.int/mali/al-mahdi/Documents/Al-Mahdi-Admission-of-guilt-transcript-ENG.pdf>. Reparations Order, ICC-01/12-01/15-236 17 August 2017, paras.68-71

<sup>28</sup> ICC, Prosecutor v. Germain Katanga, ICC-01/04-01/07-3436, Judgment pursuant to article 74 of the Statute, Trial Chamber II, 7 March 2014; ICC, Prosecutor v. Germain Katanga, ICC-01/04-01/07-3484, Decision on Sentence pursuant to article 76 of the Statute, Trial Chamber II, 23 May 2014.

<sup>29</sup> ICC, Prosecutor v. Germain Katanga, ICC-01/04-01/07-3728, Order for Reparations pursuant to Article 75 of the Statute, Trial Chamber II, 24 March 2017, para. 315. For further discussion of reparations in relation to the *Katanga* case, see Juan Pablo Pérez-León-Acevedo, The Katanga Reparation Order at the International Criminal Court: Developing the Emerging Reparation Practice of the Court, *Nordic Journal of Human Rights* 36(1) (2018), 91-102.

<sup>30</sup> There is limited relevant jurisprudence in the European Court of Human Rights (ECHR) or African Charter on Human and Peoples’ Rights (ACtHPR) jurisprudence relating to apologies in a transitional context. See further UN General Assembly, Reports of the Special Rapporteur on the *Promotion of truth Justice, Reparations and Guarantees of Non-recurrence*, A/74/147 (United Nations 2019).

<sup>31</sup> IACHR, Case of the Plan de Sánchez Massacre v. Guatemala, Judgment (Reparations), 19 November 2004.

<sup>32</sup> IACHR, Case of the Plan de Sánchez Massacre v. Guatemala, Judgment (Reparations), 19 November 2004, at para. 100.

<sup>33</sup> IACHR, Case of the Plan de Sánchez Massacre v. Guatemala, Judgment (Reparations), 19 November 2004, at paras. 101-102.

1981.<sup>34</sup> The IACHR determined that the apology should be (a) agreed with the victims; (b) take place in public; (c) take place where the crimes were perpetrated; (d) include an acknowledgment of responsibility for all human rights violations that were committed; (e) ensure that victims and survivors should be present during the ceremony or participate in it; (f) ensure that the highest Senior officials should make the apology and take part in the ceremony and that it should be recorded and disseminated in the country.<sup>35</sup> These criteria are widely used throughout the jurisprudence of the court.<sup>36</sup> In this case, the Court considered that the criteria had been met by a previous state apology, and did not order a new public apology.<sup>37</sup>

In conclusion, some international criminal courts have tended to welcome public apologies without being overly prescriptive about their content, delivery, or follow-up. As evidenced in the *Plavšić* case, the impulse towards viewing apologies as important for reconciliation should not encourage suspending critical judgement regarding the quality and efficacy of specific apologies. At the ICC the participation of victims and the gravity of international crimes has certainly rendered judges quite skeptical about their utility when considering sentencing and early release decisions. The IACHR has afforded the most serious consideration of the use of apologies in addressing past violations and together with the schema proposed at the end of this chapter, that experience should inform the work of international or national courts considering a legal role for apologies as redress or reparations. In the next section we consider some of the key conceptual themes relevant to better understanding that role.

## Apologies and Motivation

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. Often apologies in such contexts are motivated by a range of factors including: (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 dispensation; (b) the need of an individual or collective leadership to exercise moral authority and ‘do the right thing’ in addressing past human rights violations; (c) response to pressure from direct victims or victims’ representative bodies or the media; (d) legal or political pressure associated with either a criminal investigation or truth-recovery process.<sup>38</sup>

This broad spectrum of motivational factors highlights that apologies are both backward and forward-facing. The backward-facing elements may include the taking of responsibility for past human rights violations - the honest acknowledgment of what happened, and the naming of the wrongness of those harms.<sup>39</sup> The forward-facing components speak to the image of a ‘redeemed individual or nation’,<sup>40</sup> the beginning of a new era and a break from past cultures of violence<sup>41</sup> and a clear signal of the social and political transformation required to ensure that such atrocities will never be repeated – what De Greiff has termed the ‘norm-affirming’

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<sup>34</sup> IACHR, Case of the Massacres of El Mozote v. El Salvador, October 2012.

<sup>35</sup> IACHR, Case of the Massacres of El Mozote v. El Salvador, October 2012, at para. 357.

<sup>36</sup> IACHR, Case of Goiburú et al. v. Paraguay, Judgment (Merits, Reparations and Costs), 22 September 2006, at para. 173; IACHR, Case of the “Las Dos Erres” Massacre v. Guatemala, 24 November 2009, at paras. 261-263. ; IACHR, Case of Rodríguez Vera (The Disappeared from the Palace of Justice) v. Colombia, 14 November 2014, at para. 576.

<sup>37</sup> IACHR, Case of the Massacres of El Mozote v. El Salvador, October 2012, at para. 357.

<sup>38</sup> Nick Smith, *I Was Wrong: The Meaning of Apologies*, (Cambridge University Press 2008).

<sup>39</sup> John C. Torpey (ed.), *Politics and the Past: On Repairing Historical Injustices*, (Rowman and Littlefield 2003).

<sup>40</sup> Jason A. Edwards, Community-Focused Apologia in International Affairs: Japanese Prime Minister Tomiichi Murayama's Apology, *Howard Journal of Communications* 16(4) (2005), 317-336.

<sup>41</sup> Ruti G. Teitel, *Transitional Justice*, (Oxford University Press 2000).

function of apologies.<sup>42</sup> The motivation for the apology will inevitably influence its content, presentation and reception by both victims and the general public. Regardless of the extent to which an apology is motivated by bona fide reasons, it is important to note that legal considerations – such as the impact of an apology on potential criminal or civil liability - will almost always be taken into account by apologizing organizations or institutions.<sup>43</sup> It is therefore a significant challenge for such organisations to ensure that legalistic considerations do not undermine the legitimacy, effectiveness and perceived ‘genuineness’ of an apology.

An additional consideration regarding the motivation for an apology is that often both state and non-state groups believe that at least some of their past actions were justified. A wide-ranging apology might imply that all past actions were unjustified. As discussed further below, this can have consequences for the management of one’s own constituency, with any such apology being viewed as an insult to the sacrifice and bravery of those who died, were injured or were imprisoned for the nation or just ‘cause’, potentially triggering what Lind referred to as a ‘remembrance backlash’.<sup>44</sup> Given the close connection between apologies and ideas of honour, national or organisational self-image, reputation and past sacrifice, an informed grasp of such variables and the extent to which they shape what can or cannot be said is important for victims and campaigning organisations when seeking such apologies. To recap, those seeking apologies need to understand the motivation of apologizing states, non-state groups, or other organizations and the factors which may encourage or limit public apologies. Such an understanding should inform any negotiations or discussions about the nature, content, and delivery of such apologies.

### **Apologies, Acknowledgement and Truth Recovery**

As noted above, an apology will only effectively contribute to the restoration of a victim’s dignity and humanity if there is public acceptance that the full truth concerning past abuses has been disclosed.<sup>45</sup> Given the role that dehumanisation plays in political or ethnic violence,<sup>46</sup> apologies that are underpinned by a fulsome disclosure of the truth of what happened have a central role to play in the rehumanisation of those affected by such violence.<sup>47</sup> For society at large, the truth-telling function of public apologies also has important sociological and political functions in setting the record straight about the past and potentially contributing to broader reconciliation efforts.<sup>48</sup> Andrieu distinguishes between factual knowledge, important for prosecutions and the rule of law, and establishing a “moral, narrative truth,” which

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<sup>42</sup> Melissa Nobles, *The Politics of Official Apologies*, (Cambridge University Press 2010). Pablo De Greiff, The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted in Mark Gibney et al (eds) *The Age of Apology: Facing Up to the Past*, (University of Pennsylvania Press 2008), 137-53. Indeed, Tavuchis argues that apologies are unthinkable in the absence of such norms. Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*, (Stanford University Press 1991).

<sup>43</sup> Mark Gibney and Erik Roxstrom, The Status of State Apologies, *Human Rights Quarterly* 23(4) (2001), 911-939.

<sup>44</sup> Jennifer Lind, Apologies in International Politics, *Security Studies* 18(3) (2009), 517-556.

<sup>45</sup> Mark Gibney and Erik Roxstrom, The Status of State Apologies, *Human Rights Quarterly*, 23(4) (2001), 911-939.

<sup>46</sup> Herbert Kelman, Violence without Moral Restraint: Reflections on the Dehumanization of Victims and Victimiziers, in Ruth Jamieson (ed.), *The Criminology of War*, (Routledge 2017), 145-181.

<sup>47</sup> Jean-Marc Coicaud and Jibecke Jönsson, Elements of a Road Map for a Politics of Apology, in Mark Gibney et al. (eds.), *The Age of Apology*, supra note 41, 77-91 at 90.

<sup>48</sup> Girma Negash, *Apologia Politica: States and their Apologies by Proxy*, (Lexington Books 2006); Michael Murphy, Apology, Recognition, and Reconciliation, *Human Rights Review* 12(1) (2011), 47-69; Rhoda Howard-Hassmann, Official Apologies, *Transitional Justice Review* 1(1) (2012), 31-53.



delegitimises earlier practices and potentially contributes to the healing of victims.<sup>49</sup> A good apology should contain both - what Sanz has described as a 'reckoning' - an unequivocal acknowledgment of past wrongs without justification or explanation - and a 'naming' (specifying to whom an apology is addressed).<sup>50</sup> Such a process avoids vague, euphemistic or legalistic apologies, or minimizing the severity of the wrongs. A truthful apology is the opposite of simply 'drawing a line under the past' and 'moving on'.<sup>51</sup>

Apologies are best viewed as one additional element of broader efforts to bring about truth recovery after periods of conflict or authoritarianism. Truth commissions, trials, remembrance days, reparations schemes and other transitional justice processes all have an important role to play in truth recovery. Public apologies may be viewed as an additional element, designed to command a 'singular, concentrated moment of public attention,' as well as inscribe past events into living public memory.<sup>52</sup> Certainly, high profile public apologies such as that issued by Chilean President Patricio Aylwin (after the first Chilean Truth Commission reported) or British Prime Minister David Cameron (after the Saville Inquiry report into Bloody Sunday) rendered any efforts to deny or minimise the wickedness of the Pinochet regime or the killing of civil rights demonstrators much less viable. Such apologies become a permanent feature of 'the public cognitive scene.'<sup>53</sup> Once publicly expressed they are a formal part of the historical record that cannot be rescinded. Indeed, it would be difficult to imagine a public or private conversation about events such as Bloody Sunday without reference to the apology.

Of course, some apologies are designed to obfuscate the truth.<sup>54</sup> States, armed groups, corporations, or other organizations sometimes deploy apologies as a 'technique of denial' wherein past abuses and their responsibility for the same are minimized, obscured, or reinterpreted.<sup>55</sup> For example, the failure to identify and name specific harms was a key criticism of the apology issued in March 2015 by Kenyan President, Uhuru Kenyatta when (following a Truth and Justice Commission recommendation) apologised generally to 'all compatriots' for 'all past wrongs.' Critics have pointed to the vagueness of the apology as evidence of a lack of will on the part of the state to implement the Commission's recommendations.<sup>56</sup> Former Apartheid-era South African President F.W. de Klerk was accused of similar vagueness and obfuscation in his 1993 apology which suggested that apartheid was a 'well-intentioned'

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<sup>49</sup> Kora Andrieu, 'Sorry for the Genocide': How Public Apologies Can Help Promote National Reconciliation, *Millennium* 38(1) (2009), 3-23, at 11.

<sup>50</sup> Eneko Sanz, *National Apologies: Mapping the Complexities of Validity*, (Centre for Peace and Conflict Studies 2012), available at: <http://www.centrepeaceconflictstudies.org/publications/browse/national-apologies-mapping-the-complexities-of-validity/>; Girma Negash, *Apologia Politica: States and their Apologies by Proxy*, (Lexington Books 2006).

<sup>51</sup> Elazar Barkan and Alexander Karn (eds.), *Taking Wrongs Seriously: Apologies and Reconciliations*, (Stanford University Press 2006), at 6.

<sup>52</sup> Michael Murphy, Apology, Recognition, and Reconciliation, *Human Rights Review* 12(1) (2011), 47-69, at 56; Ruti G. Teitel, The Transitional Apology, in Elazar Barkan and Alexander Karn (eds.), *Taking Wrongs Seriously: Apologies and Reconciliation*, (Stanford University Press 2006), 101-114; Frank Haldemann, Another Kind of Justice: Transitional Justice as Recognition, *Cornell International Law Journal* 41(3) (2008), 675-737.

<sup>53</sup> Thomas Nagel quoted in Lawrence Weschler, *A Miracle, a Universe: Settling Accounts with Torturers* (University of Chicago Press 1990), at 4.

<sup>54</sup> Pierre Hazan, Measuring the Impact of Punishment and Forgiveness: A Framework for Evaluating Transitional Justice, *International Review of the Red Cross* 88(861) (2006), 19-47; Patricia Lundy and Bill Rolston, Redress for Past Harms? Official Apologies in Northern Ireland, *International Journal of Human Rights* 20(1) (2016), 104-122.

<sup>55</sup> Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering*, (Polity 2001).

<sup>56</sup> Ron Slye, *The Kenyan TJRC: An Outsider's View from the Inside*, (Cambridge University Press 2018).

system that went wrong.<sup>57</sup> Apologies which are not accompanied by an honest and truthful account of the scale and nature of past wrongs will simply not succeed.

## Apologies and Timing

Timing will inevitably have an impact on the reception of a public apology. Victims and a skeptical public may wish to be persuaded that an apology has been considered after careful reflection rather than hastily concocted as a result of immediate political pressure.<sup>58</sup> Alternatively, an apology that appears to have been delivered with extreme reluctance may be viewed as ‘*a manipulative attempt to placate victims rather than as a genuine admission of remorse*’,<sup>59</sup> or as ‘*too little, too late*’.<sup>60</sup>

The sequencing of an apology – whether it should come before, during, or after another transitional justice processes such as a truth commission or trial - for example, an apology which is delivered before establishing the truth of what occurred may be seen as premature, particularly if it appears that the apologising organisation is saying sorry before it is clear *what* precisely they are apologising for.<sup>61</sup> Sometimes, as in the case of the South African Truth and Reconciliation Commission, truth commission hearings themselves may provide the platform for an apology – as was the case with the De Klerk apology discussed above and the public hearings of the Peruvian Truth and Reconciliation Commission where video-taped apologies from some members of the Shining Path and Túpac Amaru Revolutionary Movement (MRTA) apologies were played.<sup>62</sup> In Timor Leste, then President Xanana Gusmao apologised at the truth commission for the actions of the resistance army which he led during the Indonesian occupation for violence against rival groups and civilians.<sup>63</sup> Such apologies while a transitional justice process is ongoing may be useful in trying to encourage a reconciliation-orientated political environment and opening up the space for ‘reciprocal political generosity’. This obviously does not preclude other formal apologies once the truth has been fully established by transitional justice mechanisms.

Apologies which are offered on the anniversary of particular events may also have an important role to play. For example, on the 30<sup>th</sup> anniversary of ‘Bloody Friday’ - when a series of bombs planted throughout Belfast in 1972 killed nine people (5 of them civilians) and injured 130 - the Irish Republican Army (IRA) issued a statement in which they offered ‘sincere apologies

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<sup>57</sup> Mia Swart, Sorry Seems to be the Hardest Word: Apology as a Form of Symbolic Reparation, *South African Journal on Human Rights* 24(1) (2008), 50-70, at 63; Anne Lambright, *Andean Truths: Transitional Justice, Ethnicity, and Cultural Production in Post-Shining Path Peru*, (Oxford University Press 2015).

<sup>58</sup> Cynthia M. Frantz and Courtney Bennigson, Better Late than Early: The Influence of Timing on Apology Effectiveness, *Journal of Experimental Social Psychology* 41 (2005), 201-207.

<sup>59</sup> Craig Blatz and Catherine Philpot, On the Outcomes of Intergroup Apologies, *Social and Personality Psychology Compass* 4(11) (2010), 995-1007, at 999.

<sup>60</sup> Stephen Fineman and Yiannis Gabriel, Apologies and Remorse in Organizations: Saying Sorry - and Meaning It?, in Chris Steyaert and Bart Van Looy (eds.), *Relational Practices, Participative Organizing*, (Emerald Group 2010), 103-120, at 104.

<sup>61</sup> The British government established a review of the papers in the Finucane case rather than a public inquiry (where witnesses could be cross-examined). See The Rt Hon Sir Desmond de Silva, *The Report of the Patrick Finucane Review*, HC 802-1, (HMSO 2012). See also Owen Bowcott, Pat Finucane’s Widow Calls de Silva Report a “Whitewash”, *The Guardian*, (12 December 2012), available at: <https://www.theguardian.com/uk/2012/dec/12/pat-finucane-de-silva-report>.

<sup>62</sup> Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, (Routledge, 2<sup>nd</sup> ed. 2011).

<sup>63</sup> Carranza et al., *supra* note 12, at 16.

and condolences' to the families of those killed.<sup>64</sup> Similarly, in Sierra Leone, following sustained pressure for the state to acknowledge conflict-era crimes of sexual violence, the government apologised to the women of Sierra Leone on International Women's Day in 2010.<sup>65</sup> In sum, all of the actors involved in drafting and delivering a public apology should consider the potential impact of timing on how that apology is ultimately received.

### **Preparing and Delivering the Apology: Engaging with Victims and Survivors, Who Apologises, and How they Apologise**

As well as timing, there are a number of other preparatory issues which must be considered in order to maximise the effectiveness of public apologies in transitional justice.

The first key preparatory element required for an effective apology is 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 self-evident. Identifying the key stakeholders who must be engaged may be challenging in some circumstances (e.g. apologies for historical crimes such as colonialism or slavery) but that is part of the process.<sup>66</sup> The apologizing state, non-state armed group, or other organization needs to be clear on what precisely victims want or expect to hear in such a statement. For example, before former British Prime Minister David Cameron's public apology in the wake of the Saville Inquiry, discussions took place not only about the form of wording to be used but also the choreography of the launch of the Inquiry report and the delivery of the apology.<sup>67</sup> Consulting and negotiating on the contents and style of delivery of an apology offers symbolic respect to victims but it also has practical utility. It improves the possibility of a more receptive response from victims.<sup>68</sup> It also provides a process whereby it can be made clear to victims that they are under no pressure to 'forgive' the apologising organisation and, at the very least, it helps minimise the risk of further traumatising victims by careless or thoughtless language in the apology.<sup>69</sup>

Secondly, there is the 'who' question – and the related notion that the person who publicly conveys the apology has to be someone with the credibility to speak on behalf of the state or organization responsible for the past wrong. In many respects, the 'moral authority' of the apologising person speaks to the level of recognition and respect being afforded to victims.<sup>70</sup> For example, a previous apology in the US from the leader of the Bureau of Indian Affairs for its racist and inhumane policies and its historic role in the 'ethnic cleansing' of Western tribes was rejected by some tribes because 'it came from the wrong person', someone who lacked the

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<sup>64</sup> *Irish Republican Army Statement*, AN PHOBLACHT, Jul. 16, 2002,

<sup>65</sup> See Sierra Express Media, *Sierra Leone: Apology to Women Victims a Welcome Step*, *Peace Women* (30 March 2010), available at: <https://www.peacewomen.org/content/sierra-leone-apology-women-victims-welcome-step>.

<sup>66</sup> Janna Thompson, *Apology, Justice, and Respect: A Critical Defense of Political Apology*, in Mark Gibney et al., *The Age of Apology: Facing Up to the Past*, (University of Pennsylvania Press 2008), 137–153.

<sup>67</sup> See Jason A. Edwards and Amber Luckie, *British Prime Minister David Cameron's Apology for Bloody Sunday*, in Hilde Van Belle et al. (eds.), *Let's Talk Politics: New Essays on Deliberative Rhetoric* (John Benjamins Publishing 2014), 115-129.

<sup>68</sup> Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*, (Stanford University Press 1991); Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press 2000); Christopher Daase, *Addressing Painful Memories: Apologies as a New Practice in International Relations*, in Aleida Assmann and Sebastian Conrad (eds.), *Memory in a Global Age* (Palgrave Macmillan 2010), 19-31.

<sup>69</sup> MacLachlan, *supra* note 12, at 14.

<sup>70</sup> Sanderijn Cels, *Saying Sorry: Ethical Leadership and the Act of Public Apology*, *The Leadership Quarterly* 28 (2017), 759-779.

authority to speak for the government as a whole.<sup>71</sup> Similarly, victims of the Indian Residential Schools in Canada criticized a 1998 ‘Statement of Reconciliation’ because it came from the then Minister for Indian Affairs rather than the Prime Minister.<sup>72</sup> In contrast, the apology from the President of Sierra Leone in 2010 for gender-based and sexual violence was more warmly received because he explicitly spoke as President, Commander and Chief and as a man.<sup>73</sup> State apologies are usually offered by prime ministers or presidents precisely because they can speak with authority as representing the state, including sometimes in contexts where the wrongs occurred long before their tenure.<sup>74</sup>

For non-state armed groups, if a political/military movement is apologizing for past atrocities, again the ‘who’ question is central for an apology to have credibility. When Nelson Mandela responded to the findings of the Skweyiya Commission which documented abuses by the African National Congress against its own members terming such abuses ‘inexcusable’ (while not formally apologizing), his status as a leader of both the political and military wings of that movement was never in doubt.<sup>75</sup> However, in contemporary Northern Ireland, where there has been a generational shift in Sinn Féin (formerly the political wing of the IRA), neither the president nor vice president of Sinn Féin has any IRA background so their status to apologize for past IRA actions would inevitably be called into question.<sup>76</sup> As one veteran former IRA leader told us, ‘if you wore the boots, it makes it that much more credible.’<sup>77</sup> Another key and related dynamic concerns the need to prepare and manage the internal constituencies of apologising institutions. If an apology issued by a leader is subsequently contradicted by others from within that constituency - for example critiquing the status of the apologizer to speak on behalf of the organization or institution - the effectiveness of the apology will of course be fundamentally undermined.

The final elements required regarding the preparation of effective apologies are to give 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 to maximize their effectiveness. For example, Australian Prime Minister Kevin Rudd’s 2008 apology to the ‘Stolen Generations’ was televised live and broadcast in public squares throughout the country.<sup>78</sup> Similarly, David Cameron’s Bloody Sunday apology was made in the House of Commons, but broadcast live on a large screen outside the Guild Hall in Derry, the city in which the killings took place. It was also preceded by a march retracing the steps of the original civil rights march. This was immediately followed by emotional scenes as family members of those killed ceremoniously ripped up copies of the previous Widgery inquiry,

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<sup>71</sup> Christopher Buck, ‘Never Again’: Kevin Gover’s Apology for the Bureau of Indian Affairs, *Wicazo Sa Review* 21(1) (2006), 97-126, at 97.

<sup>72</sup> Sheryl Lightfoot, Settler-State Apologies to Indigenous Peoples: A Normative Framework and Comparative Assessment, *Native American and Indigenous Studies* 2(1) (2015), 15-39.

<sup>73</sup> Williams, Sarah, and Jasmine Opdam, The Unrealised Potential for Transformative Reparations for Sexual and Gender-based Violence in Sierra Leone, *The International Journal of Human Rights* 21, no. 9 (2017): 1281-1301.

<sup>74</sup> Schaafsma et al., The Political Apologies Database, *Political Apologies Across Cultures* (2 December 2021), available at: [https://www.politicalapologies.com/?page\\_id=1118](https://www.politicalapologies.com/?page_id=1118).

<sup>75</sup> Scott Kraft, 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, *LA Times* (20 October 1992), available at: <https://www.latimes.com/archives/la-xpm-1992-10-20-mn-657-story.html>.

<sup>76</sup> Kieran McEvoy, Apologies, Acknowledgement and Dealing with the Past in Northern Ireland; A Discussion Document, (Healing Through Remembering, 2015, unpublished).

<sup>77</sup> Interview former IRA prison commander, 20<sup>th</sup> November 2017.

<sup>78</sup> Danielle Celermajer, *The Sins of the Nation and the Ritual of Apologies* (Cambridge University Press 2009); Mihaela Mihai, When the State Says ‘Sorry’: State Apologies as Exemplary Political Judgments, *Journal of Political Philosophy* 21(2) (2013), 200-220, at 214.

which had blamed their loved ones for their own deaths, and spoke to the crowd about the impact of Saville's finding that their loved ones were innocent.<sup>79</sup>

In some contexts, the location of the apology event can be symbolically very important. For example, in Guatemala, the apology made by Vice President Eduardo Stein to survivors of the Plan de Sanchez massacre was delivered locally, at the site where the massacre took place.<sup>80</sup> Similarly, FARC chose to deliver an apology for the accidental killing of 79 civilians hiding in a church during a firefight with right-wing paramilitaries in Bojayá, 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.'<sup>81</sup>

In addition to location, appropriate ceremonial aspects of public apologies may also contribute significantly to their impact. In 2014 four Ecuadorian government ministers and the Attorney General went and took part in a ceremony to apologize to the indigenous population for past human rights violations.<sup>82</sup> Apologies have also featured as part of traditional ceremonies in Northern Uganda designed to heal relations between victims, communities and ex-fighters from the Lord's Resistance Army as part of public *mato oput* and *tomo gong* ceremonies.<sup>83</sup> 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 such events. Thus, for example, the decision by former German Chancellor 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 by Germany during the Second World War.<sup>84</sup> The presence of victims also has the potential to impact the rhetoric of the apology issued. Where apologies have been offered during public speeches or commemorations (particularly after national inquiries), they are more likely to demonstrate empathy and compassion, and to shed light on the personal consequences of the

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<sup>79</sup> A representative of each of the families spoke in turn, and a copy of the earlier Lord Widgery report which, in 1972, accused the victims of firing weapons or handling bombs was torn apart by one of the families' representatives. See Henry MacDonald et al., Bloody Sunday Report: David Cameron Apologises for 'Unjustifiable' Shootings, *The Guardian* (15 June 2010), available at: <https://www.theguardian.com/uk/2010/jun/15/bloody-sunday-report-saville-inquiry>. It should be noted that the Saville Report suggested that one of the victims, Gerald Donaghey, was 'probably' in possession of nail bombs when he was shot although they did not consider that he was attempting to throw them when shot. This prompted a campaign to fully exonerate Donaghey's name including efforts by a London-based human rights watchdog to demonstrate that the nail-bombs were planted on Donaghey by the security forces. See further Conal McFeely, *Gerald Donaghey: The Truth About the Planting of the Nail Bombs on Bloody Sunday* (Bloody Sunday Trust, 2015)

<sup>80</sup> Carranza et al., *supra* note 12.

<sup>81</sup> *Id.* at 16. FARC chose to deliver the apology for the accidental killing of 79 civilians hiding in a church during a firefight with right wing paramilitaries in in Bojayá, 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." The apology was delivered on Thursday 18 December 2014. The FARC statement had "enormous meaning," according to chief government negotiator Humberto de la Calle, see WOLA, A Chronology of Events Related to Peace, Security, and Human Rights in Colombia, *Colombia Peace* (30 March 2020), available at: <https://colombiapace.org/timeline2014/>.

<sup>82</sup> Carranza et al., *supra* note 12, at 15.

<sup>83</sup> Tim Allen cited in Erin Wilson and Roland Bleiker, Performing Political Apologies, in Erica Resende and Dovile Budryte (eds.), *Memory and Trauma in International Relations: Theories, Cases and Debates* (Routledge 2014), 42-56.

<sup>84</sup> Danielle Celermajer, *The Sins of the Nation and the Ritual of Apologies* (Cambridge University Press 2009); Erin Wilson and Roland Bleiker, Performing Political Apologies, in Erica Resende and Dovile Budryte (eds.), *Memory and Trauma in International Relations: Theories, Cases and Debates* (Routledge 2014), 42-56.

human rights violations (particularly when victims are present).<sup>85</sup> Even when victims are not present but have been consulted with in detail, apologies are more precise, reflecting the human rights abuse committed in more detail.

In sum, 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, style of apology presentation, and dissemination strategy are required before an apology is delivered to maximize its effectiveness.

### **After the Apology: Follow Through, Non-Recurrence and Reconciliation**

Once delivered, if an apology is not be dismissed as insincere, it needs to be accompanied by appropriate ‘follow through’.<sup>86</sup> Within transitional justice, such follow through is normally framed as part of the guarantees of non-recurrence obligations.<sup>87</sup> For states, Article 2 of the International Covenant on Civil and Political Rights requires them “*to respect and to ensure... the rights recognized in the present Covenant*” and this duty requires states to “*adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfill their legal obligations.*”<sup>88</sup> This duty implies not only a general obligation to prevent any form of future violation, but also a specific obligation to prevent the recurrence of a violation that has already taken place.<sup>89</sup> While guarantees of non-recurrence are a distinct legal obligation from 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 abuses in the past. The follow through requirement should therefore be viewed as part and parcel of the apology process, a practical and symbolic enactment of the duty to make right the original wrong as far as is possible.

Processes which follow an apology may include truth recovery (or further truth recovery), reparations, the lustration of human rights abusers from state agencies or other institutional or organisational reform or delivery of reparative programmes designed to address past harms. Again, failure to deliver will undermine the original apology. By way of illustration, the 2008 apology by Australian Prime Minister, Kevin Rudd, for the Stolen Generations discussed above is rightly heralded as a good example of a heartfelt and highly impactful apology. It is nonetheless important to note that the apology itself has not served to end or even reduce the ongoing harms (high incidence of homelessness, poor health outcomes, psychological distress, inter-generational trauma) that continue to be endured by descendants of the Stolen

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<sup>85</sup> Juliette Schaafsma, Marieke Zoodsma & Thia Sagherian-Dickey, Closing Chapters of the past? Rhetorical Strategies in Political Apologies for Human Rights Violations Across the World, *Journal of Human Rights* 20(5) (2021), 582-597, at 592.

<sup>86</sup> Judith Renner, ‘I’m Sorry for Apologising’: Czech and German Apologies and Their Perlocutionary Effects, *Review of International Studies* 37(4) (2011), 1579–1597.

<sup>87</sup> Maja Davidovic, The Law of ‘Never Again’: Transitional Justice and the Transformation of the Norm of Non-Recurrence, *International Journal of Transitional Justice*, 15(2) (2021), 386-406.

<sup>88</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, G.A. Res. 2200 (XXI), (United Nations 1966); UN Human Rights Committee, *General Comment No. 31 (80): The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (United Nations 2004).

<sup>89</sup> Alexander Mayer-Rieckh, Guarantees of Non-Recurrence: An Approximation, *Human Rights Quarterly* 39 (2017), 416-448, at 422.

Generations.<sup>90</sup> Indeed that apology has been increasingly seen as anaemic or ‘decolorised’ by state inaction to address the structural wrongs endured by Aboriginal communities.<sup>91</sup>

Similarly for non-state armed groups, apologies which are followed up by the infliction of similar harms are inevitably undermined. For example, in our research on apologies during the Northern Ireland conflict, apologies for ‘mistakes’ by republicans or loyalist groupings (e.g. killing civilians on the part of the IRA or killing protestant civilians on the part of the loyalist groups) were almost always treated with profound cynicism by victims precisely because these groups continued to engage in similar armed attacks.

Once a conflict or period of authoritarianism has come to an end, the follow up to a public apology may entail different forms of memory work including the construction of memorials, museum exhibitions or ‘days of remembrance’ as part of what has been described as ‘apologetic remembrance’.<sup>92</sup> Such memory work may also include, for example, changes to the school curriculum in the teaching of history but also in subjects such as politics or civics (also referred to in some countries as citizenship). As noted above, the Chilean Truth Commission was followed up by a public apology by former State President Patricio Aylwin. However, that truth commission report also contained recommendations that the Chilean educational curriculum needed to include an honest discussion on the abuses of the past and to inculcate a ‘culture of human rights’ throughout Chilean society to ensure that such abuses did not occur again.<sup>93</sup> Similarly, while the Guatemalan government’s initial response to the truth commission there and ensuing apology was widely critiqued as being weak and apathetic, one practical outcome of the report and the apology was “...to open up spaces for teachers and schools to consider treating topics that a few years ago would have been taboo.”<sup>94</sup>

The ultimate post-apology follow-through issue is of the notion of reconciliation – often framed as the *raison d’être* of apologies in transitional justice.<sup>95</sup> Reconciliation is of course a highly debated term in the academic literature with varying understanding ranging from ‘thin’ or ‘minimal’ reconciliation – often defined as a mere non-violent coexistence - to more ‘thick’ or profound variants of reconciliation – variously characterised as being evidenced by higher

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<sup>90</sup> Francesca Dominello, Political Apologies and their Challenges in Achieving Justice for Indigenous Peoples in Australia and Canada. *Oñati Socio-legal Series*, 7, 2 (2017) ‘Moving On?’ Official Responses to Mass Harm and the Question of Justice.’ 277-303.

<sup>91</sup> Tom Bentley, A Line Under The Past: Performative Temporal Segregation in Transitional Justice, *Journal of Human Rights* 20(5) (2021), 598-613, at 602.

<sup>92</sup> As noted, the UN Special Rapporteur for Transitional Justice has suggested that such work be viewed as the fifth pillar of transitional justice, *supra* note 16. See further Jennifer Lind, Memory, Apology, and International Reconciliation, *Asia-Pacific Journal* 47(7) (2008), 1-6; Franziska Boehme, Reactive Remembrance: The Political Struggle over Apologies and Reparations between Germany and Namibia for the Herero Genocide, *Journal of Human Rights* 19(2) (2020), 238-255.

<sup>93</sup> Elizabeth Cole, Transitional Justice and the Reform of History Education, *International Journal of Transitional Justice* 1(1) (2007), 115-137.

<sup>94</sup> 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*, (Rowan and Littlefield 2007), chapter 9.

<sup>95</sup> De Greiff, *supra* note 20. Nobles Lazare, *On Apology*, (Oxford University Press 2004), at 116; Michael Murphy, Apology, Recognition, and Reconciliation, *Human Rights Review* 12(1) (2011), 47-69; Juan Espindola, An Apology for Public Apologies? Transitional Justice and Respect in Germany, *German Studies Review* 36(2) (2013), 327-345; John Borneman, Public Apologies as Performative Redress, *SAIS Review of International Affairs* 25(2) (2005), 53-66; Frank Haldemann, Another Kind of Justice: Transitional Justice as Recognition, *Cornell International Law Journal* 41(3) (2008), 675-737; Trudy Govier and Wilhelm Verwoerd, The Promise and Pitfalls of Apology, *Journal of Social Philosophy* 33(1) (2002), 67-82.

levels of mutual respect, cooperation, trust or even (in some instances) forgiveness.<sup>96</sup> Given the diverse meanings attributed to reconciliation, it is hardly surprising that the contribution of public apologies to same are rather vague.<sup>97</sup> From our perspective, the key issue is not to make easy assumptions that a public apology will automatically lead to improved relations between individuals, communities, states, or former members of armed groups. As we noted above, no representative of a state or non-state armed group should offer an apology in expectation of either forgiveness or moves towards reconciliation on the part of victims and survivors. With that caveat in mind, a properly crafted and delivered public apology may represent one important contribution to *some* form of reconciliation for *some* individuals, communities, and societies in *some* circumstances. As we have stressed throughout, apologies in transitional justice are not ‘stand-alone’ measures, but rather should be viewed as complementary to other transitional justice processes including justice, truth, reparations, institutional reform and memorialization.

### **Conclusion: Key Components of An Effective Apology**

In this final section, we present the core elements of what we consider to be an effective apology process. To paraphrase Yamazaki, given the scale and severity of the hurts involved, a ‘perfect’ apology (one that satisfies all parties) — may be all but impossible in the aftermath of periods of conflict or authoritarianism.<sup>98</sup> That said, having carried out an extensive interdisciplinary literature review, conducted fieldwork over four years in Ireland and reviewed international best practice as part of the research commissioned by the UN Special Rapporteur on Transitional Justice, we believe that it is possible to point towards a non-exhaustive checklist of issues that should be considered by any state, non-state armed group or other organisation or institution that is considering an apology as part of transitional justice efforts to address the past.

In the table below, we have framed these in light of three key phases: preparation, delivery, and follow-up.

Table 19:1

<p><b>1. Consultation with those to whom apology is addressed</b></p> <p>Comprehensive and effective consultation with the full range of those affected by harms inflicted is key to the delivery of a victim-centered apology. Care should be taken to identify ‘hidden’ victims and to ensure that gendered harms are fully considered. This enables the apologizer to establish what victims want and need to hear and what they do not want to hear. Victims should ideally have sight of draft apologies and offer feedback on the appropriateness of the language used and the setting and context of the proposed apology. This helps to avoid unnecessary pitfalls and mitigates against the possibility of an apology causing more harm than good. In situations where collective apologies are being issued it is important that victims groups consult internally and agree insofar as possible the parameters of what they would like the apology to include.</p>
<p><b>2. Consultation within apologising constituency</b></p> <p>In order to deliver a meaningful apology that is not subsequently qualified, rescinded or undermined, it is advisable for the apologizer to consult widely within their own constituency. If there are limits to what the</p>

<sup>96</sup> Trudy Govier, What Is Acknowledgement and Why Is It Important?, *OSSA Conference Archive. 1* (1999), available at: <http://scholar.uwindsor.ca/ossaarchive/OSSA3/keynotes/1>; Janna Thompson, Is Political Apology a Sorry Affair?, *Social and Legal Studies* 21(2) (2012), 215–225; Michael R. Marrus, Official Apologies and the Quest for Historical Justice, *Journal of Human Rights* 6(1) (2007), 75-105, 76.

<sup>97</sup> Nobles, *The Politics of Official Apologies*, supra note 41 at 31.

<sup>98</sup> Jane W. Yamazaki, Crafting the Apology: Japanese Apologies to South Korea in 1990, *Asian Journal of Communication* 14(2) (2004), 156-173, at 169.



apologiser can say, then these should be communicated clearly to victims and their representatives as part of the consultation process. This serves to manage the expectations of both victims and those within the apologising institution, organisation, or support base.

### **3. Naming and acknowledging of a harm deliberately or negligently inflicted**

A public apology should commence with a clear acknowledgment of the nature, scale and duration of the harm inflicted. This should specify clearly whether the harm was inflicted deliberately with intent, or negligently. The impact of the harm on different categories of victims (direct and indirect) 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 minimise or obfuscate culpability.

### **4. Truthful admission of individual, organisational, or collective responsibility**

Truthful apologies are necessary to validate the experience of victims and to restore their dignity. Establishing the truth of what happened is almost always a prerequisite but in some instances an apology or statement of acknowledgment can effectively kick-start a truth recovery process. In the light of the truth, the main apology should clearly admit responsibility – individual, organizational and / or collective – and accept blame for the infliction of the harm. There should be no attempt to justify, excuse, explain, rationalize, or contextualize the harm. In circumstances where the apologiser believes that some elements of past harms or human rights were justifiable, the public apology is not the time or place to restate that belief.

### **5. Statement of remorse and regret related to the wrongful act/s or omission**

The apology should include a clear statement of regret for the named harm(s). The language used should be carefully chosen to communicate sincere remorse. Again, this must be unqualified and unreserved.

### **6. Delivered in a context (sometimes choreographed with other events) designed to maximize potential impact of the apology**

The timing and context for the delivery of the apology should be carefully considered, ideally in consultation with the victim(s). In some cases, it may be appropriate for the apology to coincide with an anniversary or other date deemed significant by victims. In other instances, it makes sense for an apology to be issued at the conclusion of an investigation designed to establish the truth of what happened (internal organizational review, criminal trial, truth recovery process and / or public inquiry). The setting for the apology should also be designed to maximize impact and effectiveness.

### **7. Delivered by person(s) with credibility to ‘speak for’ the organization or institution**

The person(s) selected to deliver the apology must have the necessary leadership and credibility to effectively represent those who inflicted the harm(s). 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 victims and the apologizing organization or institution recognize the authority of the apologizer. This is essential if subsequent diminution, rejection or undermining of an apology is to be avoided.

### **8. Delivered with due respect, dignity, and sensitivity to the victimized**

The manner in which an apology is delivered is centrally important. The apologizer should be appropriately dressed and 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 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.

### **9. Credible promise of non-recurrence**

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 harm(s) again. There must be no sense of entitlement on the part of the apologizer to forgiveness, acceptance, or reconciliation.

### **10. Appropriate compensation or reparations**

Where appropriate, apologies should be accompanied by reparative measures designed to assist those who have been affected by past harm(s). This may include acceptance of legal liability; commitment to monetary compensation; restoration of the rights of victims; and / or appropriate commemorations or acts of memorialization. Reparative measures may also include a commitment to facilitating justice, truth, and information recovery fulsomely and effectively.