

REPARATIVE JUSTICE

# More Than Words

## Apologies as a Form of Reparation

December 2015



**Cover Image:** Audience members react as Salvadoran President mauricio Funes makes a public apology on June 1, 2012, for the El Mazote Massacre, what he calls “the worst massacre of civilians in contemporary Latin American history.” Soldiers killed some 1,000 people, nearly half of them children, in the town of El Mozote in 1982. (Presidente Mauricio Funes/La Prensa Gráfica)

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Ruben Carranza, Cristián Correa, and Elena Naughton

### **About the Authors**

**Ruben Carranza** is director of ICTJ's Reparative Justice program. He regularly advises truth-seeking bodies and international courts and tribunals, including the International Criminal Court, on reparations issues. From 2001–2004, he served as a commissioner investigating the assets of the Marcos family in the Philippines and successfully recovered \$680 Million hidden in banks in Switzerland, the US, and other foreign countries. He concurrently served in the UN Ad Hoc Committee that drafted the 2003 UN Convention Against Corruption.

**Cristián Correa** is senior associate for ICTJ's Reparative Justice program. He provides advice and technical assistance to victims' organizations, civil society groups, and governments in Peru, Colombia, Cote d'Ivoire, Sierra Leone, Timor-Leste, Nepal, and other countries. He was a legal advisor for a commission of the Presidency of Chile responsible for defining a human rights policy and the legal secretary of Chile's Commission on Political Imprisonment and Torture (Valech Commission).

**Elena Naughton** is a program officer for ICTJ's Reparative and Criminal Justice programs. She has contributed to projects examining reparations and truth-seeking mechanisms in post-conflict settings, such as Uganda, Nepal, and Sierra Leone, and conducted training workshops for victims and civil society organizations in northern Uganda. Previously, she practiced law as a litigator in private practice for nearly a decade.

### **About ICTJ**

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org)

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## ACRONYMS

|                 |  |
|-----------------|--|
| <b>ANC</b>      | African National Congress  |
| <b>CAVR</b>     | Commission for Reception, Truth and Reconciliation in East Timor (Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste) |
| <b>CTF</b>      | Indonesia-Timor Leste Commission of Truth and Friendship   |
| <b>ECCC</b>     | Extraordinary Chambers in the Courts of Cambodia   |
| <b>FALINTIL</b> | Armed Forces for the National Liberation of East Timor (Forças Armadas da Libertação Nacional de Timor-Leste)                      |
| <b>FARC</b>     | Revolutionary Armed Forces of Colombia, in Spanish the Fuerzas Armadas Revolucionarias de Colombia                                 |
| <b>ICC</b>      | International Criminal Court   |
| <b>IDEA</b>     | Institute for Democracy and Electoral Assistance   |
| <b>OHCHR</b>    | Office of the High Commissioner for Human Rights   |
| <b>TJRC</b>     | Kenya's Truth, Justice and Reconciliation Commission   |
| <b>TRC</b>      | South Africa's Truth and Reconciliation Commission   |

## Summary

Official public apologies are an important element of a transitional justice policy. As a form of symbolic reparation, an apology is a formal, solemn and, in most cases, public acknowledgement that human rights violations were committed in the past, that they caused serious and often irreparable harm to victims, and that the state, group, or individual apologizing is accepting some or all of the responsibility for what happened. The decision to make an apology can and should be used to support a just and moral vision that enables victims and the public to have hope in the future.

It has become more common for political leaders to apologize publicly to victims, their families, and communities, often during a formal national address or other ceremonial event. Such apologies have taken place in the midst of cease-fire and peace processes, made not only by those holding public office, such as heads of state, ministers, judges, and the heads of the police, military, and intelligence services, but also by paramilitary leaders. Apologies delivered by state agents signal the full backing of the state for what is being conveyed.

Apologies are not enough as reparation to victims of serious violations. While apologies have value in themselves and can address both moral and physical harm, they should be combined with material forms of reparation. In particular, care needs to be taken to ensure that a disproportionate emphasis on apologies does not diminish the likelihood that other reparative measures, such as restitution and medical care, will be implemented, to help limit the long-term harm caused to victims or address their physical needs.

Apologies should, in many cases, reflect a communal reckoning with crimes of the past. They describe what has been learned and what needs to be done to prevent such events from ever happening again; sometimes they mark either the commencement or the culmination of a long, sometimes divisive period of debate and reflection in a society. In many cases, it is victims and organizations of survivors who provide the main impetus for pursuing an apology and help to decide when and how an apology might best be given.

Whatever the catalyst, apologies (and the process for developing them) can help a country to replace, at least partially, partisan recriminations with constructive dialogue and unite the public behind the common goals it needs to achieve to move forward. The process of developing consensus around the need for an apology can help societies to face their past, reaffirm values, and meet their obligations to victims as human beings and citizens in the present and in the future.

Because official apologies are most often public acts, they usually attract considerable media attention and scrutiny. Therefore, the content, delivery, tone, and proper timing of an apology are crucial. The most effective apologies are unequivocal; they are not diluted by qualifying language designed to limit their scope or redirect blame. For victims, it may matter whether an apology is written, handed over on paper, or read or spoken aloud. Likewise, the language spoken, the access to written, spoken, or recorded materials, the venue in which it is made, even the body language and appearance of the person delivering the apology are all significant. Some of the most meaningful apologies have occurred at the place where the violations occurred.



On February 13, 2008, “Sorry Day,” Australian Prime Minister Kevin Rudd’s address to the Australian House of Commons, apologizing for government programs that took children from Aboriginal families, the “stolen generations,” is broadcast live to the nation. (Virginia Murdoch/Flickr)

Although most official apologies provide a form of comfort to victims, some have been judged harshly for being poorly conceived, insincere, and ineffective. Expressions of regret, for instance, are most frequently statements of sadness and disappointment that fall short of an apology, whereas unequivocal apologies contain a more explicit if not unconditional acknowledgment of responsibility. They acknowledge the specific injustices that occurred, recognize that victims suffered serious harm as a result, and take responsibility for what happened.

Effective apologies take into account what victims are likely to feel and think about what is being said. In fact, the most effective apologies are arguably those that have been agreed on with survivors, families of victims, or their representatives, and which address the future and not just the past. They assure victims—and the rest of society—that victims were not at fault for what happened and emphasize common values shared by everyone in society.

While apologies on their own cannot fully restore trust nor ever provide the full relief that victims and a society need to heal, they play an important role in giving meaning to reparations and promoting efforts to reform institutions and guarantee nonrepetition of violations and can be an important step toward reconciliation, on the journey toward lasting peace.



## Apologies Explored Through Questions and Answers

Violations of human rights and humanitarian law during periods of political repression or armed conflict, or which are associated with historic injustices or grievances involving land, identity, or marginalization, can give rise to an obligation on the part of the perpetrators or the state to provide reparations to victims. Different forms of reparations are sought or given as part of transitional justice processes. Apologies are one form, which victims often seek. This does not mean that an apology is all that victims seek, because, very often, symbolic forms of reparation are not enough without material reparations (financial compensation, rehabilitation, or restitution).

Apologies have been part of many transitional justice processes, but their impact on victims and society has varied according to whether the apologies were accompanied by other forms of reparation or were part of a broader transitional justice agenda. In 2005, the United Nations General Assembly adopted a set of Basic Principles on reparations,<sup>1</sup> which describe apologies as a form of “satisfaction” for victims, adding that they should be made publicly and should constitute an “acknowledgement of the facts and acceptance of responsibility.”<sup>2</sup>

This paper is not an exhaustive review of apologies in societies that have pursued transitional justice. It provides comparative information to help identify and anticipate some of the questions and challenges that might be relevant for civil society organizations, victims’ groups, and political leaders that are interested in pursuing public apologies as a form of reparation. We attempt to answer many questions based on lessons learned from the experiences of different countries and insights from the work of the International Center for Transitional Justice and our partners.

### **What apologies have been offered in contexts where transitional justice has been pursued?**

Apologies have been offered by individuals, states, and groups in societies and countries emerging from periods of repression or violence at different stages of their transitional justice processes. Most have been offered years, and even decades, after atrocities happened, often after the conclusion of criminal, civil, or truth-seeking processes, as in Chile, Indonesia, and South Africa.<sup>3</sup>

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<sup>1</sup> UN General Assembly, 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, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006) [hereinafter UN Basic Principles], [www.unhcr.org/refworld/docid/4721cb942.html](http://www.unhcr.org/refworld/docid/4721cb942.html)

<sup>2</sup> *Ibid.*, paragraph 22(e).

<sup>3</sup> See Olivia Rondonuwu, Indonesia, “East Timor leaders regret vote bloodshed,” Reuters, July 15, 2008; Liz Sly, “De Klerk Apologizes For Apartheid’s Abuses,” Chicago Tribune, April 30, 1993; Luis Roniger and Mario Sznajder, *The Legacy of Human Rights Violations in the Southern Cone: Argentina, Chile, and Uruguay* (Oxford University Press, 1999), 101.

Individuals have made apologies during ongoing truth-seeking processes, including at truth commission hearings or when a truth commission report is officially released or publicized. Some apologies have come in the course of litigation. It has become increasingly common for political leaders in societies that have come through conflict or repression to apologize publicly, usually on behalf of the state, to victims of human rights abuses, their families, and communities.

The apology made by Kenyan President Uhuru Kenyatta in March 2014, during his State of the Nation speech, is an example: “I stand before you today on my own behalf, that of my government and all past governments to offer the sincere apology of the Government of the Republic of Kenya to all our compatriots for all past wrongs.”<sup>4</sup> He mentioned different incidents of repression and violence from Kenya’s past, including the 1984 Wagalla massacre and the 2007–2008 post-election violence. The Kenyatta apology falls within a transitional justice context: it followed the release of the 2,210-page final report of Kenya’s Truth, Justice and Reconciliation Commission (TJRC) and includes a commitment to establish a fund “for restorative justice” in the amount of 10 billion Kenyan shillings (USD\$ 100 million).

However, the circumstances of the Kenyatta apology also demonstrate the limits and complexities of apologies when they are offered without other key measures of accountability. In the same speech, Kenyatta talked about “the challenges to obtaining successful prosecutions” of those responsible for over 1,500 killings during the 2007–2008 post-election violence, stating that these cases would be dealt with at the national level using what he described as “restorative approaches.”

Similar apologies have happened in the midst of cease-fire and peace processes, made not only by government leaders but also paramilitary leaders.<sup>5</sup> Some, like that offered by Nigerian President Olusegun Obasanjo, occurred soon after the end of a dictatorship, while renewed democratic processes remained uncertain.<sup>6</sup>

### **In post-conflict and post-dictatorship societies, what can apologies do?**

In the field of transitional justice, an apology is a formal, solemn and, in most cases, public acknowledgement that human rights violations were committed in the past, that they caused serious and often irreparable harm to victims, and that the state, group, or individual apologizing is accepting some or all of the responsibility for what happened. Acknowledgement in this sense means both a factual and moral recognition that victims’ rights were violated, that these victims were harmed, and that the state as well as individuals who are legally accountable for committing or enabling the violations are obligated to repair the harm done.<sup>7</sup>

At their best, apologies can help to mark a before and after, acting as a symbolic turning point. They sometimes mark either the commencement or the culmination of a long, sometimes divisive period of debate and reflection in a society. This debate can take place among the political elite, different identity groups, or social classes or across an array of social, economic, and political divisions. Because official apologies are most often public acts, they attract media attention and are closely scrutinized by activists, victims, and other stakeholders, if not all of the public. The choice of

4 The Hansard, Parliament of Kenya, Joint Sitting of the National Assembly and the Senate, Eleventh Parliament – Third Session, March 26, 2015, [www.parliament.go.ke/index.php/the-national-assembly/house-business/hansard](http://www.parliament.go.ke/index.php/the-national-assembly/house-business/hansard)

5 Some prominent apologies for instance were made during the peace process in Northern Ireland by Prime Minister Tony Blair and loyalist and republican paramilitaries, see Aogan Mulcahy, *Policing Northern Ireland: Conflict, Legitimacy and Reform* (Willan Publishing, 2006), 201 n.5.

6 Speech, President Olusegun Obasanjo on the occasion of the Democracy Day Anniversary, *The Guardian*, May 29, 2002.

7 See UN Basic Principles, articles 3 (scope of the obligation); 16 (states should endeavor to establish national programs); 22(e) (definition of “apology”).

words, the tone of the delivery, and the time and place in which the apology is made all contribute to the way the apology meets or falls short of its intentions and expectations.

Ideally, an apology should signal the intention of a state and/or liable parties to recognize their obligations to victims and encourage citizens and society at-large to take steps toward addressing the root causes of conflict, violence, repression, or exclusion that have made massive and systematic human rights violations possible.

The apology made in 1991 by Chilean President Patricio Aylwin is a good example. When Aylwin presented the report of Chile's National Commission for Truth and Reconciliation (Rettig Commission) in a televised ceremony broadcast across the country, he made it clear that the state was responsible for crimes committed by the Pinochet dictatorship; that state agents conducted enforced disappearances, torture, and extrajudicial killings; that state institutions failed to punish perpetrators and prevent violations; and that society as a whole shared a responsibility for what had happened. Aylwin's language made it clear on whose behalf the apology was being made and what it entailed:

Tonight I speak to you to discuss a painful issue that still divides Chileans: the violations of human rights committed in recent years . . . Upon taking office, I said that this is an open wound in the national soul, which could only heal if we tried to reconcile on the basis of truth and justice . . . That is why I dare, in my position as President of the Republic, to assume the representation of the whole nation and, in its name, to beg forgiveness from the relatives of the victims. This is why I also ask solemnly of the armed and security forces, who have participated in the excesses committed, that they make gestures to acknowledge the pain they caused [and] to contribute to the lessening of that pain.<sup>8</sup>

Official apologies almost always generate some controversy. Yet, as a symbolic form of reparation, they can be a powerful message in favor of the truth, helping to fulfill the state's obligation to provide redress to victims. When joined with material measures that respond to victims' needs, apologies affirm that the state is committed to recognizing the rights and dignity of victims and their well-being.

Because of the collective nature of most official apologies, they are a particularly important tool when combined with good outreach mechanisms for reaching large numbers of victims from different backgrounds at one time across remote areas. Because they can speak to one or many human rights violations at once, they are a flexible mechanism for providing a measure of reparations to victims.

Finally, official apologies also carry a strong and more general message to society as a whole that the violations were wrong and that they did great harm to citizens who have rights that must be respected. Such messages can help to build, or rebuild, a strong ethical framework for the future and, in this way, contribute to guaranteeing the nonrecurrence of violations.

### **Is there an obligation to apologize to victims of human rights violations?**

The obligation to victims is not to apologize but to provide acknowledgement through reparations, of which one form is an apology.

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<sup>8</sup> For English translation of Aylwin's apology, see Luis Roniger and Mario Sznajder, *The Legacy of Human Rights Violations in the Southern Cone: Argentina, Chile, and Uruguay* (Oxford University Press, 1999), 101.

The international standards dealing with serious violations of human rights and humanitarian law urge states where massive human rights violations have taken place to acknowledge victims through reparations, in addition to pursuing other processes, such as criminal prosecutions, and commissions of inquiry or truth seeking. The distinction between making an apology because it is considered to be an obligation versus making an apology as an unconditional recognition of responsibility for the harm done is a decisive factor in its value and impact.

Official apologies are rarely rendered spontaneously. Effective apologies generally occur in response to sustained demand from civil society or victims' groups. Most apologies require careful deliberation and may come about only after a process in which current and/or past government officials take stock of the roles that they and others as well as state institutions played in committing, enabling, or failing to prevent human rights violations. *Taking stock* of the past can mean using transitional justice mechanisms, such as a truth commission<sup>9</sup> or commission of inquiry,<sup>10</sup> to reveal or substantiate serious violations over broad periods of the past or during tragic incidents or at a time of reflection following a decision of the national courts or regional or international human rights mechanisms or on the recommendation of legislative bodies.



Remedios Tecson, 85, a Filipino “comfort woman” during World War II, displays a placard as she joins a rally outside the Japanese Embassy in Manila ahead of the statement by Japanese Prime Minister Shinzo Abe marking the 70th anniversary of Japan’s surrender, August 14, 2015. “After three generations, we are still fighting and demanding apology” from the Japanese government. (AP Photo/Bullit Marquez)

### When do apologies happen?

Sometimes apologies for human rights violations come just a few years after they were committed. In the case of former South Korean dictator Chun Doo Hwan, for example, his public apology for corruption and human rights abuses came just over a year after he

<sup>9</sup> ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013.

<sup>10</sup> OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice* (New York and Geneva, 2015).

stepped down as president, after the country held its first free election in 16 years.<sup>11</sup> But more often, apologies come only after the passage of a significant length of time, sometimes over a number of generations,<sup>12</sup> several transitions of governments, or after a succession of regimes.<sup>13</sup>

Rarely, if ever, does the mere passage of time create the political dynamic necessary for an apology, although chronological distance from the events may help to erode official, elite, or even popular resistance to making an apology. Instead, active engagement and effort by victims and their associations to organize and advocate for acknowledgment of wrongdoing, that in turn mobilizes a campaign of broader public support, is almost always necessary. Otherwise apologies rarely materialize.

Truth commissions and commissions of inquiry can provide opportunities for critical self-reflection that can help to create circumstances that lead to an apology. Truth commission hearings and reports—such as Kenya’s TJRC final report—give the public and its leaders, both past and present, the factual and narrative bases to consider or reconsider their views about the past and their roles in what happened to victims and the broader society.

Official inquiries, often also occurring after years of demand and activism, can have a reparative impact and help to put an end to long-standing disputes over what happened in the past and the burdens of responsibility among antagonists. An example is UK Prime Minister David Cameron’s apology for the Bloody Sunday massacre in Northern Ireland following the publication of an inquiry report, 38 years after the events. That apology represented the British government’s eventual acceptance of what had been denied for decades: that the British Army had fired on unarmed civilians without warning or justification, not in response to attacks.<sup>14</sup> The tone and the comprehensiveness of the apology were widely commended, including by victims’ families.<sup>15</sup>

Court proceedings, such as those before regional human rights courts, can also lead to significant apologies, including as part of the remedy ordered by the court. This has happened several times before the Inter-American Court of Human Rights. Notable cases include Guatemala’s apology to survivors of the Plan de Sanchez massacre in Guatemala and El Salvador’s apology ordered in the El Mozote massacre case.<sup>16</sup>

To some extent, criminal trials also present an opportunity for a wider public reckoning. At the Extraordinary Chambers in the Courts of Cambodia (ECCC), the compilation of apologies offered by the first person convicted by the court, Kaing Guek Eav—known as Duch—formed part of the “moral” reparations that the court could award to civil parties in the case.<sup>17</sup>

11 Seth Mydans, “Korean Ex-President Offers His Apology For Abuse of Power,” *The New York Times*, November 23, 1988.

12 See, e.g., on May 22, 1995, Queen Elizabeth II provided an apology for historic wrongs in a deed of settlement given by the Crown to Waikato signed “for, among other things, sending its forces across the Mangatawhiri River in July 1863, unfairly labelling Waikato as rebels, and subsequently confiscating their land,” [www.waikatotainui.com/wp-content/uploads/Waikato-Raupatu-Claims-Settlement-Act-1995.pdf](http://www.waikatotainui.com/wp-content/uploads/Waikato-Raupatu-Claims-Settlement-Act-1995.pdf)

13 In 1989, Václav Havel apologized to Germany for the expulsion of the Sudeten Germans after WWII. It was one of the first sovereign acts taken by Czechoslovakia after the collapse of the Soviet Union. See Christopher Daase, Stefani Engert, Michel-André Horelt, Judith Renner, and Renate Strassner, *Apology and Reconciliation in International Relations: The Importance of Being Sorry* (Routledge, 2016), 110.

14 Brandon Hamber, “Narrowing the Macro and the Micro: A Psychological Perspective on Reparations in Societies in Transition,” in Pablo de Greiff (ed.), *The Handbook of Reparations* (Oxford University Press, 2006), 576.

15 Prime Minister David Cameron, A statement to the House on the Saville Inquiry, June 15, 2010; Henry McDonald, “Reaction to Bloody Sunday report on all sides may mark seminal moment in Anglo-Irish relations,” *The Guardian*, June 18, 2010.

16 BBC, “Disculpa oficial por masacre,” July 19, 2005; *La Prensa*, “Funes pide perdón por masacre El Mozote y anuncia medidas de reparación,” January 16, 2012.

17 Compilation of statements of apology made by Kaing Guek Eav alias Duch during ECCC proceedings, see [www.eccc.gov.kh/sites/default/files/publications/Case001Apology\\_En\\_low\\_res.pdf](http://www.eccc.gov.kh/sites/default/files/publications/Case001Apology_En_low_res.pdf)

## Where do apologies lie in the range of reparative measures that may be offered?

As a symbolic rather than a material form of redress, apologies are particularly important in contexts where human rights violations have occurred on a massive scale and “cannot be made good by restitution or compensation.”<sup>18</sup> They are a form of moral reparation that offers great promise for victims as “carriers of meaning.”<sup>19</sup> By acknowledging wrongs that were perpetrated and addressing the consequences of that wrongful conduct, apologies address moral damages, including such things as mental suffering, loss of a loved one, humiliation, and “personal affront associated with an intrusion on one’s home or private life.”<sup>20</sup> This is true whether the apology is expressed through speech or in ritual or through combinations of different meaningful gestures that do not necessarily have economic value.

## But are apologies enough?

In almost all cases, apologies are not enough as reparation to victims of serious violations. While apologies have value in themselves and can address both moral and, to some extent, physical harm, they should be combined with material forms of reparation. In particular, care needs to be taken to ensure that a disproportionate emphasis on apologies does not diminish the likelihood that other reparative measures will be implemented, like medical care, that can help to limit long-term harm or address the physical needs of victims. In short, apologies should not be seen as an alternative to material reparations. They should be understood as an act of moral acknowledgment and recognition. Material reparations, even if not capable of repairing fully the losses suffered, can help to show the seriousness of the apology and dispel suggestions that the apology is seen as “an easy way out.”

Many victims feel that an apology if not paired with other forms of reparation can never be enough because of the nature and magnitude of the harm they suffered and the knowledge that nothing will ever make them whole again. For many of the “comfort women” who were forced into sexual slavery during World War II, Japan’s refusal to offer material reparations through the government made the apologies by Japanese leaders ring hollow.<sup>21</sup> As Philippines President Benigno Aquino explained, the reparations law that would provide USD \$200 million in compensation and fund rehabilitation programs for over 10,000 victims of the Marcos dictatorship “is an admission by the state that at one point in time . . . a government of the Philippines oppressed its people so that there is need to compensate all of the victims.”<sup>22</sup>

Again, apologies usually have a stronger reparative impact when linked to concrete measures or policy changes. The same year that Sierra Leonean President Ernest Bai Koroma apologized to

18 International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)[hereinafter Draft articles on Responsibility]: Article 37 (“Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality”).

19 OHCHR, Rule-of-Law Tools for Post-Conflict States: Reparations Programmes (2008), 23. As an example, when tribal leaders from various chiefdoms across Ghana performed a traditional ceremony of atonement for their role in the slave trade, they asked first for forgiveness for the horrors of slavery and their complicity in them. After “chanting, ceremonial dancing and the rhythmic beating of drums, they marched through the streets of Accra, wearing the red and black robes of mourning, then shed those robes to reveal robes of white underneath. These simple acts of contrition were designed to represent ‘a new beginning,’” while acknowledging the horrors of slavery and the webs of complicity that supported the practice in all their complexity. See Renee Kemp, “An Apology in Ghana,” 1995, [www.pbs.org/wonders/Episodes/Epi3/3\\_rete4d.htm](http://www.pbs.org/wonders/Episodes/Epi3/3_rete4d.htm)

20 Draft articles on Responsibility, 91.

21 On December 28, 2015, the Japanese government reached an agreement with the South Korean government to apologize and provide limited care to Korean women who had been forced to serve as sex slaves during World War II. Although that agreement includes a promise by the Japanese government to provide \$8.3 million towards a foundation established by South Korea that offers some medical, nursing, and other services to the women, it does not cover women from other countries including the Philippines and Timor-Leste who were similarly victimized, nor does it include cash payments or other benefits. It includes a concession from Seoul that it will not raise the issue again and will remove a monument to the women installed in front of the Japanese Embassy in Seoul, a compromise judged “shocking” by those representing the victims. Choe Sang-Hun, “Japan and South Korea Settle Dispute Over Wartime ‘Comfort Women,’” *New York Times*, December 28, 2015. China’s position is that Japan should not limit its state apology and reparations to South Korean comfort women.

22 Official Gazette, President Aquino at the 2015 FOAP Presidential Forum, October 27, 2015.

the women of Sierra Leone for the brutalities they had suffered during the armed conflict, he launched the country's National Gender Strategic Plan.<sup>23</sup> Similarly, after the 1991 apology of Chilean President Aylwin, he followed through by presenting to congress a draft law creating a reparations program and an institution to implement it and continued the registration of victims. It was also accompanied by a memorandum to the Supreme Court requesting the full investigation of violations established by the truth commission, which had just delivered its final report.<sup>24</sup>

In Kenya, for example, the creation of a “restorative justice” fund is a meaningful material way of reinforcing Kenyatta's apology, but the real test “will be in the government's efforts to implement recommendations from the TJRC Report expediently and comprehensively.”<sup>25</sup>

### What forms can an apology take?

Most apologies take the form of a speech. Some apologies have been part of larger rituals or ceremonies that acknowledge victims and their suffering. Some have been made in connection with the presentation of a report documenting human rights abuses. Some apologies have been given in letter form;<sup>26</sup> by resolution;<sup>27</sup> or as laws of legislative bodies.<sup>28</sup> During the Sierra Leone truth-seeking process, “reconciliation” sessions took place in various districts following public hearings, which, according to reports, “in almost theatrically staged and very emotional sessions, selected perpetrators would kneel in front of the traditional and religious community leaders and ask for forgiveness. Sometimes victims and perpetrators would shake hands. Prayers and emotional speeches would round up the sessions.”<sup>29</sup>

The apologies made by Guatemalan Vice President Eduardo Stein to survivors of the Plan de Sanchez massacre took place locally but acknowledged responsibility at the highest level.<sup>30</sup> There is, however, a risk with certain types of community-level rituals of localizing or narrowing responsibility that, in turn, absolves higher-level perpetrators—for example, leaders farther up the government hierarchy or in the chain of command of the groups involved in the conflict who ordered, instigated, or enabled violations. While many victims may welcome these rituals, some may participate simply

**We will never as a nation move forward if we do not apologize to the women of this country for letting them down during the war; we will never as a nation know better days if we do not ask for the forgiveness of our mothers, sisters, partners, and female compatriots for what we let them go through during the war. It is almost a decade now since the war ended, but we must apologize for the wrongs of the war.**

– Ernest Bai Koroma,  
President of Sierra Leone,  
March 27, 2010

23 President Ernest Bai Koroma, Statement on International Women's Day, March 27 2010. See also Sierra Leone National Gender Strategy Plan 2010–2013 (2010).

24 See Elizabeth Lira, “The Reparations Policy for Human Rights Violations in Chile,” in Pablo de Greiff (ed.), *The Handbook of Reparations* (Oxford University Press, 2006), 55–101.

25 Christopher Gitari, “Kenyatta's Apology Breaks Important Ground,” ICTJ, May 26, 2015.

26 Presidential letters were sent to Japanese-American citizens in the United States apologizing for their internment during WWII. See, for example, [www.pbs.org/childofcamp/history/clinton.html](http://www.pbs.org/childofcamp/history/clinton.html)

27 The US Congress passed a joint resolution in 2009 to “all Native Peoples for the many instances of violence, maltreatment, and neglect inflicted on Native Peoples by the citizens of the United States.” <http://thomas.loc.gov/cgi-bin/query/z?c111:S.J.RES.14>:

28 See, e.g., U.S. Civil Liberties Act of 1988, Public Law 100-383, <http://uscode.house.gov/statutes/pl/100/383.pdf>

29 Pettersson, Björn, “Post-Conflict Reconciliation in Sierra Leone: Lessons Learned,” IDEA, in a Report prepared by International IDEA for the Office of the High Commissioner for Human Rights (OHCHR) Annual Head of Field Presences Meeting (Geneva), November 2004, 12.

30 “We are here today in the name of the State of Guatemala to ask forgiveness from all the victims of the armed conflict. . . . As the representative of government, I give this apology and our firm promise to drive the investigations of what occurred, to make known what happened, and to identify, to submit to justice and to sanction the individuals involved in these crimes.”

because there are no better mechanisms through which they can receive apologies or be acknowledged. In the Solomon Islands, for example, the truth commission noted that some participants in community reconciliation meetings initiated by the government saw these “as symbolic ceremonies for the sole interest of politicians (and) therefore, futile.” Quoting one victim, the commission noted, “Nobody talks of reconciliation because nobody wants to think about it. It’s not that anybody is actively opposed to it, but it’s that the victims are not recognized. It is only for big men and ex-militants. We small people are forgotten therefore reconciliation has no meaning for me.”<sup>31</sup>

For victims, it may matter whether an apology is written, handed over on paper, or read or spoken out loud. Likewise, the language spoken, the access to written, spoken or recorded materials, the venue in which it is made, even the body language and appearance of the person delivering the apology are all significant.

A few apologies have been given in the language of the victims. When Prime Minister Poul Nyrup Rasmussen of Denmark apologized to the Inuit of Thule, Greenland, for the relocation of its residents, he spoke in the local Inuit dialect.<sup>32</sup> Not only is the chosen language important but the choice of words can be equally decisive. In apologizing to the Ngāi Tahu people, the principal Maori tribe of the southern region of New Zealand, in 1998 for “grave injustices that significantly impaired its economic, social and cultural development,” the apology was expressed by the Crown in both Māori and English and “the wording was given much thought by both parties.”<sup>33</sup>

Even the venue in which the apology is made can affect its meaning. When the government of the Netherlands delivered an apology to the families of those summarily executed by Dutch troops from 1945–1949 in various parts of what is now Indonesia, instead of delivering the apology in one of the communities where the executions took place, the apology was made at the Dutch embassy because they wanted “to apologize for a lot more than only what happened in South Sulawesi (or) in other places, but for all the war crimes [committed]” in the country.<sup>34</sup>

Timing will almost always affect how an apology is perceived. When Park Geun-hye apologized for the human rights violations committed by her father, who ruled South Korea between 1961 and 1979, she was still a candidate for the South Korean presidency (and was later elected president). Speaking at a news conference during her presidential campaign, she acknowledged that human rights abuses were “committed by state power” stating: “I deeply apologize to all those who were personally hurt and family members of victims of government abuse.” Although her words and the presentation were “solemn,” the sincerity of the speech was questioned, coming as it did in the midst of an election campaign when her poll numbers were down.<sup>35</sup>

The sequencing of apologies within mechanisms and processes such as criminal trials, commissions of inquiry, and other truth-seeking efforts, and legal and institutional reform, may affect the perceptions of the sincerity and motivations behind the apology. In situations in which the individual apologizing is facing prosecution, as in the ECCC’s Duch case, or is seeking a more lenient sentence, as in the International Criminal Court’s case against Thomas Lubanga, the perception that an advantage is sought by the person apologizing can diminish its value.

31 Solomon Islands Truth and Reconciliation Commission, Final Report, “Confronting the Truth for a better Solomon Islands,” vol. 3, 714.

32 Jane George, “ICC president welcomes Danish apology for Thule Relocation,” *Nunatsiaq News*, September 9, 2010.

33 Ng’i Tahu – the iwi, November 29, 1998, <http://ngaitahu.iwi.nz/ngai-tahu/the-settlement/settlement-offer/apology/>

34 Government of the Netherlands, Apology for summary executions in Dutch East Indies, September 13, 2013.

35 Lee Joo-hee, “Park apologizes for father’s rule,” *The Korea Herald*, September 24, 2012.





UK-funded memorial in Kenya to Kenyans killed and tortured by British forces during the Mau Mau uprising in the 1950s. It is part of a 2013 out-of-court settlement by the UK government by which it agreed to pay £20 million (USD \$30 million) in compensation to Mau Mau veterans, at an unveiling ceremony held on September 12, 2015. (nKiruu Photography/jothee/Flickr)

Likewise, experiences with apologies during truth-seeking processes are mixed. For instance, South Africa's Truth and Reconciliation Commission included apologies linked with a provision of amnesty. During its amnesty hearings, victims were able to confront those applying for amnesty who had acknowledged wrongdoing, even if it was done in a more formal way. Nonetheless, in this context, victims' experiences were mixed, with many left feeling disappointed.<sup>36</sup> Differences in power between the victims and the apologizer, as well as intimidation of victims, created obstacles to achieving the goals of these apologies and the participation of victims in the process, as victims did not always feel supported or protected.

The possibilities of getting it right—making good decisions about the language, timing, setting, and who makes the apology—are increased by discussing these issues with victims in advance and bringing them into the planning process.

### **Are there differences between expressions of regret and apology, and between acknowledgement and the acceptance of responsibility?**

Because the true intention behind an apology and the sincerity of the speaker will always be difficult to gauge, the choice of words (including their equivalents in the language of those for whom the apology is intended or on whose behalf it is made) will convey nuances that need to be measured.

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36 Antje de Bois-Pedain, *Transitional Amnesty in South Africa* (Cambridge University Press, 2007), 249–255.

How much remorse, shame, humility, and sincerity must an apology communicate? How much responsibility must the speaker take for the wrongdoing that occurred? Much has been written about these nuances and what would constitute a full apology. In most situations, an apology should:

1. Acknowledge and express regret for what was done (“I apologize”, “I am sorry,” etc.) and
2. Take responsibility for what happened (i.e., the conduct is attributable to the speaker or, more often, to the institution or power that he/she represents).

In societies undergoing a transition, or when an apology is made many years after the fact, that second part in particular—the recognition of responsibility—can be complex, because the person who is apologizing may not have played a role in the violations. Often they were not in power when the offenses occurred or they may be a member of the opposition who is leading the society’s transition.

The most effective apologies are unequivocal; they are not diluted by qualifying language designed to limit their scope or redirect blame. Expressions of regret for instance are most frequently statements of sadness and disappointment that fall short of apologizing, whereas unequivocal apologies contain a more explicit if not unconditional acknowledgment of responsibility. Thus, when Indonesian President Susilo Bambang Yudhoyono expressed “very deep regret at what happened in the past” but never used the word apology, despite having just accepted the final report of the joint Indonesia-Timor Leste Commission of Truth and Friendship (CTF) in which an “apology” was recommended, he weakened the reparative potential of that event. His expression of regret only reinforced the inadequate nature of the CTF as a truth-seeking process<sup>37</sup> and highlighted

the continued evasion of responsibility and maintenance of state-sponsored impunity for crimes committed in what was then East Timor by occupying Indonesian forces.

**It was not our intention to deprive people of their rights and to cause misery, but eventually separate development and apartheid led to just that. Insofar as that occurred, we deeply regret it.**

– F.W. de Klerk, *President of South Africa, April 29, 1993*

While the same kind of sadness, remorse, and shame that motivates apologies might also motivate expressions of regret, the equivocation implied in choosing to express regret instead of an apology can make the mere expression of regret itself ineffective. South African President Frederik W. De Klerk opted to express only deep “regret” and not use the words sorry or apology when he discussed South Africa’s policy of apartheid in 1993.

After he was called out for his word choice at a press conference and had to clarify, De Klerk replied: “Deep regret goes much further than just saying you are sorry. Deep regret says that if I could turn the clock back and if I could do anything about it, I would have liked to have avoided it. Yes, we say we are sorry.”<sup>38</sup> An apology may ring false because of the words used, even if not intended in that way.

The differences between an acknowledgment and an acceptance of responsibility are also important to consider. Statements of acknowledgment that include an acceptance of responsibility may sound evasive—especially those framed merely as an acknowledgment that a wrong had occurred without any recognition of the harms suffered or confirmation of who was responsible.

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37 ICTJ, *An Unfinished Truth: An Analysis of the Commission of Truth and Friendship’s Final Report on the 1999 Atrocities in East Timor*, 2009.

38 Liz Sly, “De Klerk Apologizes For Apartheid’s Abuses,” *Chicago Tribune*, April 30, 1993.

In contrast, an apology that includes an acceptance of responsibility can offer a direct connection between the crimes that occurred and a society's obligation to repair the harm caused.

When Australia made its first official statement in 1988 about the forcible removal of aboriginal children, it merely “acknowledged” that the government’s policy “had been a serious mistake” but went no farther.<sup>39</sup> It took many years before a full apology and an acceptance of responsibility by the government was forthcoming.<sup>40</sup> This should be contrasted with the unambiguous language of responsibility offered by Togolese President Faure Gnassingbe when he received the first part of a report by his nation’s Truth, Justice and Reconciliation Commission, made all the more powerful because his father had ruled for some of the period in question: “The state of Togo is not contesting its responsibility for failing in its obligation to ensure the protection and security of its citizens during the past violence.”<sup>41</sup>

Although the differences are subtle, these rhetorical shadings are ultimately significant because of the message they send to victims and to the larger society. The choice of words reveals the extent to which authorities are willing to embrace responsibility for the past as part of a communal identity, both past and present, without reservation. Unequivocal apologies make the truth of what happened fully salient in the present and locate where the responsibility lies for providing redress to victims and making the changes necessary to prevent recurrence.

### Who apologizes to whom?

Who apologizes to whom matters because those who either could or actually do apologize may represent different roles in relation to the human rights violations concerned, while those to whom apologies are offered may be expecting expressions of remorse to come from the direct perpetrators of physical integrity violations; those who had command, control, or responsibility over those who committed them; or even private or foreign individuals, governments, or businesses explicitly implicated in the commission of violations.

In general, for apologies that acknowledge state responsibility for acts by state agents or for the state’s failure to exercise due diligence in preventing violations, the head of state or government—even if not personally responsible—is the individual who is most appropriate to make such apologies. It makes it official. It imbues the apology with formality and solemnity and signals the full backing of the state for what is being conveyed. The heads of state of Argentina,<sup>42</sup> Australia,<sup>43</sup> Canada,<sup>44</sup> Chile, Colombia,<sup>45</sup> Croatia,<sup>46</sup> El Salvador, France,<sup>47</sup> Guatemala, Kenya,

39 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, “Bringing them home,” 1997, 248.

40 A formal apology was provided in 2008. [www.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples](http://www.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples). Eventually a Healing Foundation was established to address trauma and aid healing in the indigenous communities. No national compensation scheme has yet been implemented, although discussions have been ongoing for some time. See [www.reconciliation.org.au/wp-content/uploads/2013/12/Apology-fact-sheet.pdf](http://www.reconciliation.org.au/wp-content/uploads/2013/12/Apology-fact-sheet.pdf)

41 *News 24*, “Togo’s president apologises over past,” April 3, 2012.

42 Argentinian President Cristina Fernández de Kirchner, cited by Karen Ann Faulk, *In the Wake of Neoliberalism: Citizenship and Human Rights in Argentina* (Stanford University Press, 2012), 129.

43 In 2008, Australian Prime Minister Kevin Rudd apologized to the Indigenous people of Australia in a speech delivered in the Australian parliament that was simultaneously broadcast on national television and on large screens set up outside of Parliament. See [www.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples](http://www.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples)

44 The apology made on September 22, 1988, by Canadian Prime Minister Brian Mulroney in the House of Commons while members of the Japanese Canadian community looked on from the gallery. [www.crr.ca/en/programs/404-english/news-a-events/articles/24778-redress-25-years-later-presented-by-art-miki](http://www.crr.ca/en/programs/404-english/news-a-events/articles/24778-redress-25-years-later-presented-by-art-miki)

45 Colombia’s President Juan Manuel Santos apologized to indigenous peoples for crimes committed in connection with the extraction of rubber, see <http://indiancountrytodaymedianetwork.com/2012/10/28/colombian-and-peru-governments-publicly-apologizes-amazonian-rubber-boom-142271>

46 Danielle Celermajer, *The Sins of the Nation and the Ritual of Apologies* (Cambridge University Press, 2009), 39.

47 In July 2012, French President François Hollande apologized for the roundup and deportation of more than 13,000 Jews from Paris during World War II. [http://latimesblogs.latimes.com/world\\_now/2012/07/french-president-apologizes-for-role-in-wwii.html](http://latimesblogs.latimes.com/world_now/2012/07/french-president-apologizes-for-role-in-wwii.html)

**I would like to make clear now and for the first time, on behalf of Her Majesty's Government, that we understand the pain and grievance felt by those who were involved in the events of the Emergency in Kenya. The British Government recognises that Kenyans were subject to torture and other forms of ill treatment at the hands of the colonial administration. The British government sincerely regrets that these abuses took place, and that they marred Kenya's progress towards independence.**

– William Hague, UK Foreign Secretary, June 6, 2013

Nigeria, Peru,<sup>48</sup> Sierra Leone, South Africa, Togo, the United States, and the United Kingdom have all apologized for certain past violations, to name just a few.

In some cases, as previously noted, the children or descendants of former political leaders implicated in human rights violations have issued apologies on reaching national office themselves, thus making the link between the past and present more immediate. Kenya's apology was issued on behalf of "all past governments" and "for all past wrongs," which necessarily included his father, Jomo Kenyatta, Kenya's first president who governed for 14 years.<sup>49</sup> In other cases, however, such a direct link was avoided. In Morocco, the apology recommended by the truth commission appointed by the king was to be made by the prime minister, while the king, as head of state—whose father was seen as the person most responsible for past violations—was not asked to do so.<sup>50</sup>

Apologies by heads of state are also significant when the wrongs occurred in the distant past or between nations.<sup>51</sup> Several heads of state or foreign ministers of former colonial powers have apologized to their former colonies for rights violations committed during their colonial rule. In 2013, for instance the UK Foreign Secretary William Hague apologized to Kenyans who had suffered abuse and torture during the Mau Mau uprising. He announced that more than 5,000 Kenyans who suffered abuse would be compensated in a "full and final settlement" totaling GBP £19.9 million (USD \$31.1 million).<sup>52</sup>

Although apologies by heads of state offer the most natural link between the state and the apology being made, apologies by other state officials (whether at the national or local level) can be effective forms of recognition and redress, as Kenya's TJRC recognized when it recommended apologies be made by, among others, the National Intelligence Service, the Kenya Police and Defense Forces, and the Judiciary. In fact, just prior to Kenya's apology, the Chief Justice of Kenya's Supreme Court, Willy Mutunga, also made a series of apologies for the judiciary's failure to provide redress for violations in the past and said that the apology was his institution's response to the TJRC's final report and its recommendation that the judiciary acknowledge its own responsibility for past abuses.<sup>53</sup>

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48 Peruvian President Alejandro Toledo apologized following a national truth-seeking process. [www.justiciaviva.org.pe/otros/mensajepresidente.doc](http://www.justiciaviva.org.pe/otros/mensajepresidente.doc)

49 It is unclear if Kenya's apology includes not only violations linked to his father's official acts or omissions as president but also to his family's involvement in land-grabbing and other economic crimes that were reported on extensively by the TJRC. *Daily Nation*, "Kenyatta led elite in land grabbing," May 21, 2013.

50 [www.irinnews.org/report/59487/morocco-history-will-keep-its-secrets](http://www.irinnews.org/report/59487/morocco-history-will-keep-its-secrets)

51 The Colombian and Peruvian governments both issued statements of apology at the conclusion of a week-long commemoration for indigenous people who had died or were displaced during one of the most brutal episodes of the Amazonian rubber boom. <http://indiancountrytodaymedianetwork.com/2012/10/28/colombian-and-peru-governments-publicly-apologizes-amazonian-rubber-boom-142271>

52 The announcement of compensation came following a UK court judgment that five Kenyan victims of UK torture were entitled to bring cases for reparations. [www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims](http://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims). This apology was later repeated by the British High Commissioner in Nairobi to a group of elderly Kikuyu victims, [www.theguardian.com/commentisfree/2013/jun/06/britain-maumu-empire-waiting](http://www.theguardian.com/commentisfree/2013/jun/06/britain-maumu-empire-waiting)

53 [www.ijmonitor.org/2015/04/kenyan-president-and-chief-justice-apologize-for-past-injustices/](http://www.ijmonitor.org/2015/04/kenyan-president-and-chief-justice-apologize-for-past-injustices/)

Apologies by other ministers of state, especially those from agencies with a connection to the violations, can offer the clearest link between the violators, the violations, and the apology, apart from direct apologies by the perpetrators themselves. Such apologies at the ministerial level when done as a group can be particularly powerful. In October 2014, representatives of four Ecuadorian government ministries and the Attorney General's office traveled deep into Ecuador's Amazon rainforest to apologize to the indigenous population there for human rights violations that had occurred in their rainforest territory in 2003. They offered their "most heart-felt apologies" and named the specific violations that had occurred, while ratifying their "firm commitment to the force of human rights," in fulfilment of a 2012 decision by the Inter-American Court of Human Rights.<sup>54</sup>



Ecuadorian Justice Minister Ledy Zúñiga, left in red shirt, offers a public apology to the leaders of the Sarayaku community in Sarayaku, Ecuador, October 1, 2014, as part of a ruling by the Inter-American Court of Human Rights that found that the government allowed for oil exploration in Sarayaku lands without their consent. (AP Photo/Dolores Ochoa)

Apologies have also been made by heads of police units,<sup>55</sup> military,<sup>56</sup> intelligence services,<sup>57</sup> and the judiciary<sup>58</sup> in various countries. In 1995 the commander of the Argentinian Army, General

54 Inter-American Court of Human Rights, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of June 27, 2012. (Merits and Reparations) ("The State must carry out a public act of acknowledgment of international responsibility for the facts of this case").

55 In Canada, the commissioner of the Royal Canadian Mounted Police Commissioner apologized to Canada's Aboriginal people for the force's involvement in the Indian Residential School system, [www.rcmp-grc.gc.ca/aboriginal-autochtone/apo-reg-eng.htm](http://www.rcmp-grc.gc.ca/aboriginal-autochtone/apo-reg-eng.htm)

56 During a hearing of the Ghanaian National Reconciliation Commission, Osahene Boakye Djan, a former deputy chairman of the Armed Forces Revolutionary Council (which governed Ghana for several months after the June 1979 coup) rendered an unreserved apology to victims of the brutalities of that regime. *Ghana Web*, "Boakye-Djan Apologises For AFRC Brutalities," November 19, 2003.

57 South Korea's National Intelligence Service apologized in August 2005 for illegally wiretapping telephone calls of politicians and businessmen. Jong-Heon Lee, "S. Korea spy agency faces wiretapping probe," UPI, August 5, 2005.

58 In 2012, shortly before the fortieth anniversary of the coup that brought Augusto Pinochet to power, Chile's largest judicial representative body, the National Association of Judiciary Magistrates, issued a statement on its website acknowledging that the judiciary had failed in its duty to provide judicial protection and uphold the rule of law and, in doing so, had contributed to human rights violations perpetrated. *El País*, "Chile's judiciary asks for forgiveness over its role during the Pinochet dictatorship," September 5, 2013. The next day, the Supreme Court issued a statement acknowledging that, by not having investigated the human rights violations committed, the court "incurred a dereliction of duties." [www.pjud.cl/web/guest/noticias-del-poder-judicial/-/asset\\_publisher/kV6Vdm3zNEWt/content/declaracion-publica-del-pleno-de-la-corte-suprema-de-chile](http://www.pjud.cl/web/guest/noticias-del-poder-judicial/-/asset_publisher/kV6Vdm3zNEWt/content/declaracion-publica-del-pleno-de-la-corte-suprema-de-chile)

Martin Balza, apologized to the nation for military abuses committed during the country's "Dirty War." Speaking on television, he stated that the "horrors lived" could no longer be denied and acknowledged "our part" of responsibility for the "errors committed."<sup>59</sup> Similarly, in 2004, the commander of the Chilean Army, General Juan Emilio Cheyre, acknowledged collective institutional responsibility for human rights abuses perpetrated by the armed forces during the dictatorship. He issued the apology in an essay published in a Santiago newspaper, stating that the armed forces assumed responsibility for "all punishable and morally unacceptable acts falling on the institution" and affirming that there was no justification for the human rights violations perpetrated.<sup>60</sup> His gesture led to the commanders in chief of the Navy, the Air Force, and the police to issue similar statements.

**Seventy-nine people were killed in this incident, leaving such tragedy, as well as deep sadness, with serious consequences of all kinds for the families and communities of the deceased, for the survivors, and our collective memory . . . For this reason, now that we are negotiating to build peace with truth and justice, we need to express . . . that we feel profound sorrow, that the deadly outcome of this awful incident for the people of Bojayá hurts us deeply.**

– Pablo Catatumbo,  
FARC Peace Negotiator,  
December 18, 2014

Legislative bodies have also issued apologies on behalf of the nation, including by enacting legislation that incorporates a statement of apology. For example, in 1988 the US Congress passed the Civil Liberties Act 1988,<sup>61</sup> which included a formal statement from Congress apologizing on behalf of the nation to Japanese-Americans for their internment during WWII. "Apologizing on behalf of the people of the United States" was also included as one of the explicit purposes of the legislation. The legislation also provided for the establishment of a trust fund to pay reparations. In the wake of apologies made by Kenyatta and Mutunga, the Kenyan Parliament through its speaker has been asked by the National Victims and Survivors' Network to express its own apology for creating "an enabling environment for the governments to oppress perceived dissenters," citing the repression of advocates for multi-party rule through legislation under former President Daniel Arap Moi.<sup>62</sup>

Leaders of national resistance movements resisting oppressive regimes or armed groups fighting the state have also apologized for abuses committed in the course of their struggles. Thirteen years after a projectile fired by Colombia's FARC guerrillas fighting a paramilitary group killed 79 civilians hiding in a church in Bojayá, FARC leaders went to the town to apologize and vowed to "compensate (for) the damage done, repair the victims of these acts, as well as not ever repeat situations like this."<sup>63</sup> In Timor-Leste, President Xanana Gusmao appeared before the

truth commission in his capacity as leader of the resistance army FALINTIL, along with leaders of other political parties and armed movements that had clashed on the eve of the Indonesian occupation, and apologized for killings and other violence directed at rival groups.<sup>64</sup>

59 *Orlando Sentinel*, Argentine Army Apologizes For 'Dirty War,'" April 26, 1995.

60 *BBC*, "Chile army admits rights abuses," November 5, 2004.

61 U.S. Civil Liberties Act of 1988, Public Law 100-383, <http://uscode.house.gov/statutes/pl/100/383.pdf>

62 *Daily Nation*, "Victims want Parliament to apologise for injustices," April 4, 2015.

63 *teleSUR*, "FARC Asks Town for Forgiveness for 2002 Tragedy That Killed 80," September 8, 2015.

64 Gusmao's apology was made during a hearing of the East Timor truth commission CAVR. A video of the event is available from ICTJ on request.

In 1992, Nelson Mandela responded to the report of a Commission of Enquiry created by the African National Congress (ANC) that found that the ANC had committed acts of “staggering brutality” in detention camps throughout Southern Africa by making a statement “accepting collective responsibility for the leadership of the ANC [for the] serious abuses and irregularities that occurred.”<sup>65</sup> The ANC subsequently apologized for those abuses in 1996 in a written statement to the South African Truth and Reconciliation Commission, declaring that the ANC “deeply regretted” the abuses that had occurred in detention camps and apologized “without qualification” for detainee mistreatment.

### **Are victims ever given an opportunity to participate in the planning of an official apology and to verbalize their suffering?**

Some of the most effective and moving apologies have allowed victims to participate both in the planning of the apology and during the ceremonies when the apology is given. That was the case at the apology made by Salvadoran President Carlos Mauricio Funes Cartagena to the victims of the El Mozote massacre. During both events, victims and survivors spoke before the official statement of apology, describing the suffering endured by victims and demanding that the massacre be investigated.<sup>66</sup> In another Guatemalan apology, the heads of all three state powers—the executive, judiciary, and legislature—apologized in a public ceremony in the National Palace for the military’s murder of Myrna Mack, a young anthropologist investigating internal displacement during the civil war; her family played a key role in designing the ceremony.



Daughters of the late judge Carlos Uran address people attending a ceremony commemorating the 30th anniversary of a deadly government siege, at the rebuilt Palace of Justice in Bogota, Colombia, November 6, 2015. Colombian President Juan Manuel Santos apologized for his country’s actions during a 1985 army raid on the Supreme Court, acting in accordance with a ruling by the Inter-American Court of Human Rights. (AP Photo/Fernando Vergara)

65 Jerelyn Eddings, “ANC admits committing brutality Mandela calls acts ‘inexcusable,’” *The Baltimore Sun*, October 20, 1992.

66 One of the victims, who also spoke at the ceremony, stated: “We ask for justice and reparations. We keep no rancor or hate to anybody. We want to forgive, but we need to know to whom.” *La Prensa*, “Funes pide perdón por masacre El Mozote y anuncia medidas de reparación,” January 16, 2012.

### What attributes do most effective apologies have?

There is no one definitive approach recognized under international law that must be followed when making an apology.<sup>67</sup> But there are references to and examples of good practices. The Inter-American Court of Human Rights, for instance, evaluated the apologies given in 2012 by Funes to the victims of the El Mozote massacre and highlighted the following attributes of a good apology:<sup>68</sup>

The apology was agreed on with the victims or their representatives.

- It was public.
- It was made at the place where the events had occurred.
- Responsibility for the extrajudicial execution of the victims was acknowledged, as were the other violations that had been committed in this case.
- The apology was held in the presence and with the participation of a considerable number of survivors and next of kin.
- The highest State authority—namely, the president of the Republic—and senior state officials took part.
- It was broadcast and disseminated fully throughout the country.

Our comparison of apologies for past human rights violations reveals some other important attributes that can help to promote some reparative effect:

- An unequivocal statement of apology acknowledges the specific injustices that occurred, recognizes that victims have suffered serious harm, and takes responsibility for this.
- An apology must be sincere; perceptions of a lack of forthrightness can undermine an apology.
- Effective apologies take into account, as sensitively as possible, what victims are likely to feel and think about what is being said. The apology should honor victims and indicate the importance of restoring respect for them and recognizing their dignity.
- They assure victims—and the rest of society—that the victims were not at fault for what happened.
- They emphasize common values shared by everyone in society.
- They tell victims what else will be done to redress the harm that was caused as well as what is being done to keep them safe from further harm. The best apologies address the future not just the past.

### Are apologies linked to amnesties and the goal of reconciliation?

Transitional societies emerging from conflict or autocratic rule sometimes adopt amnesty laws to promise that certain crimes committed during armed conflict or periods of political tensions will not be prosecuted. This is often done with the intention of promoting national reconciliation and to consolidate a fragile peace. Some amnesty agreements incorporate apologies from

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67 Article 37 of the Draft articles on Responsibility define “satisfaction” as “an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.”

68 Inter-American Court of Human Rights, *Case of the Massacres of El Mozote and nearby places v. El Salvador*, Judgment of October 25, 2012 (Merits, reparations and costs), para. 357



those granted amnesty, as in the case of Uganda's 2000 Amnesty Act.<sup>69</sup> However, amnesty laws (including those that incorporate apologies) should only be adopted after public debate on the matter. A fundamental requirement is that they must be consistent with international treaties and customary law requiring states to investigate and prosecute certain serious international crimes, including genocide, war crimes, and crimes against humanity.

The decision to give or withhold an apology should center more on the moral force and reparative value it can have for society. Apologies—when accompanied by an effective process of recognizing the rights of victims, providing concrete forms of reparations, investigating the crimes committed, and reforming those institutions that failed to protect citizens—can promote reconciliation. Apologies are particularly helpful and even essential in cases where the persistent denial of the commission of human rights violations or the responsibility to repair their consequences is not only adding to the suffering of victims but also stokes their anger and deepens communal distrust of the government or those they associate with perpetrators of violations.

In some cases apologies may form part of a reconciliation process, but even when they do not lead to reconciliation sooner, or at all they may begin to foster peaceful co-existence or even trust. An apology in almost all of these cases is favored, although its necessity may be better determined by its timing and sequencing with other forms of reparation. In 2010, for example, Serbian President Boris Tadić apologized to the victims of crimes committed in the name of his country and people during the Yugoslav Wars, but he also stated that “other countries would follow Serbia's example, and apologize for crimes committed against Serbs during the past conflicts.”<sup>70</sup> His apology was, therefore, regarded as equivocal.

Although reconciliation may be too ambitious a goal for those seeking apology as well as for those thinking about offering apologies, they are certainly a step in the right direction as a society works through the many different relationships involved in building reconciliation. Apologies can help to create channels of communication between individual perpetrators and their victims, between a state and the universe of survivors and families of victims, within communities in which the identities of victims and perpetrators may overlap, and between one state and its officials and the population of another state or society.

Survivors and victims should never be compelled to seek an apology in the name of reconciliation or to grant forgiveness to perpetrators. Apologies can encourage not only reconciliation, but also truth seeking, reparation, and accountability. They should always be considered as a component of any transitional justice process.

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69 See Kasande Sarah Kihika and Meritxell Regué, ICTJ, Pursuing Accountability for Serious Crimes in Uganda's Courts Reflections on the Thomas Kwoyelo Case, 2015.

70 Nidzara Ahmetasevic, “Half-Hearted War Crime Apologies Leave Victims Unmoved,” *Balkan Transitional Justice*, January 21, 2010.

## Conclusions

The content, delivery, tone, and proper timing of an apology are crucial, as is its sequencing with other transitional mechanisms, including other apologies. In some cases, like Canada's apology for Indian Residential schools, several forms of acknowledgment preceded Canadian Prime Minister John Harper's apology, including state-sponsored reports, the settlement of a class-action lawsuit, and the implementation of reparation payments and services. Often apologies follow recommendations by truth-seeking bodies, like Kenya's TJRC, that have provided concrete guidance on how to define the necessary apologies and the wrongs they should recognize. In other cases, it has been victims and victims' groups that have provided the main impetus for pursuing an apology and for helping to decide when and how an apology might best be given; their input is essential.

Public apologies are an important element of a transitional justice policy. When carried out in a way that is meaningful and sensitive to the moral and material needs of survivors and victims, they can effectively convey recognition, in some cases for the first time, of what survivors and victims suffered or lost. When solemnly and unequivocally given, apologies convey a clear acknowledgement of the responsibility of the state and individuals not only for the harm done, but for the causes of the conflict or repression that led to those harms. In this way, they play an important role in giving meaning to reparations and promoting efforts to reform institutions and guarantee nonrepetition.

The process of developing consensus around the need for an apology can help societies to face their past, reaffirm shared values, and meet their obligations to victims as human beings and citizens in the present and in the future. Although apologies alone can never completely provide the relief that victims and a society need to heal, they can be an important step toward reconciliation and sustainable peace.



# ICTJ

Justice  
Truth  
Dignity

ICTJ New York  
5 Hanover Square, 24th Floor  
New York, NY 10004  
Tel +1 917 637 3800  
Fax +1 917 637 3900  
[www.ictj.org](http://www.ictj.org)

ICTJ Kenya  
Regent Court, Apt. B1 Argwings  
Kodhek Road  
P.O. Box 47153-00100  
Nairobi, Kenya  
Te: +254 20 2672816