

Public Apology as a Form of Reparation
(Case Study of the Post-Independence Atrocities by the
Netherlands in Indonesia)

Devyta Wijaya

LLM Graduate of New York University School of Law

Abstract

Public Apology is recognized as a form of reparation for victims of gross violations of international human rights law and international humanitarian law, alongside of other measures, such as monetary compensation and restitution. This paper aims to analyze the effectiveness of public apologies as a form reparation and in doing so, discusses several cases and forms of public apologies. More specifically, this paper extensively analyzes the effectiveness of the public apologies made by the Netherlands to Indonesia, in respect of the post-independence atrocities committed by the Netherlands in Indonesia, during the period of 1945 – 1949. The cases discussed in this paper reveals that the effectiveness of a public apology as a form of reparation varies from cases to cases and depends on a host of factors. Past practice of States which had delivered public apologies for human rights abuses, however, shows that public apology alone is not enough to be an effective form of reparation for the victims of gross human rights violations. In most cases, public apologies must be accompanied with other types of reparations to give effective redress to the victims of human rights violations.

Keywords: International Criminal Law; Transitional Justice; Public Apologies; Reparation; Indonesia; Rawagede; Sulawesi.

I. Introduction

In recent years, many States have issued public apologies for the past human rights violations committed by it. It seems very simple, yet when we take a closer look, a simple apology could have a significant impact. This is why many victims of gross human rights violations demand the perpetrators to apologize and on the other hand, several perpetrators also refused to apologize despite demands from the victims and international organizations, such as the United Nations.



This paper consists of two main parts. The first part intends to take a closer look at what impact does a public apology have as a form of reparation, and how effective it could be. The second part of this paper will observe the apology made by the Netherlands in respect of the post-independence atrocities committed by the Netherlands in Indonesia, being the Rawagede massacre and Sulawesi massacre.

II. Public Apology as a Form of Reparation

Public apology is recognized as a form of reparation pursuant to the United Nations General Assembly Resolution, dated 16 December 2005, on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“UN Basic Principles”). The UN Basic Principles set out five forms of reparation, being restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The public apology itself falls under the category of satisfaction (UNGA, 2005).

As the purpose of a public apology is to provide reparation for the victims of a human rights or humanitarian law violation, it is issued by a State as an official statement, and it shall include acknowledgment of the facts and acceptance of responsibility (UNGA, 2005). The delivery of the public apology is often made by way of speech by the person who is authorized to represent the State, such as the Head of State or the Minister of Foreign Affairs.

The States’ decisions to make a public apology are driven by different reasons. Some States made a public apology to its own citizens in the context of transitional justice, thereby apologizing for the atrocities committed by the previous government, such as in the case of Chile after the fall of Pinochet’s regime. The other States apologize for the past atrocities that they had committed in another State, such as in the case of the public apology made by the Netherlands to Indonesia for the post-independence atrocities, being the Rawagede massacre and the Sulawesi massacre. A number of other reasons may also drive the States to make a public apology, however, this paper will only discuss two of the afore mentioned reasons to confine the scope of this paper.

Public Apology in the Context of Transitional Justice

As discussed above, some States make a public apology to its own citizens in the context of transitional justice. Transitional justice is often characterized by legal responses to confront the wrongdoings of repressive predecessor regimes (Teitel, 2002). In this context, a public apology is made by a new government that replaces the previous repressive regimes, to its own citizens, for the past atrocities committed by the predecessor. Some countries which implement transitional justice establish Truth and Reconciliation Commissions to find the facts about past atrocities. In

most cases, the Commissions would discover facts that the previous government have committed gross human rights violations and recommend a number of actions to be taken by the State as reparation. In this regard, one of the recommendations that is often being included by the Truth and Reconciliation Commissions is to make a public apology to the citizens for the past atrocities.

An example of a public apology that is delivered in the context of transitional justice is the public apology delivered by the new government of Chile after the change of government in 1990. In this period, Patricio Aylwin replaced Pinochet as the President of Chile, after the period of dictatorship by Pinochet which lasted for more than 20 years. Upon taking over the presidency, President Aylwin established the Chilean National Commission on Truth and Reconciliation. The Commission later found that the government during Pinochet dictatorship committed enforced disappearances, torture, and extrajudicial killings. Upon the issuance of the Commission's report, President Aylwin made a public apology in 1991 on behalf of the State for the violations of human rights committed by the Chilean government in the past. He also asked for the armed and security forces who have participated in the crimes to acknowledge the crimes that had been done (ICTJ, 2015).

The Chile example raises a question of who should apologize for the gross violations of human rights in the context of transitional justice. In that case, although Pinochet was no longer the President, however, he was still in the government holding the position as the Commander-in-Chief of the army, at the time President Aylwin delivers the public apology. In such situation, President Aylwin's decision to make a public apology as the Head of State shows that the Chilean government acknowledges state responsibility for the violations of human rights committed during Pinochet's administration.

Even though the public apology made by President Aylwin in this case is very significant for Chile's reconciliation, an apology from Pinochet as the person who was responsible for the human rights violations is still desirable to give comfort to the victims. An apology from Pinochet could show to the victims that the perpetrator regrets his past actions. President Aylwin has also expressly mentioned this in his apology, by asking the armed and security forces that have participated in the crimes to also acknowledge the crimes. Pinochet, however, had never delivered any apologies for his dictatorship era (Eipstein, 2006).

In addition to the public apology made by the Head of State and the perpetrators, a public apology may also be made by other state officials (ICTJ, 2015). In 2013, the largest judiciary body in Chile issued a public apology, in the form of a statement published on its website, for Pinochet's dictatorship period from 1973 to 1990. In the statement, the judiciary body stated that it could have and should have done more to protect human rights during the dictatorship period. It also acknowledged its omissions in rejecting thousands of complaints which had been rightly filed, systematic refusal to investigate criminal acts perpetrated by

State agents, and reluctance to get involved in the actions taking place in detention centers and torture (Cea, 2013). This unprecedented public apology by a judiciary body in Chile is a good precedent of reparation in the form of public apology which was made by State officials other than the Head of State and the perpetrators.

Public Apology for Atrocities in Another State

A number of States had done atrocities in another state in the past, especially during the colonial period. With the passage of time and the development of sovereignty concept, the relationships between the former colonial powers and their former colonies are improving and they often have stronger diplomatic ties attributed to the “shared history”. Due to this condition, several colonial powers have apologized to their former colonies for the human rights violations during the colonial time. The United Kingdom (“UK”), which was one of the strongest colonial powers, apologized to Kenyans who had suffered abuse and torture during the Mau Mau uprising. The public apology was also accompanied with compensation to more than 5,000 Kenyans, in a total amount of £19.9 million (ICTJ, 2015).

It is not always easy, however, for a State to issue a public apology. In the case of Japan’s “comfort women”, who were abducted and forced into sexual slavery during World War II by the Japanese military, Japan had never issued a meaningful public apology that gives satisfaction to the victims (OHCHR, 2016). Despite repeated requests by the countries where the comfort women came from, Japan has been reluctant to offer a meaningful public apology (Constante, 2019). Public apologies for atrocities in another state will be discussed more deeply in Part III of this paper, with regard to the case study of the post-independence atrocities by the Netherlands in Indonesia.

Impact of A Public Apology

A public apology is a unique form of reparation because it does not involve payment of money, as in the case of compensation, or substantial actions, as required by restitution, rehabilitation, and guarantees of non-repetition. It is a mechanism that is adapted based on interpersonal apologies between individuals, which is a very common way of human interaction in daily life. While interpersonal apologies seem simple and do not give rise to substantial liabilities, the situation is significantly different when it comes to the public apology issued by States. Given that public apology deals with gross violations of international human rights law or

serious violations of international humanitarian law, a State must have gone through extensive deliberation before deciding to issue a public apology.

Once made, a public apology could have a very significant impact. It could create history and establish certain events as the “official story”, because it has been acknowledged by the State who made the public apology (Dominello, 2017). An example of this is the public apology made by the UK in 2010, in respect of the Bloody Sunday massacre in Northern Ireland. The massacre took place in 1972, when the British troops shot 13 Catholic protesters. At that time, the troops claimed that the killings were necessary in response to the attacks by the protesters. However, in 2010, a fact-finding commission concluded that the British troops had opened fire first and without warning, and none of the victims had posed threats to the troops (“Bloody Sunday massacre”, 2019). With the public apology made by the UK government, the UK has acknowledged the actual event and changed the history that had been believed to be true for 38 years.

Another significant impact of a public apology is the liability that will arise after the public apology is made. For the States which made the public apology, its action shows acceptance of responsibility for the harms done. As a consequence of acknowledging wrongdoing, the State who made the public apology shall be ready to assume the associated liabilities or impact that may arise in respect of the wrongdoing. An example of this is the public apology made by Australia to the indigenous people for the separation of the indigenous children from their families in order to remove all traces of indigenous culture, which happened for 60 years until 1970 (Nieves, 2017). As a result of this public apology, it entails recognition of indigenous group based claims, and strengthening demands for new political arrangements that are better aligned with indigenous people aspirations (Dominello, 2017).

In addition to the above, a public apology also implies a formal attempt to redress severe and long-standing harm against an innocent group (Blatz, 2009). This can be seen in the case of the public apology made by Kenyan President Uhuru Kenyatta in March 2014 with regard to the repression and violence done by the Kenyan government in the past. Such wrongdoings including the 1984 Wagalla massacre and the 2007-2008 post-election violence. The public apology is accompanied with a commitment to establish a fund for restorative justice in the amount of 10 billion Kenyan shillings, equals to US\$100 million (ICTJ, 2015).

For the party at the receiving end, a public apology is meaningful because in the case of human rights violations, the acts violate the victims’ dignity, which is why public apology made by a State official could comfort the victims (ICTJ, 2015). Moreover, when human rights violations occurred on a massive scale, the material form of reparation such as compensation and restitution often is not enough to provide redress. Ultimately, a public apology should be understood as an act of moral acknowledgment and recognition for the victims (ICTJ, 2015).

A public apology can also affect the relationship between the country which apologizes and the country of the victims. As public apology is made out of gross violations of international human rights law, even though the violations were made against only a certain group of people, such violations are often perceived as having high importance by the country of the victims. In the case of South Korean comfort women, the issue has been a national concern which attracts public and government's attention. South Korea has been seeking redress from Japan for the South Korean comfort women for decades, and one primary form of reparation that they repeatedly request is a public apology from Japan. In February 2019, after Japan refused South Korea's request for an apology to the South Korean comfort women, the relationship between the two countries has been intensified because of this issue ("Demand for 'comfort women' apology", 2019).

While public apology offers redress that cannot be achieved by other types of reparation, such as satisfaction for the victims and acknowledgment of the wrongdoing, at the same time, it also cannot offer the redress that the other types of reparation are capable to provide, such as financial compensation or rehabilitation in the form of provision of facilities to rehabilitate the victims. Evidently, the different types of reparation mechanisms are meant to complement each other to achieve the goal of reparation. As such, in almost all cases, apologies are not enough as reparation to victims of serious violations (ICTJ, 2015).

What Makes A Public Apology Effective

Given the uniqueness of a public apology and the many ways people could perceive it, how the public apology was made is also important in order to make an effective apology that could achieve the proposed goal of reparation. An effective public apology should take into account what the victims are likely to feel and think about what is being said (ICTJ, 2015). Obviously, the words used in the apology is significant and the statement must expressly state an apology.

Some States have failed to expressly say an apology in an official statement made in respect of past atrocities. In the case of the crimes conducted in East Timor by Indonesian forces, the then President of Indonesia Soesilo Bambang Yudhoyono only expressed that he deeply regret at what happened in the past, but did not use the word apology (ICTJ, 2015). He failed to express the apology, even though the final report of the joint Indonesia-Timor Leste Commission of Truth and Friendship has been issued and contained a recommendation for Indonesia to apologize for the past wrongdoings (ICTJ, 2015). This type of statement is ineffective and does not serve the purpose of public apology as a form of reparation.

While presently no international standard has been accepted in respect of what constitutes a good apology, the Inter-American Court of Human Rights determines that the following elements form a good apology (ICTJ, 2015):

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

The above mentioned elements appear to be reasonable and in the absence of an international standard, these elements may be used by States as a reference in making a public apology.

III. Public Apology in respect of Post-Independence Atrocities by the Netherlands in Indonesia

The Dispute over Indonesia's Independence Day

Indonesia was colonized by the Netherlands since the early 1600s, but it is unclear as to when the colonization actually ended. In the middle of the Dutch colonization of Indonesia in 1942, Japan invaded Indonesia and the Dutch troops which could not stop the invasion, surrendered to Japan (Chen, n.d.). On August 17, 1945, as a result of the end of World War II, Indonesia gained its independence.

Despite having declared its independence, created its own government, and obtained acknowledgment from other states of Indonesia's independence, the Netherlands at that time did not acknowledge Indonesia's independence (Kartosen-Wong, 2018). Conversely, after the end of World War II in 1945, the Netherlands came back to Indonesia to continue its operation in certain areas with the goal to reassert control of the country. As part of its operation, the Netherlands has conducted summary execution against Indonesians in several places, including Rawagede and Sulawesi, and this operation continued until 1949 ("Dutch apology", 2011).

Subsequent to a series of extrajudicial killings by the Dutch in Indonesia, the UN published a report in 1948 which states that the killings by the Dutch troops in Indonesia are deliberate and merciless ("Dutch foreign minister apologizes", 2016). The Dutch government had also prepared its own report in respect of this tragedy, however, while such report acknowledged violent excesses in Indonesia, it argued that the Dutch troops were carrying out a police action incited by guerrilla warfare and terror attacks ("Dutch civil court", 2011).

In an attempt to resolve the ongoing conflict between the two countries, on December 27, 1949, the Dutch government and the Indonesian government held the Dutch-Indonesian Round Table Conference in The Hague, with the assistance of United Nations Commission for Indonesia. As the outcome of this conference, both countries signed the Hague Agreement, pursuant to which the Netherlands agreed to transfer the sovereignty over the entire territory of Indonesia to the Indonesian government (Angelo, 1950). On the basis of this Agreement, the Dutch government regarded the date of the Agreement as the date of Indonesia's independence as opposed to August 17, 1945, which is recognized by the Indonesian government and other States as the date of Indonesia's independence.

The date of Indonesia's independence as acknowledged by the Netherlands is important in the context of determining whether or not the Netherlands is liable for the extrajudicial killings in Indonesia during the period of 1945 to 1949. By establishing that the Netherlands only acknowledges Indonesia's independence at the end of 1949 means that the atrocities conducted by them during the period of 1945 to 1949 cannot be classified as an attack against another sovereign country or a war crime. Instead, such atrocities will be considered as internal law enforcement because the Netherlands still considered Indonesia as a part of its country (Toebosch, 2018). Indeed, the Dutch Minister of Foreign Affairs at that time, Eelco van Kleffens, insisted that the military intervention by the Dutch forces in Indonesia was never called a war, but rather understood as an internal conflict, with the Dutch trying to restore peace and order in their own country (Allen, Boon, and Sutjipto, n.d.).

Rawagede Massacre

The post-independence atrocities conducted by the Dutch troops in Indonesia during the period of 1945 to 1949 are massive. This paper will only discuss two particular events, which were subsequently brought to the District Court of the Hague. These events are the Rawagede massacre and the Sulawesi massacre.

In Rawagede, a village in Indonesia, the Dutch troops entered the village on December 9, 1947. They then gathered nearly all men in the village, taken them to a field and shot them one by one ("Netherlands apologises", 2011). The actual number of the victims in this massacre is disputed, with the Netherlands claiming that 150 people were killed, while victims' association believes that the number is as high as 431 ("Wisah binti silan", n.d.).

After more than 60 years since the Rawagede massacre, in 2011, with the help of a Non-Governmental Organization based in Indonesia and Netherlands, Committee of Dutch Debts of Honour Foundation, nine widows and relatives of the victims of the Rawagede massacre initiated civil proceedings against the Netherlands at the District Court of the Hague in Netherlands. The claims submitted

by the victims' widows and relatives ask for compensation from the Netherlands for the lives that were lost and damage that was done during the Rawagede massacre. Although the victims had died, the UN Basic Principles set out that as appropriate, victims shall also include the immediate family or dependants of the direct victim. Thus, the widows and relatives of the direct victim shall also be entitled to reparation in this case (UNGA, 2005).

In the proceedings, the Netherlands did not deny the crimes that it had done in Rawagede, however, the Netherlands argued that the statute of limitations for civil claims in accordance with Dutch law is only five years. Thus, the statute of limitations has passed, and as such the claim is no longer justiciable. In response to this argument, the victims' lawyer argued that the Dutch Courts was also still dealing with the claims of Jewish relatives with regard to the World War II, so the Court still take up claims for that period (Kuhn, 2011). Ultimately, the Court held that the statute of limitations argument presented by the Dutch government is untenable for reasons of fairness and reasonableness. The Court's reasoning is consistent with the UN Basic Principles Part IV.6, which provides that statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law, which constitute crimes under international law (UNGA, 2005).

On September 14, 2011, the District Court of the Hague ultimately issued a decision which holds that the Netherlands acted wrongfully through the executions in the Rawagede massacre, and that the State is liable to pay damages to the victims' widows. While the decision does not specify the amount of the damages to be paid to the victims' widows, the Netherlands subsequently agreed to pay €20,000 to each of the widows ("Wisah binti silan", n.d.). The Netherlands also decided not to appeal the Court decision (Böhler Advocaten, 2011). This decision is a landmark case in respect of the post-independence atrocities conducted by the Netherlands in Indonesia, because it is the first court decision which holds that the Netherlands have conducted crimes in Indonesia and is liable for such crimes.

Although the decision only mandates reparation in the form of payment of damages, the Netherlands government, however, decided to also make a public apology for the Rawagede massacre. The decision to make a public apology is also ground breaking because the Netherlands had previously shown its reluctance to admit any liabilities in respect of the Rawagede massacre. Even before the court case, the Dutch government had acknowledged the killings in Rawagede and donated money to the village of Rawagede. It was never, however, admitted liability for the killings or linked the payment with the massacre ("Dutch foreign minister apologizes", 2016).

The public apology was made in December 2011, three months after the issuance of the decision by the District Court of the Hague, in a ceremony held in the Rawagede Hero cemetery, where many victims of the Rawagede massacre were

buried in a mass grave (ICTJ, 2015). The Netherlands was represented by its Ambassador to Indonesia, Tjeerd de Zwaan, who made the apology in English and Indonesian. In his apology, the Dutch Ambassador expressly said that he apologizes, on behalf of the Dutch government, for the tragedy that took place in Rawagede on December 9, 1947 (“Dutch apology”, 2011).

The ceremony was attended by the victims’ widows who are parties to the case in the District Court of the Hague and the other relatives of the victims, although one widow had died before the ceremony was held. As part of the ceremony, the officials of the Dutch embassy also presented the victim’s widows with a plaque with a text that says “Finally justice for the people of Rawagede”, and the date of the Court decision ascribed below (“Netherlands finally apologises”, 2011).

The apology meets a number of elements of a good apology as determined by the Inter-American Court of Human Rights, namely it was made public, delivered at the place where the extrajudicial killings had occurred, expressly stated an apology, attended by the victims’ widows, covered by mass media, and delivered by the Dutch Ambassador for Indonesia. Moreover, the Dutch government had also attempted to make the public apology more personal by delivering the apology in Indonesian and by giving the plaque to the victims’ widows.

The public apology made by the Netherlands to Indonesia in respect of the Rawagede massacre received a generally positive reception, both by the government and the victims’ widows. Indonesian Minister of Foreign Affairs at that time, Marty Natalegawa stated that the public apology is an important development of the Rawagede massacre. The victims’ widows, after hearing the apology from the Dutch Ambassador, cried because they thought they would never hear the words. One widow said that she feels that her struggle for justice was not useless (ICTJ, 2015). The lawyer of the victims’ widows, Liesbeth Zegveld also stated that the victims’ widows were more interested to get recognition for the suffering inflicted on them, rather than significant amounts of money (“Reparations for historical wrongs”, 2016).

Another significance of the public apology made by the Netherlands in this case is that it could be interpreted as an implied acknowledgment by the Netherlands that the independence day of Indonesia is August 17, 1945, instead of at the end of 1949, which the Netherlands had insisted to be the independence day of Indonesia.

Finally, this public apology is also important in the context of the relationship between the Netherlands and Indonesia as the former colonial power and the former colony. While some colonial countries have apologized to their former colonies for the rights violations during the colonial rule, such as the UK which apologized to Kenya (ICTJ, 2015), the Netherlands had never before apologized to Indonesia. Hence, the apology made in respect of the Rawagede massacre, although made only

specifically for the extrajudicial killings in Rawagede, is of great importance to Indonesia, not only to the victims' widows, but also to the whole country. In addition, it also opens the path for the other cases of past atrocities by the Netherlands in Indonesia to be brought to court.

Sulawesi Massacre

Another atrocity committed by the Netherlands in Indonesia after Indonesia's independence is the Sulawesi massacre which took place in January 1947. In this massacre, the Dutch troops killed more than 200 Indonesian men in Sulawesi, an island in Indonesia ("Netherlands apology", 2013). The number of the victims, however, is disputable between Indonesia and the Netherlands, because no reliable documentation exists which records the number of people who died during this massacre.

In May 2012, following the reparation given to the victims' widows of the Rawagede massacre, ten Indonesian surviving relatives of the victims of the Sulawesi massacre, represented by the same lawyer who also represented the widows and relatives of the victims of the Rawagede massacre, made a declaration claiming that the Netherlands is liable for the Sulawesi massacre. The declaration outlined the atrocities committed by the Dutch troops in Sulawesi and demanded financial compensation for the death of the victims, but above all the victims' relatives want an apology and acknowledgment for the distress that they had to undergo (Böhler Advocaten, 2012). On August 9, 2013, the Dutch government settled this demand out-of-court with the victims' relatives. Pursuant to the settlement, the Dutch government had agreed to pay compensation in the amount of € 20,000 per person and will offer its apologies to the victims' relatives (Böhler Advocaten, 2013).

Following the high number of cases brought to the District Court of the Hague in respect of the human rights violations committed by the Dutch troops in Indonesia during the period of 1945 to 1949, Dutch Prime Minister Mark Rutte announced in 2013 that the Dutch government would apologize for all summary executions committed by the Dutch military in Indonesia from 1945 to 1949, and all future claims will be resolved in a similar manner (Sidarto, 2013).

The public apology to the victims' relatives of the Sulawesi massacre took place on September 12, 2013, at the Dutch Embassy in Jakarta, Indonesia. Unlike the public apology made previously in respect of the Rawagede massacre which was held in the village where the massacre took place, this time the apology took place at the Dutch Embassy. The Netherlands decided to make the apology in its embassy because it also wanted to apologize to all other summary executions committed by the Dutch military in Indonesia from 1945 to 1949 ("Dutch Apologize", 2013).

It had been noted that almost in all cases, a public apology is not enough and it must be accompanied with other types of reparations being restitution, compensation, rehabilitation, and guarantees of non-repetition. In the case of the post-independence atrocities in Indonesia, however, the public apology delivered by the Netherlands to the victims' relatives serves as a very important form of reparation and could be the most effective one. The public apology is effective in this case because of three conditions associated with the case. First, the direct victims in this case had died. Second, the atrocities had occurred more than 60 years ago. Lastly, the relevant parties, being Indonesia and the Netherlands, have different perspectives regarding the official date of the independence day of Indonesia.

As for the first condition, the death of the direct victims means that the Netherlands cannot provide reparation to them. Instead, the Netherlands can only provide reparation to their immediate family or dependants, as recognized by the UN Basic Principles. Giving reparation to the victims' relatives instead of the direct victims could be challenging because it is more difficult to assess what could be the effective measure for the reparation, since the relatives did not experience the atrocities first-hand. For example, if the victims had been alive, the Netherlands might be able to offer rehabilitation by providing physical or mental care to the victims. In this situation, however, it would be irrelevant for the Netherlands to offer physical care for the relatives, and while it can provide mental care to them, the treatment will be completely different with what would otherwise be provided to the victims if they had been alive. Moreover, it is also impossible in this case to provide restitution, because the victims had died, and thus the Netherlands cannot reinstate the previous condition before the massacre took place.

Second, the time that has lapsed until the atrocities were brought to the court also affected the available form of reparation. As discussed above, it is possible to provide the victims' relatives with mental care as a form of rehabilitation. However, since the atrocities had occurred 60 years before, the damage is done and it is difficult to provide mental care for the victims' relatives which would be effective to heal the trauma.

Moreover, with the passage of time, the situation between Indonesia and the Netherlands at the time the case was brought to the court was completely different with 60 years before when the atrocities occurred. At that time, Indonesia had just been independent and the Dutch still treats Indonesia as its colony. Nowadays, however, Indonesia is an equally sovereign country as the Netherlands and both countries have a friendly diplomatic relationship. As such, the similar type of atrocities is almost impossible to happen again and therefore, a guarantee of non-repetition would not be relevant or effective in this regard.

Lastly, the different perspectives regarding the independence day of Indonesia had long been an irritant in both countries' relationship. Prior to the public apology made by the Netherlands in respect of the Rawagede massacre, even

though both countries had developed a good relationship, the Netherlands had never apologized for the post-independence atrocities. This sends the message to Indonesia that the Netherlands did not honour the official independence day of Indonesia. After the Dutch Ambassador made the public apology in respect of the post-independence atrocities, although the Netherlands did not make a statement that it acknowledges the official independence day of Indonesia, however, it delivers a message that during the period of 1945 to 1949, the Netherlands acknowledges that it has no authority over Indonesia, and thus apologizes for the atrocities.

Having regard to the foregoing, the only available forms of reparation that would be effective in this case are compensation and satisfaction in the form of public apology, both of which had been granted by the Netherlands to the victims' widows and relatives. Given the three conditions related to this case as elaborated above, it is apparent that public apology is a very important and effective form of reparation in this case, and indeed the lawyer of the victims' relatives have also emphasized this. Although the Netherlands also provided compensation to the victims' relatives, however, no amount of money can provide a strong reparative impact in such high scale of human rights violations.

IV. Conclusion

A public apology is a unique form of reparation because it provides redress for the victims' mental and dignity. In most cases, a public apology is not enough to provide reparation to the victims of gross human rights violations, and as possible, other types of reparation being compensation, restitution, rehabilitation, and guarantees of non-repetition must also be provided to the victims. The effectiveness of a public apology as a form of reparation, however, depends on a host of factors related to the particular case. Depending on the situation, public apology could be very effective, such as in the case of the public apology made by the Netherlands in respect of the post-independence atrocities in Indonesia.***

References

- Allen, L., Boon, R., and Sutjipto, A. (n.d.). *"Recipe" for Reconciliation: A Tale for Reparations*. Retrieved from <https://www.humanityinaction.org/knowledgebase/673-recipe-for-reconciliation-a-tale-for-reparations>.
- Angelo, H. (1950). Transfer of Sovereignty Over Indonesia. *American Journal of International Law*, Vol. 44 No. 3, 569–572.

- Apology for Indonesian Colonial Atrocities Opens Old Wounds. (2014, May 1). *The Straits Times*. Retrieved from <https://www.straitstimes.com/asia/se-asia/dutch-apology-for-indonesian-colonial-atrocities-opens-old-wounds>.
- Blatz, C., et. al. (2009). Government Apologies for Historical Injustices. *Political Psychology*, 30 (2), 221.
- Bloody Sunday Massacre: British Ex-Soldier Arrested on Suspicion of Murder. (2019, March 14). *NBC*. Retrieved from <https://www.nbcnews.com/news/world/bloody-sunday-massacre-british-ex-soldier-arrested-suspicion-murder-n983096>.
- Böhler Advocaten. (2011). *The Dutch State Compensates Nine Surviving Relatives of The Bloodbath in Rawagede and Offers Its Apologies* [Press Release]. Retrieved from https://www.prakkendoliveira.nl/images/nieuws/2011/111205_-_press_release_rawagede.pdf.
- Böhler Advocaten. (2012). *Declaration of Liability of the State for Massacres on South Sulawesi in 1947* [Press Release]. Retrieved from https://www.prakkendoliveira.nl/images/nieuws/2012/120507_-_press_release_sulawesi.pdf.
- Böhler Advocaten. (2013). *Dutch State Compensates Ten Widows of the Summary Executions on Sulawesi and Offers Apologies* [Press Release]. Retrieved from https://www.prakkendoliveira.nl/images/nieuws/2013/130809_-_press_release_settlement_sulawesi.pdf.
- Cea, R. (2013, September 5). *Chile's Judiciary Asks for Forgiveness Over Its Role During the Pinochet Dictatorship*. *El Pais*. Retrieved from https://elpais.com/elpais/2013/09/05/inenglish/1378397879_062719.html.
- Chen, P., *Dutch East Indies* (n.d.). Retrieved from https://ww2db.com/country/Dutch_East_Indies.
- Constante, A. (2019, May 7). Who are the 'Comfort Women,' and Why are U.S.-Based Memorials for Them Controversial? *NBC*. Retrieved from <https://www.nbcnews.com/news/asian-america/who-are-comfort-women-why-are-u-s-based-memorials-n997656>.
- Demand for 'Comfort Women' Apology by Emperor Angered Many in Japan, Abe Says, as U.S. Seeks Calm. (2019, February 13). *The Japan Times*. Retrieved from <https://www.japantimes.co.jp/news/2019/02/13/national/politics-diplomacy/demand-comfort-women-apology-emperor-angered-many-japan-abe-says-u-s-seeks-calm/>.
- Dominello, F. (2017). Political Apologies and their Challenges in Achieving Justice for Indigenous Peoples in Australia and Canada. *Oñati Socio-legal Series* [online], Vol. 7 No. 2, 283.
- Dutch Apologize for Massacre. (2013, September 13). *The Jakarta Post*. Retrieved from <https://www.thejakartapost.com/news/2013/09/13/dutch-apologize-massacre.html>.

- Dutch Apology for 1947 Indonesia Massacre at Rawagede (2011, December 9). *BBC*. Retrieved from <https://www.bbc.com/news/world-asia-16104751>.
- Dutch Civil Court Rules Government to Compensate 1947 Indonesian Massacre Victims. (2011, September 14). *The Telegraph*. Retrieved from <https://www.telegraph.co.uk/news/worldnews/asia/indonesia/8763614/Dutch-civil-court-rules-government-to-compensate-1947-Indonesian-massacre-victims.html>.
- Dutch Foreign Minister Apologizes for 1947 Indonesian Massacre (2016, March 25). *DW*. Retrieved from <https://www.dw.com/en/dutch-foreign-minister-apologizes-for-1947-indonesian-massacre/a-19143315>.
- Eipstein, J. (2006, December 10). Augusto Pinochet / Chilean Leader's Regime Left Thousands of 'Disappeared'. *SF Gate*. Retrieved from <https://www.sfgate.com/news/article/AUGUSTO-PINOCHET-Chilean-leader-s-regime-left-3249159.php>.
- International Center for Transitional Justice. (2015). *Reparative Justice: More Than Words Apologies as a Form of Reparation*.
- Kartosen-Wong, R. (2018, August 30). Apologize, Recognize Independence Date. *The Jakarta Post*. <https://www.thejakartapost.com/academia/2018/08/30/apologize-recognize-independence-date.html>.
- Kuhn, A. (2011, October 2), Widows Win Legal Victory in Indonesia Massacre Case. *NPR*. Retrieved from <https://www.npr.org/2011/10/12/140847885/widows-win-legal-victory-in-indonesia-massacre-case>.
- Netherlands Apologises for 1947 Rawagede Massacre in Indonesia (2011, December 9). *The Guardian*. Retrieved from <https://www.theguardian.com/world/2011/dec/09/netherlands-apologises-for-rawagede-massacre>.
- Netherlands Apology for Indonesia 1940s Killings (2013, September 12). *BBC*. Retrieved from <https://www.bbc.com/news/world-asia-24060913>.
- Netherlands Finally Apologises for 1947 Indonesia Massacre (2011, December 9). *The Telegraph*. Retrieved from <https://www.telegraph.co.uk/news/worldnews/europe/netherlands/8945649/Netherlands-finally-apologises-for-1947-Indonesia-massacre.html>
- Nieves, E. (2017, May 24). Australia's 'Stolen Generations' Tell Their Stories [Blog post]. Retrieved from <https://lens.blogs.nytimes.com/2017/05/24/australias-aboriginal-stolen-generation-tells-its-stories/>.
- Office of the United Nations High Commissioner for Human Rights ("OHCHR"). (2016, March 11). Japan / S. Korea: "The Long Awaited Apology to 'Comfort Women' Victims is yet to Come" – UN Rights Experts. Retrieved from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17209&LangID=E>.

- Reparations for Historical Wrongs (2016, April 19). Retrieved from <http://www.thehagueinstituteforglobaljustice.org/latest-insights/latest-insights/news-brief/reparations-for-historical-wrongs/>.
- Sidarto, L. (2013, September 13). Liesbeth Zegveld: The Lawyer Behind the Dutch Apologies. The Jakarta Post. Retrieved from <https://www.thejakartapost.com/news/2013/09/13/liesbeth-zegveld-the-lawyer-behind-dutch-apologies.html>.
- Teitel, R. (2002) Transitional Justice Genealogy. *Harvard Human Rights Journal*: Vol. 16, 69 – 94
- Toeboesch, A. (2018, August 15). Dutch Memorial Day: Erasing People After Death. *The Conversation*. Retrieved from <https://theconversation.com/dutch-memorial-day-erasing-people-after-death-97236>.
- United Nations General Assembly (“UNGA”). (2005). *Resolutions 60/147*.
- Wisah Binti Silan et al. v. The State of The Netherlands (Ministry of Foreign Affairs). (n.d.). Retrieved from <http://www.internationalcrimesdatabase.org/Case/1006/Silan-et-al-v-The-Netherlands/>.