

Anexo I:**Individual opinion by Committee member Laurence R. Helfer
(concurring)**

1. This case marks an important milestone: for the first time, a State party has acknowledged its responsibility for violating the Covenant in response to a complaint under the First Optional Protocol. In particular, Argentina recognizes that the author's rights to freedom of expression and to an impartial tribunal were infringed when he was ordered to pay damages for civil libel for publishing a book investigating human rights abuses during the military dictatorship in that country, and when his appeal was reviewed by judges who had actively obstructed such investigations (paras. 4.4 – 4.5). The Committee rightly commends the State party for making “a positive contribution” to memory, truth, justice and reparation processes in Argentina, which has “considerable material and symbolic value as assurances of the non-repetition of similar incidents” (para. 9.5).

2. I write separately for two reasons: first, to provide additional context for the Committee's remedial choices in this case; and second, to offer guidance regarding the remedies of acknowledgement of responsibility and apology in international human rights law, both which have evolved significantly in recent years.

3. The Committee does not require Argentina to apologize or to publicly acknowledge its responsibility (para. 11), although the author specifically requested both remedies (para. 3.6). Such a public statement would have enhanced the material and symbolic value of the State party's admission and broadened awareness of the violations in this case. However, the decision itself includes a detailed statement from Argentina accepting the facts and legal claims alleged by the author (paras. 4.1 – 4.5).¹ Thus, the publication and dissemination of the Committee's Views themselves constitute a formal and public acknowledgment of Argentina's responsibility for the violations of the author's rights.

4. The Committee's general approach to remedies is set forth in its *Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*.² “When the Committee finds that an individual communication reveals violations of Covenant rights, it sets out measures designed to make full reparation to the victims (restitution, compensation, rehabilitation and measures of satisfaction), as well as measures aimed at preventing the reoccurrence of similar violations in the future (guarantees of non-repetition).”³ As a measure of satisfaction, the Committee “may request that States parties issue a public apology, particularly in cases of grave or systematic violations where the injury cannot be fully redressed by restitution or compensation only.”⁴ The *Guidelines* do not mention acknowledgments of responsibility, but they refer to public manifestations of such acknowledgments, including “having a monument built, putting up a commemorative plaque or changing the name of a street or other public place in cases involving grave or systematic violations.”⁵ The *Guidelines* also cite to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by the UN General Assembly in 2005, which list “public apology, including acknowledgement of the facts and acceptance of responsibility” as appropriate measures of satisfaction.⁶ In addition, a 2019 report by Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (and a former member of the Committee),

¹ The State party contested only one aspect of the complaint: the challenge to the Argentina Supreme Court's rejection of his extraordinary appeal without providing a reasoned decision (para. 4.6). The Committee dismisses that claim as insufficiently substantiated (para. 8.4).

² CCPR/C/158 (30 Nov. 2016), available at <https://undocs.org/CCPR/C/158>.

³ Ibid. para. 2.

⁴ Ibid. para. 11(e).

⁵ Ibid. para. 11(f).

⁶ UN Doc. A/RES/60/147 (16 December 2005), para. 22(e).

titled *Apologies for Gross Human Rights Violations and Serious Violations of International Humanitarian Law*, provides a comprehensive review of “key themes of relevance in the consideration of public apologies, with a view to developing a practical schema to assist in the design and delivery of more effective apologies.”⁷

5. The Committee’s jurisprudence reflects similar concepts. In response to findings of grave or gross breaches of the Covenant, the Committee sometimes indicates various forms of apology.⁸ However, the case law is not fully coherent. For example, an author’s request for an apology is neither a necessary nor a sufficient condition for indicating that remedy. The Committee has sometimes ordered a State party to apologize even though the author did not request an apology,⁹ while in other instances it has considered such requests in fashioning the remedy.¹⁰ In still other cases, the Committee has declined, without explanation, requests for an apology or an acknowledgment of responsibility.¹¹ In addition, authors often seek measures of satisfaction that are more wide-ranging than those awarded by the Committee.¹²

6. The Inter-American Court of Human Rights (IACtHR) has developed the most extensive jurisprudence on apologies and acknowledgements of responsibility. The Court typically orders such measures of satisfaction “to repair violations to the rights to life, integrity and personal liberty,”¹³ although it occasionally declines to indicate these remedies in such cases even when petitioners request them.¹⁴ Significantly, States often apologize or acknowledge their responsibility prior to or during proceedings before the IACtHR, as Argentina did in two recent cases involving human rights abuses perpetrated during the military dictatorship.¹⁵ If the acknowledgement is not “comprehensive,”¹⁶ however, the Court may order the State to hold a “public ceremony”¹⁷ that refers to the facts and violations declared in the judgment and specifies “who must participate in the public act, how it must be conducted and disseminated, and when it must occur.”¹⁸

7. Both the Human Rights Committee and the IACtHR have previously ordered apologies or acknowledgements of responsibility for violations similar to those at issue in this case, although the case law is not fully consistent. In *Reyes et al. v. Chile*,¹⁹ the police removed and destroyed several artistic works displayed to honor the defense of human rights

⁷ A/74/147 (12 July 2019), para. 4.

⁸ For example, in *Devi Maya Nepal v. Nepal* (CCPR/C/132/D/2615/2015), the author was raped and subjected to other forms of violence and infringements of her privacy, honour and reputation, and family life. The Committee ordered, *inter alia*, “appropriate measures of satisfaction to the author for the violations suffered, including arranging an official apology in a private ceremony” (para. 9). In *Baruani v. Democratic Republic of the Congo* (CCPR/C/110/D/1890/2009), para. 8, the Committee required “a formal public apology to the author and his family” after finding the State party had violated the Covenant prohibitions on torture and arbitrary detention.

⁹ *Lecraft v. Spain* (CCPR/C/96/D/1493/2006), paras. 8–9; *Baruani, supra*, para. 8.

¹⁰ *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), paras. 2.9, 12; *Tharu and Kumari Tharuni v. Nepal* (CCPR/C/134/D/3199/2018), para. 3.6, 9.

¹¹ *Fofana v. Ecuador* (CCPR/C/124/D/2290/2013), paras. 3.10, 10; *A.S. v. Nepal* (CCPR/C/115/D/2077/2011), paras. 3.10, 10.

¹² For example, in *Guneththige v. Sri Lanka* (CCPR/C/113/D/2087/2011) the author requested “a public apology containing an unequivocal acknowledgement of the numerous violations of the Covenant in the present case” (paras. 3.2), but the Committee required only “a public apology to the family” (para. 8).

¹³ IACtHR, *Castañeda Gutman v. México*, judgment of August 6, 2008, para. 239.

¹⁴ See, e.g., *Jenkins v. Argentina*, judgment of November 26, 2019, paras. 135, 138; *Fleury et al. v. Haiti*, judgment of November 23, 2011, paras. 124–125.

¹⁵ IACtHR, *Julien-Grissonas Family v. Argentina*, judgment of September 23, 2021, para. 276; IACtHR, *Almeida v. Argentina* Judgment of November 17, 2020, para. 14.

¹⁶ *Almeida, supra*, para. 22.

¹⁷ *Julien-Grissonas Family, supra*, para. 278.

¹⁸ *Collective and Moral Reparations in the Inter-American Court of Human Rights*, University of Texas School of Law (November 2009), at 27, available at: <https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2009-HRC-Cambodia-CollectiveReparations.pdf>; see also Special Rapporteur Report, *supra*, para. 14 (summarizing IACtHR jurisprudence).

¹⁹ *Reyes et al. v. Chile* (CCPR/C/121/D/2627/2015).

and democracy on the fortieth anniversary of the 1973 *coup d'état* in Chile (para. 2.1). The State party acknowledged these facts as violations of the Covenant without, however, attempting to justify them (para. 5.2). The Committee found “a violation of the authors’ right to freedom of expression under article 19 (2) of the Covenant” (para. 7.8), and ordered “a public acknowledgement of the violation of their rights in accordance with the present Views” (para. 9).²⁰ Similarly, in *Kimel v. Argentina*, a journalist and writer was convicted of criminal libel for publishing a book criticizing an investigation into five clergymen murdered during that country’s military dictatorship.²¹ During proceedings before the IACtHR, the State acknowledged its responsibility for violating right to freedom of thought and expression and the right to a fair trial (paras. 18 - 22). The Court accepted this “as a confession to the facts [and] as acquiescence to the victim’s legal claims” (para. 25), but nevertheless ordered the State “to hold a public act of acknowledgment of responsibility” (para. 126). However, in several other cases finding violations of the right to freedom of expression, the Committee and the IACtHR have declined to order apologies or acknowledgements of responsibilities notwithstanding requests by the authors.²²

8. In future cases, the Committee should develop a more systematic approach to determining when States parties *should* apologize and/or acknowledge their responsibility.²³ Depending on the facts and circumstances presented, such measures of satisfaction may be appropriate not only in response to grave or systemic violations of the Covenant but also for other infringements of civil and political rights. Relevant factors may include the magnitude or seriousness the violations, whether a victim has requested such remedies, the State party’s response to such a request, whether an acknowledgement or apology will confer dignity on the victims or honor their memory, and whether the remedy will guard against repetition of the violations.

²⁰ The Committee did not, however, accede to the authors’ request to order the police to make “a public apology ... in which they acknowledge their mistake and undertake to defend and respect human rights.” *Ibid.*, para. 3.6.

²¹ IACtHR, *Kimel v. Argentina*, judgment of May 2, 2008.

²² See, e.g., *Ibragimov v. Kazakhstan* (CCPR/C/131/D/2452/2014), paras. 5.4, 15; *Arkadyevich v. Russian Federation* (CCPR/C/115/D/2141/2012), paras. 3.4, 9; IACtHR, *Moya Chacon et al. v. Costa Rica*, judgment of May 23, 2022, paras. 105, 107; IACtHR, *Fontevicchia and D’Amico v. Argentina*, judgment of November 29, 2011, paras. 109 – 110.

²³ The Committee has more often required States parties to apologize than to acknowledge their responsibility, although it appears that the former remedy encompasses the latter. See Special Rapporteur Report, *supra*, para. 3(a) (defining a “public apology” to include “[a]n acknowledgement of a wrong deliberately or negligently inflicted that is named”).