Successive and Additional Measures to the TRC Amnesty Scheme in South Africa:
Prosecutions and Presidential Pardons
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Successive and Additional Measures to the TRC Amnesty Scheme in South Africa: Prosecutions and Presidential Pardons

Hendrik J. Lubbe
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Cover image © The Nelson Mandela Capture Site

Photo taken by Jonathan Burton - themidlandsphotographer.weekly.com

This structure was designed by Marco Cianfanelli and comprises 50 poles, each between 5 and 10 metres high. At a distance of 35 metres, a portrait of Mandela comes into focus. This monument marks 50 years since Mandela was arrested just outside Howick, on 5 August 1962.

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To Professor Willem van Genugten
The question of how societies in transition should respond to systematic or widespread violations of human rights, seeking recognition for victims and promoting possibilities for peace, reconciliation and democracy in the context of transitional justice has received renewed interest. Over time, the experiences in various societies undergoing major transformation have expanded and diversified the discipline, which will continue to develop, because each society has its own unique context and circumstances to which this flexible discipline can adapt by involving a combination of complementary judicial and non-judicial strategies.

The process of transformation, reconciliation, development and reconstruction of South African society had not been finalised when the TRC and the Amnesty Committee reached the end of their mandates in 1998 and 2003 respectively. It is therefore imperative that all initiatives post-TRC should be approached in such a manner that they complement and build upon the work of the TRC, and it is therefore necessary, as this book aims to do, to encourage and contribute to the debates on the little progress South Africa has made pertaining to successive measures in the form of post-TRC prosecutions, and on the implementation of controversial additional measures in the form of Presidential pardons in the aftermath of the TRC’s amnesty scheme, by investigating, analysing and critically evaluating the manner in which it has unfolded.

The question of prosecuting apartheid-era crimes is politically loaded, according to critics, as some believe that prosecutions are necessary to conclude the TRC process while others feel they could prevent reconciliation. Similarly, Presidential pardons are regarded by some as necessary to accommodate those convicted of apartheid-era crimes who for various reasons did not participate in the TRC, and are regarded by others as inappropriate, unconstitutional and not in accordance with international law.

Clearly these issues are controversial, a fact which gives rise to the formation of diverse opinions about them. More important is the fact that future societies in transition could benefit from a consideration of South Africa’s achievements and shortcomings and the challenges it currently faces. How this matter unfolds is therefore of particular interest to the international community, since societies’ choices of ways in which to deal with past abuses are more likely to be effective if they are based on a serious examination of other societies’ experiences as they emerged from a period of abuse. This may reduce the likelihood of repeating avoidable errors – errors that transitional societies can hardly afford to make.
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The Hague, September 2012

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ANC</td>
<td>African National Congress</td>
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<tr>
<td>AWB</td>
<td>Afrikaner Weerstandsbeweging</td>
</tr>
<tr>
<td>AZAPO</td>
<td>Azanian Peoples Organisation</td>
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<tr>
<td>CARA</td>
<td>Criminal Assets Recovery Account</td>
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<td>CAT</td>
<td>UN Committee Against Torture</td>
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<tr>
<td>CCRC</td>
<td>Criminal Cases Review Commission</td>
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<tr>
<td>CPA</td>
<td><em>Criminal Procedure Act</em> 51 of 1977</td>
</tr>
<tr>
<td>CSVR</td>
<td>Centre for the Study of Violence and Reconciliation</td>
</tr>
<tr>
<td>DOJ&amp;CD</td>
<td>Department of Justice &amp; Constitutional Development</td>
</tr>
<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Commission on Human Rights</td>
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<tr>
<td>HRC</td>
<td>Human Rights Committee</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICCPR</td>
<td><em>International Covenant on Civil and Political Rights</em></td>
</tr>
<tr>
<td>ICTJ</td>
<td>International Center for Transitional Justice</td>
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<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
</tr>
<tr>
<td>IFP</td>
<td><em>Inkatha</em> Freedom Party</td>
</tr>
<tr>
<td>KZN</td>
<td>KwaZulu-Natal</td>
</tr>
<tr>
<td>MK</td>
<td><em>Umkhonto we Sizwe</em> (Spear of the Nation)</td>
</tr>
<tr>
<td>NDPP</td>
<td>National Director of Public Prosecutions</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>NIA</td>
<td>National Intelligence Agency</td>
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<tr>
<td>NICRO</td>
<td>The National Institute for Crime Prevention and the Reintegration of Offenders</td>
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<tr>
<td>NP</td>
<td>National Party</td>
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<tr>
<td>NPA</td>
<td>National Prosecuting Authority</td>
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<tr>
<td>PAC</td>
<td>Pan Africanist Congress</td>
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<tr>
<td>PAJA</td>
<td><em>Promotion of Administration of Justice Act</em> 3 of 2000</td>
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<td>PCLU</td>
<td>Priority Crimes Litigation Unit</td>
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<td>PNURA</td>
<td><em>Promotion of National Unity and Reconciliation Act</em> 34 of 1995</td>
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<td>South African Police Services</td>
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<td>TRC</td>
<td>Truth and Reconciliation Commission</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCHR</td>
<td>United Nations Commission on Human Rights</td>
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