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TRANSITIONAL AMNESTY IN SOUTH AFRICA

After the transition to democracy in 1994, South Africa reached out to perpetrators of violence from all conflicting parties by giving amnesty to those who fully disclosed their politically motivated crimes. This volume provides the first comprehensive analysis of South Africa's amnesty scheme in its practical and normative dimensions. Through empirical analysis of over 1000 amnesty decisions made by the Amnesty Committee of the Truth and Reconciliation Commission, the study measures the scheme against its stated goals of truth recovery, victim empowerment and perpetrator accountability. It also explores normative questions raised by the absence of punishment. Highlighting the distinctive nature of South Africa's conditional amnesty as an exceptional 'rite of passage' into the new, post-conflict society, it argues that the amnesty scheme is best viewed as an attempt to construct a new 'justice script' for a society in transition, in which a legacy of politically motivated violence is being addressed.

ANTJE DU BOIS-PEDAIN is a lecturer in law at the University of Cambridge.

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by
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- Benzi Hearing** Amnesty Hearing, Cape Town: 3, 14–16 July 1997 (Benzi JT (5314/96) – Part 1): www.doj.gov.za/trc/amntrans/capetown/capetown_benzi.htm
- Benzi Resumption** Amnesty Hearing, Cape Town: 4, 20–21 October 1997 (Benzi JT (5314/96) – Part 3): www.doj.gov.za/trc/amntrans/capetown/capetown_benzi3.htm
- Caprivi Trainees Argument** Amnesty Hearing, Caprivi Trainees Argument, Pinetown Magistrate’s Court: 8 March 1999, Day 1 (hearing transcript no longer available on the TRC homepage)
- CCB Argument** Amnesty Hearing, Cape Town: 18–19 November 2000, Day 23 (18 November 2000 – Part 1): www.doj.gov.za/trc/amntrans/2000/2001118.htm
- CCB Hearing, Day** Amnesty Hearing, Cape Town: 13–17 March 2000 (Early Learning Centre bombing)
- Day 1 (13 March 2000 – Part 1): www.doj.gov.za/trc/amntrans/2000/200313ct.htm
- Day 2 (14 March 2000 – Part 2): www.doj.gov.za/trc/amntrans/2000/200314ct.htm
- Day 3 (15 March 2000 – Part 3): www.doj.gov.za/trc/amntrans/2000/200315ct.htm
- Day 4 (16 March 2000 – Part 4): www.doj.gov.za/trc/amntrans/2000/200316ct.htm
- Day 5 (17 March 2000 – Part 5): www.doj.gov.za/trc/amntrans/2000/200317ct.htm
- Durban Police Hearing** Amnesty Hearing, Durban: 9–19 November 1998, Day 5 (13 November 1998) (Wasserman, McCarter, Bosch, etc – Part 5): www.doj.gov.za/trc/amntrans/1998/98110919_dbn_981113.dbn.htm
- Heidelberg Tavern Hearing, Day** Amnesty Hearing, Cape Town: 5, 27–31 October 1997, Day 5 (31 October 1997) (Heidelberg Tavern Massacre – Part 7): www.doj.gov.za/trc/amntrans/capetown/capetown_7heidel.htm
- Lesotho Raid Argument** Amnesty Hearing, Pretoria: 27–28 September 2000, Day 28 (28 September 2000) (Lesotho Raid final argument – Part 2): www.doj.gov.za/trc/amntrans/2000/200928pt.htm

- Lesotho Raid Hearing, Day** Amnesty Hearing, Pretoria: 1–2 June 2000, Day 18 (2 June 2000) (De Kock sixth hearing cont. – Part 2): www.doj.gov.za/trc/amntrans/2000/200602pt.htm
 Amnesty Hearing, Pretoria: 5–9 June 2000, Day 21 (7 June 2000) (De Kock sixth hearing cont. – Part 3): www.doj.gov.za/trc/amntrans/2000/200607pa.htm
 Amnesty Hearing, Pretoria: 5–7 September 2000, Day 24 (5 September 2000) (De Kock sixth hearing cont. (Lesotho Raid) – Part 1): www.doj.gov.za/trc/amntrans/2000/200905pt.htm
- London Bomb Hearing** Amnesty Hearing, Pretoria: 22 February – 4 March 1999, Day 6 (1 March 1999) (London Bomb, Schoon, First (third hearing) – Part 6): www.doj.gov.za/trc/amntrans/1999/9902220304_pre_990301pt.htm
- McBride Hearing, Day** Amnesty Hearing, Durban: 27 September – 13 October 1999
 Day 2 (29 September 1999) (Robert McBride – Part 1) (evidence of Mr Ismail): www.doj.gov.za/trc/amntrans/1999/9909271013_dbn_990928db.htm
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 Day 7 (6 October 1999) (Robert McBride – Part 5) (evidence of Mr McBride cont.): www.doj.gov.za/trc/amntrans/1999/9909271013_dbn_991006db.htm
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 Day 11 (12 October 1999) (Robert McBride – Part 9) (statement by Ms Burton): www.doj.gov.za/trc/amntrans/1999/9909271013_dbn_991012db.htm
 Day 12 (13 October 1999) (Robert McBride – Part 10) (statements by Ms Welgemoed and Ms Van der Linde): www.doj.gov.za/trc/amntrans/1999/9909271013_dbn_991013db.htm
- ‘Pebco Three’ Argument** Amnesty Hearing, Port Elizabeth: 10–18 May 1998 (‘Pebco Three’ closing arguments): www.doj.gov.za/trc/amntrans/pe/argument.htm
- Schoon Hearing** Amnesty Hearing, Johannesburg: 3–21 May 1999, Day 7 (11 May 1999 – Part 7): www.doj.gov.za/trc/amntrans/1999/99050321_jhb_990511jh.htm
- Transvaal Urban Machinery Hearing** Amnesty Hearing, Johannesburg: 15–16 May 2000, Day 2 (16 May 2000) (Leshomo, Tshoka, Nyanda, etc – Part 2): www.doj.gov.za/trc/amntrans/2000/200516jh.htm
- Tzaneen Hearing** Amnesty Hearing, Tzaneen: 30 June 1999 (Brian Clifford Thobejane – Part 1): www.doj.gov.za/trc/amntrans/1999/990630_tza_990630tz.htm

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- AC/1996/002 (Applicants Hendrik Gerber and Johan van Eyk)
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- AC/1996/005 (Applicant Jean Prieur du Plessis)
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- AC/1996/008 (Applicant Cornelius Johannes van Wyk)
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- AC/1996/011 (Applicant Brian Mitchell)
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- AC/1997/020 (Applicant M.R. Ngwendu and six others)
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- AC/1997/038 (Applicants P. Maxam, T. Madoda and C.S. Ndinisa)
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- AC/1997/041 (Applicants Dirk Coetzee, David Tshikalange and Butana Almond
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- AC/1997/053 (Applicants David Petrus Botha, Eugene Marais and Adriaan
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- AC/1997/068 (Applicant Gerhardus Johannes (Gideon) Nieuwoudt)
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- AC/1998/006 (Applicant Bhekumndeni Qedusizi Penuel Simelane)
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- AC/1998/025 (Applicant Cornelius Johannes Lottering)
 ('Orde van die Dood' initiation killing)
- AC/1998/026 (Applicants Humphrey Luyanda Gqomfa, Vuyisile Brian Madasi
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- AC/1998/049 (Applicant Robin Houston Holmes)
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- AC/1999/031 (Applicant Jan Hattingh Cronje)
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- AC/1999/032 (Applicant Paul Jacobus Janse van Vuuren)
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- AC/1999/037 (Applicants Nicolaas Janse van Rensburg, Hermanus Barend du
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- AC/1999/045 (Applicant Andre Franscois Visser and eight others)
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- AC/1999/046 (Applicant Sathy Andranath Ragunanan Maharaj and
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- AC/1999/058 (Applicant Tom Wiltshire Robbins)
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- AC/1999/086 (various applicants)
 to AC/1999/164 (further ANC leadership applications) (leading decision:
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- AC/1999/176 (Applicant Maropeng Matthews Sehlwana and thirteen others)
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- AC/1999/188 (Applicant Abraham Johannes Mouton Joubert)
 (killings of Dr Fabian and Frances Ribeiro and other joint police
 and SADF Special Forces activities)
- AC/1999/223 (Applicant Harold Snyman and seven others)
 (abductions and killings of anti-apartheid activists Sipho Charles
 Hashe, Qaqawuli Godolozu and Champion Galela – ‘Pebcu
 Three’ incident)
- AC/1999/239 (Applicant Ontlametse Bernstein Menyatsoe)
 (police shooting of AWB members after failed AWB coup attempt)
- AC/1999/242 (Applicant Adriaan Johannes Vlok and eighteen others)
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- AC/1999/243 (Applicant Glen Vilakazi and fifty-nine others)
 (SDU activities in Thokoza)
- AC/1999/248 (Applicants Jacob Jan Henrik van Jaarsveld, Deon Gouws and
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 (police killings of youth activists referred to as the ‘Kwandebele
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- AC/1999/249 (Applicant Pumelele Civilian Hermanus and three others)
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- AC/1999/257 (Applicant Obed Masina and four others)
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- AC/1999/274 (Applicant Wikus Johannes Loots and seven others)
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- AC/1999/292 (Applicant Johannes P. Coetzee and eight others)
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- AC/1999/295 (Applicant Dennis Lucas Nthodi Kgatitsoe)
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- AC/1999/332 (Applicants Daluxolo Wordsworth Luthuli, Bhekisisa Alex
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 Romeo Mbuso Mbambo, Brian Gcina Mkhize and Israel Nyoni
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 (IFP hit squad activities – *Caprivi trainees* case)
- AC/1999/345 (Applicant Eugene Alexander de Kock and eight others)
 (killings of Warrant Officer Mbalala Glen Mgoduka, Sergeant
 Amos Temba Faku, Sergeant Desmond Daliwonga Mpipa and
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- AC/2000/005 (Applicant Michael Phillip Luff)
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- AC/2000/019 (Applicant John Itumeleng Dube and four others)
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- AC/2000/034 (Applicants Nicolaas Jacobus Janse van Rensburg,
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- AC/2000/039 (Applicant Andrew Russell Cavill Taylor and six others)
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- AC/2000/042 (Applicants Aaron Tyani and Phumelele Gumengu)
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- AC/2000/055 (Applicants Philip Makwale Nyalunga and John Itumeleng Dube)
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- AC/2000/059 (Applicants Adriaan Pieter van Niekerk and nine others)
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- AC/2000/082 (Applicants Craig Michael Williamson and Roger Howard Leslie
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- AC/2000/089 (Applicant Eugene Alexander de Kock and seven others)
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- AC/2000/090 (Applicant Eugene Alexander de Kock and six others)
 (police abduction and killing of 'askari' Moses Sikhakhane)
- AC/2000/093 (Applicant Eugene Alexander de Kock and others)
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- AC/2000/100 (Applicant Michael Belligan)
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- AC/2000/101 (APLA High Command)
 (anonymous group application for APLA activities)
- AC/2000/102 (Applicants Jerome Joseph Maake, Piet Mohlamme Mathebe,
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- AC/2000/111 (Applicants Siphwi Nyanda, Solly Zacharia Shoke and Dick
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- AC/2000/121 (Applicants Daniel Benjamin Snyders, Jan Petrus Kruger and Marthinus Christoffel Ras)
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- AC/2000/122 (Applicants Vakele Archibald Mkosana and Mzamine Thomas Gonya)
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- AC/2000/135 (Applicants Johannes Albertus Steyn, Laurance Gerald Wasserman and Mathys Cornelius Botha)
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- AC/2000/141 (Applicants Eric Goosen, Willem Johannes Momberg, Jacques Hechter and Jan Hattingh Cronjé)
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- AC/2000/142 (Applicants Gary John Kruser and ten others)
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- AC/2000/144 (Applicants Zamokuhle Gregory Sithole, Sitembiso Rodney Tembe and others)
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- AC/2000/146 (Applicants Ronald Kasrils, Damian Michael de Lange, Ian Hugh Robertson and Susan Catherine de Lange)
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- AC/2000/149 (Applicant Kabelo Nimrod Matlaletsa and fifteen others)
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- AC/2000/209 (Applicant Mqambeleni Buthelezi and seventeen others)
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- AC/2000/212 (Applicant Emmanuel Nkosinathi Mavuso)
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- AC/2000/214 (Applicant Willem Johannes Momberg and four others)
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- AC/2000/215 (Applicant Eugene Alexander de Kock and eighteen others)
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- AC/2000/217 (Applicant Clarence Mbogeni Majola)
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- AC/2000/224 (Applicant André Cloete)
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- AC/2001/003 (Applicants Aboobaker Ismail, Johannes Mnisi, Mohamed Iqbal
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- AC/2001/010 (Applicant Phillipus Johannes Cornelius Loots)
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- AC/2001/034 (Applicant Sean Mark Callaghan)
 (SADF operations against SWAPO forces in Namibia)
- AC/2001/058 (Applicant Eugene Alexander de Kock and twelve others)
 ('Zero-zero hand-grenades': 'pre-emptive' supply of zero-timed
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- AC/2001/089 (Applicants P. N. Shangase, P. Kweyama and M. M. Mkhize)
 (robbery of a shop to obtain weapons for SDU activities)
- AC/2001/093 (Applicants Ronald Kasrils (withdrawn), Mthetheleni Zephania
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- AC/2001/094 (Applicant Almond Butana Nofomela and eight others)
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- AC/2001/100 (Applicant Hendrik Johannes Prinsloo)
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 (Magoo's Bar bomb and other MK matters)

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- AC/2001/185 (Applicant W. H. Coetzee and seven others)
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- AC/2001/191 (Applicant Wikus Johannes Loots and others)
 (cross-border attack on premises where MK cadres Aaron
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- AC/2001/225 (Applicant Eugene Alexander de Kock)
 (clandestine supply of weapons to the IFP)
- AC/2001/229 (Applicant Phillip Rudolf Crause)
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- AC/2001/232 (Applicant Carl Casteling Botha and seven others)
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- AC/2001/241 (Applicant Eugene Alexander de Kock and nine others)
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 MK infiltrator Jameson Ngoloyi Mngomezulu)
- AC/2001/242 (Applicant Andries Johannes van Heerden)
 (various assaults during police interrogations of MK suspects)
- AC/2001/248 (Applicant Hendrik Johannes Prinsloo and nine others)
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- AC/2001/252 (Applicant Eugene Alexander de Kock and two others)
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- AC/2001/272 (Applicant Johan Hendrik le Roux and seven others)
 (police killing of Japie Maponya)
- AC/2001/273 (Applicant Eugene Alexander de Kock and fourteen others)
 (police ambush on group of infiltrated MK cadres)
- AC/2001/279 (Applicant Dirk Johannes Coetzee, Butana Almond Nofomela and
 Natshavheni David Tshikalanga)
 (various security police matters)
- AC/2001/281 (Applicant David Petrus Botha)
 (follow-up decision to AC/1997/053)

ABBREVIATIONS

ANC	African National Congress
APLA	Azanian People's Liberation Army (armed wing of the PAC)
askari	former member of a liberation movement forced to work for the state Security Branch
AWB	Afrikaner Weerstandsbeweging
AZAPO	Azanian People's Organisation
CCB	Civil Co-operation Bureau (an undercover unit of the SADF)
CIC	Co-ordinating Intelligence Committee (a state structure)
CP	Conservative Party
CPA	Criminal Procedure Act 51 of 1977
CSVR	Centre for the Study of Violence and Reconciliation
ECHR	Convention on Human Rights and Fundamental Freedoms (European Convention of Human Rights)
Eu. Comm. H.R.	European Commission of Human Rights
ECtHR	European Court of Human Rights
FF	Freedom Front
homeland	erstwhile self-governing district allotted to black population group in apartheid South Africa
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the Former Yugoslavia
IFP	Inkatha Freedom Party
Inter-Am. Comm. H.R.	Inter-American Commission of Human Rights
Inter-Am. Ct.H.R.	Inter-American Court of Human Rights
interim Constitution	Constitution of the Republic of South Africa, Act 200 of 1993
MK	Umkhonto we Sizwe (armed wing of the ANC)
NP	National Party
PAC	Pan-Africanist Congress
PASO	Pan-Africanist Students' Organisation

ABBREVIATIONS

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PAYCO	Paarl Youth Congress
Pebco	Port Elizabeth Black Civics Organisation
SACP	South African Communist Party
SADF	South African Defence Force
SAP	South African Police
SDU	Self Defence Unit (unofficial local policing structure)
SSC	State Security Council
StGB	Strafgesetzbuch (German Criminal Code)
StPO	Strafprozessordnung (German Code of Criminal Procedure)
SWAPO	South-West African People's Organisation
TRC	South African Truth and Reconciliation Commission
TRC Act	Promotion of National Unity and Reconciliation Act 34 of 1995
UDF	United Democratic Front
Umkhonto we Sizwe	Armed wing of the ANC
UN	United Nations

ABBREVIATED CASES

- ANC 37 case: *The Truth and Reconciliation Commission v. Colin Cecil Coleman and 36 others and The Chairperson of the Committee on Amnesty*, case no. 3729/98, and *The National Party of South Africa and James Marren Simpson v. The Chairperson of the Committee on Amnesty, the Truth and Reconciliation Commission and 37 others*, case no. 3626/98, High Court of South Africa (Cape of Good Hope Provincial Division).
- AZAPO case (Constitutional Court): *Azanian People's Organisation (AZAPO) and others v. President of the Republic of South Africa and others* 1996 (4) SA 671 (CC).
- AZAPO case (High Court): *Azanian People's Organisation (AZAPO) and others v. Truth and Reconciliation Commission and others* 1996 (4) SA 562 (C).
- D.P. Botha case: *David Petrus Botha v. Die Voorsitter: Komitee oor Amnestie van die Kommissie vir Waarheid en Versoening*, case no. 17395/99, High Court of South Africa (Transvaal Provincial Division), unreported judgment of 22 March 2000 by Smit J. The judgment is in Afrikaans.
- Derby-Lewis case: *Derby-Lewis and another v. Chairman, Amnesty Committee of the Truth and Reconciliation Commission, and others* 2001 (3) SA 1033 (C).
- Gerber case (High Court): *Gerber v. Voorsitter: Komitee oor Amnestie van die Kommissie vir Waarheid en Versoening* 1998 (2) SA 559 (T). The judgment is in Afrikaans.
- Gerber case (Supreme Court of Appeal): *Gerber v. Voorsitter: Komitee oor Amnestie van die Kommissie vir Waarheid en Versoening* 2001 (3) SA 1221 (SCA). The judgment is in Afrikaans.
- Nieuwoudt case: *Nieuwoudt v. Chairman, Amnesty Sub-Committee, Truth and Reconciliation Commission; Du Toit v. Chairman, Amnesty Sub-Committee, Truth and Reconciliation Commission; Ras v. Chairman, Amnesty Sub-Committee, Truth and Reconciliation Commission* 2002 (3) SA 143 (C).
- Rapholo case: *Rapholo v. State President and others* 1993 (1) SA 680 (T).
- Simelane case: *Bhekumndeni Qedusizi Penuel Simelane v. The Minister of Justice and Constitutional Development*, case no. 2938/01, High Court of South Africa (Cape of Good Hope Provincial Division), unreported judgment of 13 April 2006 by Ndita J.

- Slovo case*: *Claire Sherry McLean, N.O.; Shawn Slovo, Gillian Slovo, Robyn Jean Slovo v. Amnesty Committee of the Truth and Reconciliation Commission, Judge Andrew Wilson, N.O.; Craig Michael Williamson and Roger Howard Leslie Raven*, case no. 8272/2000, High Court of South Africa (Cape of Good Hope Provincial Division), unreported judgment of 9 April 2002 by Blignault J and Van Reenen J.
- Van Wyk and Du Plessis case*: *Cornelius Johannes van Wyk and Jean Prieur du Plessis v. Komitee oor Amnestie*, case no. 16602/99, High Court of South Africa (Transvaal Provincial Division), unreported judgment of 24 August 1999 by Van der Walt J.
- Van Zyl case*: *Abram van Zyl v. Amnesty Committee of the Truth and Reconciliation Commission, Judge S. Miller N.O.; Peter Williams, Minister Dullah Omar, Gavin Evans and The Early Learning Centre*, case no. 8183/2001, High Court of South Africa (Cape of Good Hope Provincial Division).

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PREFACE

The topic of this book has held my interest for almost a decade. Transitional amnesties – a term coined by Ruti Teitel in her seminal 2000 book on *Transitional Justice* – generally have a bad name. They are perceived as trade-offs of justice which send the wrong message to a society struggling to rebuild respect for the rule of law. The South African amnesty is special because it makes amnesty conditional upon the full disclosure of a politically motivated offence – not a threat to justice, it is claimed, but an integral part of an ethically justifiable response to an unjust past.

I first began work on this book as a full-time researcher in a project on transitional justice based at the Humboldt-Universität zu Berlin,¹ and continued with it on and off since my appointment at the University of Cambridge in 2001. Over the years I have incurred debts to many people and many institutions. First and foremost, I want to thank my PhD supervisor, Professor Gerhard Werle, who inspired this study and could not have been more patient, and more supportive, throughout the years it took to complete it. I also want to thank my external examiner, Professor Andrew von Hirsch, and Sir Derek Oulton, who read large parts of the manuscript and gave me excellent advice on how to improve it. The Deutsche Volkswagenstiftung in Berlin provided me with generous funding from September 1998 to April 2001.

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¹ *Projekt Strafjustiz und DDR-Vergangenheit*; www.rewi.hu-berlin.de/jura/proj/psv.

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PREFACE

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I dedicate this book to my parents, without whose help and support over many years it would never have seen the light of the day.

Antje du Bois-Pedain
Cambridge, 11 August 2007