

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

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13 December 2010.

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Cover image © The Nelson Mandela Capture Site

Photo taken by Jonathan Burton - [themidlandsphotographer.weekly.com](http://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*



## PREFACE

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



## LIST OF ABBREVIATIONS

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

