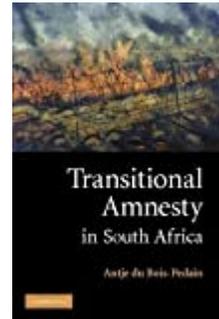




**Antje du Bois-Pedain.** *Transitional Amnesty in South Africa.* Cambridge: Cambridge University Press, 2007. 418 S. \$120.00 (cloth), ISBN 978-0-521-87829-6.



**Reviewed by** Ulf Engel

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## **A. du Bois-Pedain: Transitional Amnesty in South Africa**

The cumbersome, but highly successful process of a negotiated transition from apartheid to democracy in South Africa, 1989-1994, was made possible because the major conflict parties – the African National Congress (ANC) on the one hand and the ruling National Party (NP) on the other – agreed to substantial compromises and carefully navigated around the danger of escalating political violence. One of the most important of these compromises was the way in which the country reached out to perpetrators of violence from all political parties and offered amnesty to those who fully disclosed their politically motivated offences rather than seeking justice and prosecute all suspected perpetrators of human rights violations. This process was administered under the Promotion of National Unity and Reconciliation Act No. 34 of 1995 and organised by the Truth and Reconciliation Commission (TRC) ([http://www.doj.gov.za/trc/trc\\_frameset.htm](http://www.doj.gov.za/trc/trc_frameset.htm)). The commission was established in 1995 and chaired by Archbishop Desmond Tutu. The TRC had to deal with gross human rights violations committed by the South African security forces and its proxies as well as by the African liberation movements. It looked at state ordered clandest-

ine assassinations, torture, massacres, violent fights between rival African movements, the activities related to the so-called third force during the transition period, white terrorism and other politically motivated crimes. To some observers the TRC process was highly successful and part of the South African miracle, others called it a total failure. Those perpetrators who did not disclose their atrocities often went unchallenged; truth was not always established and the process was not advancing justice; however, many victims for the first time were given a chance to speak out in public and receive recognition of their fate.

In her monograph Antje du Bois-Pedain provides the fullest academic analysis of the TRC process to date. The book is based on the author's PhD and a related research project carried out at Humboldt-University in Berlin. Du Bois-Pedain is a lawyer, trained in Hamburg, Oxford and Berlin. Her research focuses on criminal law, transitional justice, legal theory and medical law. Currently she lectures criminal law and medical law at undergraduate level and philosophy of criminal law at the Faculty of Law, Magdalene College, University of Cam-

bridge. *Transitional Amnesty in South Africa* is based on a meticulous analysis of some 1,000 amnesty decisions made by the TRC's Amnesty Committee and the TRC Report which was published in October 1998 (vol. 1 to 5) and March 2003 (vol. 6 to 7). The book is divided into nine chapters in which Du Bois-Pedain firstly introduces the amnesty scheme, including the Amnesty Committee and the judicial review of amnesty decisions. She then looks in detail at the practice of the Amnesty Committee and its interpretation of the political offence requirement. She discusses the concept of full disclosure and analyses the main goals followed in the amnesty process: truth recovery, victim empowerment and perpetrator accountability. Finally she contextualises South Africa's conditional amnesty process in international law. While the Amnesty Committee clearly is at the fore of this volume, less light is shed on the activities of the Human Rights Violation Committee or the Reparation and Rehabilitation Committee.

Antje du Bois-Pedain argues that the amnesty process was successful, as manifested by its ability to attract relevant applications (p. 336) the success rate

of bona fide amnesty applications [were] exceptionally high (p. 9 i.e. 88.3%; p. 80). Yet she also admits that the truth recovered in the amnesty process was often flawed and incomplete (p. 337). However, according to the author this has to be balanced against the information conventional trials would have unveiled. Among the positive results of the process, she lists the fact that victims could participate in meaningful ways. In any case, the TRC process turned out to be a *rite de passage* to democracy. Despite all the ambivalences mentioned above, with the TRC process the major political players in South Africa constructed a feasible script for dealing with the problems associated with the legacy of violence in South Africa during apartheid and the liberation struggle. In her excellent study Antje Du Bois-Pedain reasons that neither the course of the transition nor the amnesty process was a foregone conclusion. Put into perspective around 1995 levels of political violence were still fairly high, some of the players involved exercised de facto veto power to block or at least seriously derail the transition, to many South African victims conditional amnesty may indeed represent a second best option only, but politically it may have been the only one which was feasible.

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