

CONTENTS

<i>List of cited Amnesty Committee hearing transcripts</i>	<i>page ix</i>
<i>Frequently cited Amnesty Committee decisions</i>	<i>xi</i>
<i>List of abbreviations</i>	<i>xviii</i>
<i>List of abbreviated cases</i>	<i>xxi</i>
<i>List of figures</i>	<i>xxiii</i>
<i>Preface</i>	<i>xxv</i>
Introduction	1
Note on linguistic usage, especially of the terms perpetrator and victim	14
Note on citation of sources	16
1 The TRC-based Amnesty Scheme: Background and Overview	17
The amnesty provisions of the TRC Act	20
Preconditions and effect of amnesty	20
The history and interpretation of the amnesty provisions	23
The constitutional challenge to the amnesty provisions	29
The work of the Amnesty Committee	35
The examination of amnesty applications	37
The influence of previous indemnity legislation on application numbers	40
Judicial review of amnesty decisions	44
After the TRC: pardons, prosecutions and rumours of further amnesties	54
2 The Practice of the Committee When Making Decisions	60
Methodology of the study	62
Information base	62
Relevant criteria	63

Indicative value of an application's outcome in respect of these factors	65
Calculation of success rates	66
Recorded information	66
Findings in relation to applicants and incidents	68
The applicants and their deeds	68
Implications of the quantitative findings for the representativity of amnesty applications	71
Hierarchical status of applicants within their organisation	73
Applicants' mandates: orders, discretion and spontaneous (re-)action	76
Outcome of amnesty applications	80
Reasons given for the success of applications	84
Reasons given for the failure of applications	92
3 The Committee's Interpretation of the Political Offence Requirement	97
The purposive nature of the political offence	98
Assessment from an ex-ante perspective	101
Responsibility for human rights violations	104
The applicant's political mandate	106
The personal mandate	109
The general mandate	111
Reasonable belief in the existence of a mandate	113
The significance of orders	113
The multiple functions of orders	114
The 'foot-soldier privilege'	116
Orders in the amnesty process: privileging 'crimes of obedience'?	118
The Committee's approach to factors affecting the gravity of the offence	121
The application of the proportionality principle	122
International law concepts in the amnesty decisions	126
The Committee's approach to the gravity of the deed: an evaluation	128
Explaining the Committee's pragmatic approach to the political offence requirement	132
Conclusion	136
4 The Concept of Full Disclosure	139
The object and scope of full disclosure	141

CONTENTS	vii
The truth-maximising view	143
The restrictive approach	147
The Committee's middle way	151
Relevant facts	152
The 'relevancy threshold' for details	155
The consequences of non-disclosure of a relevant fact	157
The legal standard for the finding that full disclosure has been made	158
Evidential burden and 'benchmark' for full disclosure	158
The legal test	160
The time and manner of disclosure	163
The assessment of the evidence	165
Admissible evidence and the 'hierarchy' of evidential sources	165
Applicant's version unchallenged	167
Relevant conflicting evidence	169
Full disclosure: an assessment	172
5 Truth Recovery in the Amnesty Process	175
Procedural practice affecting the scope of the enquiry	178
The investigative objectives of the amnesty process	178
The organisation of the process	180
Getting witnesses to testify: legal powers and Committee practice	181
Role and rights of implicated persons	183
Privileged information	186
Discovery and documentation of truth in the amnesty process	189
The discovery function: evidence used	189
(a) Cross-examination and the dangers of accomplice evidence	191
(b) The use of hearsay evidence	194
The documentation function: findings made	200
Summary	203
Available evidence and findings: individual amnesties and criminal trials compared	204
The amnesty process and different dimensions of truth	214
6 Victim Empowerment in the Amnesty Process	217
Victim participation in the amnesty process	222
The power of dialogue: the victims of Jeffrey Theodore Benzien	225
The price of engagement: the victims of Robert McBride	232
The struggle for forgiveness: the mother of Lindi-Ann Fourie	243

viii	CONTENTS	
	The amnesty process and victims' needs	247
	Opportunities for victims: criminal trials and amnesty proceedings compared	250
	Conclusion	254
7	Perpetrator Accountability in the Amnesty Process	257
	The notion of accountability	260
	The amnesty process as a call to account	264
	The retributivist challenge: no accountability without sanctions?	273
	Restorative justice to the rescue?	281
	The place of apology and forgiveness	286
	Conditional amnesty for political crime: a new justice script?	293
8	Conditional Amnesty and International Law	300
	Prescriptive international standards which restrict sovereign grants of amnesty	302
	Humanitarian law	303
	Crimes against humanity	307
	General human rights law	310
	Human rights treaties addressing specific violations	317
	Do duties to prosecute rule out conditional amnesties?	319
	The relevance of international law duties to prosecute for the South African amnesty scheme	322
	Invocations of international law in the South African transition	328
	After South Africa: conditional amnesty in future transitions	333
9	Conclusion	336
	Feasibility	339
	Legality	341
	Morality	342
	Concluding remarks	345
	<i>Bibliography</i>	349
	<i>Index</i>	372