

# Lustration, Amnesty and Truth: Drawing Lines That Courts Can Defend

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**Series:** Transitional Justice, Economic & Social Transition — research papers accompanying [the Transitional Justice, Economic & Social Transition working blueprint](#). **Paper T3.**

## 1. The question

A democratic transition from PRC (Mainland) rule will inherit a vast body of officials and security personnel, a backlog of grave abuses, and convictions for peaceful dissent. Three tools are usually reached for: **lustration** (barring some people from some posts), **amnesty** (waiving prosecution for some acts), and **truth findings** (an official record of what happened and who was responsible). Each can be drawn too wide, becoming a purge, a cover-up or a state-sponsored verdict, or too narrow to matter. This paper asks where each line should sit so that a court, domestic or international, can uphold it when it is challenged.

## 2. The hub position

The Transitional Justice, Economic & Social Transition hub rejects both collective guilt and blanket impunity. Ordinary former personnel keep their careers and civil rights, while credible serious-abuse cases cannot be closed for the sake of continuity. ([the hub hub](#)) It keeps truth, criminal responsibility, administrative fitness and institutional reform on separate tracks. It requires findings that are "proposition-specific, evidence-controlled and reviewable," with a meaningful right to respond. ([the hub](#))

The model-law package already settles much of the truth track. The Truth Commission Act makes findings graded, non-criminal and reviewable. ([Truth Commission Act](#)) The Legislative Notes state that the package does not adopt amnesty as the default rule. ([Legislative Notes and Roadmap](#)) Operative vetting and conditional-amnesty rules sit in Law L03 of the Seven-Law Transition Package. ([L03](#); [Seven-Law package](#)) This paper gives the policy reasons behind those texts and the tests they must pass. It does not redraft them.

## 3. Evidence and comparative options

### Lustration: what European courts have accepted and rejected

- **Individual, not collective.** The Council of Europe Parliamentary Assembly accepted that people who held high posts may be excluded from governmental power. Guilt must be proven individually, with defence rights, the presumption of innocence and appeal to a court, and revenge may never be the aim. ([PACE Res. 1096 \(1996\)](#)) The Council of Europe Human Rights Commissioner later restated the due-process content. ([CoE Commissioner, 2007](#))
- **Public posts, not private jobs.** In *Sidabras and Džiautas v. Lithuania* the European Court of Human Rights found that a ban on former KGB staff working across broad parts of the private sector violated the Convention. State loyalty is a legitimate requirement for public service but not for private employers, and the barred jobs were not specified. ([ECtHR, 2004, full text mirror](#))
- **Time limits and review.** In *Ždanoka v. Latvia* the Grand Chamber upheld a bar on standing for parliament. It warned that the legislature must keep such a restriction under constant review with a view to ending it. ([ECtHR GC, 2006, full text mirror](#))
- **Fair access to files.** *Matyjek v. Poland* found a violation where the lustrated person could not copy files while the state's commissioner had full access. ([ECtHR, 2007, full text mirror](#)) *Turek v.*

*Slovakia* reached a similar result where the security agency, itself a party, controlled what stayed classified. ([case summary](#))

- **No punishment by category.** *Polyakh and Others v. Ukraine* found that dismissal, a ten-year ban and publication in an online register, applied by category without individual assessment, violated the Convention. Lustration cannot serve as retribution. ([case summary](#))

National courts drew the same lines. The Czechoslovak Constitutional Court upheld the 1991 screening law because it was temporary, forward-looking and non-criminal. It struck out the category of people listed only as "candidates" for collaboration, since unreliable files cannot carry an adverse finding. ([Pl. ÚS 1/92](#)) Poland's Constitutional Tribunal voided parts of the 2006–2007 lustration law that reached beyond public functions, including journalists. ([IRIS 2007-5](#)) Germany split the roles: the records archive reports collaboration on request, the employer decides consequences, and routine checks are limited to listed senior posts with a sunset date. ([BStU tasks](#); [StUG §21, unofficial text](#))

OHCHR's vetting framework measures integrity by a person's own conduct, warns against purges by group membership, and puts the burden of proof on the vetting body. ([OHCHR Vetting, 2006](#))

**ROC (Taiwan).** The Act on Promoting Transitional Justice tasked its commission with planning personnel vetting. It did not create a lustration regime, and a 2022 amendment left the handling of perpetrators to a future law. ([Act text, unofficial mirror](#)) The commission's deputy chair resigned in 2018 after recordings of him discussing how to use planned measures against an opposition candidate. A lustration body loses legitimacy once it looks partisan. ([Taipei Times via Liberty Times, 2018](#))

## Amnesty: the outer limits

- The UN impunity principles bar amnesty for serious international crimes until the state has met its duty to investigate and prosecute. Amnesty cannot touch victims' right to reparation or the right to know. Convictions for peaceful expression must be treated as void rather than "amnestied." ([Updated Set of Principles, E/CN.4/2005/102/Add.1, Principle 24](#))
- OHCHR treats amnesties as impermissible if they shield those responsible for genocide, crimes against humanity, war crimes or gross human-rights violations, or if they block remedies or truth. ([OHCHR Amnesties, 2009](#))
- The Inter-American Court held that self-amnesty laws covering torture, extrajudicial execution and disappearance lack legal effect. ([Barrios Altos v. Peru, 2001](#)) Approval by referendum did not change that result for Uruguay. ([Gelman v. Uruguay, 2011](#); [commentary](#))
- The European Court's Grand Chamber upheld Croatia's re-prosecution of a man earlier amnestied for war crimes. ([Marquš v. Croatia, 2014, summary](#))
- **Conditional amnesty can survive.** South Africa granted amnesty only for politically motivated acts, with full disclosure, assessed against proportionality factors. ([Act 34 of 1995, s. 20](#)) Its Constitutional Court upheld the scheme as the price of truth. ([AZAPO, 1996](#)) OHCHR doubts whether such a scheme would pass today's international standards for the gravest crimes. ([OHCHR Amnesties](#))
- **Spain is the counter-example.** Its 1977 law covered officials' own abuses. ([Ley 46/1977](#)) The 2022 Democratic Memory Law could only direct a reading consistent with international law; prosecutions remain blocked. ([Ley 20/2022, art. 2](#); [JusticeInfo](#))

## Truth findings: naming without convicting

The UN principles require a truth body to corroborate information before naming anyone and to let the person respond. ([Principle 9](#)) South Africa's appellate court enforced that duty. Notice must be timely and must state the substance of the allegations. ([Du Preez v TRC, 1997](#)) In the ROC (Taiwan), the commission annulled about 6,000 martial-law-era convictions before closing in 2022. ([OCAC News, 2022](#)) Critics noted it lacked clear criteria for identifying wrongdoers and kept their identities confidential, which sits uneasily with the right to know. ([Global Taiwan Brief, 2018](#))

## 4. Recommended design

Each provision states the rule the legal texts should meet; sources are noted.

**P1. Lustration reaches public power only.** Bars may apply to elected office, senior political appointments, and command or decision posts in the military, police, intelligence, prosecution, judiciary, prisons and personnel administration. No bar may extend to private employment, the professions or civil rights, except a named, security-critical role defined in law. (*Sidabras; Polish K 2/07; consistent with L03 Ch. 6.*)

**P2. Conduct, not membership.** A bar requires an individual finding of specific conduct: direct perpetration, ordering or transmitting unlawful orders, or knowing failure to prevent within one's authority. Party membership, office-holding as such, or appearance in a file as a "candidate" is never sufficient. (*Pl. ÚS 1/92; OHCHR Vetting; L03 Art. 42.*)

**P3. Bars are temporary and reviewed.** Every bar has a fixed maximum term, at most one extension after fresh review, a statutory sunset for the whole regime, and periodic legislative review. No permanent loss of civil rights. (*Ždanoka; StUG sunset; L03 Art. 45.*)

**P4. Equality of arms over files.** The affected person sees and can copy the evidence relied on, can call evidence and have counsel, and gets a reasoned decision. Any withheld material is approved by a judge, not by the agency that holds it. (*Matyjek; Turek.*)

**P5. The decider is independent and visibly neutral.** Vetting bodies are independent of the governing party, members recuse for conflicts, and any member's partisan use of the process is grounds for removal and for re-hearing affected cases. (*ROC (Taiwan) 2018 resignation; Victim Reparation Act Art. 21.*)

**P6. Amnesty is conditional, individual and excludes the gravest crimes.** Amnesty may be granted only case by case, with written reasons. It requires full disclosure and cooperation, and it is never available for genocide, crimes against humanity, war crimes, torture, extrajudicial killing, enforced disappearance or serious sexual violence. (*Principle 24; Barrios Altos; Marguš; L03 Arts. 39-3 to 39-5.*)

**P7. Amnesty does not erase victims' rights.** Civil claims, reparation and the right to know survive any amnesty. An amnesty confers no finding of fitness for office, and it is revocable for fraud after a hearing. (*Principle 24; L03 Arts. 39-9 to 39-11.*)

**P8. Political convictions are annulled, not amnestied.** People convicted for peaceful expression, assembly, religion or association have those convictions declared void, with records cleared. They are not asked to accept a pardon. (*Principle 24; ROC (Taiwan) annulments.*)

**P9. Truth findings are graded, noticed and challengeable.** Before any adverse naming, the person receives the substance of the allegations, an evidence summary and reasonable time to respond. Findings state their evidential grade and are never presented as convictions. Named persons may seek correction and judicial review. (*Principle 9; Du Preez; Truth Commission Act Arts. 15, 16, 18, 26.*)

**P10. Tracks stay separate.** A truth finding does not by itself impose a bar, and a bar does not by itself establish criminal guilt. Each decision is re-made on its own record and to its own standard. (*Truth Commission Act Art. 16; Victim Reparation Act Art. 10; L04 Art. 38.*)

**P11. The court-defensibility test.** Before enactment, and again at each periodic review, every line must pass five questions:

1. Is it set by law and foreseeable?
2. Does it serve a legitimate protective aim rather than punishment?
3. Is it individualized to conduct?
4. Is it no broader or longer than needed?

5. Does the person get notice, access to evidence, a hearing and appeal to an independent court?

A line that fails any one is narrowed or dropped.

## 5. Open questions and risks

- **Scale.** Individual review of a very large apparatus may overwhelm any tribunal; triage by post risk (L03's 90-day retention review) needs capacity planning, and mass interim suspension would itself fail P2.
- **Evidence loss.** Archives may be destroyed before transition. The Day-1 freeze and court confirmation in L04 matter, but P2 forbids filling gaps with presumptions.
- **Negotiated exits.** A negotiated settlement may press for broader amnesty. P6's exclusions are the floor that international and comparative courts are most likely to enforce, as Gelman and Marguš show.
- **Conditional amnesty's legitimacy.** Disclosure-based amnesty is defensible only for non-grave crimes, and victims' participation and appeal rights must be real.
- **Unverified points.** Some comparative sources were read through mirrors or summaries. L03 and L04 are available only in Chinese, so article references here should be checked against the official texts.

## 6. Cross-links

- Hub: [Transitional Justice, Economic & Social Transition](#)
- Model-law package: [Legal Package overview](#) · [Truth Commission Act](#) · [Archives Openness Act](#) · [Victim Reparation Act](#) · [October 1 Memorial Day Act](#) · [October 1 policy proposal](#) · [Legislative Notes and Roadmap](#)
- Seven-Law package: [overview](#) · [L03 Accountability and Reparations](#) · [L04 Archives, Truth and Institutional Vetting](#)
- Related: [Security-Sector Transition](#) · [LG-07 Professional Civil Service](#) · [ROC \(Taiwan\) Comparative Practice](#)
- Companion papers in this series: [Reparation Before Rhetoric](#); [Property Restitution and Its Limits](#); [Paying for Transition](#) (links to be added when published).

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