

Black is the Color of a Judge's Robe

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To make any comment at all about contemporary Cuba is extremely difficult, the principal reason being Cuba, itself, and the total unavailability of reliable official information about the island nation. The ongoing situation reflects the government's will, in its attempt to guarantee its absolute control over national and international public opinion.

Official Cuban statistics are discredited for being systematically manipulated by Castro; this disregard cannot be qualified as an attack by habitual enemies. The truth is that those government statistics cannot support even the most minimal of any comparisons. There is a marked divorce between reality and the adulterated ciphers the State presents as proof of ongoing and obvious social harmony. As a result, the value of any statistic offered by the State is condemned, regardless the seriousness or impartiality of the entity from which it is issued.

In a world where any analysis or opinion depends directly on objective reality, Cuba is atypical. In Cuba, real life experiences are much more reliable than the work of specialized institutions and centers, and since there is no alternative source for information, one's personal experiences are much more important than anything else in assessing the situation in Cuba.

A reliable example of the unreliability of official statistics is the continuing survival of racism in contemporary Cuba. Racial discrimination is a daily practice in civil society: it is present even at the highest levels of the revolutionary leadership, where there is a huge discrepancy between the number of black leaders and the proportion of blacks and mestizos in Cuba's population.

The survival of discriminatory practices in Cuba, and the degree to which they seem to have become institutionalized in recent years, is extremely obvious. In fact, despite the seemingly impartial veneer attributed to revolutionary legislation, habitually racist conduct is now the norm, and has become institutionalized within the judicial sphere.

An examination of the penal code and Courts, where discrimination is extraordinarily rampant, will serve as a useful example of how deeply entrenched racism actually is in Cuba's legislative system. The severity with which proceedings are conducted and punishments are doled out to the black population contrasts sharply with the way the rest of the population experiences a markedly aggressive and repressive legal system.

The Revolution has a periodic tendency to increase the number of people who are charged and punished by its legislative

branch. Year after year, more and more citizens are brought before courts. Shockingly, though, there is a much higher incidence of blacks than whites at those trials.

This is entirely due to racist practices in the administration of justice: discrimination has become so pervasive that it is no longer seen as an exception but rather as the norm. This reveals exactly how this condemnable conduct becomes institutionalized.

Many are the examples that would help prove the existence of racism in the Revolution's penal system. One need not probe too deeply: a first-hand analysis of the situation reveals not only racism but also a uniform evidence of discriminatory treatment throughout Cuba, which allows one to assume their institutionalization. The following are a few examples:

1- The deteriorated state of public transportation throughout the whole country turns courthouses into eternal waiting areas where days can go by without one single legal proceeding being completed. The majority of those who are accused and detained must for hours remain in them. An assessment of this obligatory calvary reveals that over 60% of the people who await judgment are black. The same is true no matter the location of the courtroom one examines, and is sufficient proof of the racist nature of the charges against these people. Everything that precedes the delivery of the accused to the courthouse is already classist and discriminatory.

2- In their desire to process the greatest number of cases, courts have found a legal principle by which to defend their actions: Procedural Economy. This term, which is now in vogue, justifies the holding of court proceedings without necessary procedural guarantees, e.g., doing away with having witnesses or accusers, instructors or experts,

or even the practice of presenting evidence in defense of the accused.

Violating its very nature, an arbitrary panel of judges is selected to assess the "obvious" cases: it then issues oral judgments that disregard guarantees the law is intended to offer. In hearings that often include only the accused and no one else, judicial impartiality and the presumed innocence of the accused are all but forgotten. A case that should have been dismissed goes to a trial that further violates the law it is intended to protect.

This new sort of procedurally economical trial is discriminatory in that there are fewer suspensions in cases against blacks than in those against people of all other races. The guilt of blacks is assumed, which makes them primary victims in these unjust proceedings.

It doesn't matter where the courthouse is, as on any given day in any courtroom, the majority of those who are punished in some way at trials that do not conform formally to the law are blacks.

3- Preventive prison allows for the temporary detention of accused persons before they go in front of a court, despite the existence of alternative forms of security, from posting cash bail to release on recognizance. The black population is once again the most disadvantaged when courts decide which security method to impose on defendants. The possibility of a cash bond is a privilege that is rarely conceded to an accused black person. Those detainees who do time in preventive prison are kept separately from the rest of the prison population. The conditions of their incarceration are similar but there are special spaces reserved for them. About 80% of the population in preventive prison is black, which allows one to see just how discriminatory the courts are.

4- When the Court is unsuccessful three times in bringing about a trial, there is

almost always a negotiated reduction in vigilance of the defendant, which means that the detainee is permitted to leave preventive prison and placed under a less severe form of surveillance, unless there are circumstances surrounding the person, or the severity of the accusation that call for continued incarceration. Blacks do not fare well in these decisions either, as their race seriously disadvantages them. They are the classic example of an exemption to the norm.

5- There is also a direct correlation between the Court's decision or punishment and the race of the accused. Incarceration is the most prevalent form of disciplinary action for blacks. It is common for them to receive few fines and lots of prison time. For the most part, open correctional facilities and institutions at which sentences can be completed are for prisoners of other races. Blacks must do at least one third of their time before they are eligible for transfer to one of these. Other prisoners can be sent directly to minimum-security prisons, known as open centers, to complete their sentences. The penal population at maximum-security prisons, or closed systems, is mostly black. This statistic has remained unchanged, even in cases when the offense is economic in nature, which constitutes the most common cause for punishment. Blacks continue to be the ones given the most prison terms.

6- The Maleconazo¹ (August 1994) brought about the most severe judicial reaction in revolutionary Cuba. Because of fourteen protesters who were detained for trial, all of them accused of similar acts and equally pursued by the Prosecutor, hundreds of prisoners were judged right in their own prisons. They were judged at summary proceedings that guaranteed quick sentencing, to serve as exemplary warnings to the rest of the population. About 90% of

the accused and punished for those acts were black. Many maintain that the color of their skin was enough to get them detained and judged. The sentences were immediate, severe and unjust.

7- To be designated as a "danger to society" is one of the worst aberrations of the Penal Code, and also serves as a social indicator of discriminatory practices. It permits the judgment of a person who has not been accused of anything. The accused or detainee can be judged responsible for punishable acts without the least bit of evidence. Recently, the State has availed itself more and more of this designation, to imprison people it finds bothersome or are repeat offenders. This resort is used in moments of crisis or social disorder, via massive neighborhood roundups and immediate court appearances, which with unbelievable uniformity impose similar "security measures": between one and four years of "internment." The term by which these judicial proceedings are known—"nigger cleaners"—highlights their quintessential racism.

A social system whose discourse advocates racial and class equality, and that at one time worked for the education and social development of marginalized people, has completed a fifty-year stint in power behaving in a way that other governments the Revolution severely criticized and fought did. It is essentially racist and its judicial system proves it. The racist attitude of the penal sector is evident but not unique. It can be found in each judicial act, be it notarial, civil, administrative, labor related, etc. Blacks must overcome the disadvantages of their race in attempting to enjoy basic legal rights.

At the beginning, the Revolution intended to eliminate the historical racial differences it inherited. It fought racism with an extreme egalitarianism that opened the

doors of education, culture, and sports to all social minorities, but particularly to blacks. But this served as only temporary relief for a phenomenon that came back with an equal vengeance. Illusory methods and inflated social policies, as well as dependence on foreign systems and powers, changed the artificial course embarked upon at the beginning and caused the current chaos and stagnation in which racist conditions persist and tend to become institutionalized—with no need for decrees or laws.

I was witness to just how much racial differences have marked the very people who are already marginalized, at one of these so-called judicial marathons for people who are a “danger to society.” One of the detainees was a young and obviously homosexual black man. The viciousness of the police was evident: they made the worst possible comments in talking to the youth, who was waiting his turn before a farcical judicial proceeding. The chief of police was the most direct and aggressive of them all. Beyond that: he took it upon himself to be violent, due to his officer rank, and the fact that he, himself, was black. At the top of his lungs, he accused the detainee of being guilty of double treason, of being ungrateful with the Revolution, which had given every-

thing to blacks, and of being an ingrate with his own race, because the only thing worse than being black was being a homosexual. The detainee, exercising every ounce of calm possible in that situation, responded with equal conviction and strength of voice that the Revolution had brought him only problems and that, to the contrary, it did not seem to him that his condition was the worst of all treasonable acts. In his opinion, it was much worse for a black man to be a policeman, and serve as henchman.

Note:

1. The Maleconazo was a spontaneous popular protest and uprising that occurred in August 1994 in the Havana zone known as El Malecón. It was the first time the Revolution did not have control of a metropolitan area within the national territory. It was fueled by the prevailing economic crisis and people's hope to be able to emigrate: it lasted six hours and brought about dangerous, open encounters with police forces and paramilitary groups mobilized at the last minute. The wave of detentions generated by this event brought with it the highest number of Criminal Court proceedings and of sentences for one single crime in the history of the Revolution.