

**South Africa's Democratic Transition:
The Challenge to Achieve Justice
Lessons for Cuba and Others**

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INTRODUCTION

I want to congratulate Marifeli Pérez-Stable and all those involved in the recent publication, *Cuba, la reconciliación nacional*. I believe this is a very important initiative and I am particularly pleased that there is going to be a series of public meetings so that as many people as possible can be involved in the future of a new and free Cuba.

I've only been once in Cuba and, therefore, I'm very much on a learning curve. I was glad of that opportunity and would welcome further opportunities. I'm also pleased, however, to meet with the exiled community. I come from a country which has had a very large number of people who were driven out into exile because of a situation in my country, and I was so thrilled when the change came which allowed the exiles to return. There are many links between Cuba and South Africa. Fidel Castro was very supportive of the ANC and encouraged and enabled some of its exiled leadership to find rest and relaxation in Cuba during our early struggle. Furthermore, there are a number of Cuban doctors working in South Africa. In addition, all of us are aware of the Cuban military presence in Angola and Namibia fighting for the liberation of various countries.

South Africa is on the tip of the African continent. It has a very diverse population. It's a combination of a third world and first world situation.

I know that there are many of you in the audience who have very little hope for the future and who are full of despair. And, if there is nothing else that you can learn from South Africa, I believe it is the need to continue to hope. It was our experience that it was literally the darkest before the dawn and I never

thought I would see the remarkable changes for the good that have happened in South Africa in my own lifetime.

Obviously, the South African model, either in terms of its negotiated settlement or its Truth and Reconciliation Commission, can't be imposed on any other situation, on any other country, and certainly not on Cuba. There are many important differences between the two countries, but, of course, there are some similarities as well. Let me list them and you can test them out for yourselves.

1. All countries in transition from authoritarian regimes to a new democracy are countries which have known conflict.
2. The style of government has been authoritarian and in many instances, dictatorial.
3. Military and security forces have played a dominant role in implementing the policies of such a system.
4. There were much harassment and violence by the state.
5. All these countries produced resistance.
6. All these countries had many, many victims.
7. Much of the action by the state was covert and citizens had very little access to information and almost no freedom of expression or freedom of movement.

1. The South African Transition

1.1. Political Transformation

It is impossible to appreciate and understand the importance of the Truth and Reconciliation Commission without placing it in its political context. South Africa was essentially dominated by the politics of oppression on the one hand and resistance on the other. Over the years, it proved impossible for the state to crush the resistance, but on the other hand, it was impossible for the resistance to overthrow the state. There was a stalemate and, flowing from that, a commitment to negotiations. Former

enemies ceased killing and sat around a common table and negotiated an interim constitution, which led, finally, to democratic elections.

1.2. Truth and Reconciliation

Questions confronting newly emerging democracies, including South Africa, include

at least the following:

- How do emerging democracies deal with past violations of human rights? What measures are desirable and possible in the context of particular transitions?
- How do new democracies deal with leaders and other individuals responsible for disappearances, death squads and psychological and physical torture? Where must the line be drawn between those who gave the orders or those who carried them out or both?
- How do new democracies deal with the fact that some perpetrators may remain part of the new government or security forces or hold important positions in public life? Does this hold the new democracy at risk? Is there an alternative?

1.3. The arguments advanced to take a nation's past seriously are moral, psychological and political. The moral imperative can be summed up from the commandment from the Jewish transition: "To remember is the secret of redemption." The psychological argument has been advanced in particular by a school represented by Alexander and Margarete Mitscherlich. "It is as bad for nations as it is for individual people to suppress the memory of evil or mournful experience."

The political argument is summed up in the famous statement by George Santanyana. "Those who forget the past are doomed to repeat it."

1.4. There is, however, another side to this, which has been highlighted in particular by Professor Bruce Ackerman of Yale Law School. He has

strongly criticized those who “squander moral capital in an ineffective effort to right past wrongs—creating martyrs and fostering political alienation rather than contributing to a genuine sense of vindication.” Indeed, he continues, “moral capital is better spent in educating the population in the limits of the law rather than engaging in a quixotic quest after the mirage of corrective justice.” Timothy Garton Ashe reminds us in his book, The File, that there is a defensible position, which calls for moving on into the new future and not allowing the past to destroy or inhibit the new democracy.

For example, there is the profound insight of the historian Ernest Renan who argues that, “every nation is a community both of shared memory and shared forgetting.” He adds, “and I would even say historical error, is an essential factor in the history of a nation.” Historically, the advocates of forgetting are many and impressive. They range from Cicero in 44 B.C., demanding only two days after Caesar’s murder that the memory of past discord be consigned to eternal oblivion, to Winston Churchill in his Zurich speech 2000 years later recalling Gladstone’s appeal for a “blessed act of oblivion” between former enemies.

1.5. There were those in leadership in the new South Africa who sided with those who believed that some serious accounting for the past is not only right and moral, but it is also wise in terms of developing a stable and peaceful future.

To ignore the past is to perpetuate myth and error—it is to build a future on lies and half-truths. By lapsing into amnesia, we risk the danger of leaving people in constant victimhood instead of enabling them to become survivors who move forward in their lives. Victims have the right to know at whose hands they and their loved ones suffered. To delay and/or to suppress the truth makes it difficult, if not possible, to uphold the rule of law and to develop a culture of human rights. Countries are often

haunted by their past. Two examples are Germany in the 1950s and Switzerland much more recently. Finally, a conscious act of memory frees us from being paralyzed by the past.

South Africa, both in government and civil society, sought advice from other countries and from within its own constituency. We held an international conference with delegates from many parts of Latin America and Europe, particularly Eastern Europe. This was followed by a national conference with representatives from throughout South Africa and thirdly, we decided the way forward in our circumstances would be to establish a Truth and Reconciliation Commission which would, on the one hand, reject amnesia and on the other hand, would hold in tension, truth telling, conditional amnesty and reparation which would challenge denial, encourage accountability and assist in the process of reconciliation.

1.6. There were a number of unique features in the South African model in contrast to 20 other truth commissions which had been held. I can only touch on these briefly:

- A. We focused very strongly on a democratic process with wide consultation and decisionmaking, which included as many people as possible so that they could own the process and culminated in parliament where the overwhelming majority of the democratically-elected representatives voted in favor of the truth and reconciliation commission.

- B. We stressed transparency. Coming from a country, which had sought to cover up so much of its state violence and action against victims of apartheid, we believed that the process should be as open as was humanly possible. Therefore, all the hearings, both the victims' hearings and the perpetrators' hearings were open to the media-- television, radio and the print media and, of course, to the public. This had an incredible impact on the whole of South Africa

because it was not a handful of commissioners meeting behind closed doors, but rather an act, if you like, of theater which enabled people through-out the length and breadth of the country to hear the evidence and testimony from victims and perpetrators.

- C. We had a very extensive mandate. We listened to many victims, more than 22,000 of them. We listened to many perpetrators, over 7000 of them, but we also invited and encouraged a large number of institutions to appear before us. As a result, political parties, representatives of media, of the churches and faith communities, of the health services, of business and labor, of prisons, women and children, all appeared before the commission.
- D. The commission was granted powers of subpoena and search and seizure.
- E. We offered a conditional amnesty to those who were prepared to acknowledge their acts of violence and terror. We stressed that applications should be made on an individual basis. They had to complete a very detailed, prescribed form. They were compelled to make full disclosure and that had to be in public and could only relate to offenses linked with a political objective. Furthermore, those who refused to apply for amnesty, and there was sufficient evidence to suggest that prosecutions would be successful, their names were handed to the attorney general for further action.

Perpetrators told their stories and in large measure, substantiated the stories told by victims. We would never have gotten to the truth that we succeeded in doing without the testimonies of the perpetrators.

1.7. The South African Model and the International Community

Firstly, there has been worldwide interest in South Africa's experiment of trying to

reach truth and start the process of reconciliation. One of the reasons for this interest is that a number of countries are themselves undergoing transitions.

Secondly, the negotiation process in South Africa, which was achieved with minimal violence, was of enormous interest to countries emerging from conflict. Further, the example of Nelson Mandela, who with his remarkable humanity and lack of bitterness despite twenty-seven years in prison, captured the imagination of many people way beyond the borders of South Africa and the fact that the Commission's hearings were in public and therefore there were news stories and accounts on television and radio throughout the world.

I want to make two concluding comments. Firstly, there is a tension between remembering and forgetting. Many of the countries I go to are locked into their past to such a degree that it's almost impossible for them to deal with contemporary needs and future demands. To some of these leaders of government and civil society, I've argued that one of the tasks of memory is actually to forget, but that you can only forget by remember-ing—an actual, conscious act of remembering so that you don't ignore the past, but you deal with it, but you don't dwell in it and you're not paralyzed by it. Secondly, the stress on justice for those who have committed serious acts of human rights violations is absolutely right, but unfortunately, there are limits to justice. One can only point to Rwanda and to the former Yugoslavia. It is impossible to punish everyone and further-more, punishment cannot be the final word. Countries which have been convulsed and are moving towards a new, more decent, more open, more just society need more than justice, although they certainly need justice. We don't need to do away with justice, but we do need a richer interpretation of justice. Retributive justice and restorative justice must go hand in hand. I would urge, therefore, that we hold together justice, truth,

reconciliation, reparation and institutional reform. It is these which will enable us to respond to the many challenges that confront us today.