

# THE COMMA OPTION

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WHEN, in 1948, the American Declaration on Human Rights was created, no one would believe that human rights were about to become so important. Now, more than fifty years after, there is practically no State in the world that can easily avoid them. And there is certainly none in the Americas\*.

Political legitimacy of governments increasingly rests on human rights. Organized civil society has developed hundreds of movements and incremented its aspirations. It is continually struggling for the acknowledgement of new rights and for the respect and protection of the “old” ones. Actually, human rights and civil society are at the core of contemporary political arena and none of them can be easily left aside.

Of course, this is a very good thing. One may think that citizens have assured the possibility of defending themselves against governments' arbitrariness and that all it takes is to improve the already existing mechanisms. States have finally understood that they cannot avoid their obligations when they are related to human rights and human dignity, as it has been acknowledged by dozens of pacts, conventions and declarations both in the universal and the regional systems since 1948.

Sad to say, it is not true. Although the last decades of the 20<sup>th</sup> century have been characterized by a growing importance of human rights in discursive practices, governments are also developing consistent policies that violate them, especially the economic, social and cultural rights but also the civil and political ones.

If before September 11 terrorism was a deep concern for governments all around the world, after the Twin Towers and the Pentagon were attacked it became the first priority for many of them.

So gradually the dichotomy terrorism – security has been set as a paired concept, as if terrorism was the only menace to democratic governance and citizenship. This point of view usually forgets that poverty, social inequity and precarious conditions of life are at least as bad as terrorism when it comes to talk about democracy. Fortunately, not all governments have fallen into the trap.

The Declaration of Bridgetown, adopted by the General Assembly of the Organization of American States in June, 2002, recognized the need of a multidimensional approach to security problems and the complex nature of the new threats that our times are facing. Thus, they have started shaping a new and broader concept of security.

This has been the approach chosen by some of the countries preparing the Inter American Conference on Hemispheric Security which will take place in Mexico next October, namely the Andean countries and Canada. Following the Inter American Commission on Human Rights they are interpreting that security and human rights are not contradictory but complementary. But there are risks that these countries should be aware of.

For example, while comparing the comments made by some States to the Draft Declaration on Hemispheric Security, one can see the enormous differences among

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their approaches: while the Caribbean States intend to include in the new security model issues such as the economic inequity, the United States still brings to scene the traditional conception of security based on the use of force and military strategies.

### **The comma option**

As I said before, no government wanting to preserve itself would dare to omit human rights or to openly challenge international human rights laws and obligations (as an example, let us remember Peruvian government' behavior towards the Inter American Court on Human Rights just before Fujimori left the presidency). However, many governments have developed a new stratagem which I like to call "the comma option". It is simple and effective and is commonly used in my country as in many others, especially in Central America. It consists in adding a comma at the end of the most important paragraphs of laws and policies. After the comma there comes a sentence establishing that every action taken by lo enforcement agencies and / or military shall be carried out with full respect for human rights.

The comma option is condescending with the discursive importance of human rights and has been useful to many governments (let us say, the Mexican one) while being examined by international bodies such as the Inter American Commission or the UN treaty bodies. The comma option allows governments to create laws that are not respectful of human rights by themselves but that are not easily subject of criticism because they are actually taking into consideration human rights (usually, a civil society's claim). Thus, the comma option has been profusely used in domestic antiterrorist laws and laws against organized crime.

Although the comma option clearly states that no human rights abuse will be perpetrated while fighting crime, it opens the possibility of establishing major restrictions to these rights, as the report on terrorism and human rights presented by the IACHR shows.

- a. Due process rights. Whenever military agencies are allowed to prosecute and judge common crimes, independence and impartiality are at risk. Besides, antiterrorist laws usually pay little or no attention to the individual penal responsibility so people are judged by their relations and not by their actions.
- b. Personal freedom rights. Detentions by suspicion are commonly perpetrated while intending to prevent terrorist acts to be carried out.
- c. Personal integrity. In order to obtain valuable information, torture and other cruel, inhuman and degrading treatments are performed regularly.
- d. Equity rights. Discrimination is also at stakes. Many individuals have been victims of discriminative actions because of their ethnic group, race or religion while the government was taking action against terrorist groups.

On the other hand we should remember that the States have also the obligation of protecting their citizens from terrorism. So the distinction among those people who are an actual or a potential threat against the State and its citizens –the terrorists– and those who, given especial circumstances, might become one is a major challenge. The Inter American Commission on Human Rights has set in its report that a clear distinction should be made while using the force, especially lethal force, to fight

terrorism<sup>1</sup>. However, as we can see every day, this distinction is the key issue. There is a broad gray zone in which abuses are constantly perpetrated. Governments face the responsibility of determining who and when could be an actual menace, but this should be done before any action is taken against a person.

### **Reasons to respect and protect human rights**

We all know that there are many normative reasons to respect human rights. Both domestic laws and international human rights and humanitarian laws are clear and most countries have accepted and ratified the conventions and covenants that establish them. Human rights are good and are the only way to guarantee a civilized relation among human beings.

However, I want to point out what could be named the political reasons to respect human rights. As legitimacy principles of contemporary political systems, everybody believes that human rights are a good thing and should be respected and protected by governments. Thus, governments who fail to do so can face a legitimization crisis that could eventually put the State (and obviously its citizens) at risk. So to say, respecting human rights could also be useful to governments.

On the other hand, violating human rights undermines legitimacy of the government. A citizen who believes that his or her basic rights could be violated will not be sympathetic to the government and will be less interested in providing information about possible terrorist activities that could become actual menaces.

Impunity and violence from the State against citizens are usually related to governments in crisis. Frequently, transitions to democracy in Latin America have started by the opposition to these practices because human rights have become a symbolic patrimony of civil society and, as I said before, are at the core of political life.

The comma option has been a response to the struggle for human rights. Mainly, the perspective of NGOs is to go a step forward.

### **Urgent needs**

- a. It is important that both governments and NGOs be aware and prepared to avoid the comma option by creating a cross cutting perspective of human rights fully linked to security. It is good to say that the Canadian government has done important advances on this field, as can be seen by reading its comments on the Draft Declaration of Hemispheric Security.
- b. New theoretical and technical tools must be developed in order to narrow the gray zone and to facilitate the accurate identification of individuals who are actually promoting and performing terrorist activities. Here, academics and scientists have much work to do.

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<sup>1</sup> See Inter-American Commission on Human Rights (2002) *Report on terrorism and human rights*, par. 90. [<http://www.cidh.oas.org/Terrorism/Eng/toc.htm>]