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Conscientious Objection in the Americas

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BRIEF

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Rwanda's Domestic Trials for Genocide and Crimes Against Humanity

by Carla J. Ferstman*

Rwanda has embarked on the challenge of bringing the perpetrators of genocide to justice. Legislation which organizes the prosecution of genocide suspects and the compensation of victims has been enacted. Judges are being trained, prosecutors prepare case files, new suspects are arrested, and survivors continue to fear repercussions.

Large scale violence in Rwanda was brought on by a blend of enforced ethnic intolerance, constructed hierarchies, social inequalities, and material scarcity. For many generations, common language, culture, and religion kept categorizations of Hutu, Tutsi, and Twa mutable. Political construction of divisive ethnic identities helped create the environment which allowed for the surge of human atrocity.

Background to the Genocide

After the April 6, 1994, downing of the airplane carrying the Rwandan and Burundian presidents, an estimated one million Rwandans, mainly Tutsis and Hutu political moderates, were systematically murdered by Hutu extremists in the span of a few months. The entire governmental

apparatus, including the Presidential Guard (*Gendarmérie*), the local police force, and the civilian administration, mobilized the population toward active participation in the genocide. *Interahamwe* militia, the youth unit trained by the Presidential Guard, carried out a significant number of the murders, set up roadblocks, and distributed arms and killing lists to civilians who were rewarded for their complicity. Organizers encouraged their communities to kill the Tutsi families living amongst them. Broadcasts by *Radio Télévision Libre des Mille Collines* contributed to the genocidal frenzy by furthering the campaign of hate. The international community, despite desperate calls for assistance from world leaders, proved unable or unwilling to take measures to halt the genocide. Although the *International Convention on the Prevention and Punishment of Genocide* (ICPPG) obliges the contracting parties to undertake to prevent and punish genocide, the world failed to take action to prevent the atrocities which occurred in Rwanda.

Effect on the Rwandan Justice System

The killings, lootings, and vandalism virtually destroyed the justice system. Most equipment was damaged, leaving trained agencies involved in the investigative or judicial process inoperable. Even if the judicial system in place before the war had remained intact, it would have been

Conscientious Objection in the Americas

by Raymond J. Toney*

On October 7, the Inter-American Commission on Human Rights heard arguments in the case of Luis Gabriel Caldas Leon, who refused to perform military service in the Colombian Armed Forces for reasons of conscience. The fundamental issue raised by *Caldas* is whether conscientious objection to military service is a protected manifestation of Article 12 rights of the American Convention on Human Rights.

Mr. Caldas completed his secondary studies in 1993 and was then selected to perform obligatory military service as established by Law 48 of 1993 and Article

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216 of the Colombian Constitution. Mr. Caldas, a pacifist, informed the Colombian military officials that he was unable to perform military service due to his deeply held beliefs. Mr. Caldas presented the military with a written statement giving the reasons for his decision, while

The fundamental issue raised by Caldas is whether conscientious objection to military service is a protected manifestation of Article 12 rights of the American Convention on Human Rights.

also informing them of his willingness to perform an unarmed civilian service on the condition that the service was unrelated to the Colombian military or any other entity that engages in violence.

The army responded to Mr. Caldas' petition by stating that conscientious objection was not a ground for exemption from military service obligations. The military postponed his induction until July 1994, at which time Mr. Caldas was ordered to report to the Recruiting Command. Mr. Caldas complied with the order, and was informed that he was being inducted into the National Police as a police assistant, a position which would not require him to carry a weapon. Mr. Caldas refused induction, arguing that the National Police forms part of the Colombian Armed Forces. Mr. Caldas again requested that he be allowed to perform an alternative service, specifically under an environmental service already established by Law 99 of 1993. He did not receive a response.

Mr. Caldas failed to report for duty as ordered and was charged with the crime of desertion. On September 13, 1994, he was found guilty of desertion and was sentenced to seven months in prison. A series of motions challenging the sentence and the constitutionality of the Colombian government's failure to recognize conscientious objection was denied. Mr. Caldas entered prison in June of 1995 and, upon release in October, was informed that he had two weeks to submit to military service or face another prison term of up to seven years, again for the crime of desertion. He accepted neither of these offers and instead entered into hiding, where he remains.

The Caldas case presents complex and timely legal issues (at present seven

American states recognize the right of conscientious objection in domestic law). Foremost among these is whether the scope of Article 12 of the American Convention, which establishes the freedom of conscience and religion, includes a right to refuse to perform military service, when such refusal is motivated by reasons of conscience. Unfortunately, inter-American jurisprudence on Article 12 sheds no light on this matter.

In answering the questions raised by Caldas, the Commission will need to consult other sources of international human rights law, primarily the United Nations and European systems, where precedent favors Mr. Caldas. The UN Human Rights Committee has adopted a progressive interpretation of conscientious objection, noting in General

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Comment No. 22 that conscientious objection to military service "can be derived from Article 18 [of the International Covenant on Civil and Political Rights] inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest religious or other beliefs." UN Human Rights Committee resolutions also recognize a right of conscientious objection.

The Council of Europe in Resolution 337 of 1967 held that conscientious objectors to military service "shall enjoy a right to be released from the obligation to perform such service." A subsequent Council resolution, R(87)8 (1987), reiterated this view and noted that the right to conscientious objection "shall be regarded as deriving logically from the fundamental rights of the individual [to freedom of conscience and religion] . . . guaranteed in Article 9 of the European Convention on Human Rights." A majority of EU Member States recognize the right of conscientious objection.

At the October 7 hearing, the commissioners agreed that the legal issues presented by Caldas require careful study. A second hearing will be scheduled for the February session of the Commission in order to present more

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fully and discuss the legal issues raised by Caldas, issues which could have a profound impact on the youth of the Americas, military service, and the future of Article 12 jurisprudence.

The Commission will examine other issues such as the due process violations committed and the question of double jeopardy. It is on the question of Article 12, however, that much of the future jurisprudential development in this area will hinge.

Article 12. Freedom of Conscience and Religion states (in part):

1. Everyone has the right to freedom of conscience and religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religious beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

Note: Three organizations filed the joint petition in this case: the National Interreligious Service Board for Conscientious Objection (NISBCO), Colombian Collective for Conscientious Objectors, and the Center for Justice and International Law (CEJIL). For further information on the activities of, and services provided by, NISBCO write to: NISBCO, 1830 Connecticut Avenue, NW, Washington, DC, 20009-5732. ☎

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