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A Congolese Woman's Hell: War Rape and its Attack on the Body Politic

Often used as a strategic weapon of war, the systematic rape of women not only destabilizes communities and terrorizes civilian populations but also forces women and children to flee their homes creating an influx in refugees and IDPs. While the influence of Canada's Gender-Related Persecution Guidelines can be praised for their attention to women's rights, for Congolese victims of war rape, they maintain the gendered and cultural biases that underpin the status determination process. Because 'rape' is the feature under which her application rests, a woman is forced to recount the details of gang rape or sexual violence in a public setting. Not only is the burden of proof on her to prove that her fear of persecution is based on subjective and objective grounds but such testimonial requirements perpetuate a cycle of powerlessness and reaffirm a woman's identity as 'victim'. Since war rape is considered a 'crime against humanity' (Rome Statute) it should be viewed as a systematic attack on the body politic and therefore should be considered persecution based on political opinion. Cases should consequently be sent to the ICC for further international prosecution and the onerous burden of proof should be placed on the state or perpetrator.

Victims of war rape and sexual violence have reached an unprecedented high in the Democratic Republic of Congo (DRC) in the past several years: "Estimates of rape among women aged 15 to 49 years in the [last] 12 months... [indicate that] approximately 1150 women are raped every day, 48 women raped every hour, and 4 women raped every 5 minutes" (Peterman 2011, 1064-1065). Rape in the DRC is becoming epidemic. A survey conducted by

the Harvard Humanitarian Initiative (HHI) gives an in-depth analysis of the sexual violence occurring in the DRC from years of continuing despotic conflict. The survey reveals extremely elevated levels of gang rape and abduction, speaking to the highly ‘weaponized’ forms of violence against women in this region. The brutality of the sexual violence is illustrated by the following report: “this violence, perpetrated by multiple armed groups has features rarely seen in peace-time, or indeed most wartime, settings including: forced incest; gang rape; rape in public; rape with foreign objects, and urogenital mutilation” (HHI 2009, 6). Once attacked many flee their homes due to the cultural stigma associated with being a survivor of rape. Once a woman of any age has been sexually violated by someone other than her husband, she is regarded as impure and dirty, even if she has been forcibly raped or abused. Rebel groups use this cultural value to manipulate women into thinking that they are worthless, demoralizing entire communities through sexual violence against wives and daughters. Women end up feeling like they have brought a ‘curse’ into their villages. For this reason, many flee their country of origin with little hope of re-joining a reputable community.

Many practical barriers exist when a female refugee decides to flee from the conflicted boundaries of the DRC such as having the funds and freedom to successfully cross the border. However, it is the bureaucratic obstacles during the status determination process that can often seem even more insurmountable for women who have been sexually violated. In 1993, the Canadian Immigration and Refugee Board (IRB) issued the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* to address the difficulty for women in obtaining Convention refugee status. Prior to 1993, obtaining status based on persecution aimed at women ‘because they were women’ (genital mutilation, forced marriage, trafficking, war rape, sexual assault) was nearly impossible since these methods were not recognized as being part of one of

the enumerated grounds in the Convention status. Furthermore, nearly all refugee case law reflected the experiences of men. These guidelines have brought the reality of gendered persecution into the spotlight for policy makers contrasting the traditional view that all persecution whether it is against a man or woman, is equal. Yet, despite the noble strides that the Gender Guidelines have had on female cases in numerous countries of asylum, several problematic issues remain.

First and foremost, the Gender Guidelines are in fact that- simply *guidelines*. They are not binding and have not become part of the Convention relating to the Status of Refugees (1951). This is important to note because not all asylum states recognize these guidelines. Although Canada, the United States and Australia have acted quite quickly to implement them, the European Union has been far slower (Sweden and the UK) if not responsive at all. The political will on the part of national governments is simply non-existent. Furthermore, “evidence from most Western states suggests ... that even where guidelines have been adopted their implementation rests patchy at best” (Freedman 2007, 90-91). The UK is a good example of this: “Research conducted in 2006, for example, suggested that the United Kingdom’s Asylum Policy Instruction was rarely followed” and the Gender Guidelines specific to the appellant determination process was denied of ever being official policy (Baillot 2009, 202).

Secondly, the Guidelines exist to ensure that a female refugee has a fair determination process but just because these Guidelines are enforced does not mean that her narrative will fall on sympathetic and gender sensitive ears. There still remains an inability among many Board members to move beyond their own culturally biased opinions of female refugee experiences. When a sexually violated woman has fled the only country she has ever called ‘home’ she often experiences a host of emotions including ‘culture shock’ which a Board member may associate

with guilt. Many female claimants may appear to be depressed, confused, inarticulate and withdrawn- all things that by male Western standards are difficult to know how to deal with. For example, a male Board member may not understand why a female claimant has difficulty telling her story when deportation hangs in the balance but in many other countries, sexual honour is representative of the family:

a woman who admits during the hearing that she has been sexually mistreated or even raped during detention would normally have to take her own life in accordance with the traditions of her home country in order to restore the honour of her family. For a woman the hearing itself therefore puts into question the norms and values to which she was accustomed in her country of origin. (Alfredson 2009, 91)

The complexities that correlate with a female claimant who has experienced sexual violence causes male Board members to have to sift through their gendered stereotypes that often intersect with discriminatory beliefs about race, ethnicity, culture and nationality. As well, often judges in the United States “are predisposed to place ‘blame’ on a victim of rape: she asked for it, she was provocatively dressed, or she knew the man...this perception of negating the horror of and unwillingness on the part of the women in rape, carries itself into the law” (Mulligan 1990, 379). It is this same perception that the Immigration Refugee Board members bring to their analysis of human rights violations involving rape. Due to these complications that judges experience, “statistics suggest that the majority of female claimants (71 percent in 2007) are refused asylum or any other form of humanitarian/discretionary leave to remain on first application...” (Baillot 2009, 202-203). Once this occurs, a female refugee’s hope for judicial review is slim because of the legal complexity and cost and many other forms of appeal can sometimes take years.

Attempting to address the flaws of a poor Board members decision can be very lengthy and complex.

Lastly, within the Convention, refugees who are seeking asylum must carry the burden of proof to prove that there is a well-founded fear based on subjective and objective grounds that prevents them from returning to their country of origin. This burden of proof is very problematic within the context of the Gender Guidelines. Since 'rape' is the only feature under which her application rests, the only way a female claimant can prove such 'well-founded fear' is by narrating the details of the sexual violence that she has experienced. This perpetuates a cycle of powerlessness and reaffirms a woman's identity as 'victim' making all attempts at a 'gendered' determination process null and void. Sexual violence by nature is difficult to prove, often compromising a woman's ability to prove well-founded fear: "The level of proof required in terms of medical certificates and expert witness statements has become very stringent ...any claimant who does not have all of these certificates will be sure to have her claim rejected" (Freedman 2007, 89). Also, often times adjudicators perceive all sexual violence as 'private' even when it is instigated by an agent of the state (war rape in the DRC) and is often dismissed as a deviant act of an individual rather than sexual torture condoned by militia. While the international community both pities and fears a woman seeking asylum, when a state does welcome her it is with a 'victim' approach. Many women play into the role of victim and construct a victim narrative because it is expected of them: "It is most tempting for asylum seekers- who are often informed by sympathetic lawyers- to create a narrative that fits the mould" (Hajdukowski 2008, 40). The normalization of gender inequalities has created refugee policies that reinforce women as subordinate. This strategy of survival is only used because of the burden of proof women are forced to bear. Being forced over and over again to tell their

stories in various ways can be very traumatic tarnishing a woman's ability to empower herself in her new host country. Although the Gender Guidelines seek to address this evidentiary issue by trying to provide female caseworkers and ensuring the judiciary is aware of the problems with credibility, the reality is the bureaucratic structure of UNHCR largely consists of men. The hierarchical social relations based upon gender at the state level reproduce and reinforce the state's responses to female refugees, employing Gender Guidelines that only inflict a continuous victim approach. Simply put, forcing a woman to recount the details of her rape automatically reinstates her identity as a lonely subordinate woman.

After acknowledging the problematic issues surrounding the current Gender Guidelines and their inability to truly help Congolese war rape victims, a more effective alternative at the individual determination process would be for female claimants to seek status under persecution based on political opinion. Reconceptualising war rape as an attack on the state reveals that rape is an act of political power. International law states that war rape is considered a crime against humanity according to the Rome Statute (which will be referred to later). Therefore if the IRB wishes to stay on par with international law, then war rape should be considered an attack on the body politic. Sexual violence in any state is a form of control which is inherently political. Traditionally, wars were fought on battlefields with guns targeting armed soldiers now they are being fought in villages and the new targets are civilian women and children. The DRC embodies this new type of warfare affecting, "1.69 to 1.80 million women aged 15 to 49 years" who reported having a history of rape (Peterman 2011, 1063). The majority of these very violent sexual attacks are carried out by men in uniform and have had dire consequences on the civilians of the DRC:

Forced dispersal of populations as they flee feared atrocity; submission of an invaded community through fear of reprisal rape; intensification of bonding among perpetrators through commission of brutal acts; demoralization of an entire people through violence against their women; genetic subversion through impregnation of women; and destruction of a social fabric by attacking women whose denigration or death often destroys the entire family unit. (HHI 2009, 7-8)

If Congolese women can successfully claim status as being persecuted under the grounds of political opinion, it may help them construct a sense of empowerment by viewing themselves as a unified group of women standing up against the state as opposed to a single woman fleeing her country in search of asylum. Although DRC women would still have to prove persecution based on subjective and objective harm, by seeking asylum under political opinion it would likely minimize a woman having to tell the 'details' of her rape because rape is not the feature under which her application rests, rather it is political opinion. A judge is legally not allowed to inquire into the reasoning behind an individual's political opinion therefore opinions based on whether the woman is to 'blame' cannot be inquired into during the Board's hearing. The Refugee Immigration Board should therefore consider:

If there is a system for redress against her attacker, just as if a victim had been beaten up and threatened with death. If there is no system for a woman to prosecute in her country where the rape has occurred or if she did prosecute or bring the issue to the authorities her life would be in danger, then the woman should be granted asylum" based on political opinion. (Mulligan 1990, 380)

Viewing the war rape in the DRC as more *political* rather than gendered would perhaps also help a woman's perception of the shame and stigma attached with sexual violence.

Many feminist critics may argue that by reconceptualising rape in this manner, the *gendered* analysis of sexual violence is lost. Although gender is a vital aspect in terms of sexual violence, for Congolese rape refugees, the Guidelines do not suffice and in fact do more harm than good. Something that needs to be remembered is that war rape does not simply affect women but rape is used as a weapon against men, women and children. It also affects the security of not just a single individual, but also states around the world: "While the immediate destruction of this war weapon is embodied and personal...the effects of systematic rape work over time to undermine communities, states, and regions, and, by extension, threaten global security" (Carter 2010, 355). While the sexual violence of a single woman must never be trivialized, what is occurring in the DRC to multiple women is an attack on the state not just the physical body or psychological mind. Arguably, by filing a claim under political opinion, a Congolese war rape refugee may feel more empowered knowing that along with her, there are others standing up against the state. Many feminists would agree that empowering women to view themselves as something other than a vulnerable victim is the solution to gendered conflict. Perhaps if adjudicators began viewing war rape as not simply gendered, but globally political affecting the security of many nations, then they would approach the individual determination process differently.

The final part of this paper looks to the future in the hopes of effectively criminalizing war rape perpetrators and/or holding the DRC responsible for its inaction towards women's rights. In order to further empower Congolese rape refugees, cases need to be sent to the appropriate international courts where the burden of proof should be on those who oppose

international jurisdiction (i.e. the state), rather than women, who must prove their position. The prevalence of war rape in the DRC is due in part to the international community's ignorance and 'blind eye' approach towards the problem (Hooper 2001, 80). Perhaps part of this problem of recognition consists of western states' inability to view women's issues as problems of security as mentioned above: "During war, bodies, boundaries, violence and power come together in devastating combination" (Jacobs 2000, 95). Women's bodies become a source of conflict fought over state boundaries. Claiming status under political opinion is the first step in addressing this issue which could effectively lead to both the feminist and international analysis required at the ICC. Furthermore, the burden of proof at the international level should not be static. Ellis claims that those who oppose international law (i.e. rape as a crime against humanity), rather than their opponents, should be the ones to prove their position. He argues that the threat of punishment, given the preconditions about public relations, the likelihood of detection, and so on, will have deterrent value (Ellis, 2010 184). Anyone who denies this must carry the burden of proof and must be forced to prove otherwise. Once this burden of proof is removed and war rape is considered a de facto crime against humanity, collective DRC cases should be sent to the ICC so that proper prosecution can take place.

Critics may suggest that forcing Congolese war rape refugees to be subject to yet another bureaucratic political structure is unfair and problematic. There are several criticisms that abound of the ICC and its procedures including: primacy of state sovereignty, effective criminal cooperation of state parties, lengthy trials and lack of US support. However, despite the bureaucratic issues, the ICC still remains one of the most gendered progressive criminal institutions that exist. As of 2010, 11 of the 18 judges who sit on the ICC are women who also happen to have expertise in gender-based violence: "the ICC is best placed of any court either

internationally or domestically in terms of the number of women on the bench and of having the institutional capacity with which to advance gender justice” (Chappell 2010, 493). Although it is dangerous to argue that women are more sensitive towards gender-based violence as opposed to men, it would seem as though parity among both genders in any court would have an approach more sensitive to women’s rights. Therefore the ‘gendered’ aspect that appears to be lacking at the individual determination process is made up for at the international level. The bench is still relatively new and one cannot expect gender violence to be made aware of overnight. However, the ICC remains Congolese war rape refugees’ most hopeful criminal body for progressing awareness and prosecution of gender-based violence to prevent future refugees.

The brutal epidemic of rape that is occurring in the DRC is not only leaving physical and psychological scars on the women in the country but also scars on the face of the international community. As progressive and influential as the Gender Guidelines may seem, they simply fail to truly help Congolese victims of war rape by: their lack of credibility since they are not binding, by continuing to foster a cultural and gendered bias and finally by perpetuating victimisation by making women recite the details of her rape. Rather women should claim status under persecution based on political opinion since rape in the Congo is used as a weapon. Furthermore, epidemic rape calls for epidemic action internationally therefore cases should be sent to the ICC so that future women in the DRC are not harmed. For the past several years, the Congo has been a woman’s hell. The Democratic Republic of Congo should not be another scar on the conscience of the world. Both men and women at the state and international levels have the power to change this. In this case what is personal is in fact international.

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