

Gender, Flight and Neglect: An Examination of the Sexual and Gender-based Violence against Congolese Women Refugees

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Abstract

This paper examines the experiences of Congolese refugee women in their flight from conflict, examining the SGBV perpetrated against them therein. The experience of SGBV throughout flight is examined in order to ascertain its nature and intent. It is important to determine the pattern of sexual violence and whether or not the use of sexual violence is random or a strategic and systematic tool for multiple and widespread displacement. The paper also looks beyond the movement of people internally, and examines the population flow across state borders. In doing so, the paper assesses the consideration of gender in the paradigm of international law. Refugee law based on the 1951 Convention Relating to the Status of Refugees is examined from a gendered perspective to determine to what extent women's persecution is considered or ignored throughout the legal process of refugee determination. The paper critically examines the gendered language and application of the Convention's definition of a refugee and especially the use of the public/private binary in the examination of applicant's experiences of persecution. Ultimately, this paper explores the insecurities of Congolese women, and the effectiveness of international refugee law to remedy said insecurity.

INTRODUCTION

This paper examines the experiences of Congolese refugee women in their flight from conflict, examining the sexual and gender-based violence (SGBV) perpetrated against them therein. The paper firstly assesses the conflict within the Democratic Republic of Congo (DRC) and its subsequent effects on the security of the populace, particularly the female population. This is important to the paper in order to demonstrate the magnitude of insecurity throughout the DRC, reflected in the movement of vulnerable peoples. The experiences of Congolese women will be represented through interviews as reported in NGO field reports and medical journals. Extracts from these interviews constitute an important source of primary data to the paper, whilst additionally providing unparalleled insight into the experiences of women's journey of flight, unattainable through quantitative data alone. The experience of SGBV throughout flight is examined in order to ascertain its nature and intent. It is important to determine the pattern of sexual violence and whether or not the use of sexual violence is random or a strategic and systematic tool for multiple and widespread displacement.

The second section of the paper looks beyond the movement of people internally, and examines the population flow across state borders. The paper assesses the consideration of gender in the paradigm of international law. Refugee law based on the 1951 Convention Relating to the Status of Refugees is examined from a gendered perspective to determine to what extent women's persecution is considered or ignored throughout the legal process of refugee determination. In so doing, the paper critically examines the gendered language and application of the Convention's definition of a refugee and especially the use of the public/private binary in the examination of applicant's experiences of persecution.

Ultimately, this paper explores the insecurities of Congolese women, and the effectiveness of international refugee law to remedy their insecurity.

SGBV and 'Disastrous' Displacement in the DRC

The ongoing conflict within the DRC has reached debilitating levels, where the population's physical security, particularly that of the female population, has reached an unquestionable low. According to the African Union, 'violence against women and girls has assumed unprecedented levels...the situation of women in conflict situations in Africa are deplorable', while Senior United Nations (UN) official, Margot Wallstrom, has labelled the DRC 'the rape capital of the world' (cited in Ssenyonjo 2010, p.179, UNHCR 2012d). This has resulted in an immense movement of peoples within and throughout the DRC and across state borders. The level of displacement in the DRC has been described by UNHCR's, Antonio Guterres, as 'disastrous' (UNHCR 2012c). As of January 2012 more than 1.7 million Congolese have become internally displaced peoples (IDPs) with 78 per cent located in the eastern provinces of North and South Kivu, where conflict is an ongoing concern (UNHCR 2012d). For women, their experiences of flight are shaped by their gender and its attendant vulnerabilities, due to the prevalence of SGBV, which does not simply abate upon flight but can be worse than the persecution from which they fled.

Contemporary armed conflict has caused civilian casualties that far exceed those suffered by the military. Thus armed conflicts are one of the primary causes of human insecurity and subsequent displacement throughout the DRC (UNHCR 2010, p.16). The UN Security Council suggests this point, acknowledging that 'casualties, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including...refugees and displaced persons...' (UN Security Council 2000, p.1). Patrick Cammaert, former Deputy Force Commander of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), further asserts women's increased vulnerability in conflict. He affirms that 'it is now more dangerous to be a woman than a soldier in modern wars' (cited in Otto & Gronberg 2009, p.10). In such an environment, women, fearful of their own security and the security of their family, flee their homes in the hope of safety. However, women's vulnerability to SGBV only increases during flight from conflict, at the hands of soldiers, armed militia groups and border guards (Otto & Gronberg 2009, p.8; Pittaway & Rees 2005, p.19; Ferris 2007, p.584-585). Hynes & Cardozo (2000, p.819) attribute women's heightened insecurity and exposure to SGBV to the comprehensive disintegration of social structures during flight. Furthermore, women's risk of sexual violence when fleeing from conflict is heightened if they have lost their husband or other male relatives in flight (NSW Refugee Health Service 2011, p.1).

While much of the DRC is now somewhat stable, violent conflicts are still waging between the official government forces and highly armed militant groups in the country's far eastern provinces. For civilian populations living in these provinces, the environment is highly volatile, particularly for women who have been subjected to systematic sexual violence. It is the soldiers and the militant groups which constitute the highest risk to women (UNHCR 2012d). In a MSF report a 23 year old woman described her experiences of SGBV post-flight:

We had fled from our village and built a bivouac - a small hut- in the bush to protect us from the war... One night a group of armed men came...they took me and other women... I was raped by four of them (Congolese woman cited in MSF 2004, p.23).

According to MSF, reports such as this are not exceptional, but rather the norm, with many families being forced to flee their homes resulting from strong fears of attack by armed gangs (MSF 2012).

Women's traumatic experiences of flight only compound existent trauma of the violence and persecution which they had experienced pre-flight. Highly traumatic events have been described by many women, who have predominantly described events of familial loss:

When we were running away on the road...you would see one of your friends being shot...someone with a baby on her back...you would see bullets going into the baby, you would see the blood leaking and realise that the baby is dead...such things used to happen when we were fleeing (Congolese woman cited in Walker 2007).

According to Walker (2007), many women have experienced rape, torture or witnessed the murder of family members during their flight from conflict. The health consequences for women following their experiences are significant. According to Laurie and Petchesky psychological consequences of SGBV, such as post-traumatic stress disorder (PTSD), depression and insomnia, can be some of the most pervasive for women (2008, p.31). MSF has documented considerable testimonies to support this assertion. According to a 17 year old Congolese girl interviewed by MSF 'at night I suffer from insomnia and nightmares... I recall the incident. Often that moment flashes back to me...' (cited in MSF 2004, p.24). Most of the testimonies offered are by those who have found access to health services; however, the protracted conflict in the DRC has resulted in relatively few available or suitable health services for the majority of survivors of SGBV (MSF 2004, p.20). Furthermore, while services may exist, the pervasiveness of armed gangs and soldiers severely inhibits the ability or the willingness of survivors to access health services. According to MSF, a growing number of cases have arisen where families have delayed accessing health services due to well-founded fears of violence at the hands of armed militia and soldiers along roads. According to a MSF nurse from Mweso hospital in North Kivu:

A woman began miscarrying late at night... with all of the military and armed groups on the roads, her family was too scared to travel during the night, so they waited until the morning to walk the few hours to our hospital. She arrived at noon. By then she had lost too much blood... She died within minutes of arriving (cited in MSF 2012).

Moreover, MSF notes that some women have presented to the hospital having been attacked en route to access health care for others, such as children. One woman was so severely raped by an armed group while trying to get her sick child to a hospital that she required more urgent medical care than her child upon arrival (MSF 2012). This inability to access effective health care constitutes a significant threat to the security of IDPs during flight throughout the DRC. The importance of effective health care is stressed by Correa-

Velez et al. (2007, p.2), who assert that health care is essential given the past exposure to torture, trauma and previously poor access to adequate health care throughout women's flight from conflict.

The trauma, emotional and physical trauma, of sexual violence is obvious; what is more debated is the strategic deployment of it during conflict and flight. Zeender & Rothing (2010, p.11) argue that the widespread use of SGBV, in particular gang rape, is not spontaneous. Much like the SGBV that has characterised the ongoing conflict throughout the DRC, the rape used against displaced populations has a systematic and strategic objective. Rape against displaced women by armed gangs; particularly in eastern DRC is being employed as an instrument of increased and often multiple displacement (ibid.). Zeender and Rothing assert that many IDPs attempt to remain as close to their homes as possible, however, shifting frontlines have forced many to flee greater distances (2010, p.10). The use of SGBV as a tool of increased and multiple displacement increases insecurity through the inability to maintain any form of communication or connection with home areas (ibid.). Additionally, displacement across great distances makes the possibility of return increasingly challenging or unlikely (ibid.). The multiple dislocations of populations, and the compounding insecurity which this creates, has meant an increase in population flows out of the DRC and across state borders.

Crossing borders: Phallocentrism and Female Exclusion

As the violence in the eastern Kivu provinces grows more volatile, thousands of Congolese people have had no choice but to seek refuge in neighbouring African states. The growing violence has attracted UNHCR attention; the agency has expressed concern for the security of civilians, particularly women being targeted in the fighting. According to UNHCR, more than 100,000 people have been displaced in eastern DRC since April 2012 (UNHCR 2012a). Furthermore, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) record that thousands of Congolese citizens have fled across nation borders to Uganda and Rwanda (UNHCR 2012a). According to the BBC, as of February 2012, Uganda had opened a third refugee camp in order to meet the demands of the growing influx of Congolese refugees (BBC 2012). Stephen Malinga, Uganda's refugee minister, estimates that approximately a hundred people a day are now crossing the border to escape the upsurge of violence within the DRC (cited in BBC 2012). Malinga asserted that more refugee camps were required because extant settlements such as Nakivale and Oruchinga were 'over stretched' (ibid.). Voicing his concern for the Congolese refugees, the minister stated that 'they [armed groups] would mistreat the women and...rob families...' (ibid.).

The strain of the recent population flows has similarly been felt in Rwanda, where new camps are also under construction (UNHCR 2012b). As of June 2012, UNHCR has begun to relocate Congolese refugees from an overpopulated 'transit centre' to a new camp to the country's south (UNHCR 2012b). The move is an effort by UNHCR to decongest the Nkamira transit camp where 12,500 refugees have arrived since late April 2012 (UNHCR 2012b). Prior to the recent influx, Rwanda was already host to approximately 56,000 DRC refugees (ibid.). According to UNHCR (2012d) Congolese refugees throughout Africa are estimated to number half a million. Given the severity and escalating nature of the current violence in the

eastern provinces of the DRC, with no signs of abating, it can only be postulated that the number of people crossing state borders will only increase in the coming months and year.

For women fleeing persecution, and attempting to cross state borders, it has become increasingly difficult to obtain refugee status, due to the subsidiary consideration of gender issues by international law. The refugee determination process is highly gendered and discriminatory in both practice and concept. International refugee law has been established within a male paradigm which simultaneously privileges men and ostracises women. The definition of a refugee has been set by the 1951 United Nations Convention Relating to the Status of Refugees as someone who:

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [her] nationality and is unable or, owing to such fear, is unwilling to avail himself [herself] of the protection of that country (UNHCR 2000, p.1).

The Convention has remained the centrepiece for the international protection of refugees. The Convention has been subject to only one amendment since its inception, this came in the form of the 1967 Protocol. According to Haines, the amendments by virtue of the Protocol 'fundamentally transformed the 1951 Convention from a document fixed in a specific moment in history into a human rights instrument which addresses contemporary human rights abuses' (cited in Edwards 2003, p.46). Whilst the amendments made to the Convention were significant and highly important, the male-centric language and application of the Convention was not, and has not, been adequately addressed. Freedman (2010, p.591) argues that the Convention was typical of the time of its creation. Freedman posits that questions of gender equality and women's rights were far from being central to politics of the era, especially international politics (ibid.).

Convention-based legal frameworks have failed to incorporate gender as the sixth criterion for a legitimate refugee, but have simply inserted gender into the five existent criteria. Thornton has dismissed the refugee definition as 'phallocentrism masquerading as universalism' (cited in Greatbatch 1989, p.519). While women and girls constitute the preponderance of refugees worldwide, little has been achieved in the way of dealing with them as women who have particular experiences of persecution and particular needs as women (Johnsson 1989, p.221). UNHCR has posited that women fleeing gender-based persecution may claim asylum under the 'social group' criteria (Greatbatch 1989, p.525). According to UNHCR, women may be recognised as a particular social group of 'women who face harsh and inhumane treatment because they are considered to have transgressed the social mores of their society' (cited in Greatbatch 1989, p.525). Greatbatch argues that this formulation takes advantage of the elasticity and universality of the definition, and considerably addresses the concerns of Convention critics (ibid.). The manipulation of the Convention definition is inadequate in responding to the needs of female refugees. Merely inserting gender-based claims into the existing criteria connotes that gender is unimportant, not warranting attention or consideration in and of itself as a separate criterion for refugee determination.

This stance is supported by UNHCR Executive Committee Conclusions on *Refugee Women and International Protection*. It is asserted that sole reliance on the 'social group' as a ground for persecution is inadequate. It is proclaimed that 'mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status' (UNHCR 1979, p.10). If international refugee law fails to pay specific attention to women and their experiences of persecution as a particular constituency, issues which are unique to women will remain invisible or sidelined (Bunch 2004, p.32). As a result, there will continue to be an inability to provide adequate protection to women seeking international recognition as refugees. This gender discrimination constitutes a great protection and security concern for Congolese women.

The phallogocentric nature of international refugee law is further evident in the hierarchical and asymmetrical examination and consideration of persecution through the dichotomy of the 'public' and 'private' spheres. According to Crawley the terms 'public/private' are used in multiple ways to establish distinction between state and society, and between non-domestic and domestic life (2007, p.17). The discourse of refugee law, according to Crawley, privileges the public sphere activity which is largely male-dominated, while ignoring and depoliticising the activities of women, which are predominantly within the private sphere (2007, p.4). The bifurcated, male-centric lens through which society is viewed, discounts the realm of women's lives and lived experiences outside of domesticity (Greatbatch 1989, p.519). Consequently, Greatbatch argues, a 'rhetorical and theoretical' divide is established between domestic and social culture (ibid.). In so doing, the political capacity of the family, and the relevance of intimate personal justice is ignored, and consequently, the subsequent inequalities of gender are not acknowledged (Crawley 2007, p.17). The allocation of asymmetric value to the public sphere sanctions and legitimises the gender-specific and gender-related persecution, disproportionately experienced by women within the private sphere.

Bunch argues that it is within the private sphere that the majority of violations against women's rights occur (cited in Razack 1995, p.53). The public/private dichotomy ignores the fact that for women, the family unit may be the greatest source of persecution and oppression (Crawley 2007, p.19). The international legal paradigm is dominated by the experiences of male refugees, which does little in the way of providing protection and security for female refugees. Male-centric application of refugee law fails to observe the way in which gender 'can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment' (UNHCR 2002, p.3). This is important in order to understand and to consider the motivations of flight, specific to women. Crawley argues that whilst refugee law does not innately exclude women's experiences, the public/private sphere distinction 'is used in a such a way that what women do and what is done to them is often seen as irrelevant to refugee law' (2007, p.20). Persecution experienced by women because they are women in the depoliticised private sphere is largely ignored or seen as unimportant. Stamatopoulou (1995) argues for the reinterpretation of international law from a female perspective which prioritises claims of SGBV. Stamatopoulou maintains that such a reinterpretation will 'lead to the recognition that violence against women, in the family...in peacetime and in war, is an affront to women's...dignity as human beings' (1995, p.39). Women's unique experiences of SGBV, and subsequent flight, must be acknowledged

and prioritised in international refugee law, which has hitherto, failed to provide adequate protection to women fleeing persecution.

Conclusion

The ongoing conflict within the DRC has reached debilitating levels, where the population's physical security has reached an incontrovertible low. Congolese women are particularly susceptible to the widespread violence. Their flight from conflict does not mean flight from their experiences of SGBV, but rather women find themselves in greater risk of persecution in flight. This is a result of the inherent insecurity of their situation but also the limitations of international law. Women's traumatic experiences of flight only compound existent trauma of the violence and persecution which they had experienced pre-flight. Much like the SGBV that has characterised the ongoing conflict throughout the DRC, the rape used against displaced populations has a systematic and strategic objective. Rape against displaced women by armed gangs; particularly in eastern DRC, is an instrument of increased and often multiple displacement. Unable to find measurable security within their own country, often after multiple displacements, women find no other option than to seek protection in neighbouring states. The escalating violence has resulted in growing numbers of Congolese asylum seekers, a rise which UNHCR has judged to be a great concern.

However, the phallogocentric nature of international refugee law, in particular the use of asymmetrical public/private dichotomies, has meant women have received inadequate protection from their persecution. The allocation of asymmetric value to the male dominated public sphere sanctions and legitimises the gender-specific and gender-related persecution that is disproportionately experienced by women within the private sphere. Male-centric interpretation of the law has left women ignored and their experiences depoliticised and viewed as inconsequential. For Congolese refugee women, their insecurity is highly personal, intimate and determined along lines of gender. Women's unique experiences of SGBV must be viewed as an issue in and of itself, not simply a tangential issue.

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