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Jennifer M. Hentz

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The Impact of HIV on the Rape Crisis in the African Great Lakes Region

by Jennifer M. Hentz

DISCUSSING THE MASS RAPE OF WOMEN in the former Yugoslavia in 1992, Catherine MacKinnon, a law professor and noted feminist theorist, argued that, “if [women] believed existing approaches to human rights, we would not believe we had any.” This exaggeration exposed the gap between human rights law and women’s experiences. MacKinnon advocated that the law should reflect women’s experiences in the former Yugoslavia and acknowledge that rape was a tool of genocide, part of a systematic plan, and not an isolated occurrence. She argued that as women’s human rights advocates, we must look at the reality of women’s lives first and “hold human rights law accountable to what we need, rather than to look to human rights law to see how much of what happens to women can be fit into it, as we are taught to do as lawyers.”

A decade later, MacKinnon’s argument holds true. Rape by soldiers has long been a crime under national military codes, but international law has only recently come to recognize its use as a tool of war. This responsive approach succeeded in bringing rape from a prohibition in national military codes, to the categorization of rape as a form of torture, and finally recognizing rape as an independent crime under international law. This change in the law was created in response to the overwhelming evidence of systematic rape during periods of armed conflicts in both the former Yugoslavia and Rwanda. The law was developed in response to those circumstances and the demonstration that systematic rape techniques are not unique to one locale. While this advancement in the law cannot be minimized, it is critical at this time, and in response to ongoing circumstances, to review the legal parameters of the crime of rape and re-evaluate its efficacy. The human rights community has an obligation to evaluate the impact of the purposeful infliction of the HIV virus on victims as a systematic measure designed to eliminate an identified segment of the population, or more simply, as a tool of genocide.

THE RWANDAN RAPE CAMPAIGN

IN 1994, OVER ONE MILLION PEOPLE WERE KILLED in 100 days when the Hutu majority in Rwanda attempted to eradicate the Tutsi minority from the population. Having seen the footage of the massacres, interviewed survivors, and lived in Rwanda, it is still difficult to imagine the horror of these months. The tools of the genocide were predominantly machetes, sticks with nails sticking out of the end, and garden implements. People were killed with screwdrivers driven into their skulls, they were drowned in the rivers, and they were set on fire. They were also killed with guns and grenades.

The calculation of one million dead includes those people whose lives ended within those 100 days by one of the above means. It does not account for the women who were intentionally infected with HIV during those 100 days as part of a systematic rape campaign designed to infect Tutsi women who survived the genocide with the virus. The number also does not account for

those who were killed leading up to the start of the genocide on April 6, 1994, and those whose deaths followed the official cessation of hostilities.

Rape and sexual violence were an integral part of the genocide campaign in Rwanda. The prevalence of sexual violence and a targeted media campaign against Tutsi women set the stage for the scale of sexual abuse that was a part of the genocide. It is currently the subject of litigation before the International Criminal Tribunal for Rwanda (ICTR). In addition, historians and legal scholars have documented the media campaign leading up to the genocide. One of the local newspapers, *Kangura*, regularly published articles and cartoons depicting Tutsi women as sexual creatures who used their beauty and sexual abilities to influence decision makers. Cartoons depicted leading international political figures in sexually compromising positions with Tutsi women. The Hutu Ten Commandments, a widely dispersed propaganda tool, warned that Tutsi women were used as a weapon against Hutu men. Another of the Commandments declared any Hutu man a traitor if he had a Tutsi wife, mistress, or secretary, despite the fact that intermarriage was not uncommon between the two groups. As a result, Hutu members of a mixed family were instructed to kill the Tutsi members of their family to demonstrate their commitment to the Hutu movement, and usually to spare their own lives, if only temporarily.

Organizers of the Rwandan genocide intended the rape campaign as a tool of genocide. The blatant nature of the campaign is most clearly demonstrated by the lists of Tutsis who were to be killed that were posted prior to April 6, 1994. The people to be killed were



Judges of the International Criminal Tribunal for Rwanda (ICTR).

identified and their locations were well known in the community. No covert program or element of surprise was part of what happened to these people. Men were killed, women were raped and then killed, or women were kept as sexual slaves or “wives.”

The rape campaign in Rwanda was extensive. Some organizations estimate that every woman who survived the genocide was a victim of sexual violence. Other more conservative estimates range from 250,000 to 535,000 rape victims during those 100 days. Further, testimony before the ICTR has documented gang rapes, sexual torture and humiliation, sexual slavery, and other varieties of sexual abuse.

THE USE OF HIV INFECTION AS A TOOL OF WAR

MILITIAS IN THE GREAT LAKES REGION are estimated to have HIV infection rates much higher than the general population. It is estimated that 60 percent of the militia in the neighboring Democratic Republic of the Congo are HIV positive. In Rwanda, the HIV infection rate for the general population is 11 percent. The dramatically increased infection rate among military personnel places women raped by soldiers or other militia at significantly higher risk of infection. Some assert the nature of this risk is a coincidence. But this assertion is demolished by survivor groups' allegations that the Rwandan government paid men known to be HIV positive to rape Tutsi women. Rape and HIV infection were a part of the genocide campaign.

The strategic use of HIV infection to destroy the Tutsi community is terrifying. Logically, one would predict that some Tutsis would escape the violence of the genocide. If the women who survived were consistently infected with HIV, however, it would ensure the slow but ultimate destruction of the Tutsi community.

“Sixty-seven percent of
genocide rape survivors
reported being HIV positive in
a 2001 study.”

Every woman infected would die, those who engaged in sexual relations (either Tutsi or Hutu “traitors”) would likely become infected, and any children born of Tutsi women would likely be infected and die. The success of the rape campaign is demonstrated by the fact that 67 percent of genocide rape survivors reported being HIV positive in a 2001 study. Genocide rape survivors are six times more likely to be HIV positive than the general population. Consolee Makanyirigira, coordinator for the Rwandan widows organization AVEGA, pointed out the intent of military personnel to infect rape victims when she stated that the Hutu used two weapons to kill, “one was to use guns and machetes; the other was to infect us with AIDS.”

There are no baseline statistics documenting rape prior to 1994, and statistics on sexual violence are still difficult to acquire in Rwanda and the larger region. In large part, this is due to the strong cultural stigmas associated with both rape and AIDS. Culturally, Rwandan women are discouraged to admit they have been raped. Additionally, women fail to report rape because there are no means to prosecute the rapists. The Rwandan police admit that they lack the ability to provide medical rape tests to document the occurrence of a rape. Without this medical confirmation, prosecution cannot be successful.

The stigma associated with HIV/AIDS is equally damaging. Particularly in Rwanda, to admit that one has been raped during the genocide is to admit to being HIV positive. Because medica-

tion is nearly impossible to obtain and there are limited treatment resources available, not only do women not want to be tested for HIV, but they do everything within their ability to conceal their HIV status. Once it is discovered that a woman is HIV positive, she is generally isolated from her family and community. In a country where 90 percent of the population relies on subsistence agriculture for their livelihood, to be removed from one's land is to be left to die. Charitable resources for these women are scarce, and those that do exist tend to be clustered in the capital city of Kigali.

In addition to the lack of material resources, there are no legal resources for these women. Only a handful of national trials for genocide suspects have been completed, and the country is ill-equipped to conduct either the formal trials or the less formal *gacaca* trials. While the government regularly opines the healing power of the *gacaca* tribunals, the members of these panels have only recently begun training—ten years after the genocide. At the international level, rape has been declared an international crime, but there has been no recognition of the use of HIV as a tool of genocide. Those persons responsible for orchestrating HIV infection through a systematic rape campaign as a genocidal tool should be prosecuted not just for rape, but for genocide through HIV infection.

THE LAW GOVERNING GENOCIDE AND RAPE

UNDER INTERNATIONAL LAW as embodied in the Genocide Convention, a person is guilty of the crime of genocide by performing certain acts “with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.” The crime has three main elements: (1) a physical element, in the form of the commission of at least one of the prohibited acts; (2) the direction of the act



Jean Paul Akayesu with his attorneys John Philpot and Andre Tremblay immediately before his Appeals Court judgment commenced.

toward one of the listed groups; and (3) a mental element, which consists of the intent to destroy the group in whole or in part.

The ICTR, in its landmark *Akayesu* decision in 1998, declared rape an independent crime under international law. Prior to this decision, rape had been categorized as a form of torture, but never an independent crime. In finding *Akayesu* guilty, the Tribunal set the stage for addressing the serious nature and the systematic use of

rape as a tool in armed conflict. While the indictment included both rape and genocide, the causal connection was not made between the two and rape was not charged as a tool of genocide.

The *Akayesu* decision defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” The Tribunal explored the contours of this broad definition with specific examples throughout the judgment. It examined coercion and the facts that would lead to physical invasion through examples provided by victims’ testimony. The ICTR was careful to define rape in conceptual terms and not as a laundry list of behaviors. This approach was modeled after the definition of torture, which provides the conceptual parameters of tor-

International tribunals have consistently relied on national legal decisions to guide them in matters of first instance. American courts have addressed the inclusion of intentional HIV infection in the commission of crimes and the aggravation of a crime. For example, in *State v. Hutchinson*, the Ohio Court of Appeals in 1999 convicted the defendant of raping an 8-year-old boy with the knowledge that he was HIV positive. The defendant acknowledged in police interviews that he was aware that unprotected sexual activity would place any sexual partner in danger of HIV infection and, ultimately, death. The defendant was convicted of both attempted rape and attempted aggravated murder. This analysis is consistent with foreign court decisions, which have consistently acknowledged the use of HIV as an individual tool of murder. International tribunals should expand this logic to apply to the genocidal rape campaigns at issue before them.

Despite the evidence of its prolific use, there has been no effort to prosecute anyone for the use of HIV infection through rape as a tool of genocide during the 1994 genocide in Rwanda. Upon first glance, this may seem unnecessary, as those responsible for the genocide are being tried for both rape and genocide. This, however, is not sufficient. It is important to legally recognize the use of HIV as a genocidal weapon because its use is not isolated to Rwanda but has become a commonly used tool throughout the Great Lakes region.

INSTABILITY IN THE GREAT LAKES REGION BREEDS INCREASED ABUSES

WHILE IT HAS NOT RECEIVED EXTENSIVE AMERICAN media coverage, Rwanda recently declared war on the Democratic Republic of Congo (DRC) as part of a long-standing and complex political battle within the region. The DRC regularly accuses Rwanda of military incursions into its territory, and Rwanda remains furious that many of the people responsible for the 1994 genocide continue to live and plan attacks from within the borders of the DRC. In addition, there are regular flows of refugees from Burundi and the DRC into Rwanda and vice versa. The porous nature of these borders, along with similar linguistic and ethnic dynamics within the countries, only serves to muddle the complex politics of the region. One point is clear—problems in one of these countries will always spill over onto their neighbors. The rape and HIV crisis is no exception.

The Great Lakes region has been engulfed in violence since its independence in the 1960s. The civil war in the DRC is now widely acknowledged to have claimed the most lives of any recent civil war. Burundi, like Rwanda, is divided along a Hutu-Tutsi divide that has led to civil unrest, claiming more than half a million lives since 1972. Both of these countries are in the midst of long running periods of civil unrest. Women become increasingly vulnerable under these circumstances. Rape is being reported as a common element of the violence that is pervasive in each of these countries.

The chaotic situation in the DRC and the lack of physical security available to international workers has left a void in the documentation available as to the number of rapes committed and the HIV infection rate of those raped. The patterns and parties involved, however, in large part mirror an exaggerated version of what was seen in Rwanda in 1994. The most recent reports from the DRC detail rapes more brutal than those seen elsewhere. The brutality of these rapes, and the attacks that accompany them, have



Map of Rwanda.

ture, allowing courts discretion to determine whether the specific facts of a case constitute torture. Likewise, with rape, a case-by-case analysis is important in allowing the factual circumstances of a woman’s experience to find reflection in the law, without the need for modification or expansion of the law.

In addition to creating this factually flexible definition of rape, the ICTR noted that “rape and other inhumane acts” examined in the *Akayesu* decision were committed as a part of the genocidal plan. The ICTR received testimony of rapes, sexual humiliation, and sexual violence. None of the testimony reflected in the opinion of the ICTR indicated that any evidence had been admitted as to the HIV status of either the accused or the victims. This element, however, is critical in linking rape to genocide. Although rape is without dispute a violent act intended to cause injury to the victim, injury alone is not sufficient to constitute genocide. Moreover, there is no evidence to indicate that the rapes alone, without intentional or reckless HIV infection, were designed or intended to cause death.

led to reports that United Nations peacekeeping forces in the DRC (known as MONUC) have refused to pick up wounded rape victims and escort them to medical care because they fear attacks from nearby rebel forces. Veteran human rights workers with 30 years of field experience report that they have never seen a rape campaign so brutal or widespread. There are reports of women being tied to stakes, like a goat to be slaughtered, and gang raped; raped women who subsequently have their labias pierced and padlocked by their attackers; and women who require reconstructive surgery because the brutality and consistency of the rapes has dislodged their internal organs. These rapes are encouraged by the military structure and committed by a militia that is estimated to be 60 percent HIV positive.

CONCLUSION

TO CONTINUE TO OVERLOOK THE CONNECTION between rape and HIV infection as a genocidal tool is to undervalue the role of sexual violence. Although rape was historically seen as a byproduct of war to be discouraged by military leaders, paired with HIV, it has transformed into an extremely effective tool used to destroy, over time, selected communities of people. When the renowned lawyer Raphael Lemkin coined the term genocide in the 1940s, he was careful to distinguish that “genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.” The systematic infection of a selected group with HIV through a rape campaign falls squarely within this definition.

The solution to this problem is complex and requires the efforts of many facets of the international community. The law must acknowledge and criminalize the use of HIV as a tool to facilitate genocide; the international health community needs to provide testing, treatment, and education about AIDS; and the communities themselves must come to recognize that allowing this method of warfare to continue will harm the fabric of their societies socially, economically, and politically. Ultimately, it is not the international community that will bring this practice to an end, but the men and women of the Great Lakes region. The international community, however, in all its aspects, must provide the tools to facilitate that change. *HRB*

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AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW
ACADEMY ON HUMAN RIGHTS AND HUMANITARIAN LAW
4801 Massachusetts Ave., NW

Washington, DC 20016-8181

Phone: (202) 274-4215

Fax: (202) 274-4198

E-mail: iamoot@wcl.american.edu

Web: wcl.american.edu/pub/humright/mcourt/