

“I Need to Hurt You More”: Namibia’s Fight to End Gender-Based Violence

Following decades of civil conflict and antiapartheid struggle, Namibia held the first one-person, one-vote election in 1989. The country achieved electoral democracy in 1990 and committed itself to a process of national reconciliation. The early 1990s also saw the reconstitution of civil society organizations and an expansion of international organizations. It was a moment ripe for progressive social change and legislative transformation. This article examines one social movement that benefited from this rapidly changing political space—the campaign to end gender-based violence. Through an analysis of gender scripts that preceded and persisted long after the political conflict ended, we explore the gap between legislation and social transformation.

At the end of the first decade of democracy, Namibia had cultivated a home-grown movement calling for stricter laws on rape. Women achieved notable electoral success during this decade through the use of gender quotas (enforced by law at the local level and facilitated by voluntary political party quotas at the national level), pressure from regional and national women’s movements, and a closed-list proportional representation electoral system (a strategy recognized for improving election victories for women and minority groups), filling parliament with a small but critical mass of allies (Bauer 2004; Bauer and Britton 2006).¹ This period corresponded with the regional push for the advancement of women’s empowerment and development. The leaders of the Southern African Development Community made sweeping commitments to advance the status of women and to combat gender-based violence. This combination of forces, led most notably by the national movement to end gender-based violence, culminated in Namibia’s Combating Rape Act (No. 8 of 2000). The act is known

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¹ In a closed-list proportional representation system, the political parties select a list of candidates prior to the election. The voters then vote for the party as a whole and do not have a choice of candidates within each party. This often ensures that female candidates do not get moved to lower positions on the list.

as one of the world's most progressive rape laws because of its expansive definition of rape, its lack of gender-specific identifiers for victims and perpetrators, its detailed description of coercive circumstances, its limitations on the use of the survivor's sexual history in criminal trials, and its prohibition of marital rape (Thomas et al. 2011). Yet Namibia continues to suffer from epidemic levels of sexual violence. The end of armed conflict and the advancement of women in the public sphere have been accompanied by an increase in violence against women. As the fighting subsides, violence against women increases (Samuelson 2007). This article examines that troubling disjuncture.

In this article we highlight various perspectives of Namibian antirape activists and political leaders concerning the factors contributing to sexual violence in the country. By sexual violence, we are referring to rape, domestic violence, and sexual assault. The antirape activists in the study were also concerned about the changing nature of violence against women, which, in their assessment, is becoming more gruesome and graphic. Several dominant perspectives emerged in our study. Some activists attribute the continued violence to a failure of accountability about war rape and too narrow a conception of national reconciliation. According to many women interviewed, during the war, women's struggle for gender rights was subordinated to the struggle for national liberation. As occurred across the continent, Namibian women were asked to put their quest for recognition and equality second to the independence struggle.² Subordinating the struggle for gender rights to the struggle for national liberation—and, later, nation building—created a situation in which gender issues are often publicly advanced through legislation and campaigns for elected office but privately restricted within households and through socially ascribed gender roles. Other activists maintain that gender violence is linked to entrenched patriarchal attitudes found throughout society. These attitudes sustain a perception that women are akin to property, subject to regulation and control by men. Another view widely held in the country and discussed in many of the interviews in our study is that gender violence is fueled by a backlash against women, related to the progress some women have made in elected office, the public sector, and business. Violence becomes symbolic: while not targeting any specific group of women, men who feel threatened and disenfranchised in the new dispensation are lashing out against the women in their own lives—violently putting women back in their place. Many of these

² See Becker (1995), Bauer and Britton (2006), Fallon (2008), and Tripp et al. (2009).

perceptions suggest that persistent patriarchal views normalize gender-based violence.

In contrast to such patriarchal views, the Combating Rape Act presents one of the most progressive understandings of rape in the world and is a vital tool that antirape activists use to combat gender violence and promote more progressive frameworks for gender equality. While significant studies emphasize the implementation of the Combating Rape Act (LAC 2006), less attention has been paid to colonial and customary constructions of rape and how these constructions frame contemporary debates. Through archival research, we examine how contemporary discourses on sexual violence are framed by assumptions embedded in colonial and customary law. We explore how notions about degrees of rape—the idea that some rapes are “real” or more harmful while other rapes are “acceptable” or less harmful—originated in colonial laws, continued during the independence struggle, and surface in rhetoric surrounding rape today.³

We center our discussion on the parliamentary debates surrounding the Combating Rape Act because of their importance in the contemporary movement to end gender violence within the postwar context. The parliamentary debates illuminate diverse attitudes toward gender violence, which can be conceived as competing gender scripts that signify movement beyond past silences about rape while also reflecting continuities in assumptions about rape that impede contemporary struggles to end gender violence. Regressive gender scripts continue to plague women’s lives long after the war is over and after progressive laws have been passed. The disjuncture between progressive law and regressive gender scripts may help explain why Namibian efforts to address gender-based violence remain incomplete.

³ The interdisciplinary methods in this essay rely centrally on a rhetorical analysis of the parliamentary debates preceding the passage of the Combating Rape Act, which is supplemented by field-based research that Hannah Britton conducted in Namibia during two separate multi-month fieldwork trips in 2007 and 2008. Britton conducted participant observations, seven group interviews, and thirty-eight semistructured in-depth interviews with Namibian antirape activists; members of Parliament, nongovernmental organizations, and the police and justice system; social workers; prosecutors; and members of the medical community in three research sites located within two different regions: one in the urban Khomas Region and two more in the more rural Erongo Region. These interviews and observations are used in this article to supplement the historical and rhetorical analysis. Britton’s fieldwork was supported through a New Faculty General Research Fund grant from the Kansas University Center for Research, the Kansas African Studies Center, the College of Liberal Arts and Sciences, and the Department of Political Science at the University of Kansas.

Twin legacies of struggle and silence

Namibia is classified as a postwar, postapartheid, democratizing country. This emergent system is embroiled in a process of defining itself in response to, and in opposition to, its past. Namibia confronts a legacy of entrenched racism and sexism, civil and regional conflict, and state secrecy and violence. The state is plagued by resource inequality, scarcity of public funds for social services, neoliberal imperatives that dictate policy choices, growing dissatisfaction with the pace of transformation, and shallow notions of reconciliation. Namibia is ranked as an upper-middle-income country, yet inequalities remain vast, and few resources are directed toward pressing social issues like gender-based violence.

Aspects of Namibian history, including German colonization and the implementation of apartheid by South Africa, prompt some scholars to argue that Namibia's history distinguishes it from other parts of Africa. On closer examination, however, Namibia may represent a microcosm of the continent. Namibia had one of the first twentieth-century genocides, in which the Germans attempted to obliterate local resistance by killing approximately 80 percent of the Herero population and half of the Nama population. The German military then drove survivors of these mass killings off their land, sending many to forced labor camps, actions that set the stage for apartheid in later years and, some argue, created a model for the Holocaust. There were subsequent genocidal acts, including slaughters of indigenous groups in 1912–15 (Gordon 2009). Following Germany's defeat in World War I, the League of Nations issued a mandate that transferred control of the territory now known as Namibia to South Africa in 1920. South Africa continued to rule Namibia even after the UN General Assembly voted to revoke the mandate in 1961.

The Namibian war for independence, lasting roughly from 1966 to 1988, was a protracted guerrilla war that crossed borders and pitted neighbor against neighbor. The struggle for liberation in Namibia was led by the South-West Africa People's Organization (SWAPO) and included armed conflict among soldiers from Cuba, Angola, South Africa, and Namibia (Baines and Vale 2008). After repeated attempts at Namibian independence that involved UN diplomatic and peacekeeping intervention, peace was eventually secured with a tripartite agreement among South Africa, Angola, and Cuba (with the United States and the Soviet Union serving as observers) that led to South Africa's withdrawal and Namibia's official independence in 1990. The transition to independence "was, in fact, a decolonization, closely supervised by international forces, and facilitated by a 'transitional pact'" (Bauer 2001, 36). It occurred during an upsurge of support for neoliberal economics and multiparty poli-

tics, and this combination shaped the contours of the new constitution (Bauer 2001, 36).

Despite the violence of the twenty-six-year conflict, and over one hundred years of foreign occupation, Namibia's transition is often championed as a model of international diplomacy and mediated transitions, especially in the face of continued civil and regional conflicts across the globe (Melber and Saunders 2007). In 1990, political leaders committed themselves to a policy of national reconciliation, focusing on unity, respect, and progress. But, unlike many African governments, the new Namibian government chose to move forward from the nation's war-torn past without a formal national truth commission or criminal tribunals. While committing themselves to national reconciliation, leaders opted to forgo institutionalized, public processes of transformational justice and pursued amnesty for past abuses. Many suggest that the liberation-movement-turned-ruling-party, SWAPO, would have been implicated in torture and disappearances, and so, as Heike Becker (2011, 522) observes, "officially sanctioned forgetting has been the cornerstone" of the 1990 Policy of National Reconciliation. Although South African forces were assumed to be responsible for most of the abuses and violence, accusations of wrongdoing followed SWAPO for decades, charges that were amplified once SWAPO detainees returned to Namibia after independence (Conway 2003). The International Committee of the Red Cross (ICRC), the South African Truth and Reconciliation Commission, and the International Criminal Court have sought to investigate SWAPO leaders for the violence they may have perpetrated. Debate continues about the best approach to SWAPO's alleged abuses: dialogue, confrontation, or amnesia. Many in the press and public have advocated moving forward. Others worry that shallow reconciliation threatens the democracy still under construction (Hohn 2010), contributing to the continuation of dominant party politics and the consolidation of executive power (Bauer 2001).

The state's desire to forget the past is further complicated in terms of gender. Women served as a vital force in the Namibia liberation movement as soldiers, activists, medical professionals, and struggle participants (Becker 1995), yet conscious decisions placed gender issues second to the liberation struggle, as in much of Africa (Bauer and Britton 2006; Fallon 2008; Tripp et al. 2009). This normalized gender scripts that designated women's rights secondary to nation building rather than regarding these matters as interdependent.

As in other southern African conflicts where "women took up the apparently divergent roles of warriors and supporters" (Samuelson 2007, 834), tensions persist between, first, an authentic, progressive attitude among

party leaders and decision makers to advance the cause of women; and, second, regressive notions of women's position in society that are often stringently maintained, even by leaders in parliament (Hubbard 2007). Women have secured notable levels of political representation and have passed significant legislation (Bauer 2004). Through local laws and voluntary party quotas, women followed the fast track to representation found elsewhere on the continent (Bauer and Britton 2006).

Women across Africa mobilized during national struggles for liberation, and they maintain reputations as former liberation leaders and fighters. What differentiated the transitions of the 1960s–1970s from the transitions of the 1980s–1990s, however, was that women learned that they must act quickly to secure public rights, lest they be relegated to the domestic sphere. A process of political learning shaped women's activism across the continent. In the 1980s and 1990s, domestic and international women's groups pressured governments to rewrite electoral laws and systems during transitions.⁴ Continent-wide measures increased the representation of women in office on normative grounds (i.e., this was the right thing to do) and because African leaders wished to demonstrate their legitimacy. But gaining political office and drafting progressive feminist legislation were only the first steps on the path toward improving the status of women. Legislation must be translated into concrete policies to change women's lives. Many nations have stalled in implementing progressive legislation, creating concern among scholars and antirape activists that the success women have had in the public sphere in Namibia and across the region is fueling a backlash of violence against women in the postwar era.⁵

The context of gender-based violence in Namibia

High levels of reported sexual violence in Namibia call for explanation. At the 2007 Namibian national conference to combat gender-based violence, explanations ran the gamut from claims that violence is increasing because of the influence of Western media, alcohol abuse, and the destruction of indigenous values to claims of too much religion or too little religion. One theory—a theory to which we strongly object—is that the violence stems from cultural phenomena. This inherently racist explanation fails to acknowledge that violence against women cuts across cultures. There is nothing uniquely Namibian, or African, about gender violence. Culture

⁴ See Britton (2005), Bauer and Britton (2006), Fallon (2008), and Tripp et al. (2009).

⁵ See LeBeau, Ipinge, and Conteh (2004), LeBeau and Spence (2004), Britton (2006), Moffett (2006), and Bhana, de Lange, and Mitchell (2009).

does not cause violence. Uma Narayan (1997) and December Green (1999) point out that gender violence replicates and entrenches social scripts of gender inequality and patriarchal dominance. Cultural explanations are fraught with biases that often limit understanding of the causes of violence. Participants in the conference also gave credence to the idea that Western television, movies, and music—which fetishize the comingling of violence and sex—glamorize promiscuity and promote alcohol and drug use. Blaming promiscuity and substance abuse for gender-based violence, however, holds the victim accountable for her assault (Estrich 1986; Torrey 1995).

In contrast to a culture-based explanation, Norman Tjombe of the Legal Assistance Centre (LAC), located in Namibia, contends that gender violence exists because of patriarchal power.⁶ Although there is an ever-increasing globalization of media influences, sexual violence and alcohol use predate this influence, and sexual violence continues to occur in cultures where such influence is minimized. Tjombe argues that until a radical alteration of the patriarchal gender regime occurs, the power imbalance will continue.

While culture is not an explanation for gender-based violence, context may be a relevant factor. Patriarchy is not invariant. Legacies of occupation, war, and apartheid create a particular context of violence in Namibia. Rape was employed as a tool for enforcing racial hierarchies under *de facto* colonial rule and apartheid (Scully 1995; Meintjes, Pillay, and Turshen 2001). While Namibia never witnessed the levels of genocidal rape seen in Rwanda and the Democratic Republic of the Congo, the former Namibian government and South African forces used sexual violence to demoralize the opposition. But opposition forces also employed this particular brand of violence to control women soldiers within their own ranks. During the independence struggle, understandings of rape became bifurcated. A line was drawn between the rape of civilians by South African forces and the rape of female combatants by their peers or commanding officers, generating a national script that accredited degrees of rape related to women's various roles during conflict (Green 1999; Krog 2001; Scanlon 2008).

In her firsthand account of life in the military resistance, Teckla Shikola (1998) captures this bifurcated view. She reserves "real" rape for the actions of South African military forces in the course of their sweeping attacks on Namibian communities: "Real rape occurred inside Namibia, rather than in the battle zones. Women in the villages were raped by the

⁶ Tjombe made this statement at the National Conference on Gender-Based Violence, which was hosted by the Ministry of Gender Equality and Child Welfare and held in Windhoek, June 19–22, 2007.

black forces. Those who were not raped were killed or beaten and afterwards their crops were destroyed and they abandoned their houses” (145). South African forces and members of the all-black South West African Territorial Force committed these rapes: “The South Africans really knew how to divide and rule. They made sure it was the black troops that raped” (145). Shikola distinguishes between “real rape” and something else, something different:

I didn’t really see rape cases as such, but you know, sometimes, when you are coming from home, you are new, and they train you in the army to say “yes.” Whenever someone in charge calls you, you shouldn’t refuse, you don’t say no, you have to go. You feel scared of saying no, you cannot talk directly to a commander. Sometimes the chiefs would call out these poor young girls fresh from home. The chiefs made love to them, and the women became pregnant without knowing the person who impregnated them, sometimes they didn’t even know his name. Some commanders had fifteen or eighteen kids. It is not really rape in a direct way as such but just the way the chiefs were. I didn’t hear of any case where someone was raped. Maybe it happened in the civilian camps, or maybe women didn’t come forward because they felt ashamed about reporting to people what had happened. I haven’t really known a case where a woman went and reported that she had been raped. (143)

Shikola clearly hesitates to label the sexual violence she and other women combatants experienced as “real rape” (Estrich 1986). Rape by comrades becomes part of their role as combatants. Shikola recognizes the harm involved in the acts, but she never heard it called rape. Her interpretation leaves space for female agency even in the face of pronounced sexism and sexual violence. Yet this example also underscores the idea that part of women’s service to nation building is defined by submission to certain unwanted sexual encounters. Rape becomes “manifestly coercive yet consensual” (Samuelson 2007, 843). Rape is “often simply viewed as an ‘unfortunate’ consequence of war” (Scanlon 2008, 31).

A conception of degrees of rape is not inherent in Namibian culture.⁷ A broader legal rhetoric draws similar distinctions. Sexual offense laws

⁷ The notion of degrees of rape can be observed in conflicts across the continent; see Green (1999), Turshen (2000), Krog (2001), Bowman (2003), Utas (2005), and Scanlon (2008).

in Namibia are rooted in the same common-law tradition as in Western societies and inherit problematic assumptions concerning degrees of rape (Schwikkard 2009). Susan Estrich (1986) first delineated this jagged edge in rape law: “real” rape is constructed as involuntary and conducted by a stranger (i.e., not the commanders of the female combatants); other rapes are considered questionable in terms of legal and social standards, and often the survivor is deemed culpable in some way.

Claims about degrees of rape fail to acknowledge that both forms of rape constitute real rape while also reinforcing multiple hierarchies. For example, the South Africans were able to capitalize upon the idea of “real” rape, even if unwittingly, to stigmatize both the black troops and the women who were raped. As Pascale Bos (2006) has noted in another context, interpretations of wartime/genocidal rape often ascribe causality to the predatory nature of particular ethnic groups or to the objective of ethnic cleansing, while peacetime/everyday rapes are attributed to sexual urges. But the construction of this binary obscures more than it reveals.

SWAPO commanders’ sexual abuse of women within their units created gendered hierarchies among Namibians while also adding an air of illegitimacy and lack of patriotism to any allegation that these sexual encounters constituted rape. Silence is always a problem for gender violence (Green 1999), but when silence is infused with calls for loyalty, nationalism, and patriotism, it becomes more intractable (Turshen 2000; Utas 2005). Resistance fighters who experienced rape were not only condemned to silence, their silence sustained the facade that these sexual exchanges were voluntary and consensual. The absence of social mobilization against this form of sexual violence during war quietly reinforced oppressive gender scripts during and after the war.

In postwar Namibia there is continuity and discontinuity in the meaning ascribed to gender, rape, and social transformation in the state and society. Even before the end of apartheid rule, activists and legal organizations throughout the country began pressing for comprehensive changes to existing legislation, including stiffer penalties for perpetrators and fundamental revisions to the definition of rape. Pressure continued throughout the 1990s and included legal submissions and lobbying as well as mass protests, marches, and demonstrations (Hubbard 2007). Local communities often protested for stronger laws following the rapes of community members. The increased visibility of rape, in particular the rape of young children, mobilized widespread political action. A solidified grassroots movement, manifested in community-based action, emerged in response to specific horrific rapes.

The antirape activists in Namibia focused much of their movement on passing strong legislation against rape. In a campaign that featured women as agents of transformation and empowerment mobilizing against experiences of victimhood, women played central roles in constructing a law that gives the state the ability to confront rape swiftly through prosecutions. The timing of this legislative campaign also benefited from the influence of the international anti-violence against women campaign (Weldon 2002). While working to ensure that the law was a domestic creation, legal experts drafting the Namibian legislation had the benefit of knowing which types of legislation had proven successful internationally (LAC 2006). The resulting Combating Rape Act is important for understanding how progressive legislation, influenced by activists and legislative experts outside of government, has focused the state on rape prosecutions. Yet the prevalence of certain gender scripts affects which rapes are prosecuted.

Passage of the Combating Rape Act was a vital victory and marks significant progress in Namibia. Yet the law coexists with increasing levels of gender violence, continuing silence about certain kinds of rape, and persisting rape myths.

The Combating Rape Act

The Combating Rape Act represented a long-sought-after victory for antirape activists throughout Namibia. Several significant legislative advances deserve mention. In addition to minimum sentencing and stiff bail provisions, the 2000 act reoriented the legal system toward a comprehensive, victim-centered approach. The definition of rape was expanded in two critical ways. First, it included men, women, boys, and girls. Second, it was altered to include sexual violations, including oral rape; rape with objects; rape with any body part; any form of genital stimulation, including forced masturbation of oneself; gang rape; and forced sexual acts with animals. Despite objections by some members of Parliament (discussed below), the act includes marital rape, and it states that, “No marriage or other relationship shall constitute a defence to a charge of rape under this Act.” Thus, the act specifically rejects the logic behind “degrees of rape.”

The act also takes important strides in expanding the types of evidence and arguments admissible in court. Prior to 2000, standards for evidence in Namibia were based in the English (and South African) common-law tradition, which requires that accusations of sexual violence be judged by different evidentiary standards than other crimes (Schwikkard 2009). The 2000 act shifted the evidentiary standards to more victim-centered

criteria. The act ended the requirement that complainants demonstrate nonconsent, which placed survivors in a defensive, and often impossible, legal position (LAC 2006). Instead, the act shifts to an examination of the use of force by the accused, defining force and coercion broadly to include physical force or threats of physical force, psychological threats, threats to some other person, and unlawful detention. Sexual acts are regarded as coerced if the complainant is incapacitated in some way by disability or intoxication.

The 2000 act no longer allows questions or evidence about the complainant's previous sexual history, experience, or conduct, with a few strict exceptions. The prosecution can bring forward evidence of past sexual offenses of the accused if that is relevant to establish a pattern of behavior (but not to prove the nature or character of the accused). The act abolishes the "special cautionary rule," which required the court to treat accusations of sexual assault with caution, based on the widely held myth that rape charges were more likely than other types of accusations to be false (Schwikkard 2009). The 2000 act also mandates the highest sentencing penalties for knowingly spreading HIV/AIDS through rape (LAC 2006).

One shortcoming is that the act is focused on prosecution, so combating rape becomes synonymous with law enforcement, prosecution, and punishment. Although this is an important step, the act lacks provisions for prevention and rehabilitation. It does not address the causes of gender violence, does not suggest programs to address social attitudes, does not propose the creation of task forces, and does not outline services for survivors or perpetrators—all of which regional legislation has recommended.

Even with these limitations, Namibia still has one of the strongest, most progressive rape acts globally. Legislation is only effective, however, if implementation structures are in place, and it is in the realm of implementation that Namibia struggles. While the World Bank regards Namibia as an upper-middle-income country, in an era of structural adjustment, leaders find it difficult to properly fund programs designed to combat gender-based violence. From financial resource deficits that undermine evidence collection, storage, and analysis to human resource deficits that limit the availability of social workers, medical professionals, and legal assistance, Namibia struggles to overcome gaps between its stated national priorities and its financial resources.

Policy makers assert that implementation fails due to lack of funding. But economic issues may not be the only barrier to full implementation of the law. As the LAC has noted, "While the text of the Combating

of Rape Act leaves little room for ambiguity, the subtext of its enforcement reveals that its progressive message about a woman's control over her own sexuality has not been fully internalised in Namibian society" (LAC 2009, 6). If prevalent discourses around rape were reframed, funding priorities and social responses to rape might be transformed.

Rhetoric of rape: Debating the Combating Rape Act

The progressive nature of the Combating Rape Act is particularly notable given the common-law tradition that shaped earlier definitions of rape.⁸ In common-law traditions, the harm of rape is construed in terms of damage inflicted upon the community rather than harm inflicted upon the victim.⁹ Common law also defined some acts of rape as worse than others. The category of "real rape" required demonstration of nonconsent, particularly through physical resistance (Estrich 1986; Luchjenbroers and Aldridge 2007, 342; Orenstein 2007, 1587). To fit the definition of "real rape," the rapist must be a stranger who attacked an innocent woman as she valiantly fought him off (Temkin 2002, 51). These traditional assumptions about what acts constitute rape, who can rightfully be seen as a rapist, and who qualifies as a rape victim haunt the debates surrounding the Combating Rape Act. Some prominent Namibian political leaders articulated assumptions about "real rape" during the parliamentary debates, perpetuating distinctions that the bill was designed to eliminate.

The parliamentary debates rely on the trope of the unquestionably innocent victim juxtaposed against the brutal perverted rapist. The clear-

⁸ Prior to the 2000 act, Namibia's rape laws were based in the same common-law tradition as that of the United States, the United Kingdom, and Germany. The common-law tradition dates back to Roman law and was recorded in treatises during the Middle Ages all over Europe. Preindependence Namibian laws are linked to the common-law legal codes (likely through their colonial heritage).

⁹ Under common law, rape is a crime against the state and not the person. In fourteenth-century England, defiling a woman was an act of stealing her honor and virtue, values that were directly tied to her worth in her family and community. *Bracton* is the first legal treatise in common law to note that only virgins can be raped. *Bracton* was written by a largely unknown assemblage of authors (notably Henry de Bracton) in thirteenth-century England. It was a pragmatic legal treatise recording the Roman legal traditions of Britain for use by judges and educated people on all manner of offenses. It is one of the first common-law codifications of the law that only virgins can be raped. See <http://bracton.law.harvard.edu>. In the common-law tradition, there are different classes of rape that require different levels of punishment. The different levels of rape are no longer codified into German (Boyne 2010, 1321) or Namibian law, but the assumptions of that standard continue in the "real rape" myth.

est, most reprehensible types of rape within the broader “real rape” category are the rapes of small children and innocent women. Men who commit these violent acts deserve the most draconian punishments.¹⁰ This attitude is expressed in the assertions of Buddy Wentworth, the deputy minister of higher education, vocational training, science, and technology:

I feel rape is something where the perpetrator is seeking sexual gratification. In my mind I cannot see how a male, an adult male can obtain sexual gratification raping a one year, two year or three year old child. That person who commits that crime is not fit ever, ever to be left free in society again. Never, ever, because somebody that does that has something radically wrong with his mind. That person should never be exposed to society again. That is really something different. That person cannot be cured, he is a psychopath. That person falls within the category of a dangerous psychopath and should never be let out.¹¹

This discourse suggests that perpetrators are beyond rehabilitation because they are pathologically ill. Siegfried Wohler, the deputy minister of lands, resettlement, and rehabilitation, agrees that rapists are monsters who prey on the weakest members of society.¹² Similarly, Hadino Hishongwa, the deputy minister of youth and sport, associates rape with a form of mental illness that is particularly dangerous because it is infectious: “These people are mentally sick, thus they are dangerous to live in our midst, so they must be totally isolated and banished to those isolated places. . . . Normally if one is suffering from an infectious disease, it is always recommended that such a person should be isolated, and I believe in this case of rape the person is also infected with an infectious mental disorder and, therefore, does not deserve to live among the people.”¹³ When rapists are pathologized, a gulf is created between “real rape” and practices of domestic violence or marital rape, which are normalized and rendered invisible.

Pathologized constructions of rape also posit an ideal rape victim—innocent women and children who are in need of protection. The long

¹⁰ Pamela J. Schwikkard (2009) cites *Bracton* as an important text establishing the basics for how Namibian rape law has developed. In *Bracton*, draconian punishments were reserved for the rape of virgins by members of neighboring villages. Men who raped virgins were to be punished with torture and death.

¹¹ “Combatting Rape Bill: Second Reading,” *Hansard*, June 3, 1999, 82.

¹² “Combatting Rape Bill: Resumption of Second Reading,” *Hansard*, June 8, 1999, 96.

¹³ *Ibid.*, 115.

association between common law and the domestication of women, however, makes it difficult for adult women to maintain a level of innocence. Indeed, Susan Brownmiller (1975) and Caroline Joan Picart (2003) suggest that the more a woman transgresses domestic roles, the more vulnerable she becomes to rape and the more culpable she is held for her own violation. The common-law standard allowed admission of evidence pertaining to the moral character of the victim (Schwikkard 2009, 22).¹⁴ Nonconformance with traditional moral standards could undermine the prospects for criminal convictions even in the context of violent sexual assaults (Torrey 1995).

Within the parliamentary debates, widowed and elderly women were regarded as a special class in need of protection. As MP Ruppel argued, “I think it is also bad, very bad if elderly women, widows, are attacked by young able men at night in their homes and their throats cut.”¹⁵ In calling attention to attacks against elderly women and widows in their homes as particularly egregious crimes, Ruppel shores up the association between women and the private sphere. The innocence of widows and elderly women is constituted in part by their being in their homes at the time of attack. They are not out in the middle of the night, nor are they joining armed struggles. Left vulnerable by the loss of her husband, an innocent widow is worthy of protection. An elderly woman is an innocent victim. Because of her age, she is assumed to be beyond impropriety. An innocent woman is seen as the “pride of her nation and should, therefore be protected against such brutal attacks against her gender,” stated Clara G. Bohitile, deputy minister of basic education and culture.¹⁶

Beyond the very young and the very old, it is more difficult to demonstrate innocence. Consider, for example, the statement of Ngarikutuke Tjiriange, the minister of justice who attempted to defend the rights of all women in the debates: “Even women with a bad sexual reputation should still not be raped.”¹⁷ The “even” in this sentence indicates a hesitation toward women who are less than innocent. The hesitation was more pronounced in the warning given by another member of parliament, Philemon Moongo, who suggested that certain behaviors provoke rape: “Sometimes the women are also misbehaving. You see women walking in

¹⁴ Schwikkard (2009) dates this rule back to the English courts in the nineteenth century, where the understanding was that no decent woman would be having sex outside marriage.

¹⁵ “Combatting Rape Bill: Resumption of Second Reading,” *Hansard*, June 8, 1999, 106.

¹⁶ “Combatting Rape Bill: Resumption of Second Reading,” *Hansard*, June 9, 1999, 144. Note that on June 9, 1999, *Hansard* began to list the debates as “Combatting” and not “Combatting.”

¹⁷ “Combatting Rape Bill: Second Reading,” *Hansard*, June 3, 1999, 74.

the streets at 2 o'clock at night where the situation is not safe . . . some women are still ignorant of the unsafe situation at the moment. I appeal to Namibian women to behave well and not to wear mini dresses. Sometimes it provokes the men. I know it is the right of a woman to wear the dress she wants, but we must know the situation is very bad."¹⁸

Shikola's (1998) discussion of sexual violence among resistance fighters suggests just how difficult it is to preserve one's status as innocent in the context of armed conflict. When women take on the role of combatants, they enter a male-dominated domain. By crossing traditional gender boundaries, they purportedly put themselves in harm's way. They voluntarily assume an obligation to armed struggle that supercedes everyday concerns about bodily integrity. In consenting to the military chain of command, they agree to obey all orders. They accept the sexual assaults of their commanders "as just the way the chiefs were."

Both Netumbo Ndiatwah (now Netumbo Nandi-Ndiatwah), the director general of women's affairs, and Ngarikutuke Tjirirange, the minister of justice, suggested that parts of the bill would be difficult to enforce because notions about "real rape" persist within the Namibian populace.¹⁹ When such mistaken notions are widespread, many victims may fail to recognize their lived experience as rape, and they may refrain from seeking medical or legal services (Torrey 1995). Government programs and educational campaigns are needed to transform these views.

Marital rape

Like common law, customary law (the unwritten traditional laws of a particular people) in many nations conflated marriage with the husband's sexual access to his wife. The LAC report on rape in Namibia documented confusion among men and women about marital rape. Some women accept "forced sex as an inevitable part of marriage" (2006, 41).²⁰ Some participants in the parliamentary debates about marital rape insisted that a husband cannot rape his wife: "There is no rape in marriage. That cannot be true. There is no rape in marriage. The two agreed to come together and they know what will take place through thick and thin. When you are on

¹⁸ *Ibid.*, 79.

¹⁹ See "Combating Rape Bill: Resumption of Second Reading," *Hansard*, 146, June 9, 1999, and "Combating Rape Bill: Second Reading," *Hansard*, June 3, 1999, 70, respectively.

²⁰ British and German colonial law, on which Namibian law is based, also maintained that women were the property of their husbands in marriage, and thus consent to sexual relations was unnecessary since sex is the right of any husband (Archampong and Sampson 2010, 511–12, 516).

honeymoon you will never talk of rape, but when marriage turns sour, that is when one could talk about rape” (Hadino Hishongwa, deputy minister of youth and sport).²¹ Some members of parliament, such as Petrus Iilonga, argued that acknowledging marital rape served only to distract from “real rape.”²²

The 2003 court case *S v. Lopez* indicates that misunderstandings about marital rape extend beyond the legislative branch of government.²³ In *S v. Lopez*, a husband was found guilty of raping his wife, but his sentence was reduced from ten to five years. In issuing its ruling, the court noted that “the appellant’s wife for some years is no stranger to having sexual intercourse with him,” thereby suggesting that “it is more traumatizing to be raped by a stranger than by a man once loved and trusted” (LAC 2006, 187).

In its 2009 study, the LAC reported “that many men and women are suspended between two conceptions of rape. While one is rooted in what they know the law to be, the other stems from social, cultural, and historical attitudes that are antithetical to a full recognition of what constitutes rape” (6). According to LAC, some women perceived “the crime of marital rape” as an artifact of the Combating Rape Act. They identified “certain types of rape—particularly rape between past and present sexual partners—as mere violations of new national regulations rather than serious criminal offences” (6).

The assumption that marriage confers upon the husband a right to have sex with his wife carries over into periods of separation. As the director general of women’s affairs, Netumbo Nandi-Ndaitwah, notes, prior to the passage of the Combating Rape Act, the law did not allow wives separated from their husbands to deny them sexual access until a divorce was granted:

In referring to rape within marriage, women in Namibia are faced with a problem when men force sex on them during separations. In that case when [the] two are l[i]ving in separate houses due to problems that they may want to sort out, according to the current law, a man is at liberty to enter the other house and force sex on that woman and she will have no right to lay a charge of rape, as they have not been officially divorced. . . . I realize that there are mixed feelings about a man having sex with his wife against her

²¹ “Combating Rape Bill: Resumption of Second Reading,” *Hansard*, June 8, 1999, 115.

²² *Ibid.*, 119.

²³ *S v. Lopez* 2003 NR 162 (HC).

will. Some people feel that forced sex within a marriage is wrong, but wondered if it should be called rape.²⁴

Confusion about “real rape,” then, may be tied to legacies of common law, colonial statutes, and customary law. Customary law in Namibia allowed perpetrators of gender violence to make financial restitution to a victim’s family under certain circumstances. During parliamentary debates, several members of parliament referred to the custom of the rapist paying remittances to the victim’s family as a part of the punishment for rape.²⁵ Although monetary compensation for a survivor to cover the costs of counseling, medical attention, and training to create a new life for himself or herself may be helpful, compensation awarded to a survivor’s family reinforces familial gender dynamics that privilege men.

The 2009 LAC report identified other problematic effects associated with compensatory schemes. Monetary compensation for the rape of a family member can reinforce the notion that rape is a crime that can be repaid, as opposed to a crime against human dignity (LAC 2009, 31). It can also introduce new modes of gender power and gender vulnerability: “The way that compensation is arranged in many communities today amounts to bribery and coercion, and converts a woman’s right to sexual autonomy into a property right which is controlled by male members of her family” (LAC 2009, ii). In addition, the LAC found that the primary reason women withdrew rape complaints was because they—or their families—received compensation.

“I need to hurt you more”: Qualitative changes in the nature of violent sexual crimes

Interviews with social workers and police in Namibia in 2007 and 2008 called attention not only to increases in the incidence of sexual assault but also to a qualitative change in the nature of gender-based violence. According to many, sexual assault has become more brutal. Interview participants from every sector of government and civil society stated that

²⁴ “Combating Rape Bill: Resumption of Second Reading,” *Hansard*, June 9, 1999, 146.

²⁵ “Combating Rape Bill: Resumption of Second Reading,” *Hansard*, June 8, 1999, 114. See also Jacobus Willem Francois “Kosie” Pretorius, “Combating Rape Bill: Second Reading,” *Hansard*, June 3, 1999, 76, and in the same issue, Philemon Moongo, 80, and Andimba Toivo ya Toivo, 83; also see Hadino Hishongwa, “Combating Rape Bill: Resumption of Second Reading,” *Hansard*, June 8, 1999, 114.

sexual violence was becoming more gruesome, more horrific, and more graphic each year.²⁶

Statistics indicating increases in the incidence of sexual violence are controversial, attributed at times to increased awareness as well as to better methods of reporting and recording rapes. Respondents in this study suggested that Namibians were experiencing a change in the nature of sexual violence, tied to larger shifts in the social fabric of the postconflict context. A salient example of the increased brutality of sexual violence came from a prosecutor who indicated that she has seen an increase in the number of women whose throats had been slit by their partners, in the same manner as one would slaughter a goat. Linking this horrific form of sexual violence to older common-law conceptions of women as property, akin to livestock, this prosecutor echoed rhetoric that surfaced in parliamentary debates.²⁷

Some interview participants tied increasingly brutal sex crimes to a backlash against the advancement of women in the new Namibian government. One antirape activist, who serves on the board of a family violence shelter, suggested that this need to hurt women more was a direct result of women's advancement:

Women are taking control and educating themselves. Men have had very little in their backgrounds except fighting. They fought for liberation. They fought in the struggle. They have not transitioned in their roles. Women are moving into leadership roles throughout society, and in the corporate world. The men received no counseling the entire time they were in the struggle.

Women have no support—no one to show them the way in these new areas. They have no support in growing into these roles. Women have to be the wife, the business woman, and the submissive partner. This is the challenge. From eight to five, they have to be on top of business, then come home and be the submissive wife. Part of this is the income women are receiving because of the affirmative action. Now with their own jobs, they can be independent from their husbands.

It is like the message is being sent out that “I need to hurt you more.” It is about a level of control.²⁸

²⁶ Interview questions did not specifically address the qualitative change in the nature of rapes. This finding emerged through participants' independent discourse during the course of the research.

²⁷ Interview by Britton, Windhoek, July 12, 2008.

²⁸ Interview by Britton, Windhoek, July 9, 2008.

According to this antirape activist, violence is intended to put women back into their place in society. This is not an isolated account: “Most men in Namibia are not happy about the current trend in Namibia that is aimed at empowering women. Men are frequently intimidated by the rising status of women and see this as a direct threat to their own social position. . . . [One] serious challenge women face is men’s negative attitudes toward contemporary gender equality movements” (LeBeau, Ipinge, and Conteh 2004, 492). When some men perceive their privilege to be under threat, their response can be violent. If men “think that the advancement of women’s rights can only occur at the cost of a reduction of men’s rights” (LeBeau and Spence 2004, 50), they may seek to turn the clock back to an earlier era of male domination. Some interview participants link the change in violence to current socioeconomic stress and uncertainties about the future of the country. As particular forms of masculinity are destabilized—as women assume greater responsibilities as breadwinners and decision makers—some men may violently reassert gender norms.

Concerns about backlash are not unique to Namibia. Some scholars identify backlash as a possible consequence of the fast track of women into national politics (Britton 2006; Moffett 2006; Bhana, de Lange, and Mitchell 2009). Others link the phenomenon to demobilization in the aftermath of armed conflict and a desire to return to “normalcy.” As Meg Samuelson (2007, 840–41) has noted in the context of South Africa, “The ‘normalcy’ to which women are returned, and which they are called to represent, requires women warriors to reclaim the home as their natural domain and to render themselves sexually available to men. Ideologies of domesticity and acts of sexual violence are two means by which this return to ‘normalcy’ may be enforced.” Just as the normalcy of male dominance was maintained through rape of women resistance fighters during the liberation struggle, rape may play a key role in reestablishing gendered power relations in postconflict transitions.

Other scholars and activists trace qualitative changes in the nature of violence to a failure to address apartheid-era atrocities that remain buried in the collective consciousness of the nation. Since Namibia did not subject these atrocities to public examination as part of its process of national reconciliation, some suggest that these wounds have become more insidious as silence masks national complicity. Although the South African case demonstrates that truth commissions do not lead directly to decreases in gender-based violence (Krog 2001), the absence of explicit mechanisms of transitional justice in Namibia ensnares rape and gender-based violence exclusively in the private sphere.

Causal explanations of gender-based violence are notoriously difficult to prove, but perceptions linking increases in sexual violence and increasingly

brutal sexual assaults to changing gender roles and relations are widespread in Namibia. Women's bodies remain a battleground in the postwar era. As women manifest their agency in new ways in peacetime, they experience continued violence. Tensions between national transitions and familiar gender power relations are inscribed on women's flesh.

Conclusion: The way forward

Namibian efforts to address gender-based violence illuminate both the possibilities and the limitations of progressive legislation in a nation struggling to overcome financial challenges, restricted resources, long histories of armed conflict, and legacies of silence. Successful mobilization by antirape activists in conjunction with international protocols on violence against women and creative initiatives by elected officials shaped the progressive Combating Rape Act. Yet the parliamentary debates surrounding its passage reveal the persistence of oppressive views about rape that have roots in common law, customary law, colonial experience, and Namibia's history of armed conflict.

Our findings suggest that successful implementation of the law requires that patriarchal beliefs about sexual violence be changed. As feminist scholars have long recognized, there are limits to using the law to change public attitudes, and this is clearly the case in the area of sexual assault. As Morrison Torrey (1995) has demonstrated, changes in the legal code do not always produce more prosecutions or arrests in cases of sexual violence. In the Namibian case, antirape activists, government ministers, and community leaders interpret the meaning of the Combating Rape Act in markedly different ways, and these diverse interpretations affect how the law is implemented. When certain men and women do not believe that coerced sexual exchanges constitute rape and when police and members of the populace assume that there can be no rape within marriage, progressive definitions in the act will not be enforced. Laws do not automatically shift norms or beliefs.

Failure to enforce progressive laws is not a reason to abandon legal strategies for social transformation, but the law must be supplemented with other mechanisms to change popular assumptions, discourses, and everyday practices. Innovative legislation may be a necessary step, but it is not a sufficient means to eliminate sexual violence.

The persistence of assumptions about degrees of rape provides a strong indication that national dialogue is needed to dispel myths about rape and to change gender scripts that normalize gender inequalities. Continuing the activism and advocacy that culminated in the Combating Rape Act

is the most promising means to bring to create new understandings of sexual violence that can change everyday practices at the individual, community, and national levels.

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