

From the bodies to the humanity: A feminist geolegality's approach to the prosecution of forced marriage as crimes against humanity

Le Nguyen Nhat Minh*



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ABSTRACT

What does it mean to prosecute forced marriage as crime against humanity? Forced marriages during authoritarian regime is a form of sexualized and gender-based violence, as it aims specifically to the sexuality and reproductive ability in the female bodies. In its turn, prosecuting forced marriage as crimes against humanity promise to reconcile the victims with humanity, where victims are represented as a part of the human community. This article examines the process of translating forced marriage victims' bodies into the realm of global justice through the prosecution of forced marriage as international core crimes. In doing so, it utilizes the notion of 'feminist geolegality', an approach that sees the 'indissoluble relations' between law, space and the workings of power across multiple scales, from the intimate to the global as a whole. In other words, feminist geolegality challenges the dualistic binaries by analysing the co-constitution between law and space in multiple scales of space, from the intimate space of bodies to the global space of international law. Applying this theoretical perspective in the field of international criminal law, and specifically focusing on the problem of victims' participation in international criminal proceedings, this article re-conceptualises the practice of prosecuting and representing the victims before international criminal courts as a process of translating the victims into the legal realm and transcending them through multiple scales of legal space. And yet, through the lens of feminist geolegality, the article observes how the victims of forced marriage are translated from bodies under violence to the bodies before the law, where the intersection of space and law occurs in multiple scales. From there, on the same strand of feminist legal scholars, I argue for a wholistic perspective for the issue of victims of sexual violence before international criminal tribunals.

Key words: feminist geolegality, the victims' bodies, intersectionality, intimate/global binaries, forced marriage

Faculty of Law, University of Economics and Law, VNU-HCM

Correspondence

Le Nguyen Nhat Minh, Faculty of Law, University of Economics and Law, VNU-HCM

Email: minhlnn@uel.edu.vn

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INTRODUCTION

Nowadays, International Criminal Tribunals (ICTs) have become the institutions for “one of the most radical types of politicisation” in the international field, as they produce the visual domain of the global manifestation of the rule of law.¹ As judicial institutions, ICTs make the enforcement of the global justice visualised by meting out punishment to heinous crimes that harm the world's conscience. This rationale echoes the International Military Tribunal (IMT) in Nuremberg's Judgment that mass atrocities are crimes committed by “men, not by abstract entities”, and that “only by punishing such individuals who commit such crimes can the provision of international law be enforced”².

And yet, scholars have now observed the extension of the field into humanitarian mandates which includes restoration and reparation and turning the field's focus to the victims³⁻⁵. For example, the Preamble

of the Rome Statute, the founding document establishing the International Criminal Court (ICC) states that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity⁶. Indeed, the ICTs' works have now invoked the figure of the victims as their main purpose, since punishing crime is regarded as the just way to address the victim's sufferings, and thus to seek for the victims' justice⁷. The concept of “victims' justice” therefore becomes the purpose that justifies the punishment for heinous crimes that shock the world's conscience.⁸

This article analyses the situation of prosecuting crimes related to sexual and gender-based violence of the ICTs, while they also pursue the idea of “justice for victims”. Concretely, I analyse the work the Extraordinary Chamber in the Courts of Cambodia (ECCC). Established in 2006, the ECCC, as known as the Khmer Rouge Tribunal, is an ICT mandated to prosecute the senior leaders of the Khmer Rouge.⁹ Having

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ruled Cambodia from 1975 to 1979, the Khmer Rouge regime has been known as one of the most brutal and genocidal regimes in 20th century. Among other heinous acts, there was the implementation of the Khmer Rouge's policies towards achieving the "great leap forward", by which men and women were forced to marry and pressured to have sex and produce children^{10,11}. This article therefore explores the ECCC's works on prosecuting this marriage policy implementation, also known as the "forced marriage" charge included in Case 002. The article then asks the question: what does it mean for the victims (or their justice) to prosecution forced marriage as a crime against humanity? Based on the critical literature on victimhood in the field of international criminal law, I argue that the prosecution of forced marriage both "translate" and "transcend" the victims into the law's language and rationale^{4,7,8}.

On the one hand, to translate means to constitute the victims in the language of the law. As we could see, in order to regard certain suffering as criminal harm, we need to hold a set of assumptions about agency, responsibility, and the appropriate forms of redressing such suffering¹². These principal assumptions of the criminal law's field, in turn, marginalise other forms of harm and suffering which cannot be rationalised in terms of criminality¹². Such exclusion would necessarily render certain forms of harm and their victims as invisible before the international criminal law. And gender-based violence is among such forms of suffering. Tackling this issue within the field of international criminal law, early feminist interventions have criticised the invisibility of victims through the marginalisation of sexual and gender-based violence¹³. Rachel Killean also demonstrates,

- Feminist, radical and critical traditions of criminology have argued in favour of looking beyond the crimes which are visible within the 'mainstream', by challenging the processes that 'go on behind our backs' which contribute to the victimisations we 'see' as opposed to that which we do not 'see'¹³.

Feminist theory has been utilised as a project of criticising the structural influence of patriarchy and masculinist norms on the law itself, which is used to demonstrate "their effects on the material conditions of women and girls and those who may not conform to cisgender norms"¹⁴. However, while the success in forced marriage prosecution may signal the potential of the victims of sexual and gender-based violence being heard before the trials and acquiring moral and

collective reparations, it may cast other layers of exclusion to the survivors of crimes. It is because the victims would be, on one hand, transcended into an abstract, disembodied, homogenous unity of victimhood, where concrete individual sufferings and needs of justice are obscured, on the other hand.

Here, I utilise the concept of "feminist geolegality" to re-conceptualise the prosecution of forced marriage in the ECCC context. "Feminist geolegality" is a neologism referring to an approach that sees the 'indissoluble relations' between law, space and the workings of power across multiple scales, from the intimate to the global as a whole. In other words, feminist geolegality challenges the dualistic binaries by analysing the co-constitution between law and space in multiple scales of space, from the intimate space of bodies to the global space of international law. It therefore reveals the potential to observe the manifestation of justice and law in intersectionality, not in paradox, with the participation of the victims' bodies.

In the following sections, I turn to the problem of victims' selectivity and exclusion in the case of prosecuting forced marriages as crime against humanity at the ECCC, before applying the concept of "feminist geolegality" to problem of victims' participation in international criminal proceedings. I argue that, under the lens of feminist geolegality that shift the attention to the bodies as intimate spaces, the victims' bodies are now seen as a site of intersection between law and violence. On the one hand, sexualised and gendered bodies are the intimate dimension of the structural violence rooted in the social structures. On the other hand, the bodies are site for legal inscription, categorisation and translation.

PROBLEMATISATION: VICTIM'S JUSTICE AND VICTIM PARTICIPATION AT THE ECCC

Actors in the field of international criminal law vows to bring justice for the victims. And yet, as articulated above, this concept of justice in the field is understood as only to be brought about when international criminal law is successfully enforced. And as it is understood for the victims, justice is achieved when their cases are heard before a due criminal proceeding. However, since the International Military Tribunals in Nuremberg, to the International Criminal Tribunal for the Former Yugoslavia and for Rwanda, victims were largely invisible in a field historically dominated with punitive concept of justice and individual accountability^{3,5}. The field's turn to humanitarian mandates therefore urges ICTs and transitional

justice mechanisms to provide more venues of courts and legal procedures for the victims and their families⁵. After the ICC victim participation regime, a number of ICTs started to provide a broader regime for victims in their proceedings¹⁵. The ECCC therefore has been known for an extensive victim participation regime¹⁵. Distinct from precedent tribunals, at the ECCC procedure, victims may file to participate directly in a case as civil parties¹⁶.

Established within the Cambodian judicial system, through an agreement between the United Nations and Cambodian government, the ECCC is drawn on its national procedural law which greatly inherited from French criminal justice model. Thus, at the ECCC, victims may participate as a party beside the accused and the prosecutor^{15,17}. It also means that victims who are admitted as civil parties could enjoy extensive procedural rights such as filing a complaint or requesting for “moral and collective reparation” upon the harm they had suffered¹⁶. Ultimately, the ECCC provide a promise of representing the victims, and a venue where the victims’ experience and voices are heard. However, this ideal about a criminal proceeding that brings justice for the victims often distract us from the fact that the admissions of victims as civil parties are highly selective^{4,8,15}. The actual participation of victims necessarily requires a fundamental select between who are the admitted and who are not. The ECCC Internal Rules provides that to be admitted as a civil party, one must

- demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury [...] ¹⁶.

According to these criteria, the admission of civil parties would be decided before each case by specific organs within the ECCC. However, in order to meaningfully demonstrate if a person is injured by a crime alleged, such injury or harm must at first fall within the ECCC’s jurisdiction, and be brought against an accused person by the ECCC. Furthermore, such perpetration must also be made successfully into the legal case. Only from there could a survivor be scrutinised under the legal criteria provided by the procedural law. In order to be represented as civil parties, the victims’ sufferings must firstly regard as crime and be successfully made into a legal case. In other words, the victims’ experience must be “translated” into the language of law⁷.

To see a certain violence as crime means to assume about the “agency, responsibility, and appropriate

forms for redressing suffering”¹². Furthermore, such violence must be articulated in terms of the legal definitions of international crimes that may side-line other types of violence that could not be rationalised in the criminal law’s forms. It therefore inevitably selects certain individual victims who are relevant to the crime prosecuted, while excluding the victims of suffering that could not be articulated in legal definitions of crimes. The punitive concept of “global justice” therefore does not always reflect the fulfilment of victims’ justice. At the same time, it is this selectivity and exclusion of victims that has been criticised by the feminist legal studies, whose works explain how the operation of law could render the victims of sexual and gender-based violence invisible¹³.

The operation of the ICTs does not only translate the victims into the legal realm, it also transcends the figure of victims into a disembodied, abstract and singular concept. The concept of victims in the field does not always refer to the actual individuals who suffered from the atrocious events. Much of the case, it refers to an abstract concept of “victims” which transcends beyond the individual victims, and transforms the victims into a homogenous unity - “The Victims”⁸. The figure of “The Victims” is inclusive: it is used to refer to all of those who suffered from the atrocities, all at once⁸. And yet, the transcendence of victims into a singular, homogenous unity of victimhood excludes the individual victims with concrete sufferings, and needs of justice. Or as put it in Rachel Killean’s terms, it is to add another layer of exclusion of victims¹⁸.

The layers of exclusion of victims could also be seen in the case of forced marriage prosecution, that I now turn to. I argue that the prosecution of forced marriage as crime against humanity at the ECCC translate and transcend the victims into the legal realm and humanity.

MATERIALS: THE PROSECUTION OF FORCED MARRIAGE AT THE ECCC

At the ECCC, forced marriage is charged in Case 002 which includes 4 senior Khmer Rouge leaders. However, after Ieng Sary died and Ieng Thirith deemed as unqualified to stand the trial, the case go on with two accused: Noun Chea and Khieu Sampan¹⁹. 4 April 2004, the Pre-Trial Chamber decided Case 002 to be heard in 2 smaller trials where forced marriages is included in the second one (referred to as Case 002/2)¹⁹. Notably, forced marriage was not included in the prosecution and investigation in the first place. It was due to the widely assumption at the ECCC that the Khmer Rouge was mostly devoid of sexual and

gender-based violence as it promulgated laws regulating marriages and sexual relations^{10,13}. However, at the appeal by the Civil Parties, the Co-Investigative Judges CIJ decided to include forced marriage for investigation²⁰. It is then prosecuted in the Closing Order 002 as crimes against humanity.

In regard to the application of law, the ECCC may draw on both international criminal law and national law, whereas it has the jurisdiction to prosecute international crimes such as genocide, crimes against humanity, war crimes and other serious violation of the Cambodian Penal Code⁹. At the ECCC, indictment was filed by the CIJ in form of a Closing Order²¹. According to the applying law at the ECCC, crimes against humanity are defined as

- any acts committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnic, racial or religious grounds, such as murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecution on political, racial, and religious grounds; [and] other inhumane acts.^{a 21}

This definition is not varied from ones adopted at other international criminal tribunals such as the International Criminal Tribunal for the former Yugoslavia, for Rwanda or the ICC.^b Aspired from the concept of *hostis humani generis*, or "the enemy of mankind", the concept of "crimes against humanity" was first included the Nuremberg Charter in 1945 with the attempt to capture the commission of the Nazi regime against its own population in legal terms. Since then, this concept has gathered much discussions from scholars and lawyers, both in theoretical and legal perspective.

So, what does it mean to prosecute forced marriage as crimes against humanity? The term "crimes against humanity" denotes two crucial elements: "humanity" and "crimes". Many scholarly literatures have tried to define the meaning of "humanity". Antonio Cassese suggests that "humanity" points to "those basic values that are, or should be, considered inherent in any human being"⁷. While Cassese emphasises the notion of humanity in this sense on the meaning of an intrinsic basic value of being a human, distinguished from the meaning of mankind or human race, it is assumed that acts that violate the basic value of a human being

could affect the entire mankind⁷. David Luban interprets this assumption through a theory that crimes against humanity affect the humanity, understood as the mankind of plurality, through inflicting on the humanity, understood as the value of a human being⁷. Luban's theory also points to the intersection of the humanity as a global community of human with the body of an individual.

The second element is "crime". To prosecute forced marriage as crimes against humanity means to articulate in terms of acts, agency and responsibility, i.e., in the legal meaning of crimes. As a legally defined concept, the commission of crimes against humanity is proved through prohibited acts^{c 7} which amounts to "a widespread or systematic attack directed against any civilian population, on national, political, ethnic, racial or religious grounds"²². The legal definition provides an unexhausted list of prohibited acts through which the law recognised as able to be proved as crimes against humanity: "murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecution on political, racial, and religious grounds; [and] other inhumane acts". The Closing Order prosecuted the Khmer Rouge forced marriage as crimes against humanity in two counts: through the commission of rape and "other inhumane acts" in form of sexual violence, and in form of regulation of marriage¹⁰. In order to prosecute forced marriage as crime against humanity, the Closing Order focus on three factors: the inherent lack of consent between the "spouses", argued through the destruction the traditional and cultural practice of marriage; the acts of forcing consummation through rape which most clearly reveal the sexually violent nature of forced marriage; and the coercive nature of the policy through the exclusive and total control and regulation of the government¹⁰.

Ultimately, in order to prosecute certain atrocious events as crimes, these events must be articulated in terms of acts, the particular context that such acts were committed, where they are considered through gravity and causality. A process that Elander calls the translation and classification from life experience to legal terms⁷. At the same time, while translating the experience of suffering into the its realm, Elander argues, the law also call for the subjectivity of 'victims' as individuals harmed by the crime prosecuted. As Marie Elander argues, the victims "become intelligible in and through legal language"⁷. It means that in order to become a victim, the suffering that harm the

^aLaw on ECCC. Art. 5

^bSee the Statute of the International Criminal Tribunal for former Yugoslavia, Art. 3; Statute of the International Criminal Tribunal for Rwanda, Art. 5; Rome Statute of the International Criminal Court, Art. 7.

^cIn other places, it is termed "underlying offences" or "enumerated acts"

person must at first be recognised as crime. In particular, the articulation of forced marriage into the legal definition of crimes against humanity also call for the figuration of the victims of forced marriage. In this sense, the possibility of victims participating in trial is determined even before the admission decision. It is the Closing Order that define, by law, the figure of victims relevant to crime it prosecutes.

For the person who has suffered from the marriages enforced by the Khmer Rouge, the prosecution provides a promise of representation. From bodies that bare the violence of forced marriage, they could be represented the victims of crimes against humanity⁷. However, through the representation of law, the figure of victims is constituted anew, through the disembodied existence by law which moves closer to the singular, collective figure of “The Victims”. A wholly perspective therefore must be the one that includes both bodily dimension and the abstract dimension of humanity.

METHODS: CONCEPTUALISING FORCED MARRIAGE PROSECUTION THROUGH FEMINIST GEOLEGALITY

Within the field of ICL, feminist jurisprudence has long intervened as a mode of analysis of how ICL could sufficiently response to women-targeted violence and oppression. Not in the manner of claiming rights for the female victims, feminist perspectives always offer a more structural critique: to the structure of violence and the “violent structure” of law itself²³. For the ICL, feminist critique expose the violence that have been hidden from the gendered perspective of law, which has rendered certain groups of victims invisible^{13,23}. Under this lens, feminist scholars have long emphasised the invisibility of victims of sexualised and gender-based violence in the operation of international criminal proceedings. These criticisms show the absence of adequate recognition of sexualised and gender-based violence within the framework of an ICT²⁴. The framework of “feminist geolegality” does not only offer a critique to the law, but also challenge the law’s perspective by shifting our attention away from the top-down, disembodied viewpoint of law to the analysis of law based on embodied and grounded viewpoint.

The term “feminist geolegality” is a neologism referring to “a project that integrates the intellectual terrains of legal geography and feminist geopolitics.”²⁵. On one hand, it is based on the literature of the legal geographic scholarship that marked the “spatial turn” in legal theory since 1980s²⁶. This scholarship turns

the attention from the linguistic meaning of law to the relations of law with space where they argue that law and space are co-constituted. Traditionally, in both fields of legal and geographical research, the nexus between space and law used to be neglected because they are usually treated as two separated realms: the empirical world of space and a sphere of abstract principles²⁷. On the contrary, legal geographers shift their attention to the question of how law and space are both social phenomena which shapes each other. As legal geographer Nicolas Blomley explains, “although law will ‘shape’ place, the enforcement of law with reference to place will simultaneously shape law [...] law begins to acquire an intrinsically geographic nature.”²⁷ Therefore, the operation law is always seen by its actualisation through and by a spatial *loci*.

On the other hand, feminist geolegal theory catches the multi-scalar perspective on geopolitical matters suggested by the studies of feminist geopolitics. Feminist geopolitics asks how “localised, embodied discourses link to transnational discourses and vice versa.”²⁵. In a gendered categorisation of matters, the masculinised geopolitical violence, such as war, are usually distinguished from the feminised, emotional and intimate violence, such as the sexual assaults.^d Under the feminist geopolitical lens, such geopolitics and intimacy are viewed in a “single complex”²⁵. This way of thought could be seen through the concept of Rachel Pain, “intimate war”, through which domestic violence and the violence by modern international warfare are fundamental parts of a “single complex” of violence²⁸. As Pain explains further, the articulation of violence as multi-scalar single complex “does not position the intimate as affected, or dripped down upon, by larger (geopolitical) processes.”²⁸ On the contrary, it is seen to have “common gendered, psychological, and emotion-laden, foundations of power, though it may be enacted, negotiated and resisted in specific ways”²⁸.

Based on the integration of these intellectual terrains, the term feminist geolegality provides a theoretical framework to examine the co-constitutional relations between law and space on multiple scales from the intimate to the global. As a mode of observance on the co-constitution of law and space, the proponents of this theory argue that to choose the *loci*, or a specific space-law, it does not mean to be spatially confined or to exclude perspective from other scales, either the intimate or the global. Similar to what Pain sees as the

^dThis intimate/global distinction therefore is not interchangeable with the local/global distinction in the discourses of international law, as the local/global binary does not necessarily reflect a gendered perspective.

“single complex”, feminist geolegal agenda suggests that while connecting to and as a fundamental part of “national, global, and geopolitical processes and strategizing, international events, policies and territorial claims” (quoted in²⁵), intimate spaces such as the body or home is a location that reflects how law manifests.

Choosing the body as a location of observation, feminist geolegal framework shows how the bodies could be understood “as the site of both legal inscription and resistance”²⁵. With the development of feminist geopolitics, geopolitical discourse has now extent to the matter of the bodies, in a sense that bodies become the “finest scales of geopolitical space”²⁵. In other words, the bodies contain both intimate, private concerns and distinct geopolitical and geo-economic calculations in the global dimensions. Feminist geolegality bridges this multi-scalar approach to the nexus of bodily space and law. Law lives “through” the body, and at the same time, the body also has the potential to resist the structural violence of law through its participation in legal spaces.

Writing on how the law lives “through” the body, Judith Butler argues that “Law is not literally internalized, but incorporated, with the consequences that bodies are produced which signify that law on and through the body” [quoted in²⁵]. Through the bodies, law not only produces legal subjectivity, but also through it, categorises the bodies by law and within the law. Other scholars have articulated these points in other contexts. Alan Hyde argues that through the production of legal subjectivity, we see the body less as a material object but as more of a discursive construction: “as machine, as property, as consumer commodity, as bearer of privacy rights [...]”^{29,30}. As the argument continues, it shows that “there is no knowledge of the body apart from our discursive constructions of [the body]”^{29,30}. With these productive forces, in relation with the bodies as spatially specified entities, law sorts bodies into categories which are either determined as legitimate, i.e., belonging to the realm of legal protection, or as illegitimate, i.e., excluded and marginalised. Therefore, in order to be protected by law, a body must acquire the personhood that law recognises. Meanwhile, as Alexander G. Weheliye argues, such legal recognition that is tied to the acceptance or rejection of an embodied subjectivity is inevitably racialised, sexualised, and normatively gendered^{25,31}. It is thus as Alison Mountz’s argument that “bodies carry differential forms of privilege and power, where law acts as a mechanism of embodied exclusion, marginalisation and discipline”³².

This point is particularly relevant because in order to be included in the proceedings of ICTs, the survivors must first acquire the victimhood that international criminal law provides. Without firstly acquired the status of victimhood, those who suffered remains invisible before the law. Therefore, utilising the concept of feminist geolegality opens an embodied, grounded analysis of international criminal justice through the victims’ bodies as a site of legal inscription and resistance²⁵.

RESULT-DISCUSSION: FORCED MARRIAGE AS AN “INTIMATE WAR”

The term “forced marriage” usually refers to the practices of forcing abducted girls and women to serve as wives, which is closely related to the sexual and gender-based violence and enslavement in the context of armed conflict. However, in the Khmer Rouge context, the term forced marriage refers a national scale state enforcement of weddings in which men and women in Cambodia were to marry according to the states’ instigation^{7,10}. Different from the conflict-related forced marriage, by which women and girls were forced to serve as wives based on their physical coerce and enslavement, forced marriage by Khmer Rouge was “one of the five policies ... to implement and defend the CPK [or Communist Party of Kampuchea] socialist revolution was through the regulation off marriage by whatever means necessary.” It means that marriage via a collective instigation of state was enforced in Khmer Rouge Cambodia as a part to achieve the “great leap forward” towards socialist revolution¹⁰.

Because of that, its nature of sexual and gender-based violence understood as women-targeted violence is not clear. While many couples “divorced” immediately after the fall of Khmer Rouge, other couples who wed during Khmer Rouge regime remained together⁷. Moreover, no evidence demonstrated that the Khmer Rouge explicitly ordered to force couples of men and women to get married³³. However, as James A. Tyner argues, since forced marriage was an implementation of state’s policies of social transformation, it sparks “a more pressing form of gendered violence [...] – a mode that pivots on the social ordering of the CPK’s political economy.”³³ Tyner argues that gender-based and sexual violence during Khmer Rouge regime “was not *simply* the result of individual action”; but rather, it is an intrinsic form of violence within the structural relations enforced by the CPK³³. Rachel Killean argues similarly that the focus on physical violence may obscure the reality of social harms,

as it tends to overlook the interrelationships between harm, human relationship and societal structures³³. A recall of Pain's concept of "intimate war" here seems to be useful. It reminds that intimate spaces such as home and body bare the macro-scalar violence caused by the societal structures.

As soon as taking control over Cambodia, the CPK imposed a radical upheaval of what was regarded as the previous ordering of life³³. Consequently, it attempted to dismantle familial relations.³³ Cities were soon evacuated into worksites in the rural areas, and families were subsumed into village cooperatives. Here, citizens were divided according to gender, age and workability. Women, men and children often lived separately, and intimate bonds such as familial and marital relations were then collectivised into the bond with "Angkar". Traditional family life was therefore radically distorted, as traditional and customary spaces, such as families and villages had then been replaced with spaces of social organization of production⁷.

Forced marriage was imposed in this context. Marriage was no longer an affair between families, but became a matter under the responsibility of public authorities⁷. The initiations of marriage and organisation of weddings were made by the local representatives. Men and women were reported to have taken part in mass ceremonies where couples who wedded mostly met for the first time at the ceremony, as they had been chosen by the Angkar. Anyone refused to marry would have been sent for "re-education" or punishments. These ceremonies were brief and conducted collectively with approximately 300 couples at a time. After the wedding, the couples would be sent to private sleeping huts which had been prearranged for them. It is reported that soldiers would spy outside the hut in order to ensure that the couples consummate, and would execute anyone that did not comply⁷. After the ceremony was done, the spouses would not live together but returned to their working units, and would only meet occasionally⁷.

The implementation of forced marriage by the Khmer Rouge reflects the total control over private sphere such as sexual relations, and the effort to dissolve the domestic spaces such as family. Clearly, the reproductive capacity of the female body was mobilised as a mere force of social reproduction. As one of the five policies of economic transformation, the goal of the forced marriages was to instantly increased the population through births. As Tyner also describes, "the apparent dissolution of the family comes on the heels of the CPK's attempt to collapse the separation of

the so-called productive and domestic sphere."³³ Social reproduction of the Khmer Rouge, therefore, was cultivated through a direct form of material production: the labour of the population and the reproductive capacity of the human body. And thus, gendered and sexual violence existed in a rather structural form where gendered and sexual relations were totally subsumed into the collective as one of the instruments of capital accumulation.

CONCLUSION

Feminist projects work hard to enhance the legal recognition of sexual and gendered violence, while acknowledging that the victims of sexualised violence and violence based on gender are rendered either invisible before the law or struggled to see their harms recognised within mainstream responses to atrocity¹³. However, feminist perspectives also point to the limitation of recognising sexual and gendered violence as physical harm caused by individual acts. For instance, Wendy Brown demonstrates how fixating rape as a universal experience of women have reduced the women to a passive and vulnerable object of law [cited in¹³].

All these facts point to the intrinsic violence of law: the violence to categorise and to produce legal subjectivities. This is what critical legal scholar have observed that violence lives on and through the law. Meanwhile, feminist legal theory also demonstrates that such violence of law reflects a gendered perspective at the binary of the masculine, active, rational, global against the feminine, passive, emotional, and intimate^{23,25}. However, either as mere existence before the state collective power or the victims relied on the categorisation of law, the feminist geolegal view reminds us that these different legal subjectivities in multiple scales of law and justice are modes of existence that are embodied in those who experienced forced marriage. Both the occurrence of the past violent regime and the prosecution of such unjust past converge at one point: the bodies that bare violence. Through the lens of feminist geolegality, the victims' bodies are now seen as an intimate, bodily space of the intersection of law and violence. On the one hand, sexualised and gendered bodies are the intimate dimension of the structural violence rooted in the social structures. On the other hand, the bodies are site for legal inscription, categorisation and translation. At the same time, the participation of the victims in the criminal proceeding as a bodily act reflect the possibility of the body to resist against the past violence and the juridical exclusion of law. This is clear in the case of forced marriages: the Civil Parties' request for the

investigation on an excluded charge show a potential of an active role of the actual victims in challenging the exclusive perspective of law.

Ultimately, by challenging the perspective of law, the framework of feminist geolegality vibrates the possibility of the body as the intersection of law and violence. And therefore, it points to a potential of an active role of the victims in resisting violence inflicted on them.

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All content of the article is done by the author only.

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Từ thân xác đến nhân loại: Một tiếp cận của Địa-Pháp lý Nữ quyền đối với sự Truy tố Hôn nhân cưỡng bức như là Tội ác chống Loài người

Lê Nguyễn Nhật Minh*



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TÓM TẮT

Việc truy tố hôn nhân cưỡng bức như là tội ác chống lại loài người có nghĩa là gì? Hôn nhân cưỡng bức trong chế độ độc tài là một hình thức bạo lực tình dục hoá và có cơ sở giới, vì nó cụ thể nhắm đến tính dục và khả năng sinh sản của cơ thể phụ nữ. Phần mình, việc truy tố hôn nhân cưỡng bức như là tội ác chống loài người hứa hẹn việc hàn gắn các nạn nhân với nhân loại, nơi các nạn nhân được xuất hiện như một phần của cộng đồng nhân loại. Bài viết này xem xét quá trình "dịch" các nạn nhân của hôn nhân cưỡng bức sang địa hạt của công lý toàn cầu thông qua việc truy tố hôn nhân cưỡng bức như là tội phạm quốc tế trọng yếu. Để làm như vậy, nó sử dụng khái niệm 'địa-pháp lý nữ quyền' (feminist geolegality), một cách tiếp cận xem "mối quan hệ bất khả phân ly" giữa luật pháp, không gian và hoạt động của quyền lực trên nhiều chiều kích, từ "thân mật" đến "toàn cầu". Nói cách khác, địa-pháp lý nữ quyền thách thức các trục nhị nguyên bằng việc phân tích sự cấu thành lẫn nhau giữa luật và không gian trong nhiều chiều kích không gian, từ không gian thân mật của thân xác đến không gian toàn cầu của luật quốc tế. Áp dụng quan điểm lý thuyết này vào ngành luật hình sự quốc tế, và cụ thể tập trung vào vấn đề quyền tham gia tố tụng của nạn nhân trong tố tụng hình sự quốc tế, bài viết này khái quát lại thực hành truy tố và đại diện nạn nhân trước các tòa án hình sự quốc tế như thể là một quá trình chuyển dịch nạn nhân vào trong lãnh vực của luật pháp và siêu vượt họ qua các quy mô khác nhau của không gian pháp luật. Bên cạnh đó, thông qua lăng kính địa-pháp lý nữ quyền, bài viết quan sát cách các nạn nhân của hôn nhân cưỡng bức được chuyển đổi từ cơ thể của bạo lực sang cơ thể trước pháp luật, nơi giao thoa của không gian và luật pháp diễn ra theo nhiều quy mô. Từ đây, cùng quan điểm với những học giả pháp lý nữ quyền, tôi lập luận ủng hộ cho một quan điểm hợp toàn cho vấn đề về nạn nhân của bạo lực tình dục trong các tòa án hình sự quốc tế.

Từ khoá: địa-pháp lý nữ quyền, thân xác của nạn nhân, tính giao thoa, hôn nhân cưỡng bức, thân mật/toàn cầu

Khoa Luật, Trường Đại học Kinh tế-Luật, ĐHQG-HCM

Liên hệ

Lê Nguyễn Nhật Minh, Khoa Luật, Trường Đại học Kinh tế-Luật, ĐHQG-HCM
Email: minhlnn@uel.edu.vn

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