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Genocide Finally Enters Public Discourse: The International People's Tribunal 1965

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ABSTRACT

This article describes public discussion in Indonesia and abroad before, during and after the International People's Tribunal 1965 (IPT). Hearings were held in The Hague in November 2015. As a "tribunal of inquiry," it derived its legitimacy from Indonesian and international civil society, while seeking guidance from conscience and the highest principles of international law and justice. Although pressure had grown since democratization in 1998 for action to resolve the numerous crimes against humanity committed against presumed communists in 1965, the government appears unable and unwilling to follow up. The IPT was one among many transitional justice initiatives undertaken by civil society as a result. Here we summarize the process of the hearings and the final report by a panel of international judges, as well as the reception of the report in Indonesia and abroad.

KEYWORDS

People's Tribunal; tribunal of inquiry; genocide; Indonesia; military; civil society; The Hague

Introduction

After Indonesians won their democracy in 1998, many expected an accounting for the atrocities committed at the birth of the New Order regime thirty-three years earlier. Survivors of the anti-communist pogroms who were still alive had spent decades as outcasts, deprived of many rights and constantly demonized by a hostile society. They and their families—millions of people—wanted at least an acknowledgement of the injustices done to them. Survivors' associations spoke of an official apology, truth telling and accountability for perpetrators. Others wanted compensation and medical support for ageing people still carrying traumas.

The first president elected after 1998 did indeed make several significant gestures. President Abdurrahman Wahid was a liberal former head of the large religious organization Nahdatul Ulama (NU). In December 1999, two months after his election, he apologized for the killings to meetings of "1965 exiles" at the Indonesian embassies in The Hague and Paris. One of us (AS) was present at both meetings, and heard him call the exiles "wandering heroes" (*pahlawan klayaban*). He repeated the apology on the state-owned television channel TVRI on 15 March 2000, when he added a call to revoke the ban on communism. However, that is as far as it went. He failed to persuade the nation's supreme legislative body, the People's Consultative Assembly (Majelis Permusyawaratan

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Rakyat, MPR) to repeal the 1966 ban on communism that had long hampered open discussion of 1965. In retrospect, it seemed clear that his public apologies were made not in his capacity as head of state, but as NU leader. In any case, NU leaders since Wahid passed away in 2009 have claimed that he never intended to compensate victims.

Since then, there have been only glimmers of hope for a resolution at the highest level. President Susilo Bambang Yudhoyono reportedly drafted a text to apologize to the 1965 victims on his National Day speech of 17 August 2012, but he was dissuaded when, two days before his address, a demonstrative meeting of Islamic leaders and retired generals led by the vice-chairman of NU said it was best to “forget” the 1965 issue. His successor, President Joko “Jokowi” Widodo, promised before his 2014 election to “resolve” 1965 and other past human rights abuses, but since then has done almost nothing to overcome resistance among the military figures who surround him.

This evident paralysis at the top led activists in the regions to begin initiatives of their own. A mass grave in Central Java was exhumed in November 2000, and the documentary film of the event circulated online. Progressive Islamic followers of Abdurrahman Wahid, organized through Syarikat of Yogyakarta, began early in 2000 to hold social-cultural meetings with victims in East and Central Java, emphasizing gender issues. Local truth and reconciliation meetings have been held in many other places around Indonesia since then, as described elsewhere in this special issue. Of greatest significance were a series of “testimony hearings” held in six cities in 2013 by a consortium of non-governmental organizations (NGOs) known as the Coalition for Justice and Truth (KKPK in Indonesian). These testimonies were published in 2014, and a number of respected national figures responded to them. The media have also covered various film screenings, book launches and discussions.

The idea to organize a people’s tribunal on crimes committed by the Indonesian state in and after 1965 first arose during an informal meeting on 23 March 2013 in The Hague. Civil society and human rights activists in the Netherlands were talking with Joshua Oppenheimer about his documentary film *The Act of Killing*. This and its sequel, *The Look of Silence*, were not the first eye-openers in Indonesia, but they were cinematically striking. Given the decades of public silence amid the state’s hate propaganda that preceded it, Oppenheimer’s vivid re-enactment and graphic description of the torture and deaths of 1965–66 was sure to awaken shock, anger, terror and perhaps even disbelief among a generation who knew of this only by hearsay.

Present at the meeting were the anthropologist Saskia Wieringa, host and later chair of the organization, Nursyahbani Katjasungkana, lawyer-turned-coordinator, and Stanley Adi Prasetyo, then a member of the Indonesian National Commission for Human Rights (Komnas HAM). Dozens of activists, students and Indonesian exiles in the Netherlands were also there. One of us (AS) was there too, as a journalist with a long-standing concern for the issue, having seen corpses in a river in Central Java in December 1965, and having talked about the shock of that experience often with friends since then. The discussion went on to focus on what both the state and human rights activists had achieved in terms of justice for the 1965 crimes. Komnas HAM had delivered its full report on the crimes the previous year (2012).¹ However, instead of verifying the evidence in it to prepare state indictments for a judicial process, the Attorney General’s office had returned it to the commission, on formal and rather dubious grounds. In effect, it rejected it. The report remains in limbo. Then-President Susilo Bambang Yudhoyono, Stanley revealed, appeared to be interested in resolving the 1965 issue. But he time and again

reminded the commission of his “situation”: Sarwo Edhi, the best-known general behind the killings, is Yudhoyono’s father-in-law. Many awaited an opening during the presidential State of the Nation address on 16 August 2014, but to no avail. Indeed, when some time later several former generals, led by retired general Solichin G. P., resisted the idea of offering an excuse, he dropped it altogether.

Thus, our discussion reached its conclusion: “unwilling” and “unable.” Almost fifty years on, the Indonesian state has undeniably demonstrated its unwillingness and inability to address and resolve the many questions around the 1965–66 tragedy. None of the responsible officials and perpetrators of the crimes have been brought to justice. Rather, victims, survivors and their families were held to be responsible for their own misfortune by having called down upon themselves the deaths, their physical and mental suffering, the stigmas, and their social, political and economic deprivation. With very few and partial exceptions, there are as yet no indications that the state has been seriously concerned about these issues, let alone ready to resolve them by, for example, compensating the victims and survivor families. In short, we needed some sort of intervention—a people’s tribunal.

Given the political conditions, tribunal hearings could not be held in Indonesia, however much the organizers wanted it. They chose The Hague instead, the international city of justice. And what could be more appropriate than to present it as a special event to commemorate the half century that had elapsed since the crimes were committed?

The prelude

A number of seminars and conferences followed throughout 2014–15. The first was small, and reviewed people’s tribunals elsewhere. Then followed a seminar highlighting forms of repression seen from 1965 onwards, stories of victims, and Dutch involvement. On 18 March 2014, a body was formalized on behalf of Indonesian exiles in the Netherlands and Germany and international researchers. The International People’s Tribunal 1965 Foundation (henceforth “IPT 1965” or simply “IPT”) tasked itself to organize a tribunal to examine the state crimes in Indonesia from September–October 1965 onwards.

The IPT could not and did not derive its legitimation from the state. Instead, it said its moral authority derived from the 1965 victims and from national and international civil societies. It took the format of a formal human rights court, with the power to prosecute but none to enforce. The IPT considered itself a “tribunal of inquiry.” Its evidence was drawn from victim testimonies and academic research (FR, 20). Like any state court should do, however, the people’s tribunal sought guidance in conscience and inspiration in the highest principles of international law and justice.

Some forty international researchers contributed to the IPT Research Report presented to the tribunal’s judges and prosecutors. The IPT also contacted a number of 1965 survivor organizations in Indonesia asking for data on their members’ social conditions. The Indonesian government was invited to the hearing but declined to be present or make a submission.

The hearing

The IPT hearings were held at the Nieuwe Kerk, The Hague, from 10 to 13 November 2015. The four days of hearings attracted much interest among international experts, rights

activists and Indonesian students in Europe. Live streaming provided by the IPT to Indonesia helped to educate a younger generation and ensured considerable Indonesian media interest. Streaming also went to significant exile communities in Australia, the United States, Germany and Sweden. The symbolism of the date—a half century after the massacres—triggered international press coverage. BBC Indonesia, al-Jazeera, the Asia-based Rappler online, and British, American, Dutch and Australian media carried extensive, sometimes daily reports and documentaries.

A team of prosecutors led by noted lawyer Todung Mulya Lubis compiled a list of nine indictments for crimes against humanity. About twenty survivors and witnesses, mostly from Indonesia, as well as international experts, presented their testimonies during the hearings (FR, 13–14).

The panel of judges (henceforth “the panel”) consisted of seven international lawyers and professionals and was led by former Chief of the South African Constitutional Court Zak Yacoob. It opened by regretting the absence of a submission by the state of Indonesia and other states, despite their being invited to do so. At the end of the last hearing, the panel concluded in a statement that, “All the material demonstrates beyond any doubt that the serious violation of human rights brought to the judges’ attention did occur” (FR, 17). The organizers and public present greeted this statement with warm enthusiasm.

Referring to the upheaval that started in September–October 1965, the panel defined its task as follows:

To determine whether these events amounted to crimes against humanity, to express a conclusion on whether the state of Indonesia and/or any other state should assume responsibility for these crimes and to recommend what may be done in the interests of lasting and just peace and social progress in Indonesia. (FR, 16)

Crimes against Humanity

On 20 July 2016, Chief Judge Zak Yacoob, on behalf of the panel, concluded that the state of Indonesia was guilty of the crimes against humanity as charged by the team of prosecutors. He also found that the mass killings fell within the 1948 Genocide Convention.

[T]he widespread systematic attack targeted the substantial civilian population constituted by the Communist Party of Indonesia (Partai Komunis Indonesia, PKI), all its affiliate organizations, its leaders, members and supporters and their families (as well as those alleged to have been sympathetic to its aims) ... [A]ll of the acts ... considered by the IPT qualify as crimes across the world, including in Indonesia, whose domestic law in relation to crimes against humanity does not differ significantly from that of other countries around the world ... (FR, 21–2) ... namely, mass killings, imprisonment, enslavement, torture, enforced disappearance, sexual violence and persecution through exile. (FR, 24)

These crimes are all listed in Indonesia’s own law establishing a Human Rights Court “in order to resolve gross violations of human rights” (Law No. 26/2000). In addition, the panel concluded that two further indictments by the prosecutors—hate propaganda, and the complicity of other states—also constituted crimes against humanity (FR, 61, 71).

On State Responsibility

As to the responsibility and the chain of command involved, the panel stated

that all these crimes were committed under the full responsibility of the State. General Suharto assumed immediately on 2 October 1965 de facto control of the capital and the armed forces. A new Operations Command for the Restoration of Security and Order (“Kopkamtib”) was established on 10 October to implement the liquidation of the PKI and alleged sympathizers. (FR, 26)

On the evidence of specific crimes and local responsibilities, the panel relied on the conclusions of the Komnas HAM investigation (2012) (FR, 28–9).

Interestingly, the panel viewed as an acknowledgement of state responsibility (“a rare exception”) that on 8 November 1973,

the Attorney General issued an instruction to local prosecutor offices in Indonesia to set aside (not to prosecute) the cases of killings against members of the PKI and/or of PKI-affiliated organizations, as they had “arisen from popular anger and spontaneity of the masses.” (FR, 28–9)

Even more clear admission of state responsibility can be inferred from the former coordinating minister for political, legal and security affairs Djoko Suyanto’s statement on 1 October 2012 rejecting the Komnas HAM report, “saying that the killings were justified to save the country from communism” (FR, 29).

Kopkamtib was the main vehicle for this operation as well as the source of many other military instructions. In Aceh at least, local commanders replicated these orders (FR, 30). “[S]ome of the orders explicitly authorized army commanders to take action outside the law.” They were told to use their own discretion to detain, investigate and prosecute a huge range of suspects, often leading to the latter’s disappearance. The panel found that these orders, phrased as “taking measures for a solution of the prisoners (*mengambil tindakan penyelesaian pada tawanan/tahanan*), [constituted] a bureaucratic euphemism for mass murder that smacks of the ‘final solution’ with which the Nazis tried to veil the Holocaust” (FR, 31). On the basis of various so-called “investigations” and “screening,” PKI suspects’ attitudes were “clarified.” On 18 October 1968, they were “classified as ‘A’ (clearly involved directly), ‘B’ (involved indirectly) and ‘C’ (... assumed to have been involved directly or indirectly)” (FR, 32–3). This classification became the basis for further sanctions, ranging from regular reporting requirements, through long-term imprisonment, to execution.

The nine crimes against humanity are described as follows:

Mass Killing

The official, army-sponsored narrative always ascribed the 1965–66 mass killings to spontaneous acts by outraged people to punish the PKI for its coup attempt. Only in 1969 (the Purwodadi killings) did the Indonesian press run some stories suggesting that the army was in fact responsible for organizing killings. If the army kept substantial records of the way in which operations were actually conducted around the archipelago, they are mostly not yet in the public domain. Given this history of Indonesian press censorship, the IPT judges panel relied mostly on academic research that drew its information from reports in the foreign media and diplomatic cables. It concluded:

The most common procedure was for civilian paramilitaries operating under the direction of a small RPKAD [Indonesian special forces] post to arrest suspected communists and then take them to designated detention centres. The detainees were interrogated, however briefly, to

separate PKI cadres from ordinary Party members, sympathizers, and relatives. Cadres were taken to isolated locations and killed ... [L]arge numbers of detainees, whom the military was neither interested in nor capable of feeding and housing [were handed down ...] to designated civilian death squads ... [E]ven those killings that were carried out by non-military actors were ... engineered by the Army. (FR, 32–3)

Given the nature of the killing—“dispersed, nocturnal and by small groups”—the panel concluded: “Any estimate of the total number who perished must therefore be a composite of numerous reports ... A scholarly consensus has settled on a figure of 400–500,000, but the correct figure could be half or twice as much” (FR, 37–8).

The killings were “collective in nature rather than directed toward singled out individuals.” They were, moreover, of such a scale and scope as to constitute, in the view of the panel, “acts of extermination” (FR, 38–9).

Imprisonment

Prisoners were subject to a screening process using psychological procedures that “came to be a substitute for law” (FR, 41).

An overall figure for those detained (known as *tapol*, abbreviation for *tahanan politik*, political prisoners) is often given as one million. ... By 1975–76, a total variously stated as 500,000, 600,000, or 750,000 was officially stated to have been arrested and detained in the years immediately following 1965. ... Very few of these detainees, who might be held for ten years or longer, were ever subjected to any form of trial process ... (although) by early 1977 ... the government claimed to have tried about 800 prisoners in all, that is, an annual average of less than 100 cases. (FR, 40–41)

The panel supported the prosecution’s charge of “severe deprivation of physical liberty.” The state of Indonesia had

arbitrarily arrested and imprisoned large numbers ... without trial ... and the vast majority [were] detained without warrant of arrest ... ; the approximately one million prisoners were detained on a categorization administered by psychologists [who ...] in essence were performing the role of *de facto* judges. (FR, 42–3)

In the late 1970s, they were released as a result of pressure from donor countries.

Enslavement

On the basis of evidence put forward in a range of documents and testimonies, the panel found that many detainees lived under “slavery conditions” (including sexual slavery). One factual witness testified that on Buru Island he

was subject to intensive and extreme forced labour (without any remuneration) in the construction of infrastructure in the previously undeveloped jungle, and subsequently in cultivation of food crops, much of the produce of which was sold for the benefit of the guards and commanders.

At least 11,600 prisoners held in Buru’s twenty-three labour camps turned the virgin jungle island into three million hectares of paddy fields. The panel concluded: “Given the extreme work requirements and inhuman working conditions and the total control exercised by

military and civilian officers of the state, it is clear that the prisoners ... were subject to enslavement" (FR, 42–4).

Torture

The torture took place in a widespread and systematic manner. Data collected by IPT 1965 researchers records 235 victims of torture ... 173 of these torture victims were forced to continue reporting to authorities on a regular basis after they had been released. The acts of torture which took place included: a. burning parts of the body; b. application of electric shocks; c. various forms of water torture; d. sexual abuse; e. pulling out fingernails; f. forcing victims to drink soldiers' urine; g. rubbing chili in the eyes of victims; h. tying victims inside a sack with a snake; i. cutting off victims' ears and forcing them to consume them. (FR, 44–5)

The data on torture represents a small but representative fraction of the total number of victims.

Enforced Disappearance

Two eyewitnesses testified in great detail to the panel about the disappearance of family members. Their stories were in line with a sample investigation by Komnas HAM (2012), which concluded that civilian "victims of enforced disappearances as a consequence of operations conducted by the state security forces amounted to roughly 32,774 people." (FR-48) The figure for the whole of Indonesia must be considerably higher. The IPT Research Report included

a number of case studies, containing explicit details of locations and the names of a number of victims, focusing on North Sumatra, South Sumatra, East Nusa Tenggara and Java. The plantations in North Sumatra provide perhaps the most extreme case of wholesale mass disappearances of people alleged to be related to the PKI as well as labour activists. (FR, 46–7)

Sexual Violence

Here the panel received a detailed 200-page report, including more than twenty individual case studies, which alleged that

[t]he crimes ... occurred in a wide range of settings: in victims' homes, in public, in prisons, police or military barracks, and in the many ad-hoc facilities used to hold people ... The time-frames ... also vary considerably: from individual assaults, to repeated assaults over days and weeks, to conditions of sexual enslavement, enforced prostitution and forced marriage, lasting months or years. The range of sexual offences, and the many conditions ... are evidence [of] the widespread and systematic nature of sexual violence as crimes against humanity. (FR, 49)

The panel heard evidence from one expert witness and a personal account of sexual violence from a factual witness. It also received a 2007 report from the National Commission on Violence against Women (Komnas Perempuan) analysing 122 testimonies provided by women survivors (FR, 48–51).

Exile

The exact number was not known, but the panel concluded that "hundreds of thousands of Indonesian nationals who were abroad" at the time of the bloody 1965 events were

persecuted by being “deprived of the right of safe return” home. They “have been deprived of their full and unconditional rights of citizenship and nationality” (FR, 54). At “screening investigations” by the Indonesian embassies, they

were asked detailed questions about their lives, as well as the details of their families in Indonesia, with the purpose of purging the migrant community from an entire faction of the perceived or actual ideological opposition ... [O]nly those people who claimed to be Suharto sympathizers would be able to return without pain, while others risked facing dire consequences if they returned.

The panel concluded that the persecution had “a huge impact on their lives” and “a devastating psychological effect.” Two exiles who live in the Netherlands testified anonymously from behind a screen, claiming “continuing concerns for their own safety or those of their families even after fifty years of exile” (FR, 52–4).

Most exiles had lived in the former Soviet Union, Eastern Europe and China. Little academic research has been done on exiles, and more evidence is needed. It seems doubtful to the present authors that the number of exiles was ever in the hundreds of thousands. Their safety concerns, too, may have become less serious since 1998.

The Propaganda Campaign

From early October 1965, there was a sustained “campaign of propaganda and hate speeches” that lasts even to the present day. One factual and two expert witnesses testified about “continued production and publication of school and university textbooks as well as many other films, novels etc, while at the same time prohibiting or suppressing any alternative accounts” (FR, 60). The campaign was (and is) based on untrue allegations, and was “intended to discriminate, as well as to dehumanize, the target group and laid down the basis for the mass atrocities committed against them.” This campaign focused on

two central charges: (a) that the PKI was the “mastermind” behind the failed coup of 30 September–1 October 1965; and (b) that during the coup the young women present at Lubang Buaya (where the murders of the captured officers—six generals and one lieutenant—were said to have taken place) were encouraged by the PKI to engage in immoral behaviour, seeking to seduce the generals in “a lurid, naked dance,” and then “castrating the generals” and “killing them after gouging out their eyes.”

This official narrative, the prosecution stated, is entirely false. Yet

[i]t helped to legitimize the mass killings that took place in 1965–66 and was cited as justification by many of those who perpetrated such killings. It was later elaborated in various cultural forms, including film and literature, and became the main source for the historical narrative of events presented during the New Order of President Suharto, sustaining the continued persecution of, and discrimination against, those judged to be communists or communist sympathizers. (FR, 55–6)

To examine this narrative, the panel outlined in some detail what did happen in early October 1965. It accepted the view put forward by academic Robert Cribb that recent research “has shown convincingly that the 30 September Movement was a joint conspiracy between the Untung group [of army officers] and a small group around [D. N.] Aidit as PKI leader.” It pointed out that, as revealed by Benedict Anderson, the autopsy

reports show that “[n]one of the bodies [of the generals] bore the marks of torture or of mutilation.” Having considered the many versions as to the real perpetrators summarized in the IPT Research Report, the panel concluded that the facts “could not reasonably lead to a defensible conclusion that the majority of party officials and rank and file members of the PKI were involved in an attempted coup, or consequently presented a threat to the state or society” (FR, 56–9). The panel concluded:

The propaganda version ... had a significant dehumanizing impact, helping to justify the extra-legal persecution, detention and killing of alleged suspects and particularly to legitimize the use of sexual violence against women. Unchallenged for more than three decades, this propaganda also contributed to the denial of civil rights of survivors, and the absence of any attempt to remedy injustices against them. (FR, 61)

Complicity of Other States

Two expert witnesses presented the case:

First, that the Indonesian army constructed a sustained and false narrative of acts of extreme brutality, and conspiracy against the state in order to create a pretext for the anti-communist purge and slaughter, which was quickly launched. Second, that the diplomatic and propaganda apparatuses of the US, Britain and Australia propagated this version of events with the purpose of manipulating opinion in favour of the Indonesian army (and against President Sukarno), in the full knowledge that the army was preparing to, and later had already begun to, “carry out or encourage” such killings on a massive scale. Third, that the US provided material aid to the Indonesian army in at least two specific cases in the full knowledge that these would assist these acts: (a) the provision of small arms and communications equipment; and (b) the provision of a list of known communists; and that Britain eased pressure on the Indonesian army in the undeclared war (Konfrontasi—Confrontation) taking place on the border between Indonesia and the Borneo (Kalimantan) territory of the Federation of Malaysia, again to allow the army to pursue its anti-communist purge more easily. (FR, 61–2)

It is clear from the above evidence that knowledge of the mass killings in Indonesia was widespread among officials of Western governments, as well as being reported in their media. This appears to have been accepted with few qualms, with rare dissenting views. According to historian Gabriel Kolko, Cold War conditions ensured that, for Western officials, “the events of September 30 created a small challenge but also an enormous opportunity to resolve America’s dilemmas by directing the military’s wrath against the communists” (FR, 68–9). The panel concluded

that the US gave sufficient support to the Indonesian military, knowing well that they were embarked upon a programme of mass killings, for the charge of complicity to be justified ... UK and Australian propaganda operations already in existence were part of that undeclared war. Both governments shared the US aim of seeking to bring about the overthrow of President Sukarno, but the charge here is not one of complicity in “regime change” (which however objectionable is not a crime against humanity).

Other states including the Soviet Union may have had similar knowledge yet continued supplying arms to Indonesia as a Cold War ally, though “the panel ... did not have sufficient evidence nor time to go into such additional charges.”

In short: “There is no record that any of the governments considered above made the slightest attempt to urge restraint upon the Indonesian government or army” (FR, 70–71).

On Genocide

Few expected the panel in its final conclusions to go beyond the prosecutors' charge sheet. That is exactly what it did when it qualified the 1965 crimes as "genocide" because they were directed at a "national group." It added that crimes committed against ethnic Chinese Indonesians "would plausibly amount to genocide under the Genocide Convention" (FR, 71).

The 1948 Convention defines genocide as "acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group" (FR, 72). The panel found it important to qualify the acts it had already called crimes against humanity as genocide. Doing so provides "a framework to comprehend the true nature of what took place in Indonesia in 1965–66 and beyond." Genocide defines the victims "as part of a 'national group'," and not simply as "individuals whose individual rights have been violated" (FR, 71–2). It reached the verdict of genocide after answering "yes" to the following four questions.

1. Do the facts brought before the tribunal by the prosecution include acts that fall within the provisions of the Genocide Convention?

Yes, acts proscribed by the Genocide Convention were committed "against alleged leaders of the PKI and those alleged to be its members or sympathizers, as well as a much broader number of people including Sukarno loyalists, trade unionists and teachers, and specifically against people of ethnic Chinese or mixed descent." (FR 74)

2. Were these acts committed against a "group" that is protected under the Genocide Convention?

Yes, the acts described in the FR "demonstrate the extent to which Indonesian society was completely and intentionally reorganized through terror and the destruction of a significant part of the 'Indonesian national group'" (FR, 76).

The Genocide Convention defines the crime of genocide as consisting of "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." Raphael Lemkin's original intention was that genocide should mean "the destruction of the national identity of the oppressed group [and] the imposition of the national identity of the oppressor."² Courts in Spain and Argentina have recently upheld this original interpretation in relation to the Argentinian military abuses during the 1970s and 1980s. According to the IPT panel of judges, the same interpretation applies in Indonesia. The national identity of the oppressor was here known as the New Order (Orde Baru).

The social, political and economic changes wrought in Indonesia after 1965 were unprecedented in their scope. They persist to the present day. They were brought about by a series of crimes that were committed, encouraged and enforced by the state. These crimes affected the targeted groups as well as the rest of society. In our view, they shed considerable light on the authoritarianism of the New Order, on the numerous atrocities committed throughout its three decades, and on the impunity that still persists today. The panel reserved its judgement on whether ethnic Chinese were specifically targeted as well.

3. Were these acts against a group protected under the Genocide Convention committed with the specific intent to destroy that group in whole or in part?

Yes, the acts “were committed with the specific intent to annihilate or destroy that section in whole or in part” (FR, 81). The panel considered the idea “that the PKI had embarked on planned massacres and a seizure of state power, a scenario bolstered by revival of the memory of the alleged role of the PKI in Madiun in 1948,” and agreed with scholar Robert Cribb that this idea was a “malicious fantasy.” The panel concluded: “[T]here is no basis in fact for the assertion that the acts were committed in a context of the need to ‘kill or be killed’” (FR, 77).

4. Is the state of Indonesia bound by the provisions of the 1948 Genocide Convention?

Yes, “[t]he State of Indonesia is bound by the provisions of the 1948 Genocide Convention under international customary law” (FR, 81), although it has neither signed nor ratified the Genocide Convention (FR, 77).

Recommendations

The panel recommended that the Indonesian state should

(a) apologize to all victims, survivors, and their families for the commission by the State of all the crimes against humanity and other crimes committed in Indonesia in relation to the 1965 events; (b) investigate and prosecute all crimes against humanity; (c) ensure appropriate compensation and reparation to victims and survivors. (FR, 82)

It urged the state to comply with the calls by Komnas Perempuan for a full investigation and compensation for the victims, and by Komnas HAM for the Attorney General to act on its 2012 report. It furthermore urged “all relevant authorities to ... [f]ight impunity, ... rehabilitate the victims and ... [e]stablish the truth about what happened ...” (FR, 82).

Reception

After a half century of state silence, marked by unwillingness and inability to resolve the great human and political tragedy of 1965 and after, the IPT can be seen as a historic moral intervention. It has helped to create some political momentum. How did the state and the public within and beyond Indonesia react to the IPT hearing and verdict?

The hearing in The Hague in November 2015 provoked negative reactions from official circles in Jakarta. So much so that, when returning home afterwards, IPT organizers, witnesses and lawyers had to take precautions for their safety. Earlier, some Indonesian student volunteers who had helped to organize the hearing reported intimidation, and the live streaming in Indonesia experienced some disturbance. Both efforts were apparently directed by military officers in Jakarta. Vice-President Jusuf Kalla and Coordinating Minister for Politics and Security Luhut B. Panjaitan promptly denied the legitimacy and significance of the tribunal. Both condemned the fact that it was held abroad and, especially, in the former colonial power, the Netherlands. Kalla said dismissively that the IPT was “like theatre.” It was “nothing more than a moral movement, perhaps important

for those who attend, but not for the Indonesian government.” He then repeated the New Order argument that the murder of the six generals outweighed any need to confront wider abuses. “Why should the government apologize when it was our generals who were killed?” Panjaitan cast doubt on the nationalism of the IPT organizers: “Probably they are Indonesians with too little to do. We Indonesians know how to solve Indonesian problems. Maybe those Indonesians don’t think like Indonesians any more” (www.bbc.com/indonesia, 11 November 2015).³ He too refused to apologize to the victims.

These two were not alone in rejecting a moral movement from within society. Defence Minister Ryamizard Ryacudu said the responsibility for “the problem” (which he did not further specify) lay elsewhere: “If there had been no rebellion first, this problem would not have arisen, so the human rights abuse was first committed by those who started it.” Attorney General Muhammad Prasetyo also rejected the tribunal as illegitimate, since it had been initiated by human rights activists: “We solve our own issues. There is no need for other parties to be involved in this” (CNN Indonesia, 22 July 2016).⁴ When, eight months later, the panel of judges issued the verdict of genocide, former Chief of the Constitutional Court Mahfud MD came out with the most negative reaction. The IPT had been “just a joke (*dagelan*),” he said (*Tempo*, 21 July 2016).⁵ Curiously, however, the Ministry of Foreign Affairs adopted a mild tone, considering the tribunal a matter of “different opinions.” Most legislators, meanwhile, remained silent on the tribunal and its verdict. Apparently, they saw little political future in the 1965 issue.

The harshly nationalist, angry reactions on display here should not have come as a surprise. Their language was reminiscent of the days and months after October 1965. Even before the tribunal hearing, 1965 survivors holding public commemorations and even student organizations putting on seminars experienced intimidation. The ban on certain book launches at the famous Ubud Writers and Readers Festival in mid 2015 set a trend. Threats against film screenings and other public events on 1965 issues continued throughout the year and after the July 2016 verdict.

The IPT greatly increased Indonesian public attention to the 1965 mass killing and to the existence of mass graves. Even before the hearing, IPT chief prosecutor Todung Mulya Lubis said he believed President Jokowi would be ready to offer an apology to the 1965 victims, despite influential figures around him who thought otherwise. The “Turn Left” (*Belok Kiri*) festival of art and books, soon after in March 2016, planned to highlight a history of leftist activism in Indonesia, including in 1965, but was banned by police. Media reports, civil society actions and student initiatives made the verdict of genocide widely known within Indonesia, and even abroad. Many activists—both those who grew up during the New Order and the younger 1990s generation—began to confront the bloody past and became aware of the official lies about what happened. We can say that the politics of memory have entered a new phase.

It is true that the IPT organizers mostly did not represent institutions and civil society organizations in Indonesia. Some activists criticized the IPT on the (not unreasonable) grounds that it did nothing to improve the welfare of 1965 victims. The organizers were individual activists and survivors who each had their networks at home and abroad. Yet it is also fair to say that they gained public attention reaching far beyond their own circles. They acquired popularity and political-moral strength in Indonesia. Many were invited to attend public discussions across the country and abroad. In August 2016, the IPT was awarded the prestigious Suardi Tasrif Award for freedom of expression, along

with victimized LGBT groups (*The Jakarta Post*, 26 August 2016). In February 2017, Berkeley University awarded T. M. Lubis the Elise and Walter A. Haas International Award for his human rights work, including that as IPT chief prosecutor.

In the midst of all this, what appeared to be the first opening towards dialogue came as soon as the backlash. Indonesian media coverage on the IPT apparently prodded the government to respond. In April 2016, it held a symposium to discuss the 1965 events from various viewpoints. It was initiated by the relatively liberal governor of the National Resilience Institute, retired general Agus Widjojo, who is also the son of one of the generals killed in October 1965. The co-host was retired police general Sidarto, a former guard of President Sukarno. For the first time, victims of 1965 could meet and freely express their views in a public meeting with government representatives. Academics, civil society groups and human rights activists presented an alternative discourse on what the nation had gone through, and what it now needs to face up to and rectify. Human rights NGOs, including IPT activists, together with 1965 victim associations, proposed a presidential commission to seek the truth and pursue both judicial and non-judicial steps towards a just resolution and reparations. Representing the government was the same Luhut B. Panjaitan quoted above. He repeated his refusal to offer an apology, denied that the number killed in 1965 exceeded 80,000 (as if that were an insignificant number), and challenged the activists to find the alleged mass graves. President Jokowi did not seem to be much involved in the process as he was on a trip to Europe at the time. However, when the IPT handed him a letter in The Hague reminding him of the need for a presidential commission to resolve the 1965 crimes, he said, "I am aware [of it]" (*The Jakarta Post*, 28 April 2016). Earlier he had called on the security apparatus to stop intimidating and to help find the mass graves (*Kompas*, 26 April 2016).

For some retired generals, even this tentative first dialogue was apparently too much. In June 2016, they initiated an alternative "anti-PKI" symposium. It was led by retired general Kiki Syahnakri. Defence Minister retired general Ryamizard Ryaacudu spoke, as did other military figures and representatives of various conservative Islamic organizations. The "symposium" warned resolutely against the resurgence of communism. The 1965 victims represented a revival of the long-defunct PKI and should by no means be rehabilitated. In paranoid fashion, its spokespersons pointed out that PKI symbols had recently been "found" in many places. (Historian Asvi Warman Adam commented that this attempt to deflect the issue from historical truth and the fate of innocent victims by baseless talk of a revived PKI came from people involved in the killings and was disloyal to the president's election promise—*Kompas*, 1 June 2016). They repeated the New Order argument that the 1965 "clash" had been a horizontal one: it had been a case of popular revulsion against communism. In conclusion, they urged the PKI to "apologize" to Indonesia's people and government (apparently for the 1948 Madiun revolt), then to dissolve itself and cease all further activity [*sic*—the party ceased to exist in 1965]. They asked the public not to "reopen the past." They did add "regrets" (*menyesal*) for the victims "on both sides" during the suppression of the PKI in 1965, acknowledged the "rights" of former PKI members and their relatives who had been rehabilitated, and said that the fact that many of them had risen to official positions represented "natural reconciliation" (*Kompas*, 2 June 2016). Coordinating Minister Luhut Panjaitan, who said his ministry had paid for both symposia, promised he would blend the recommendations from the two events into one set and present them to the president (*Kompas*, 22 September 2016).

In July 2016, the president replaced Coordinating Minister for Politics and Security Luhut B. Panjaitan with retired general Wiranto. The United Nations Serious Crime Unit in Dili had indicted Wiranto as a war criminal over the 1999 violence in East Timor. At the national Sacred Pancasila commemoration on 1 October 2016, he read out a statement in which, he said, the government responded to various reports it had received. The government was “concerned” (*prihatin*) at the loss of life in 1965. Having sought legal advice, he proposed to establish a “non-judicial” body for “national reconciliation” (*kerukunan nasional*). At the same time, he explained that the state at that time had faced a “clear and present danger” (the English was his) due to ideological differences leading to revolt. The government of the day took emergency measures that were beyond today’s legal system to judge: “Emergency action under emergency conditions (abnormal) can be legally justified and cannot be judged by the character of law today,” he said (CNN Indonesia, 30 September 2016).⁶ The president remained silent and aloof throughout.

In March and April 2017, two associations of retired officers (PPAD and Pepabri), evidently acting under the influence of Wiranto, told Komnas HAM that they rejected a judicial reconciliation model. “That would reopen old wounds and could lead to fresh bloodshed,” retired general K. Syahnakri insisted. They were even sceptical of a non-judicial resolution (RMOL.Co, 17 March 2017).⁷ Several NGOs then reported Wiranto to the national ombudsman for not involving the 1965 victims in his policy discussion. IPT activists and victim associations said he, in collusion with the retired generals and Komnas HAM, was ignoring truth altogether. They pointed out that mass incarceration, for example, was well documented and could easily be brought to a judicial process. Komnas HAM came in for severe criticism for not insisting that the Attorney General do its part, i.e. a judicial investigation, and moreover for ignoring the IPT’s substantial new findings. Komnas HAM responded lamely that it had done all it could, as its 2012 report was stuck at the Attorney General’s office.

Amidst all this, a good source told one of us (AS) that key Wiranto advisors might agree with a presidential apology to 1965 victims, in exchange for a public statement in which Suharto was excused for his regime atrocities. Of course, it is absurd to excuse Suharto, but this indicates that at least some in Wiranto’s circle acknowledge the reality of the mass killings. Wiranto’s initiatives virtually smothered any hopes that victims might have had that the 1965 issue could be resolved judicially or perhaps by means of a presidential commission to investigate the events and rehabilitate the victims. Nevertheless, IPT organizers and their networks of victims and rights activists continue to search for mass graves (they have found about 120 already in Java alone) and push for a presidential commission. They held meetings in nine cities to disseminate and discuss the tribunal’s findings. In Semarang and Bandung, one of us (AS) watched an interested audience of young people, mainly students, engage with the issues. IPT Jakarta was at the time of writing (April 2017) planning a national congress in October 2017. IPT The Hague is continuing its international lobby. All will continue to hold the president to his election campaign promise (as formulated in Nawacita, the 9 Priorities) to “resolve with justice the human rights abuse cases of the past that until now remain a socio-political burden ... [including] the 1965 tragedy.”⁸ Will he now dare to challenge the conservative forces that surround him?

Disclosure Statement

No potential conflict of interest was reported by the authors.

Notes on Contributors

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Note

1. *The Final Report of the IPT 1965* is available at <http://www.tribunal1965.org/final-report-of-the-ipt-1965/>. Page references will be noted in the text as (FR, page).
2. Raphael Lemkin, *Axis rule in occupied Europe*, Washington, DC: Carnegie Endowment for International Peace, 1944, p.79.
3. http://www.bbc.com/indonesia/berita_indonesia/2015/11/151111_indonesia_luhut (accessed 2 November 2017).
4. <http://www.cnnindonesia.com/nasional/20160722151219-20-146378/kejaksaan-tolak-rekomendasi-pengadilan-rakyat-1965/> (accessed 2 November 2017) [about Prasetyo]; <https://nasional.tempo.co/read/789398/tragedi-1965-disebut-genosida-mahfud-md-itu-hanya-dagelan> (accessed 2 November 2017) [about Mahfud]
5. <http://www.antaraneews.com/berita/528957/indonesia-tak-larang-pengadilan-rakyat-den Haag> (accessed 2 November 2017) [Foreign Affairs]
6. <https://www.cnnindonesia.com/nasional/20161001102336-20-162540/wiranto-1965-negara-bahaya-tak-bisa-dinilai-hukum-masa-kini/> (accessed 2 November 2017) [about Wiranto]
7. <http://politik.rmol.co/read/2017/03/17/284214/Soal-Tragedi-1965,-PPAD-Sampaikan-Empat-Sikap-Resmi-Ke-Komnas-HAM-> (accessed 2 November 2017) [about Syahnakri]
8. Nawacita was the 41-page platform presented by Joko Widodo and his running partner Jusuf Kalla during the 2014 presidential election campaign (http://kpu.go.id/koleksigambar/VISI_MISI_Jokowi-JK.pdf, accessed 2 November 2017).