

FINAL REPORT OF THE IPT 1965

Findings and Documents of the International People's Tribunal on Crimes against Humanity Indonesia 1965

20 July 2016

IPT 1965 Foundation, The Hague - Jakarta

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EDITORIAL NOTE

This is the Final Report of the Judges who participated in the hearings held in the Nieuwe Kerk, The Hague, Netherlands from 10 to 13 November 2015. Before the hearings, the judges received the Indictment and Prosecution Brief, as well as extensive background documentary material in the form of a Research Report of over six hundred pages.

During the four days of hearings, the judges heard the oral submissions of the prosecutors, as well as the testimony and responses to questions of more than 20 witnesses (some of whom testified with their identities protected under pseudonyms and/or behind screens). The judges also received several hundred pages of documents, tendered as evidence. The prosecution presented its case as nine counts, alleging the commission of the following crimes against humanity: (1) Murder, (2) Enslavement, (3) Imprisonment, (4) Torture, (5) Sexual Violence, (6) Persecution, (7) Enforced Disappearance, (8) Hate Propaganda and (9) Complicity of Other States.

Following the hearings, the judges examined the evidence and supporting material further, in their preparation of this Report. Helen Jarvis and John Gittings prepared and edited the Report, assisted by Shadi Sadr, Mireille Fanon-Mendes France and Zak Yacoob. Judge Yacoob provided a legal overview of the text. The Report amplifies and provides reasoned justification for the Judges' Concluding Statement, delivered during the final session of the hearings on 13 November 2015 (see A3 below). It begins by addressing the overarching question of responsibility for the mass murders and other crimes; it then focuses on the counts presented by the Prosecution and in an *amicus curiae* Brief submitted to the Tribunal; and concludes with a series of findings and recommendations.

It is regrettable that the State of Indonesia did not accept the invitation to participate in the hearings or make submissions to the Tribunal. The governments of the United States, the United Kingdom and Australia, also did not accept the invitation extended by the Tribunal. The judges welcomed the willingness of individual members of Indonesian National Human Rights Commission, Komnas HAM, and the National Commission on Violence Against Women, Komnas Perempuan, to brief the Tribunal.

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It should be noted that some significant though partial steps towards addressing these issues have been taken in Indonesia since the Tribunal was held, as outlined in Appendix D2.

ACKNOWLEDGMENTS

We wish to acknowledge in the first place the fundamental contribution of those eyewitnesses who had the courage to come forward to testify on facts that have touched their lives profoundly and forever. They are the most qualified representatives of the victims, whose numbers will never be known and whose suffering could never be described in full. We also recognize the contribution of many others, victims and witnesses, who by testifying in recent years—sometimes at personal risk—to the Indonesian national human rights institutions Komnas HAM and Komnas Perempuan, or in print or public forums, have also helped to throw light on the obscurity of the past.

We thank all those who organized and participated in the Hearings in The Hague in November 2015, and the Registrar, Ms. Szilvia Csevár and her team.

We express our thanks to Nursyahbani Katjasungkana SH and Dr. Saskia E. Wieringa and the IPT Foundation for inviting us to act as members of the Panel of Judges and for publishing this Report.

In preparing this Report, we have been helped by the work supplied in oral or written form to us, or already published, by a number of scholars, both Indonesian and non-Indonesian, who have conducted significant research in this field. Their contribution to our knowledge is recorded in footnotes and in the Select Bibliography. However, we pay special tribute to the late Professors Ben Anderson and Ruth McVey of Cornell University for their pioneering work, and we thank Cornell Southeast Asia Program Publications for their kind permission to reproduce a substantial extract from Anderson's essay on "How did the Generals Die?" (Appendix D1.a).

We would like to thank Dr. Bradley Simpson, University of Connecticut, for his help in locating key diplomatic documents, and for permission to publish the extract from an article by him (Appendix D1.b). We thank Dr. Jess Melvin, Yale University, for permission to quote from an unpublished article by her (in Section B2, "Chain of Command"). We thank Mathias Hammer for permission to quote from his article cited also in Section B2. We also acknowledge the Creative Commons policy of Amnesty International under which we reproduce the material in Appendix D1.c).

Finally, we extend our appreciation to Helene van Klinken, the text editor, and the teams who prepared the Indonesian translation, as well as the print and electronic versions of this Report.

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GLOSSARY AND ABBREVIATIONS

30 September Movement: On the night of 30 September 1965, a small group of pro-Sukarno army officers with support of the PKI leader launched an action against anti-Sukarno officers—six generals and one lieutenant were killed.

amicus curiae: Latin for “friend of the court”

Baperki: *Badan Permusjawaratan Kewarganegaraan Indonesia* (Indonesian Citizenship Consultative Body for Indonesian citizens of Chinese ethnic origin)

BTI: *Barisan Tani Indonesia* (Indonesian Farmers’ Union)

Buterpra: *Bintara Urusan Teritorial Pertahanan Rakyat* (Non-commissioned officers in Territorial and People’s Defence)

CAH: crimes against humanity

DPR: *Dewan Perwakilan Rakyat* (People’s Representative Council)

ET: *ex-Tapol* (former political prisoners)

Events of 1965-66: Translation of *Peristiwa 65-66*; it is the term generally used to refer to the killing of the generals on the night of 30 September 1965, and the killings which followed during 1965-66.

G30S: Abbreviation of *Gerakan September Tiga Puluh* (30 September Movement)

Gestapu: Acronym reduced from *Gerakan September Tiga Puluh* (30 September Movement)

Gerwani: *Gerakan Wanita Indonesia* (Indonesian Women's Movement)

Inrehab: *Instalasi Rehabilitasi* (Rehabilitation Installation)

Intel: Abbreviation of Intelligence

IPPI: *Ikatan Pemuda Pelajar Indonesia* (Indonesian Students' Youth Association)

Jaksa Agung: Attorney General

jo: Abbreviation of Latin word *juncto* (in conjunction with)

jus cogens: Latin for “compelling law”, peremptory law with no derogation permitted

KODAM: *Komando Daerah Militer* (Regional Military Command)

KODIM: *Komando Distrik Militer* (District Military Command)

Komando Aksi: (Action Command)

Komnas HAM: *Komisi Nasional Hak Asasi Manusia* (Indonesian National Human Rights Commission), often referred to as the Commission

Komnas Perempuan: *Komisi Nasional Anti Kekerasan Terhadap Perempuan* (Indonesian National Commission on Violence Against Women)

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Kopkamtib: *Komando Operasi Pemulihan Keamanan dan Ketertiban* (Operational Command for the Restoration of Security and Order)

Kostrad: *Komando Cadangan Strategis Angkatan Darat* (Army Strategic Reserve Command)

Koti: *Komando Operasi Tertinggi* (Supreme Operations Command)

Laksusda: *Pelaksana Khusus Daerah* (Special Territorial Administrator)

Lubang Buaya: Crocodile Hole, the well at Halim Airforce Base on the outskirts of Jakarta into which the bodies of the murdered army officers were thrown on 30 September/1 October 1965

Mahmilub: *Mahkamah Militer Luar Biasa* (Extraordinary Military Tribunal)

MPR: *Majelis Permusyawaratan Rakyat* (People's Representative Assembly)

MPRS: *Majelis Permusyawaratan Rakyat Sementara* (Temporary People's Consultative Assembly)

New Order: The name President Suharto gave to his new regime after displacing Sukarno in 1966

Pancasila: The state ideology under President Sukarno. The five principles are: Belief in one God; Nationalism; Humanitarianism; Democracy and Social Justice.

Panglima: Military Commander

PKI: *Partai Komunis Indonesia* (Communist Party of Indonesia)

RPKAD: *Resimen Para Komando Angkatan Darat* (Army Para Military Regiment)

SH: *Sarjana Hukum* (title for lawyer)

Tapol: Acronym reduced from *tahanan politik* (political prisoner); also name of human rights organisation based in London, which focuses on human rights violations after 1965

A THE IPT HEARINGS

A1 Introduction to the International People's Tribunal

by the Organizing Committee

The International People's Tribunal (IPT) 1965 was established to end the impunity for the crimes against humanity (CAH) committed in Indonesia in and after 1965. These CAH have mostly escaped international attention and are silenced in Indonesia itself. Joshua Oppenheimer's 2012 film, *The Act of Killing*, helped to disrupt the international silence. In March 2013 this documentary was launched in The Hague, during the Movies That Matter Festival. After the screening of the film a discussion was held which was attended by 35 exiles, the film director himself, a former member of the Indonesian National Human Rights Commission, and a few activists and researchers. How could the impunity around the CAH committed after 1 October 1965 in Indonesia be ended? The Indonesian government has still not followed up the impressive 2012 report of the Indonesian National Human Rights Commission on the CAH in and after 1965. The failure of the state to try to reach an internal Indonesian solution for these serious crimes made participants decide that international pressure was needed to fight against the impunity the perpetrators continue to enjoy and to break through the silence and stigma surrounding this period in Indonesian history. They felt that the best form for such a campaign would be an International People's Tribunal, and appointed the human rights lawyer Nursyahbani Katjasungkana to be the general coordinator.

In the first months after the March 2013 meeting a small working team was formed, a Concept Note was drafted, a research coordinator was appointed (Saskia Wieringa), and secretariats and media teams were set up, both in Jakarta and in the Netherlands (led by Lea Pamungkas). The IPT 1965 became a legal entity (foundation) on 18 March 2014. In 2015 prosecutors and prospective judges were approached, the indictment was prepared and the hearings were held.

The Foundation IPT 1965 aims to redress the historic tendency to trivialize, excuse, marginalize and obfuscate these CAH, particularly the rapes and other forms of sexual violence and torture of women prisoners. Furthermore, the suffering of the thousands of Indonesians whose passports were arbitrarily revoked because they refused to support the "New Order" of

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President Soeharto must be acknowledged as a crime against humanity. The Foundation IPT 1965 has the following objectives:

1. To ensure national and international recognition of the genocide and crimes against humanity committed in and after the “events of 1965” by the State of Indonesia, as well as the complicity of certain Western countries in the military campaign against alleged supporters of the 30 September Movement;
2. To stimulate sustained national and international attention to the genocide and crimes against humanity committed by the State of Indonesia in and after the events of 1965, and to the continued inaction of the State to bring the perpetrators to justice, by, for example, inviting the United Nations Special Rapporteur on Past Human Rights Violations to Indonesia;
3. In the long term: (a) to contribute to the healing process of the victims and their families of the genocide and crimes against humanity in Indonesia in and after 1965; (b) to contribute to the creation of a political climate in Indonesia where human rights are recognized and respected; (c) to prevent the reoccurrence of violence against victims of the genocide and crimes against humanity in and after 1965 and to ensure the fair trial of perpetrators of such violence;
4. To provide a public record of the genocide and crimes against humanity committed after 1 October 1965;
5. To affirm the uncompromising hope that justice is still possible and that such atrocities will never be repeated, and to contribute to the creation of a political climate in Indonesia where human rights and the rule of law are recognized and respected.

Since 2013, preparatory activities, both in the Netherlands and more importantly in Indonesia, were conducted in preparation for holding the tribunal in The Hague, from 10–13 November 2015. The year 2015 marked 50 years of silence on these crimes.

More than 100 volunteers helped to organize the Tribunal: researchers from all over the world, the media teams in Jakarta and the Netherlands, and many Indonesian students from all over

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Europe who helped during the hearings. The formal organs of the Foundation IPT 1965 were the Board of the Foundation, the Organizing Committee and the International Steering Committee. Indispensable political and legal advice was provided by our Advisory Board.

The following is a list of the organs:

Executive Board of Foundation IPT 1965: Saskia Wieringa, (chair), Sungkono and Sri Tunruang (treasurer)

Organizing Committee (OC): Nursyahbani Katjasungkana (general coordinator), Sri Tunruang (finances), Artien Utrecht (member), Ratna Saptari (member), Sri Wahyaningrum (secretariat Jakarta), Helene van Klinken (secretariat Netherlands), Annet van Offenbeek (security), and Saskia Wieringa (research)

International Steering Committee: Saskia Wieringa (chair), Artien Utrecht (secretary) and members Ratna Saptari (Netherlands), Sri Tunruang (Germany), Jess Melvin and Annie Pohlman (Australia), Sri Lestari Wahyuningrum (Indonesia), Dolorosa Sinaga, Reza Muharam and Wijaya Herlambang (Indonesia), Mulyandari Alisah (France) and Soe Tjen Marching (UK)

The OC had two secretariats: (1) in Indonesia/Jakarta and (2) in Netherlands/The Hague, responsible for the coordination of the working groups on:

Media and Communication: Lea Pamungkas (coordinator), including Aboepriadi Santoso, Joss Wibisono, Arif Kurnia, Yusuf Sudrajat, Lexy Rambadetta, Eka Hindra, Olien Monteiro

Campaign and creative media: Dolorosa Sinaga (coordinator), Indra Porhas Siagian, Agnes Indraswari

Research and Data Collection: Nursyahbani Katjasungkana, Saskia Wieringa (coordinator), Sri Lestari Wahyuningrum, Jess Melvin, Annie Pohlman, Wijaya Herlambang and Ratna Saptari

Indictment Preparation Committee: Nursyahbani Katjasungkana (coordinator), Antarini Arna, Rinto, Todung Mulya Lubis, Agung Wijaya, Sri Suparyati, Bahrain and Alvon Kurnia Palma. The secretariat maintained the links with the Country Coordinators, the International Steering Committee and the Advisory Committee.

Country Coordinators:

Indonesia: YLBHI (Indonesia Secretariat)

Netherlands: Foundation IPT 1965 (Netherlands Secretariat)

Australia: Jess Melvin and Annie Pohlman

England: Soe Tjen Marching

Germany: Sri Tunruang (Aachen), Arif Harsana (Munster)

Sweden: Tom Iljas

France: Mulyandari Alisyah,

Belgium: Elisabeth Ida Mulyani

Canada/USA: Ayu Ratih,

Scotland: Maria Pakpahan

Thailand: Dewi Ratnawulan

The prosecuting team consisted of:

Dr. T. Mulya Lubis, Board Member of Indonesian Legal Aid Foundation and leading Human Rights Lawyer in Indonesia (Chief Prosecutor)

Antarini Arna, SH, LLM Human Rights Activist

Sri Suparyati, Commission for the Disappeared and Victims of Violence, KontraS

Bahrein van Halen, SH, MH Indonesian Legal Aid Foundation

Uli Parulian Sihombing, LLM (chair of Indonesia Legal Resource Center);

Agung Wijaya, SH

Silke Studzinsky (Expert on Sexual Violence, Civil Party Lawyer in the Extraordinary Chambers in the Courts of Cambodia, 2008-2013)

Registrar: Szilvia Csevár (Netherlands Lawyers Association for Human Rights), assisted by Sunil Pal and three interns.

Structure of the hearings:

The hearings were held in the Nieuwe Kerk (a popular functions venue that no longer serves as a church) in The Hague, from 10 to 13 November 2015. The general coordinator of the IPT 1965, Nursyahbani Katjasungkana, opened the hearings. The chief prosecutor, Todung Mulya Lubis, then read his opening statement and the introduction to the indictment. The registrar opened each session and invited a representative of the government of Indonesia to take the seat assigned. This seat remained empty during the proceedings. The hearings were closed by the chair of the Foundation IPT 1965, Saskia Wieringa.

Tribunal Programme:

Day 1, 10 November 2015

OPENING

COUNT 1: MURDER AS A CRIME AGAINST HUMANITY

Prosecutor: Uli Parulian Sihombing

1. Factual witness—Mr. Martono
2. Expert witness—Mr. Ferry Putra (pseudonym, real names of all witnesses known by Registrar)
2. Expert witness—Ms. Ngati (pseudonym)
3. Expert witness—Dr. Leslie Dwyer

COUNT 2: ENSLAVEMENT AS A CRIME AGAINST HUMANITY

Prosecutor: Sri Suparyati

1. Factual witness—Mr. Basuki Bowo (pseudonym)
2. Expert witness—Dr. Asvi Warman Adam

Day 2, 11 November 2016

COUNT 3: IMPRISONMENT AS A CRIME AGAINST HUMANITY

Prosecutor: Uli Parulian

1. Factual witness—Mr. Bedjo Untung
2. Factual witness—Mr. Martono
3. Expert witness—Dr. Saskia Wieringa

COUNT 4: TORTURE AS A CRIME AGAINST HUMANITY

Prosecutor: Bahrain Makmun

1. Factual witness—Mr. Muhammad Pakasi (pseudonym)
2. Factual witness—Mr. Martin Aleida

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COUNT 5: SEXUAL VIOLENCE AS A CRIME AGAINST HUMANITY

Prosecutor: Antarini Arna

1. Factual Witness—Ms. Kinkin Rahayu (pseudonym, testifying behind screen)
2. Expert witness—Dr. Saskia Wieringa

Day 3, 12 November 2015

COUNT 5: SEXUAL VIOLENCE (CONTINUED)

COUNT 6: PERSECUTION AS A CRIME AGAINST HUMANITY Revocation of passports

Prosecutor: Antarini Arna

1. Factual witness—Mr. Soerono Widodo (pseudonym, testifying behind the screen)
2. Factual witness—Ms. Aminah (testifying behind the screen)

COUNT 7: ENFORCED DISAPPEARANCE AS A CRIME AGAINST HUMANITY

Prosecutor: Sri Suparyati

1. Factual witness—Mr. Astaman Hasibuan
2. Factual witness—Ms. Intan Permatasari (pseudonym, testifying behind the screen)

BRIEFINGS ON THE WORK OF KOMNAS HAM AND KOMNAS PEREMPUAN

Dr. Dianto Bachriadi, Commissioner of Komnas HAM

Ms. Mariana Amiruddin, Commissioner of Komnas Perempuan

COUNT 8: PERSECUTION THROUGH HATE PROPAGANDA

Prosecutor Antarini Arna

1. Expert witness—Dr. Saskia Wieringa
2. Expert witness—Dr. Herlambang Wijaya

Day 4, 13 November 2015

COUNT 9: COMPLICITY OF OTHER STATES IN THE COMMISSION OF CRIMES AGAINST HUMANITY

Prosecutor: Silke Studzinsky

1. Expert witness—Dr. Bradley Simpson
2. Expert witness—Dr. Herlambang Wijaya

CONCLUDING STATEMENT OF THE JUDGES, read by the Presiding Judge

A2 Opening Statement of the Judges of the International People's Tribunal on the 1965 Crimes Against Humanity in Indonesia read at the Opening of the Hearings on 10 November 2015

We accepted appointment as judges of this Tribunal for these reasons:

There is no doubt that the events of 1965 in Indonesia remain extremely important for Indonesia and for the world.

We believe that the most probable and reliable account of the exact causes of what happened in 1965 - and thereafter - must be identified and that this account is necessary if real, lasting and just peace, that includes reconciliation and reparation, is to be achieved in Indonesia.

It may then be possible to determine whether crimes were committed that should, even after this passage of time, be dealt with either by formal judicial processes or in other ways.

Our findings may provide impetus for the creation of concrete structures or processes, like a truth commission, and the implementation of recommendations made by the Indonesian National Commission for Human Rights (Komnas HAM).

The failure to create processes like these to date leaves a gap between what happened, on the one hand and, on the other, the prospect of those responsible being brought to justice and greater justice for victims and Indonesian society being realized.

It is our mission, so far as in our power, to contribute towards filling that gap.

A3 Concluding Statement of the Judges of the International People’s Tribunal on the 1965 Crimes Against Humanity in Indonesia read at the Close of Evidence on 13 November 2015

The judges of this Tribunal were appointed by the Foundation of the International People’s Tribunal on the 1965 Crimes Against Humanity in Indonesia to evaluate the upheaval and violence that plagued Indonesia during and after September-October 1965, 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.

The judges regret that neither the government of Indonesia, nor any other state to whom notice was given have made any submissions before this tribunal despite having been invited.

This Statement is made on the 13th day of November 2015, at the end of the hearing of oral testimony of the victims, and of expert witnesses, over four days, having taken into account the broad historical background, much research material, writing and opinion and, in particular:

- a. the 23 July 2012 Statement by Komnas HAM (National Commission for Human Rights) on the Results of its Investigations into Grave Violations of Human Rights During the Events of 1965-1966;
- b. the 2007 report, “Gender-Based Crimes Against Humanity: Listening to the Voices of Women Survivors of 1965” by Komnas Perempuan (Indonesian Commission for Violence against Women); and
- c. the Concluding Observations of the UN Human Rights Committee in 2013 raising concerns about human rights violations in Indonesia in 1965 and after, the reiteration of those concerns in 2015, as well as the concerns expressed in 2012 by the UN Committee on the Elimination of Discrimination Against Women.

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The broad historical background includes material concerning the government in Indonesia before the events of 1965, accounts of these events and their impact, the years of the Suharto dictatorship until about the turn of the century, the new reformist constitutional era ushered in after the round rejection of the Suharto regime as well as events after that.

The judges have had particular regard to the fact that there is no credible material disputing the occurrence of these grave violations of human rights, the passage in Indonesia of truth and reconciliation legislation in an effort to come to terms with the fact that these events had indeed occurred, the absence of any denial by any government of Indonesia that these events had occurred and the promise made by the President of Indonesia, Joko Widodo, to ensure that these violations will be redressed. All the material demonstrates beyond any doubt that the serious violation of human rights brought to the judges' attention did occur.

The judges consider that allegations by the prosecution of cruel and unspeakable murders and mass murders of over tens of thousands of people, of unjustifiable imprisonment of hundreds of thousands of people without trial and for unduly long periods in crowded conditions, and the subjection of many of the people in prison to inhumane and ruthless torture and to forced labour that might well have amounted to enslavement, are well founded. It has also been demonstrated that sexual violence, particularly against women, was systematic and routine, especially during the period 1965-1967, that many political opponents were persecuted and exiled, and that many thousands of people who, according to propagandist and hate discourse, were thought not to support the Suharto dictatorship with sufficient fervour, disappeared. All of this was justified and encouraged by propaganda aimed at establishing the false proposition that those opposed to the military regime were by definition grossly immoral and unspeakably depraved.

It has been established that the State of Indonesia during the relevant period through its military and police arms committed and encouraged the commission of these grave human rights violations on a systematic and widespread basis. The judges are also convinced that all this was done for political purposes: to annihilate the PKI (Communist Party of Indonesia) 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. The design was also to prop up a dictatorial, violent regime, which the people of Indonesia have rightly consigned to history. It cannot be doubted that these acts, evaluated separately and cumulatively, constitute crimes

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against humanity, both in International Law and judged by the values and the legal framework of the new reformist era accepted by the people of Indonesia 17 years ago. This Tribunal has heard the detailed and moving evidence of victims and families as well as the evidence of established experts. It saw this evidence as no more than the mere tip of the iceberg—a few tangible, graphic and painful examples of the devastation of the human beings who appeared before them, as well as the wholesale destruction of the human fabric of a considerable sector of Indonesian society.

The prosecution made the case that other states have aided Suharto's ruthless regime to achieve these results in the pursuit of the establishment of a particular international order in the context of the Cold War. We will consider this in our final judgment.

The material presented to the judges may amount to proof that other grave crimes have been committed. This issue is also left open for the final judgment.

The judges are sufficiently satisfied of their conclusions to make them public now with confidence. However we need more time to set out in detail the basis upon which we have come to these conclusions. We shall file a final judgment justifying, with reasons, every conclusion and opinion in this statement within the coming months.

The judges consider the state of Indonesia responsible in the commission of such crimes against humanity as the chain of command was organized from top to bottom of the institutional bodies.

Despite the important and positive changes that took place in Indonesia in 1998, emphasizing the importance of human rights in governance, this has not led to a situation in which the successive governments have genuinely addressed past grave and systematic human rights violations.

In addition to the above conclusions, the Tribunal is convinced, on the evidence presented, that material propaganda advanced in 1965, which motivated the dehumanization and thus the killing of thousands of people, included many lies. In particular, the repeated assertion that the generals were castrated has long been disproved by autopsy reports, and these reports have been known to successive governments of Indonesia. It is the duty of the president and government of Indonesia forthwith to acknowledge this falsity, to apologize unreservedly for the harm that these lies have done, and to institute investigations and prosecutions of those perpetrators who

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are still alive. The Tribunal would have thought that the President would, of course, do all this and be eager to keep his electoral promise. Furthermore, the archives should be opened and the real truth on these crimes against humanity should be established.

In this regard, the Members of this Tribunal note that Komnas HAM commenced investigations in 2008, and that the government of Indonesia has received the commission's report and recommendations. The government has not implemented these recommendations and in our view should do so as a matter of urgency. These recommendations include appropriate reparation for victims.

We commend the Foundation and the many people who have invested time and energy as well as financial and other resources into this Tribunal. Without all that involvement and determination, such a tribunal would not have been possible. We trust that their efforts will be justified by an appropriate national and international response.

Mireille Fanon-Mendes France

Cees Flinterman

John Gittings

Helen Jarvis

Geoffrey Nice

Shadi Sadr

Zak Yacoob

B REPORT OF THE JUDGES

B1 Legal framework

The role of the IPT and its panel of judges was clarified in the Public Statement issued in October 2015, before the Hearings, as follows:

As a people's tribunal, the Tribunal derives its moral authority from the voices of victims, and of national and international civil societies. The Tribunal will have the format of a formal human rights court, but it is not a criminal court. It has the power of prosecution but no power of enforcement. The essential character of the Tribunal will be that of a Tribunal of Inquiry.

Individual members of the Tribunal have extensive knowledge of international and human rights law and of this period of Indonesian history. The judges of the Tribunal will examine the evidence presented by the prosecution, develop an accurate historical and scientific record and, applying principles of international customary law, public international law and Indonesian law to the facts as found, will deliver a reasoned judgment. They will seek to establish, without fear or favour, the truth about these historical events, in the hope that this will contribute to justice, peace and reconciliation.

In their Opening Statement read before the start of evidence the judges said:

There is no doubt that the events of 1965 in Indonesia remain extremely important for Indonesia and for the world.

We believe that the most probable and reliable account of the exact causes of what happened in 1965 and thereafter must be identified, and that this account is necessary if real, lasting and just peace, that includes reconciliation and reparation, is to be achieved in Indonesia.

The panel of judges of the IPT was asked to consider the probity of prosecution charges and submissions that crimes against humanity had been committed in Indonesia in 1965 and beyond, and the state of Indonesia is legally responsible for recognizing, investigating and punishing these crimes under codified international law, customary international law and/or Indonesian domestic law. The judges examined these submissions in the light of their opening statement which, properly interpreted, necessarily implies that serious human rights violations did indeed occur in Indonesia at the relevant time. Therefore, the issues are what were the causes of these violations,

and do these occurrences amount to crimes against humanity, in respect of which the State of Indonesia is obliged to act.

CRIMES AGAINST HUMANITY

Crimes against humanity stand as a necessary ingredient and pillar of customary international law. They were tried for the first time in the Military Tribunals in Nuremberg¹ and Tokyo.² The existence of these crimes was later codified in the inspirational Universal Declaration of Human Rights on 10 December 1948 and the Nuremberg Principles by the UN General Assembly in 1950.³ They were also recognized and accepted as part of Indonesian domestic law, as is mentioned below. We start with customary international law.

As correctly pointed out by the Prosecution, crimes against humanity in customary international law are fundamentally:

- a. *inhumane acts that are crimes in most national criminal law systems*
- b. *committed as part of a widespread or systematic attack against civilians.*⁴

The Prosecution submitted that the inhumane acts are crimes against humanity in international law. It also urged that because under customary international law the prohibition of crimes against humanity is a *jus cogens* norm, derogation is not permitted under any circumstances.⁵ Customary international law therefore obliges these States to prosecute those responsible for the commission of these crimes, or to extradite them to States committed to pursue prosecution.⁶

Two matters must be emphasized. For crimes against humanity in customary international law to be proven there must first be a widespread or systematic attack against civilians. The attack need

¹ 1945–1946.

² May 1946 to November 1958.

³ Indonesia became a member of the United Nations on 12 June 1950. On 20 January 1965, during *Konfrontasi* (Indonesia's military and political confrontation campaign against the formation of Malaysia), in response to the election of Malaysia as a non-permanent member of the Security Council, Indonesia informed the United Nations by letter that it wished to withdraw. A second letter was sent on 19 September 1966 notifying the Secretary-General of its decision "to resume full cooperation with the United Nations and to resume participation in its activities". However, the Charter makes no provision for withdrawal of membership from the United Nations, and it appears that Indonesia did not thereby derogate from any of its treaty obligations. (See Blum, Yehuda Zvi (1993), *Eroding the United Nations Charter*. Martinus Nijhoff Publishers. ISBN 0-7923-2069-7, cited in https://en.wikipedia.org/wiki/Member_states_of_the_United_Nations#cite_note-81.)

⁴ Article 9 of Law No. 26, Year 2000, Establishing the Ad Hoc Human Rights Court; Article 7 of the Rome Statute of the International Criminal Court (1998); Article 5 of the Statute of the International Tribunal for the Former Yugoslavia (1993); Article 3 of the Statute of the International Criminal Tribunal for Rwanda (1994).

⁵ Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (Cambridge: Cambridge University Press, 2011), p. 263.

⁶ Article 9. Obligation to extradite or prosecute of International Law Commission, *Draft Code of Crimes against the Peace and Security of Mankind with commentaries*, 1996. New York: United Nations, 2005.

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not be against the entire civilian population but against part of it. Here, as will be shown, the widespread systematic attack targeted the substantial civilian population constituted by the Communist Party of Indonesia (Partai Komunis Indonesia, PKI), all its affiliate organisations, its leaders, members and supporters and their families (as well as those alleged to have been sympathetic to its aims).⁷ Secondly, it is not necessary for the attack to be both wide-ranging and systematic. A wide-ranging attack that is not systematic, and a systematic attack that is not wide ranging, would each qualify separately as attacks which fall within the purview of crimes against humanity in customary international law.

It must also be emphasized that to prove crimes against humanity, the acts which were part of the attack must be deemed crimes in most countries, as demonstrated through state practice. Indeed, the Prosecution submitted that all of the acts to be 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.

In 2000, the Indonesian People's Representative Assembly (Majelis Permusyawaratan Rakyat, MPR) adopted Law No. 26/2000 (Law 26), establishing a Human Rights Court" in order to resolve gross violations of human rights", defined by Article 7 as:

gross violations of human rights include both the crime of genocide and crimes against humanity

Article 9 of this law defines crimes against humanity as including any action perpetrated as a part of a broad or systematic direct attack on civilians, in the form of:

1. *killings (Article 9(a));*
2. *extermination (Article 9(b));*
3. *enslavement (Article 9(c));*
4. *enforced eviction or movement of civilians (Article 9(d));*
5. *arbitrary appropriation of the independence or other physical freedoms in contravention of international law (Article 9(e));*
6. *torture (Article 9(f));*

⁷ Although, as discussed in B2, instructions were issued and attacks launched from as early as 1 October 1965, the PKI and its affiliates were officially banned in 1966 by the People's Representative Assembly (MPRS). Ketetapan (Tap) No XXV/MPRS/1966 MPRS Resolution No. XXV/1966 adopted on July 5, 1966 by the Provisional People's Consultative Assembly (MPRS), which outlawed the teachings of Marxism-Leninism.

Article 2 of this Resolution reads as follows: "All activities undertaken in Indonesia to spread or promote the beliefs or teachings of Communism/Marxism-Leninism in all its forms and manifestations, using whatever means including the media for the spread and promotion of these beliefs or teachings, shall be prohibited."

Indonesia is a signatory of the International Covenant on Civil and Political Rights, the provisions of which are binding upon Indonesia.

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7. *rape, sexual enslavement, enforced prostitution, enforced pregnancy, enforced sterilization, or other similar forms of sexual assault (Article 9(g));*
8. *terrorization⁸ of a particular group or association based on political views, race, nationality, ethnic origin, culture, religion, sex or any other basis, regarded universally as contravening international law (Article 9(b));*
9. *enforced disappearance of a person (Article 9(i)); or*
10. *the crime of apartheid (Article 9(j)).⁹*

These follow closely those set out in Article 7 of the Rome Statute of 2000, governing the International Criminal Court.

And Article 43 of Law No. 26/2000 specifically provides for gross violations of human rights that occurred in the past to be heard and ruled on by an *ad hoc* Human Rights Court. The Article uses the word “shall” and thus renders the formation of the court and adjudication of these offences peremptory.¹⁰

The definition of crimes against humanity is broadly similar in both customary international law and Indonesian law. The first difference is that the attack must be wide ranging and systematic in customary international law, while it needs to be broad, systematic and direct in Law No. 26/2000. Secondly, the Indonesian law sets out specific acts that must be part of an attack while customary international law requires inhumane acts that are crimes in most countries. These differences are immaterial.

Accordingly this Report sets out to show that:

- a. there was an attack against civilians: that is the PKI, and those alleged to be its leaders, members, supporters and sympathisers, as well as their families, that was broad or wide ranging, systematic and direct in contravention of customary international law and Indonesian domestic law;

⁸ In the Indonesian original *penganiayaan* is used. It is normally translated as “persecution,” as used in English texts on crimes against humanity.

⁹ Republic of Indonesia, “Law No. 26 Year 2000 - Establishing the Ad Hoc Human Rights Court,” translation published by Asian Human Rights Commission, accessed through the website of the International Red Committee of the Red Cross <https://www.icrc.org/>.

Note: The numbering of Article 9 in this translation has been garbled, and is corrected here.

¹⁰ Article 43 of Law 26 provides:

“1. Gross violations of human rights occurring prior to the coming into force of this Act shall be heard and ruled on by an ad hoc Human Rights Court.

2. An ad hoc human rights court as referred to in clause (1) shall be formed on the recommendation of the House of Representatives of the Republic of Indonesia for particular incidents upon the issue of a presidential decree.

3. An ad hoc human rights court as referred to in clause (1) is within the context of a Court of General Jurisdiction.”

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- b. the ingredients of these attacks relied upon by the Prosecution, namely, mass killings, imprisonment, enslavement, torture, enforced disappearance, sexual violence and persecution through exile, which are crimes in most national jurisdictions and covered by Law No. 26/2000, were indeed committed.

The inquiry by Komnas HAM, the government's own Indonesian National Human Rights Commission into the 1965–66 events, undertaken pursuant to Law No. 26/2000, and in the light of the definition of crimes against humanity as set out in its Article 9, concludes its report with the following statement:

After having carefully examined and analysed all the findings discovered in the field, the statements of the victims, witnesses, reports, relevant documents and other information, the Ad Hoc Team to Investigate the Committal of Grave Crimes Against Humanity During the 1965/1966 events has reached the following conclusions:

1. There is adequate initial evidence to believe that the following crimes against humanity, which are serious crimes against basic human rights, occurred:
 - a. Killings (Article 7, letter b jo¹¹ Article 9 letter a of Law 26, 2000 on Human Rights Courts).
 - b. Exterminations (Article 7, letter b, jo Article 9 letter b, of Law 26, 2000 on Human Rights Courts).
 - c. Enslavement (Article 7, letter b jo Article 9 letter c of Law 26, 2000 on Human Rights Courts).
 - d. Enforced evictions or the banishment of populations (Article 7 letter b jo Article 9 letter d of Law 26, 2000 on Human Rights Courts).
 - e. Arbitrary deprivation of freedom or other physical freedoms (Article 7 letter b jo Article 9 letter e of Law 26, 2000 on Human Rights Courts).
 - f. Torture (Article 7 letter b jo Article 9 of Law 26, 2000 on Human Rights Courts).
 - g. Rape or similar forms of sexual violence (Article 7 letter b jo Article 9 letter g of Law 26, 2000 on Human Rights Courts).
 - h. Persecution (Article 7 letter b jo Article 9 letter h of Law 26, 2000 on Human Rights Courts).
 - i. Enforced disappearances (Article 7 letter b jo Article 9 letter I, of Law 26, 2000 on Human Rights Courts).

The aforementioned actions were part of an attack aimed directly against the civilian population, namely, a series of actions against the civilian population as a consequence of the policy of the authorities in power. As these actions were widespread and systematic, these actions can be classified as crimes against humanity.¹²

¹¹ The translation of sentence 1a, h and i published by Tapol has been corrected here to conform to the Indonesian original text of Komnas HAM, *Ringkasan Eksekutif: Laporan penyelidikan pelanggaran HAM berat* (Jakarta: KomnasHAM RI, 2012) p. 25. It uses the term "jo" throughout (abbreviation of Latin word juncto, meaning "in conjunction with").

¹² *Komnas HAM Report*. This 470-page Executive Summary of the results of their investigation into ten cases, of which 40 pages relate to the 1965-66 events, was signed on 23 July 2012 by Nur Kholis, the Chair of Komnas HAM's Ad Hoc Investigation Team into the 1965-66 Events, on the Results of its Investigations into Grave Violations of Human Rights During the Events of 1965-1966.

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The Prosecution Brief also argued strongly that the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) also imposes obligations and responsibility on the State of Indonesia for violations of crimes against humanity; it referred specifically to Article 40(2), which considers a serious breach to be constituted by gross and systematic failure by the responsible State to fulfil its obligations.

The Judges in their Concluding Statement emphasized that they had taken into particular account:

- a. the 23 July 2012 Statement by Komnas HAM (National Commission for Human Rights) on the Results of its Investigations into Grave Violations of Human Rights During the Events of 1965–1966;¹³
- b. the 2007 report, "Gender-Based Crimes Against Humanity: Listening to the Voices of Women Survivors of 1965" by Komnas Perempuan (Indonesian Commission for Violence against Women);¹⁴ and
- c. the Concluding Observations of the UN Human Rights Committee in 2013 raising concerns about human rights violations in Indonesia in 1965 and after, the reiteration of those concerns in 2015, as well as the concerns expressed in 2012 by the UN Committee on the Elimination of Discrimination Against Women.¹⁵

<http://www.tapol.org/sites/default/files/sites/default/files/pdfs/Komnas%20HAM%201965%20TAPOL%20translation.pdf> (see Appendix D1.f for its conclusions).

The full text of the *Komnas HAM Report* has never been officially published, although copies of what appears to be the authentic text are in circulation.

¹³ Ibid.

¹⁴ Komnas Perempuan, *Komnas Perempuan, Kejahatan Terhadap Kemanusiaan Berbasis Jender: Mendengarkan Suara Perempuan Korban Peristiwa 1965*. (Jakarta: Komnas Perempuan, 2007). Published in English as *Gender-Based Crimes Against Humanity: Listening to the Voices of Women Survivors of 1965*, (Jakarta : Komnas Perempuan, 2007). Available at <http://home.patwalsh.net/wp-content/uploads/Listening-to-the-Voices-of-Women-Survivors-of-1965.pdf>. See Appendix D1.e for the recommendations in this Report.

¹⁵ July 2013: UN HRC: "Concluding observations on the initial report of Indonesia" (see Appendix D1.g); UN Committee on the Elimination of Discrimination against Women, "Concluding Observations: Indonesia", CEDAW/C/IDN/CO/6-7, 27 July 2012.

B2 Responsibility and Chain of Command

The Prosecution made a strong case 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 sympathisers. On 1 November General Suharto was appointed as the Chief Commander of the Kopkamtib. Consequently, this Command operated under the direct orders of General Suharto...

General Suharto and his associates immediately blamed the PKI as the masterminds of the G30S [Abbreviation of Gerakan September Tiga Puluh (30 September Movement)—added by Report editors]. A military propaganda campaign distributed pictures of the dead generals with claims that Communists, particularly Communist women, had tortured and butchered them before death. As a result, violence and demonstrations by the army and various youth groups, equipped and/or supported by the military and the government, targeting suspected Communists soon broke out in Aceh, Central and East Java, before spreading all over Indonesia. Civilians were killed, raped, tortured, enslaved or subjected to other crimes against humanity in their own homes or in public places.

On 21 December 1965, General Suharto issued an order (Kep-1/KOPKAM/12/1965) for military leaders around Indonesia to compile lists of members of PKI and PKI-affiliated organisations in their respective areas. Civilians whose names were included in these lists became the targets for gross human rights violations including murder, torture and other crimes, as has been reported by the Indonesian National Commission for Human Rights (Komnas HAM).

On the basis of the above, the following questions need to be asked relating to the issue of responsibility:

1. *Did the state of Indonesia acknowledge at the time, or has it since acknowledged, its responsibility for the mass killings and other crimes against humanity which occurred in 1965 and afterwards?*
2. *What was the chain of command between the central state and the lower levels of authority alleged to have carried out the killings, and what was the relationship between state authorities and local militia or other groups which are alleged also to have carried out the killings?*

1. Acknowledgement

Since the restoration of democracy in Indonesia in 1998, two Presidents have made statements on the need for the government to address the mass killings of 1965.

In 2000, the then President Abdurrahman Wahid (Gus Dur, the first elected president after Suharto resigned in 1998) discussed at some length in a TV interview his concern for "the victims of G30S/PKI" and suggested that his government would welcome opening up the case to determine the truth of what happened. He also acknowledged that members of the Islamist mass organization Nahdlatul Ulama (NU) -- of which he was formerly the chairman -- had participated in the killings and said that he had already apologized for their actions.¹⁶

The interview as reported in Kompas included the following remarks:

Much earlier, when I was still General Chair of the Board of the NU, I already apologized to the victims of the G30S/PKI.

The government welcomes it if society wants to open up the case of G30S/PKI and the other cases of human rights violations.

Much earlier I already apologized. Not only now -- ask the friends in the NGOs -- I already apologized for all killings that happened to people who were called communists....

It is not at all sure that people who were accused of being communists were all wrong so that they were sentenced to death. Prove it to the courts, not just like what happened.

Gus Dur went on to say that if the G30/PKI issue were opened up again, it would be good to have a debate among the people of Indonesia. "For many people think that the PKI members were wrong. There are also those who think they committed no mistakes. Well because of that we had better decide via a legal procedure which is right."

The current President Joko Widodo, in a mission statement issued in May 2014 shortly before he was elected, pledged that:

We are committed to bring about a just solution to past human rights violations that still impose a socio-political burden on the Indonesian nation, such as the May disturbances, the 1st and 2nd Trisakti-Semanggi events, forced disappearances, the Talang Sari-Lampung and Tanjung Priok incidents and the 1965 tragedy.¹⁷

¹⁶ "Gus Dur: Sejak Dulu Sudah Minta Maaf", *Kompas*, 15 March 2000, accessed at <http://indoprogess.com/2014/04/masihkah-meragukan-maaf-gus-dur/>. His remarks elicited a hostile reaction from many Muslim political and religious leaders, see further Goenawan Mohamad, "Remembering the Left", in Grayson J Lloyd & Shannon L Smith, eds., *Indonesia Today: Challenges of History* (Rowan & Littlefield, 2001), pp. 131-32.

¹⁷ Extract from Joko Widodo's main electoral platform as appeared in English as "The road towards an Indonesia that is sovereign, independent and with its own distinctive identity: Vision, Mission and Action Program," Kalla, Jakarta, May 2014, accessed at <http://abbah.yolasite.com/resources/VISI%20MISI%20JOKOWI%20JK.pdf>. The other violations mentioned include the May 1998 riots, the shootings at Trisakti University in Jakarta in the same month, the February 1989 army killings at Talang Sari, Lampung, and in Tanjung Priok in September 1984.

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The official investigation body established by Komnas HAM concluded in its Statement of 23 July 2012 that, on the basis of its investigations:

1. There is adequate initial evidence to believe that the following crimes against humanity, which are serious crimes against basic human rights occurred...
 - a. Killings ...
 - b. Exterminations ...
 - c. Enslavement ...
 - d. Enforced evictions or the banishment of populations ...
 - e. Arbitrary deprivation of freedom or other physical freedoms ...
 - f. Torture ...
 - g. Rape or similar forms of sexual violence ...
 - h. Persecution ...
 - i. Enforced disappearances

3. Based on the wide range of crimes which occurred and the picture of victims who have been identified and the mountain of evidence that is available, the names of those who implemented these crimes and were responsible for the events of 1965/1966 are the following, added to which there may be more.

A. Individuals/military commanders who can be called to account:

a.1 The commander who decided on the policy:

- a. PANGKOPKAMTIB – the Commander of KOPKAMTIB from 1965 until 1969.
- b. PANGKOPKAMTIB – the Commander of KOPKAMTIB from 19 September 1969 at the least until the end of 1978.

a.2 The commanders who had effective control (duty of control) over their troops.

The PANGANDAs and/or PANGDAMs [regional and local Commanders] during the period from 1965 until 1969 and the period from 1969 until the end of 1978.

B. Individuals/commanders/members of the units who can be held responsible for the actions of their troops in the field.

Contemporary documentary evidence of the killings is almost completely lacking and appears to have been suppressed by the military authorities. It has been noted that "under the New Order, little was heard of the killings" and that "official and semi-official accounts, such as the National History of Indonesia and the so-called 'White Book' on the 1965 coup, famously ignored the killings, and there was a widespread perception that they could not be discussed publicly."¹⁸

In a rare exception, a document does exist—dated 8 November 1973—in which the *Jaksa Agung* (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.” It was feared that pursuing these cases would “give rise to psychological effects among G30S/PKI remnants emboldening their struggle, could be used by international organisations affiliated with

¹⁸ Robert Cribb, "Unresolved problems of the Indonesian Killings of 1965-1966", *Asian Survey*, XLII:4, July-August 2002, p. 559.

or under the influence of the international communist movement and would cause apathy in society towards helping the Government and state instruments in the future.” It also stipulated that they must consult with the *Laksusda* (Special Territorial Administrator) in order to provide evidence that would prove that those killed were indeed members of the PKI and/or PKI-affiliated organizations. Further, they were requested by the Attorney General to avoid exposing to third parties this “setting-aside process” (specifically the media).¹⁹

An admission of state responsibility may also be inferred from statements by government ministers and senior politicians seeking to justify what occurred. In a recent example, the former coordinating minister for political, legal and security affairs, Djoko Suyanto, issued a public statement on 1 October 2012 rejecting the *Komnas HAM Report*, saying that the killings were justified to save the country from communism and that there should be no official apology. Suyanto stated that "this country would not be what it is today if it didn't happen. Of course there were victims [during the purge], and we are investigating them."²⁰ And, most recently, such a view was expressed by Coordinating Minister for Politics, Law, and Security, Luhut Pandjaitan, in his Opening Remarks to the National Symposium on the 1965 Tragedy, held in Jakarta, 18–19 April 2016, “We will not apologise. We are not that stupid. We know what we did, and it was the right thing to do for the nation.”²¹

It should be noted that this National Symposium was the first time that the Government of Indonesia has facilitated the public discussion of a wide range of views regarding the 1965 events, and that its outcomes are not yet clear, as is discussed below in Appendix D2, Attempts at Redress and Reconciliation.

2. Chain of command

There is abundant evidence, set out in a number of academic studies of this period, that a vertical system of military control and repression was established on the direct authority of General Suharto and conveyed through a series of Orders from Jakarta to the lower levels. Although orders and operations began in some areas as early as 1 October 1965, the main vehicle for this operation was Kopkamtib, set up on 10 October 1965 with General Suharto as its Commander

¹⁹ Jaksa Agung Republik Indonesia, Nomor instr-007/J.A/11/1973 “Tentang penyelesaian perkara pembunuhan oknum2 G.30.S/PKI” [Concerning resolution of cases of killing G.30.S/PKI operatives]. (A copy of the original document was supplied to the Tribunal).

²⁰ Accessed at <http://www.thejakartapost.com/news/2012/10/02/govt-denies-1965-rights-abuses-happened.html>.

²¹ Jess Melvin, “Symposium on Indonesia’s 1965 genocide opens Pandora’s box”, *New Mandala*, 9 May 2016. Accessed at <http://asiapacific.anu.edu.au/newmandala/2016/05/09/symposium-on-indonesias-1965-genocide-opens-pandoras-box/>.

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(Pangkopkamtib). Instructions to lower levels in the army were issued as numbered Orders from Kopkamtib or from other military institutions, such as the Ministry of Defence or Army Strategic Reserve Command (Komando Cadangan Strategis Angkatan Darat, Kostrad), which Suharto already commanded. These were replicated or amplified by army commanders at lower levels (see below in this section for material from Aceh).

Starting with an order issued by Suharto on 1 October, the central theme throughout was the need to "annihilate" (*menumpas*) the G30S Movement (which was often described as "counter-revolutionary").²² But the G30S Movement was simply a euphemism for the PKI and every person directly or indirectly connected with it. This order was quickly replicated by Lieutenant General A.J. Mokoginta, the commander for Sumatra of the Supreme Operations Command (Komando Operasi Tertinggi, Koti) who called on all members of the Armed Forces to "resolutely and completely annihilate this counter-revolution and all acts of treason to the roots."²³

While initially the object of such instructions might appear to be limited to the small number of alleged leaders of the 30 September Movement, it was always so and soon became clear that the target was much broader, and applied to anyone who might be identified as belonging to, supporting or sympathizing with the PKI, directly or indirectly. Many other people also suffered who did not regard themselves as having any connection or even sympathy with the PKI. As time went on, the target broadened further to clear the ground for a thorough restructuring of society in which both the bureaucracy and the army were cleansed of left-leaning people in general, including many supporters of President Sukarno and progressive members of the Nationalist Party of Indonesia, PNI, who in many cases also suffered persecution. Furthermore, some of the orders explicitly authorized army commanders to take action outside the law. Those orders given in the first three months of the operation have been summarized, on the basis of research into the original texts, by Mathias Hammer as follows:

Suharto tasked the commanders at the district level with establishing investigation teams (TEPERDA, Team Pemeriksa Daerah, or regional investigation teams) which were to interrogate prisoners and collect information about them (Army Strategic Reserve Command (KOSTRAD), Decree Kep-069/10/1965, in: Kopkamtib 1970). He also wanted these teams to assist the commanders in "taking measures for a solution

²² Alex Dinuth, *Dokumen Terpilih sekitar G.30S/PKI*. [Selected Documents on G.30S/PKI] (Jakarta: Intermedia, 1997), p.59.

²³ Mokoginta, Letdjen A.J., "Koleksi Pidato2 Kebidjaksanaan Panglima Daerah Sumatra" (Medan: Koanda Sumatera, 1966) p. 152.

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of the prisoners” (“mengambil tindakan penyelesaian pada tawanan/tahanan”), a bureaucratic euphemism for mass murder that smacks of the “final solution” with which the Nazis tried to veil the Holocaust. These solutions were to be “either according to the law or according to the special discretion” of the commanders (Army Strategic Reserve Command (KOSTRAD), Decree Kep-069/10/1965, in: Kopkamtib 1970). The last word on life and death was thereby entrusted to the district or KODIM commanders (Komando Distrik Militer, District Military Command). Between late October and late December 1965, the organisational structure involving a variety of “investigation” and “prosecution” teams, with central bodies in Jakarta and various subcomponents of their own, became more and more elaborate – Kammen and Zakaria (2012 p. 447) offer more details on this point. “Screening teams”, as these bodies were often called, eventually existed all over Indonesia, spreading along with the persecution of the PKI. In assessing individual cases, Suharto’s orders mandated the teams to also gather testimonials from witnesses (Army Strategic Reserve Command, decree Kep-70/11/1965, in: Kopkamtib 1970). Not only direct involvement in the 30th September Movement, but also attitudes towards that movement became criteria for persecution.

Finally, it was clarified that attitudes and activism from the time before October 1965 – the so-called “prologue” to the 30th September Movement – would be criteria for persecution as well (Ministry of Defence decree Kep-1/Kopkam/12/1965, 21 December 1965, in: Kopkamtib 1970).

Suharto thereby widened the legal and practical scope of persecution from the relatively small cabal of army officers involved in plotting the kidnapping of the seven army officers who were killed in Jakarta to the socio-political behaviour of millions of ordinary citizens throughout the archipelago. Obtaining information from civilian informants about such behaviour became a valid part of the procedure which local commanders and their teams were to follow in identifying individual execution targets.²⁴

From November 1965 onwards, orders were also issued for a system of classification to be applied to PKI suspects, and as time went on this system was refined further. On 18 October 1968 the Commander of Kopkamtib issued a Decision detailing that,

Those involved in the treasonable G30S/PKI movement are classified as follows:

- A. Those who were clearly *involved directly*....
- B. Persons clearly *involved indirectly*....
- C. Persons *of whom indications exist or who may reasonably be assumed to have been directly or indirectly involved*.²⁵

There is no official account of how these operations were conducted throughout Indonesia. The Indonesian press, which quickly fell under military control, almost uniformly refrained from

²⁴ Hammer, Mathias "The Organisation of the Killings and the Interaction between State and Society in Central Java, 1965", in: *Journal of Current Southeast Asian Affairs*, 32, 3, 37–62 (2013). Used by permission.

²⁵ “The Decision of the Commander of the Kopkamtib no.kep-028/kopkam/10/68 (issued and operative from 18th October 1968) as amended by the Decision of the Commander of the Kopkamtib no.kep-010/kop /3/1969 (issued on 3rd March 1969 to operate retroactively for the period since 18th October 1968).” Amnesty International, *Indonesia: An Amnesty International report* (London: Amnesty International Publications, 1977), Appendix 1. (See Appendix D1.c for the full text of this Decision.) It should be noted that a further Decision by the President was made on 28 June 1975 concerning government employees who were still being detained as Category C prisoners. KepPres No. 28/1975.

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reporting any information regarding the killings. One researcher, John Roosa, notes that "according to the press coverage, the 'destruction' of the PKI 'down to the roots' was an almost bloodless affair." In a rare exception, three Jakarta newspapers ran stories in February-March 1969 about Army-organized killings in the Purwodadi District of Central Java.²⁶ We may speculate on the existence of records kept by the Indonesian army, but if they exist they are not yet in the public domain.

However, the US embassy in Jakarta was able at the time to obtain information from army sources, and information on the army's role in carrying out or organizing killings is contained in numerous reports from the embassy and the CIA to Washington. Telegrams in November 1965 give a detailed account of the way in which the Army Para-Commando Regiment (RPKAD) in Central Java mobilized civilian militias to assist it in arresting suspected PKI members and in disposing of them. Two researchers who have used this material, Douglas Kammen and David Jenkins, summarize the procedure as follows:

The most common procedure was for civilian paramilitaries operating under the direction of a small RPKAD 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, sympathisers, and relatives. Cadres were taken to isolated locations and killed. But this left large numbers of detainees, whom the military was neither interested in nor capable of feeding and housing. The solution was for military personnel to 'move' detainees at night and en route hand them down to designated civilian death squads.²⁷

A rare insight into the killings in the one region—Aceh in northern Sumatra—is provided by internal documents from the Aceh Military Command, obtained by another academic researcher, Jess Melvin, who has made her work available to the Tribunal. On the basis of these documents, Melvin describes the killing process as "occurring in four distinct phases in the province: these phases include an initiation phase; a phase of public---spectral--- killings; a phase of systematic mass killings; and a, final, consolidation phase." Other documents obtained by Melvin in Aceh show in detail how "the military and civilian government supported the formation of death squads, which the military and civilian government pledged to provide with 'assistance'." ²⁸

²⁶ Sources cited by John Roosa in *Contours*, p. 45. n. 41. Two of these reports are translated in Robert Cribb ed., *The Indonesian killings of 1965-6; Studies from Java and Bali*. (Clayton, Victoria: Centre of Southeast Asian Studies, Monash University, 1990 (Monash papers on Southeast Asia no. 21).

²⁷ Jenkins and Kammen in *Contours*, p. 94, citing Airgram A-353, US Embassy Jakarta to State Department, 30 Nov. 1965.

²⁸ Jess Melvin, "Mechanics of Mass Murder: Military Coordination of the Indonesian Genocide", paper presented at "'1965' Today: Living with the Indonesian massacres," Amsterdam, 2 October 2015 (Publication forthcoming).

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On the few occasions when the mass killings were mentioned openly in official sources, these were ascribed to popular anger, while no reference was made to military involvement. One example is the speech by President Suharto on 11 March 1971, on the fifth anniversary of the "Supersemar" order supposedly signed by then President Soekarno, which led to Suharto's assumption of full powers.²⁹ In this speech Suharto claimed that mass killings had occurred in the countryside in 1965–66 as a result of pre-existing political tensions.³⁰ An official narrative sponsored by the Army and published in English for foreign consumption in 1968 acknowledged that mass killings had occurred, but described them as supposedly spontaneous acts by ordinary people wishing to punish the PKI for its coup attempt. It claimed that the people, "seeing justice neglected... decided to act as judges themselves, which resulted in the mass killings in Central and East Java and other parts of Indonesia."³¹

However, the latest research in various regions is bringing a new perspective, revealing considerably more information on the degree to which even those killings that were carried out by non-military actors were planned, armed and facilitated (in short, engineered) by the Army. Of particular significance is the research by Indonesian scholar Yosef Djakababa, published in 2013, and more recently by John Roosa, who in April 2016 concluded that it negates the widely accepted:

dualistic thesis ... that the violence was committed by a combination of army personnel and civilian militias, with the role of each varying by region.

The dualistic thesis does not grasp the striking uniformity in these descriptions in such widely dispersed locales. For all the diversity in the anti-communist violence, one finds a remarkable consistency across the provinces in the practice of disappearing people who had already been taken captive. One finds army personnel organizing the civilians, administrating the detention camps, and arranging the trucks to transport the detainees to the execution sites.³²

Legal considerations

The state is responsible in international law for illegal acts which are expressly committed by it or on its behalf without its repudiation and punishment. Since the Nuremberg and Tokyo trials, it

²⁹ It is to be noted that the original of this document has never been released publicly, and there is considerable controversy regarding its contents and the circumstances under which President Sukarno signed, or did not sign, it.

³⁰ Suharto, "11 Maret Untuk Mengatasi Situasi Konflik Ketika Itu", *Kompas*, 11 March 1971. Cited in Roosa, *Contours*, p. 45, n. 44.

³¹ Notsusanto and Saleh, *The Coup Attempts*, p. 42.

³² Yosef Djakababa, "The Initial Purging Policies after the 1965 Incident at Lubang Buaya," *Journal of Current Southeast Asian Affairs* 3/2013; John Roosa, "The State of Knowledge about an Open Secret: Indonesia's Mass Disappearances of 1965–66." *The Journal of Asian Studies*, published online 25 April 2016.

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has also been a well-established principle that states and their superior or command-level military and civilian officers are responsible for the actions of their agents or servants, or by individuals under their effective command and control, or authority and control, even if these have not been explicitly authorized.

States also have a general responsibility under international law to take all possible measures to ensure that crimes against humanity are not committed by any persons within their jurisdiction, whether acting for the state or not, and to bring such acts to an end and take action against those responsible.

Furthermore, under the doctrine of superior responsibility, superior officers (both military and civilian) have responsibility for preventing or punishing illegal acts by those under their effective command and control, or authority and control. For example, Article 29 of the law of 2004 setting up the Cambodian Extraordinary Chambers to prosecute crimes committed in the period of Democratic Kampuchea provides that:

[the fact that illegal acts] were committed by a subordinate does not relieve the superior of personal criminal responsibility if the superior had effective command and control or authority and control over the subordinate, and the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

The acts of mass killing and associated crimes in 1965 and subsequently, and the failure to prevent their occurrence or to take action against their perpetrators, occurred under the full responsibility of the State of Indonesia. Senior members of the Indonesian government have acknowledged that these crimes were committed, but few have expressed a desire to investigate them or apologize for them. Although contemporary reporting of them was mostly suppressed by the military Suharto regime, there were occasional admissions that they occurred. Subsequent investigation by Indonesian and other researchers has exposed the orders and directives which link that regime to the crimes committed in various regions of Indonesia, showing a coherent chain of command from Jakarta to the lower levels. To the extent that some crimes may have been committed independently of the authorities, by so-called "spontaneous" local action, this did not absolve the government at the time from the obligation to prevent their occurrence and to punish those responsible.

This Report will not repeatedly indicate in the text, but it needs to be borne in mind throughout, that all the crimes against humanity committed during this time, and described in detail below, were against a discrete and large part of Indonesian society: the communists in Indonesia and everyone connected with them however remotely.

B3 Mass Killing, Imprisonment, Enslavement, Torture and Enforced disappearance

No one disputes that a very large number of Indonesians lost their lives in the mass killings of 1965 and after: nearly all estimates give a number of at least six figures. It is also a matter of record that tens of thousands were placed into prisons and camps over the following years without proper legal process: a significant number were subjected to forced labour and torture, were executed or died in captivity. There are also numerous reports, although harder to quantify, of people who were picked up or arrested (seldom through any formal process) and who then disappeared.

Given the accepted magnitude of killings and imprisonment, it is not strictly necessary for the purpose of reaching a conclusion in terms of international or human rights law to establish the precise, or even the approximate, figure. However, given the high degree of interest which this issue of numbers has always attracted, it was necessary to undertake an examination of several of the principal sources in order to give a summary of the estimates given over the past 50 years.³³

a) Mass Killing

Statistical sources for the mass killings fall into three categories:

1. a significant number of contemporary reports by foreign diplomats and journalists (no statistical information was published in the Indonesian press), who suggest an overall figure for killings up to that point. For example, the British ambassador in Jakarta, Andrew Gilchrist, informed the Foreign Office on 23 February 1966 that a previous estimate of 400,000 was considered by his colleague the Swedish ambassador, who had conducted some research in the

³³ This section of the report covers Counts No. 1 (Murder and Extermination), 2 (Enslavement), 3 (Imprisonment), 4 (Torture) and 7 (Forced Disappearance) in the Prosecution case.

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field, to be an underestimate.³⁴ A few days later, the US journalist Joseph Craft reported in the *Boston Globe* that "Indonesia, the fifth most populous country in the world, has been the scene of a continuing massacre on the grand scale--some 300,000 persons killed since November but here the slaughter evokes no concern."³⁵

2. A very small number of estimates from Indonesian government sources, for which we only have second-hand information. Two are often quoted: (a) an early estimate in November 1965 by a fact-finding commission appointed by President Sukarno which produced a figure of 78,000 to that date. (The figure was apparently derided as too low even by members of the commission); and (b) a later estimate by Kopkamtib in mid-1966, said to have been based upon a sample survey and circulated to foreign journalists, which gave a round figure of one million, of whom 800,000 were in Central and East Java, and 100,000 each in Bali and Sumatra.³⁶ The latter has been described by the Australian scholar Robert Cribb as being "a genuine attempt to obtain reliable figures, but its conclusions cannot be accepted with any certainty."³⁷ Also often quoted is the statement by the Kostrad commander Sarwo Edhie who while on his death-bed allegedly told Permadi, a well-known diviner, that in this period some three million people were killed, and most of them on his orders.³⁸ There appears to be no corroboration of this statement.

3. Accounts by participants, eyewitnesses and observers, typically confined to one area or one incident. The *Komnas HAM Report* of 2012, which confined its enquiry into the events of 1965-66 to only six separate areas, provides many examples such as this:

Killings in Flores Timor Kampung [region of Maumere]

The witnesses were people who had seen the killings in several places in the district of Maumere. People were brought there in trucks with their hands tied, taken down from the trucks and led to the edge of a trench. There were altogether 84 persons, of whom 36 had been taken from prison while others had been arrested in the mountains.³⁹

Reports of this kind which come from many parts of the country indicate the widespread nature of the extermination campaign (the Komnas HAM enquiry, which had limited resources, noted

³⁴ Letter from British Embassy in Jakarta to Foreign Office, February 23, 1966, DH 1015/80, FO 371/186028, UKNA

³⁵ "No Political Gain in Indonesia Inter-Army Bloodbath", *The Boston Globe*, 4 March 1966.

³⁶ Frank Palmos, "So Indonesia counts its dead," *The Sun*, 5 August 1966. This story estimated one million dead, based on access to an Indonesian Army research report which appears never to have been publicly released. See also Seymour Topping, "Slaughter of Reds Gives Indonesia a Grim Legacy," *New York Times*, 24 August 1966.

³⁷ Both estimates are discussed in Robert Cribb, *The Indonesian killings of 1965-6*, Introductory Chapter "Problems in the historiography of the killings in Indonesia," pp. 7-8.

³⁸ Quoted in Benedict Anderson, "Petrus Djadi Ratu" [Petrus Becomes King], *New Left Review*, 3: May-June 2000.

³⁹ *Komnas HAM Report*, p. 2.

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that one of its main problems was "the huge geographical spread of the 1965-1966 Events"). Such reports also often illustrate in graphic detail the horrendous nature of the killings. However, they remain too scattered for any meaningful statistical aggregation.

The first systematic attempt to collate and analyse the varied and often not very satisfactory statistics from the above sources was made by Robert Cribb in his introductory chapter to the previously mentioned volume, published in 1990. This publication made a dramatic impact when it appeared and is still relied on today for its overview of the range of estimates, as well as its preliminary analysis of the difficulties in reaching any firm conclusions, and the reasons for both under-reporting as well as over-reporting. Cribb presented the available evidence in a table which showed estimates ranging from 78,000 to one million. However, he stated at the outset that:

We know surprisingly little about the massacres which followed the 1965 coup attempt. The broad outline of events is clear enough. The killings began a few weeks after the coup, swept through Central and East Java and later Bali, with smaller scale outbreaks in parts of other islands. In most regions, responsibility for the killings was shared between army units and civilian vigilante gangs. In some cases the army took direct part in the killings; often, however, they simply supplied weapons, rudimentary training and strong encouragement to the civilian gangs who carried out the bulk of the killings. The massacres were over for the most part by March 1966, but occasional flare-ups continued in various parts of the country until 1969. Detailed information on who was killed, where, when, why and by whom, however, is so patchy that most conclusions have to be strongly qualified as provisional....

The nature of the killing in 1965-66 – commonly dispersed, nocturnal and by small groups - was such that no-one could possibly have had first or even second hand involvement in more than a tiny proportion of the total number of deaths. Any estimate of the total number who perished must therefore be a composite of numerous reports, themselves probably also composites of reports.⁴⁰

A 2013 review by Annie Pohlman gives continuing appreciation to Cribb's 1990 overview, while providing several more recent estimates. Pohlman notes that the killings remain "a murky part of Indonesian history." While a number of critical studies since Cribb's work had "improved our knowledge about the who's, the where's and the why's" there were "many factors, trends, actors and motivations which remain unclear...."⁴¹

⁴⁰ *The Indonesian Killings*, p. xx

⁴¹ Annie Pohlman, "The Massacres of 1965–1966: New Interpretations and the Current Debate in Indonesia", *Journal of Current Southeast Asian Affairs* 3/2013 pp. 3–9.

In summary, then, Cribb's assessment in 2001 still stands: "A scholarly consensus has settled on a figure of 400–500,000, but the correct figure could be half or twice as much,"⁴² and "We are unlikely now to find empirical evidence to resolve this question."⁴³

Legal Considerations

Killing is named as a criminal act in almost all legal and moral codes, up to the specified crimes of murder and extermination as crimes against humanity in the Rome Statute of 2000, and in Articles 138–140 of the Indonesian Criminal Code (KUHP) and as Article 9 (a) and (b) of Law No. 26/2000. As legal scholars have observed:

The primacy of the right to life in the international order for the protection of human rights is self-evident; if it is not respected, those other rights already deemed to fall within the scope of contemporary customary international law—such as the right to equality and the prohibition against slavery and systematic racial discrimination, as exemplified by apartheid - would become meaningless.⁴⁴

The deliberate taking of human life represents, of course, the quintessential crime against humanity. Lists of crimes against humanity, beginning with the IMT Charter and up through the ICTY and ICTR Statutes, the ILC's 1966 Draft Code and the ICC Statute, begin with this crime.⁴⁵

The acts documented above, in which it is widely understood that at least half a million people were killed in the aftermath of the G30S events, clearly constitute violations of crimes against humanity under international customary law of murder, appropriately the first count to be brought before the Tribunal by the Prosecution.

Considering the scale and scope of these killings, they may also be qualified as the crime against humanity of extermination, whose character is described as follows:

'Extermination' consists first and foremost of an act or combination of acts which contributes to the killing of a large number of individuals. Criminal responsibility for extermination therefore only attaches to those individuals responsible for a large number of deaths, even if their part therein was remote or indirect. By contrast responsibility for one or for a limited number of such killings is insufficient in principle to constitute an act of extermination. Acts of extermination must, therefore, be collective in nature rather than directed towards singled-out individuals.... any act or combination of acts could

⁴² Robert Cribb, "Genocide in Indonesia, 1965–1966", *Journal of Genocide Research*, 3, 2, 219–239.2001 p. 232.

⁴³ Ibid., p. 14.

⁴⁴ Hurst Hannum, "International Law and Cambodian Genocide: The Sounds of Silence," *Human Rights Quarterly* 11 (1989) p. 122.

⁴⁵ Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*. 2nd ed. Oxford: Oxford University Press, 2001, p. 70.

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amount to extermination if contributed, whether immediately or eventually, directly or indirectly, to the unlawful physical elimination of a large number of individuals.⁴⁶

b) Imprisonment

In the first months of the army-led campaign, many thousands accused of being PKI members or belonging to associated organisations were arrested and put into prison or into makeshift detention centres.

As early as 25 October 1965, General Abdul Haris Nasution (Army Chief of Staff, and the only targeted general who managed to escape the killings on the night of 30 September) described the process, although he refrained from naming the PKI:

It is clear who the enemies are within. It is clear because in every institution, including the SAB (Staf Angkatan Bersendjata or The Armed Forces Staff), the cleaning and regulating process are currently going on. The elements of these political adventurers or their supporters are being swept out, and people are now sweeping them out and hunting them down everywhere.⁴⁷

Then on 12 November General A. H. Nasution issued Instruction INS-1015/1965 that spelled out three categories of individuals within the armed forces who were to be “secured” (those clearly involved, clearly involved in an indirect way, and those who can be presumed to be involved directly due to their involvement with the PKI). This was the precursor of the later ABC classification and the first purge instruction to name the PKI.⁴⁸ (See Appendix D1.c for a more detailed later version of this classification.)

Three days later, General Suharto, in his capacity as Commander of Kopkamtib, issued Directive, no. 22/KOPII/1965 widening the application of the three categories to be purged to the civilian bureaucracy.⁴⁹

On 12 March 1966, as his first official act after gaining a handover of power to act in the name of President Sukarno, General Suharto signed Presidential Decree 1/3/1966 declaring the PKI to be a banned organisation throughout the territory of Indonesia, and declaring all its structures

⁴⁶ Guénaél Mettraux, *International Crimes and the ad hoc Tribunals*. Oxford: Oxford University Press, 2005, p.176-177.

⁴⁷ Yosef Djakababa, “The Initial Purging Policies,” p.11.

⁴⁸ Ibid., p. 18-19.

⁴⁹ Ibid., p. 19.

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dissolved, from the centre to the regions, and including all its affiliated and related organisations.⁵⁰

Another decree issued in May 1966 designated the mass organisations which were now proscribed. As well as the PKI structure down to the village committee level, the list comprised 22 mass organisations and 25 educational institutions. The all-Indonesia trade union federation, SOBSI (*Sentral Organisasi Buruh Seluruh Indonesia*), with a reported membership of over 3 million was included, with a sub-list naming 62 separate trade unions. Baperki, an organisation for Indonesian citizens of Chinese ethnic origin, was also proscribed (together with three related institutions).⁵¹

Prisoners were said to be subject to a screening process to determine whether they belonged to one of other of the categories and/or the proscribed groups.⁵²

As to how the authorities determined the appropriate classification for detainees, the Tribunal was presented with a written report and oral testimony by Dr. Saskia Wieringa regarding the procedures adopted for psychological testing of prisoners to determine classification, which “came to be a substitute for law.” Further, she documented collaboration in this process between Indonesian and Dutch psychologists.⁵³

An overall figure for those detained (known as *tapol*, abbreviation for *tabanan politik*, political prisoners) is often given as one million. Official statistics began to be issued in the mid-1970s of the numbers in detention and of those who had been released (most of the latter were designated as ET (*ex-tapol*), and they and their families continued (and in some respects continue today) to suffer from loss of civil rights, denial of the right to free movement or to work in certain fields etc.). By 1975-6, a total variously stated as 500,000, 600,000, or 750,000 was officially stated to

⁵⁰ Keputusan Presiden/Panglima Angkatan Bersenjata Republik Indonesia/Mandataris MPRS/Pemimpin Besar Revolusi No. 1/3/1966 [Decision of the President/Commander of the Armed Forces of the Republic of Indonesia/Mandate Holder of the MPRS/Great Leader of the Revolution No. 1/3/1966], “on behalf of the President... signed by Lt. Gen Soeharto, 12 March 1966, reproduced in Dinuth, *Dokumen Terpilih*, p.168-169 (see Appendix D1.h).

⁵¹ Lampiran Keputusan Presiden/Panglima Tertinggi Angkatan Bersenjata Republik Indonesia/Panglima Besar Komando Ganyang Malaysia No. 85/KOGAM/1966 [Attachment to Decision of the President/Supreme Commander of the Armed Forces of the Republic of Indonesia/Great Leader of the Crush Malaysia Command], “on behalf of the President... signed by Lt. Gen Soeharto,” 31 May 1966, reproduced in Dinuth, *Dokumen Terpilih*, p.190-194.

⁵² Amnesty International, *1977 Report*. This compilation of evidence remains until today the principal source for the number of people imprisoned. See also Eva-Lotta E Hedman ed., *Conflict, Violence, and Displacement in Indonesia* (Cornell University Press, 2008).

⁵³ Saskia Wieringa, “Testing of prisoners: collaboration between Indonesian and Dutch psychologists,” submitted to the IPT on 11 November 2015, p. 4.

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have been arrested and detained in the years immediately following 1965. In one such statement, Foreign Minister Adam Malik said in April 1975 that:

Immediately after the abortive coup in 1965, we began in 1966 to seize people for interrogation who had been connected with the coup. The number at that time was about 600,000. On the basis of our prevailing laws, our religious conscience and our humanitarian conscience, we immediately began to discover whether people were guilty or not. In that process, from a total of 600,000 there are now only about 20,000 left, and they fall into various categories. These people will be brought to trial. Those who already have been found not guilty have been released. As others are found not guilty, they too will be released.⁵⁴

These figures were queried by Amnesty International and other critics, and Indonesian officials themselves admitted that the real total might be higher. In September 1971 the former Indonesian Prosecutor General, General Sugih Arto, told foreign journalists in Jakarta that "it is impossible to say exactly how many political prisoners there are. It is a floating rate, like the Japanese yen vis-a-vis the dollar." He explained further that local commanders were empowered to arrest and interrogate suspects, and that "these people can be held for an unlimited period of time. It is not always compulsory to report such security arrests to the central command in Jakarta."⁵⁵ Very few of these detainees, who might be held for 10 years or longer, were ever subjected to any form of trial process. According to Amnesty International, "by early 1977, of the hundreds of thousands arrested in connection with the 1965 events, the government claimed to have tried about 800 prisoners in all, that is, an annual average of less than 100 cases." Access to these trials was denied to foreign jurists.⁵⁶

According to the official account by the Armed Forces themselves, published in 1995, 1,887 prisoners were classified in Group A, of whom 1,009 were eventually tried by one of several types of court, and 878 were transferred into group B (none of whom was destined to be tried). Most of these former group A prisoners were sent to the forced labour camps of Buru Island.⁵⁷

⁵⁴ 22 April 1975, reply to questions in the Parliamentary Assembly of the Council of Europe. Quoted in Amnesty International, *1977 Report*, p.41

⁵⁵ *Ibid.*, p. 42.

⁵⁶ *Ibid.*, pp. 45 & 53.

⁵⁷ *Bahaya Laten Komunisme di Indonesia*, Jilid ke-5 "Penumpasan pemberontakan PKI dan sisa-sisanya". [The Latent Danger of Communism in Indonesia. Vol.5: Elimination of the PKI Rebellion and its Remnants] (Jakarta: Markas Besar Angkatan Besar Republik Indonesia, Pusat Sejarah dan Tradisi ABRI, 1995), p. 119.

Legal Considerations

Considering the universal proscription of arbitrary and unlawful imprisonment under international customary law, the acts brought before the Tribunal, as documented above, support the Prosecution's charge of violation of Article 9 (e) of Law No. 26/2000, as argued:

126. ...imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law is considered a crime against humanity....
...the State of Indonesia, acting individually or in concert with other organisations, arbitrarily arrested and imprisoned large numbers of members, followers and sympathisers of the Indonesian Communist Party (PKI) and PKI-affiliated organisations without trial and the vast majority detained without warrant of arrest and in violation of international law. In this regard, the absence of a valid arrest warrant rendered the initial arrest unlawful, additionally detainees were never informed of the reasons for their detention, nor were they formally charged, or informed of any procedural rights.

127. On the contrary, the approximately 1 million prisoners were detained on a categorisation administered by psychologists and based on an assessment of their apparent level of communist loyalty. The prisoners' categorisation was usually an indication of whether they would survive and thus the psychologists in essence were performing the role of de facto judges.⁵⁸

c) Enslavement

Considerable evidence was tendered by the Prosecution, charging that many of those who were detained were forced to work under conditions that amounted to enslavement, one of the oldest established crimes under international law and constituting a crime against humanity.

The Prosecution Indictment gave the following examples: Monconglo (called Moncong Loe by Komnas HAM), South Sulawesi; Buru Island, Maluku; Balikpapan, East Kalimantan; Nusa Kambangan and Plantungan, Central Java; and in several prisons in West Java.

The *Komnas HAM Report* in relation to prisoners confined to the island of Buru reached the following conclusion:

The island of Buru, in the Moluccas: Some 11,500 political prisoners were brought there. Slave labour also took place in the concentration camp in the island of Buru. Witnesses informed the Komnas team that they had to work without pay in a reservoir, a dam, the office of the camp commander, a cement factory, a housing complex, and they had to till the rice fields of the local population and of the officers without pay. They also testified that 90% of the wives of the prisoners were ordered to sexually service both military and

⁵⁸ International People's Tribunal on 1965 Crimes Against Humanity in Indonesia, *Prosecution Brief Outlining the Relevant Legal Framework under International Law as Applicable to Crimes Against Humanity as Charged in the 23 October 2015 Indictment*, 09 November 2015, p. 46.

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civilian men. Komnas HAM concludes that slave labour took place on the island of Buru. This includes sexual slavery.⁵⁹

Amnesty International reported in 1973 that in the women's prisoners' camp in Plantungan, Central Java,

...the women must work from morning until night in the fields to produce their own food stuffs. They are only provided with rice and vegetables and must rely on their relatives for other food, such as sugar, tea and coffee as well as soap and clothes. Relatives are not permitted to visit prisoners at Plantungan and although food parcels can be sent, communications are difficult and costs are high.⁶⁰

Written evidence was submitted to the Tribunal describing this system as follows:

In many places of detention, political detainees were not only put to work within the confines of their camp. Here *tapols* were transported from their prisons to work for a pittance or no payment at all in infrastructure and building projects or plantations. This transportation took place under surveillance, either on daily basis or longer periods depending on the distance of the project area to the prison and on the type of project. In all cases there is speak of forced labour in captivity, whereby slavery conditions prevailed. Reports of such situations exist from Central Sulawesi (Palu, Donggala, Poso), North Sumatra (Asahan, Langkat, Deli Serdang), East- and Central Java as well as East and West Kalimantan.⁶¹

Two witnesses gave oral testimony during the Tribunal hearings, namely factual witness Mr. Basuki Bowo (pseudonym) and expert witness Dr. Asvi Warman Adam. Mr Basuki Bowo testified to his nine years' imprisonment on Buru Island, during which time he was subject to intensive and extreme forced labour (without any remuneration) in the construction of infrastructure in the previously undeveloped jungle, and subsequently of cultivation of food crops, much of the produce of which was sold for the benefit of the guards and commanders.

Dr. Asvi Varman Adam, a historian from LIPI (Lembaga Ilmu Pengetahuan Indonesia, Indonesian Institute of Sciences) confirmed that, on the basis of his detailed 2003 research, at least 11,600 prisoners were sent to Buru and held in 23 forced labour camps of around 500 persons each. Dr. Asvi stated:

They were released 1978-79 through pressure by the international community, and they were the donors. This forced them to close. Buru island was a virgin jungle when they arrived in 1974, but they established 3 million hectares of rice paddy, and Buru Island

⁵⁹ *Komnas HAM Report*, p. 8.

⁶⁰ Amnesty International Dutch Section, *Indonesia Special*, Special Report, March 1973, p. 24.

⁶¹ IPT Research Report, delivered to the Tribunal, briefing on enslavement.

became a bread basket for Indonesia due to of the results of the hard labour of the detainees.⁶²

Legal considerations

Under international law, a distinction is made between “forced labour” and “enslavement,” on the basis of the extent of and conditions under which labour is performed and the degree to which the victim is under the control of the perpetrator.

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 or inmates of what may have been known as “labour camps” were subject to enslavement, a crime against humanity and a crime under Indonesian domestic Law No. 26/2000, Article 9 (c).

Furthermore, it constitutes violation of the 1930 Convention concerning Forced or Compulsory Labour, ratified by Indonesia on 12 June 1950, which provides strict limitations on the amount of labour that may be required and the conditions under which it may be performed.

d) Torture

The Prosecution provided considerable evidence (both in written form and as oral testimony) of torture being inflicted on prisoners and detainees. Its Indictment charged:

In many cases, the torture carried out by Indonesia’s military forces led to death as a result of the torture itself and at other times death occurred due to wounds sustained during torture being left untreated.

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

⁶² Transcript, 10 November 2015. For further information on the dates and numbers of releases from Buru and elsewhere, see 1977 Amnesty International, *1977 Report*, p. 31-40.

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- 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

Two witnesses, Mr. Muhammad Pakasi (pseudonym) and Mr. Martin Aleida, provided testimony during the IPT hearings regarding their own experience of being tortured, being threatened with torture, witnessing torture committed on others and/or hearing screams nearby and seeing the wounds of others following their torture.

The *Komnas HAM Report* also provides details of torture being carried out at many of the sample sites it investigated, including the Jalan Gandhi detention centre in Medan, North Sumatra, at various military posts, police stations, immigration offices, Chinese homes, and at prisons, military prisons and other and places of detention. (See Appendix D1.f for details.)

In addition, a Joint Submission was made to the IPT by Asia Justice and Rights (AJAR), KontraS, SKP-HAM Palu, ELSAM, KIPPER, LAPPAN and JPIT, entitled “Widespread and Systematic Commission of Arbitrary Detention, Torture & Ill-Treatment During the Violence around the 1965 atrocities in Indonesia.” The Joint Submission reported that it had collected information on 296 victims of torture, of whom 240 were male and 56 female. The perpetrators were military personnel (on 240 victims), police (51), prosecutors (3) and other civilians (32).⁶³

Legal considerations

While the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment was enacted only in 1984, and ratified by the Indonesian Government on 28 September 1998, torture is considered a crime against humanity under international customary law.

In addition to the absolute ban on torture under international law and international customary law, the following explicit prohibitions on torture are provided in Indonesian law: Indonesian Constitution Article 28G(2), “Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country;” Law No. 39/1999 on Human Rights, Article 33(1), “everyone has the right to be free from torture, or cruel, or inhumane and degrading punishment or treatment.” Law

⁶³ IPT Research Report, delivered to the Tribunal, ch. 3.6.1.

No.26/2000 Article 9 (f) explicitly names torture among the crimes to be applied retroactively (according to Article 43) by the Human Rights Courts.

e) Enforced Disappearance

In addition to mass killings and imprisonment, as outlined above, many people were rounded up or arrested and then “disappeared” without legal basis and without detailed records being made as to the identity of the victims. Enquiries to the authorities as to their whereabouts typically met with no answer. Some subsequently emerged after having been imprisoned, while many others have never been seen again, and are presumed to have been killed, either directly or after some form of imprisonment.

Two factual witnesses gave testimony at the IPT hearings on the enforced disappearance of their relatives, Mr. Astaman Hasibuan and Ms. Intan Permatasari (pseudonym, testifying behind the screen).

Mr. Hasibuan’s testified that his father, Sumarno Hasibuan, a member of the North Sumatra Regional People’s Assembly (DPRD-GR Sumatera Utara) and a member of the Executive Council of the PKI’s North Sumatra Regional Committee (Dewan Harian-DH Komite Daerah Besar PKI Sumatera Utara), was called as a witness at one of the trials held by the Extraordinary Military Tribunal, Mahmilub, but then disappeared; he was seen in detention at Regional Military Command, Kodam, in Jalan Masdulhak, Medan.⁶⁴ The witness stated that he has repeatedly attempted to discover what happened to his father, but never received even a shred of information from the authorities. He has given testimony on this twice before, including to Komnas HAM.

Ms. Intan testified that seven of her close relatives were disappeared, including her father, a retired member of the People’s Representative Assembly, DPR, who had been in Surabaya for medical treatment from July 1965, and who was reportedly seen in police custody, and also her mother, brother, uncle and cousins.

⁶⁴ Another source provides more detail, stating that on 10 December 1965, Sumarno Hasibuan was taken from the place of detention in Jalan Masdulhak, together with two other prisoners, and they were executed at Sungai Ular (Snake River). “Penghilangan Paksa dan Kehancuran Organisasi Buruh Perkebunan Sumatera Utara, 1965-1967” (Enforced Disappearances and Annihilation of the North Sumatra Plantation Workers Organisation, 1965-1967), (Typed manuscript, No author, no date, 69p.), p.16.

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The 2012 *Komnas HAM Report* gives several vivid examples of enforced disappearance. Sometimes these involved people who were seized from their homes and were never seen again, while in other cases people disappeared from prison camps or detention centres and were likewise never seen again. In one example from Medan, Sumatra, a witness testified that:

In the middle of 1967, in the middle of the night, the witness was also aware of the fact that sixty people were moved from TPU A to Suka Mulya Prison, while some others were transferred to Intelligence Task Force (Satgas Intel)] in Jalan Gandhi. All these sixty people disappeared and nothing is known to this day about their whereabouts. They included some students from AISA (Ali Arkham Social Sciences Academy) which belonged to the PKI in Medan, as well as workers [and] leaders who had been arrested in a number of districts in Medan.⁶⁵

On the basis of the sample investigations carried out by Komnas HAM, the report concluded that:

Civilians who were recorded as being the victims of enforced disappearances as a consequence of operations conducted by the state security forces amounted to roughly 32,774 people.

Clearly, the figure for the whole of Indonesia would be considerably higher than that indicated from the Komnas HAM sample investigation.

The IPT Research Report provided to the panel of judges also 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 in general, in late 1965 and into early 1966, in which:

all leaders and secretaries of branch and sub-branch organisations (PKI, BTI, the People's Youth Organisation and the labour union Sarbupri [Sarekat Buruh Perkebunan Republik Indonesia, the Republic of Indonesia's Plantation Workers Union – IPT note] in the sub-districts and villages situated in plantations were arrested by the Buterpra [Bintara Urusan Teritorial Pertahanan Rakyat – Non-Commissioned Officers of the Territorial and People's Defence – IPT) and members of Komando Aksi (Action Command).⁶⁶

⁶⁵ *Komnas HAM Report*, p.13.

⁶⁶ IPT Research Report, delivered to the Tribunal, ch. 2.7.2.

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It is to be noted that many different sources from across the country have reported the fact that almost all of those involved in the PKI, however remotely, disappeared at this time.

Legal considerations

This section of the IPT Research Report concluded:

These cases mentioned above do not represent all the cases of enforced disappearances but provide sufficient evidence of serious violations of a range of human rights embodied in the Universal Declaration of Human Rights set out in both International Covenants on Human Rights as well as other major international human rights instruments.⁶⁷

While the International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly only in December 2006, the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, bases the prohibition of enforced disappearance in international customary international law as expressed in arising from the Charter of the United Nations and the Universal Declaration of Human Rights.

Clearly, the evidence brought before the Tribunal demonstrates the occurrence of Enforced Disappearance, as defined in the Preamble to the 1992 Declaration:

... enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

B4 Sexual Violence

The Prosecution presented a full and detailed case to support its claim that "sexual violence was pervasive during both the massacres of 1965-1966 and the mass political detentions after 1 October 1965 in Indonesia." This violence, the Prosecution stated, took many forms, including:

⁶⁷Ibid., ch. 2.8.

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"rape, sexual violence as torture, sexual enslavement, and other forms of sexual violence (including sexual assault)." The Judges were provided with a 200-page report, including more than 20 individual case studies, which alleged that:

The crimes detailed in this report 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 illegally detained following the 1965 coup. The time-frames for the crimes discussed in this report 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 in which they were perpetrated, are evidence [of] the widespread and systematic nature of sexual violence as crimes against humanity during the anti-Communist violence in Indonesia.⁶⁸

The Tribunal also heard evidence from a factual witness, Ms. Kinkin Rahayu (pseudonym) and an expert witness, Dr. Saskia Wieringa. An excerpt from the testimony of Ms. Kinkin, a victim of sexual violence and who recounted her experiences in graphic detail, testifying for privacy behind a screen, is attached to this report as Appendix D1.d. The expert witness who testified on this subject and who is also Chair of the IPT Executive Board, Dr. Saskia Wieringa, has carried out extensive research, resulting in a number of significant publications.

A considerable body of the evidence available on this sensitive subject is contained in the report published in 2007 by Komnas Perempuan (the Indonesian National Commission on Violence Against Women).⁶⁹ Komnas Perempuan was established by presidential decree in 2005 with the task of working for "the elimination of violence against women and to promote understanding on all forms of violence against women." The report which it produced was based upon academic research, archive materials, and an in-depth analysis of 122 testimonies of women survivors of 1965 and subsequently. (For an excerpt from this report, see Appendix D1.e). A number of substantial academic studies have been published on this subject, which have also been consulted by the judges.⁷⁰

While working on its report, Komnas Perempuan received a powerful statement from women victims who had approached the Commission, which included the following:

⁶⁸ IPT Research Report, Part 3, Section 3.5. (Grammatical correction by Editors.)

⁶⁹ Komnas Perempuan (Indonesian National Commission on Violence Against Women) Report, Jakarta, 2007. See full source in Bibliography. Komnas Perempuan), *Gender-based Crimes Against Humanity: Listening to the Voices of Women Survivors of 1965*, 2007, English translation published by the International Center for Transitional Justice.

⁷⁰ These include Annie Pohlman, *Women, Sexual Violence and the Indonesian Killings of 1965-66*. (London and New York: Routledge, 2015); Mery Kolimon, Liliya Wetangterah, Karen Campbell-Nelson, (eds.), Jennifer Lindsay (Translator), *Forbidden Memories: Women's experiences of 1965 in Eastern Indonesia* (Herb Feith Translation Series), (Melbourne: Monash University Publishing, 2015). See also Saskia Wieringa, *Sexual Politics in Indonesia* (Houndsmill, New York: Palgrave Macmillan, 2002), esp. ch. 8.

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We are women activists detained for years without trial, wives of political detainees, widows --we represent thousands of women victims of 1965... We have shared our stories of state violence, how we have survived, and our hopes. In 1965, we were veterans of the independence movement, supported government policy and campaigns... We were members of legal organisations, such as Lekra, Gerwani, CGMI, HIS, BTI, SOKGI. We organised literacy training, creches, we campaigned against feudalism, for equality. We were young wives with young children, we were students. But the murders of the Generals changed our lives. We did not know anything about what happened. But suddenly we become a-moral women. There were no letters of arrest. The paramilitary groups never explained why our husbands were taken away.

As wives of political prisoners, we became victims of sexual abuse when trying to visit our husbands in prison. Some of us were forced to "marry" military personnel to save our families. Our children were also detained, and our land, houses, jewellery confiscated. We were fired from work, we had no income. Then many of us were sent to labour camps... We endured interrogation and torture, and were made to watch the torture of others. We experienced rape, and pregnancy due to rape. The prison conditions where we were held were inhumane. Some detainees were executed.

The impact of our incarceration was not only felt during the time of detention. Our attempts to improve the situation of women were halted. After our release, we were made to report to the authorities --an opportunity for extortion. Our national identity cards were marked, and some of us have still not received life-long identity cards. We continue to feel discrimination from our families and community. Our families have been broken, forced to separate --our children raised by others. They blame us, and we have found difficulty in finding spouses. We still cannot find employment and are continuously discriminated against.⁷¹

In its report, Komnas Perempuan came to the conclusion that during the violence of 1965-1966, members of the communist women's organisation Gerwani and other women suspected of being affiliated with PKI, "became the target of systematic killings, enforced disappearance, illegal detention, torture and sexual violence." Komnas Perempuan believed that Gerwani was a target of "a smear campaign designed to bring about the total destruction of this political group." (In the present IPT Report, this issue will be dealt with in more detail in section B6 below on The Propaganda Campaign).

Cases examined by Komnas Perempuan showed a pattern in which "the security forces were able to carry out sexual torture and rape against women from the moment they were arrested. There were no attempts from their superiors to prevent or punish the perpetrators of these crimes." They also found instances of sexual slavery in which "women prisoners were treated as personal

⁷¹ Excerpt from statement prepared by victims, presented to Komnas Perempuan (Indonesian National Commission on Violence Against Women), 29 May 2006 [some grammatical changes have been made by the editors of this IPT report]. The extract precedes the copy of the English translation of this report published online by the International Center for Transitional Justice, accessed on the web site <http://home.patwalsh.net/wp-content/uploads/Listening-to-the-Voices-of-Women-Survivors-of-1965.pdf>.

possessions who were repeatedly raped over long periods. In several cases, sexual slavery resulted in pregnancy."⁷²

The Tribunal also heard evidence from Mariana Amirrudin, a Komnas Perempuan commissioner who had received official permission from the President to attend. She testified that her organisation had concluded that there were:

strong indications that there was gender based persecution, and it was coordinated by the security apparatus of Indonesia, along with groups that were in power. Rapes and sexual torture, sexual enslavement. In this regard, there needs to be the responsibility of the state. Our recommendation is that at this time the most important issue is how the female victims who suffered the violence can recover, and their fate in terms of economic well-being and political rights. There is no attention in this area, no agency attending to this—that their position is very inhumane. The state must make immediate steps to find out how to take action to provide assistance in regard to these matters, accordingly so they may resume their lives until old age.

I would like to add, the elderly victims have only received money from small trades they opened up. But some can no longer be productive and they have difficulty getting food, can't go to a doctor; they are alone and their homes are falling apart. When we meet with some victims in the field, it's important to pay attention to their economic and social rights. The second issue is recovery and the responsibility of the state to create a sense of security for these victims. The state must remove the stigma put upon them.⁷³

Legal Considerations

This aspect of the crimes committed in Indonesia in 1965 and beyond received very little attention until recently, consistent with what is now understood to be widespread under-reporting around the world, and under-prosecution of gender based violence in both domestic, international and internationalized courts.⁷⁴

⁷² *Komnas Perempuan Report*, English translation, p. 174.

⁷³ Evidence from Mariana Amirrudin, Commissioner of Komnas Perempuan, 12 November 2015 (edited from IPT transcript of the proceedings).

⁷⁴ Bangladesh was the first in the world to include sexual violence as an international crime, specifically mentioning rape as a category of crimes against humanity, (Article 3.2a) in the International Crimes (Tribunals) Act, 1973, when it moved towards prosecution of war crimes, crimes against humanity and genocide that were committed as part of the Liberation War of 1971. However, due to political changes in the country, these proceedings were suspended until recommenced in 2009, when rape as a war crime was included among the charges brought forward. (See Waliur Rahman, "Background notes on adoption of the International Crimes (Tribunal) Act", From genocide to justice: national and global perspective. (*Journal of the 1st Winter School*, Center for the Study of Genocide and Justice). Dhaka: Liberation War Museum, 2014, p. 105-109; Mofidul Hoque, "Bangladesh genocide: the long journey to justice", *ibid*, p.130-139.1.)

In 1998 the first conviction for rape as a crime against humanity was recorded, when the Trial Chamber of the International Criminal Tribunal for Rwanda considered rape to be an instrument of genocide and soon afterwards, in 2001, the International Criminal Tribunal for the former Yugoslavia found rape and sexual enslavement to be crimes against humanity, also ruling that rape and other forms of sexual violence are elements of other international crimes such as torture, persecution and enslavement.

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The evidence, both oral and written, presented to the Tribunal on the subject of sexual violence in Indonesia in 1965-66 and subsequently is compelling and conclusive. The numerous statements by witnesses from different areas of Indonesia provide specific and graphic information on a whole range of crimes under this heading. The details provided by individuals and the experiences which they relate are mutually corroborative and build a picture of sexual violence inflicted on a wide scale and over a long period of time upon large numbers of women who were alleged to have some connection or sympathy with the PKI.

These crimes included rape, sexual violence in the form of torture, sexual enslavement, and other forms of sexual violence constituting against humanity outlawed under international customary law and Indonesian domestic law.

More attention still needs to be focused upon this deeply disturbing aspect of the events of 1965–66 and after. The call of Komnas Perempuan for a full investigation by the government of Indonesia, and full compensation to the surviving victims of sexual violence and their families, is still outstanding nearly ten years after it was made.

B5 Exile

The Prosecution charged the Indonesian State with the crime of persecution⁷⁵ against hundreds of thousands of Indonesian nationals who were abroad by depriving them of the right of safe return to their country of origin.

The situation of the exiles was summarized by Australian academic, David Hill, as follows:

With the rise of New Order under General Suharto in Jakarta after 1 October 1965, thousands of Indonesians who were residing in socialist and communist countries, mainly as students, were affected by the acts of the Indonesian government. During 1965-1966, the Indonesian Embassies summoned Indonesian nationals for screening investigations. In these sessions the interviewees 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. Those who refused to attend the meetings, as well as those who were considered members or sympathizers of the PKI received letters from the respective Embassies in which they were urged to immediately return to Indonesia. If

⁷⁵ As mentioned in n. 8 above, some sources have used the term “terrorization.”

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they declined, fearing arrest or even execution at home, their passports were invalidated, revoked or confiscated. The migrant communities were also asked by their respective Embassies to refrain from any moral or material assistance to them.⁷⁶

The Prosecution documented 56 cases of invalidation of passports in six countries (the Soviet Union, Albania, Romania, Czechoslovakia, Bulgaria and Cuba). However, the total number of those victimized by this governmental policy of invalidating passports surely exceeds this number. Though the exact number is currently unknown, it is evident that Indonesian embassies, especially those in communist countries, were instructed to call upon all Indonesian nationals in these countries to determine whether they were communist or Sukarno sympathisers or not. It is perfectly clear that only those people who claimed to be Suharto sympathisers would be able to return without pain, while others risked facing dire consequences if they returned.

The Tribunal heard two factual witnesses for this Count, Mr. Soerono Widodo (pseudonym) and Ms. Aminah (both of whom testified from behind the screen). According to these witnesses, the screening meetings and cancellation of their passports had a huge impact on their lives, not limited to the practical perspective. There was also a devastating psychological effect on the victims.

The witnesses who appeared before the tribunal were unable to reveal their identity because of continuing concerns for their own safety or those of their families even after 50 years of exile. While the witnesses have managed to live and work in other countries, the fact is that they felt they could not return to their own country with the prospect of persecution hanging over them.

Legal considerations

Although the witnesses and the Prosecution described them as “stateless,” this is not necessarily a definitive statement on their current status, technically speaking. Nevertheless, it is a vivid description of the reality they faced. Ultimately, they are neither nationals of the countries in which they live nor are they able to function as real citizens of Indonesia. However, due to the confiscation or invalidation of their passports, and in light of the fact that both of the witnesses who testified before the hearing have not felt safe to return to their home country, it is clear that they, and others in the same situation, have been deprived of their full and unconditional rights of citizenship and nationality.

⁷⁶ David T. Hill, “Indonesian Political Exiles in the USSR”, *Critical Asian Studies*, Routledge, 45:4 (2014), p. 632.

On the question of the revocation of nationality, the 1958 Law on the Citizenship of the Republic of Indonesia does not provide provisions to protect its citizens from revocation of their nationality due to political reasons. In considering this question, it is necessary to make a distinction between two different but interrelated concepts: deprivation of the right of safe return to home country; and deprivation of nationality rights. The Prosecution did not establish the claim that the act of invalidating the passports of Indonesian nationals who were abroad between 1965 to 1967 constituted, *de jure*, the revocation of nationality.

It may be argued that while such treatment of these involuntary exiles does not amount to persecution as a crime against humanity, particularly in terms of the numbers, severity and impact on the victims, it certainly formed part of a widespread and systematic state attack against a part of the civilian Indonesian population. However, another view is that this treatment of these involuntary exiles does amount to persecution as a crime against humanity, in itself, particularly because in terms of the numbers, severity and impact on the victims, the confiscation of passports was systematic and wide-ranging and had a severe impact on the victims. It certainly formed part of a widespread and systematic state attack against a part of the civilian Indonesian population.⁷⁷

Upon consideration of the evidence presented before the Tribunal, the fact was established that many Indonesians were subjected to forcible exile, which constitutes deprivation of right to free passage, right to return and enjoyment of full citizenship rights (fundamental rights laid down in international customary or treaty law), and this may well reach the same level of gravity as other forms of persecution as a crime against humanity

⁷⁷ To define “persecution” the tribunal relies on terms of existing codified human rights law. According to the ICC Statute Article 7(2)(g): “persecution” is defined as the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group or collectively.” Perceived identity as political party supporters constituted persecution on political grounds within the meaning of Article 7(1)(h) (Muthaura case, Pre-Trial Chamber: Decision on the Confirmation of Charges (23 January 2012) at para. 283; Ruto case, Pre-Trial Chamber, Decision on the Confirmation of Charges (23 January 2012) at para. 273.)

In order to assess the gravity or seriousness of the crime, different factors, such as the scale of the crime, the numbers of the victims, the severity of the crime and the impact on victims would be taken into consideration.

With regard to persecution as a crime against humanity, the ICTY Trial Chamber judgement required a gross or blatant denial on discriminatory grounds. International law only considers a few elements for “persecution” to amount to a crime against humanity, including the gravity or seriousness of the crime. (Prosecuteor v. Kupreskic et al, No. IT-95-16-T, Judgement (14 January 2000), at para. 621) (These are the same factors the Office of the Prosecutor of the ICC considers in order to decide whether or not an investigation should be initiated. (Susana Sacouto & Katherine Cleary, pp. 809-10, available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1037&context=auilr>.)

It is evident that the legal gravity threshold for the purpose of this judgement cannot meet all the criteria that ICC or other past ad-hoc international courts have required and defined as causing grave concern to the international community for prosecutorial purposes. However, for the purpose of this Tribunal, the judges have decided to consider the gravity threshold as criterion to evaluate whether “persecution” as CAH had occurred in the form of involuntary exile in the aftermath of 1965-66 upheaval and afterwards, under the Suharto’s regime.

B6 The Propaganda Campaign

The Prosecution presented evidence to the Tribunal of what they described as a campaign of “propaganda and hate speeches as part of the widespread and/or systematic attack against the members and sympathisers of the PKI and PKI-affiliated organisations, and/or civilian population in Indonesia from 1965 onwards by spreading hate propaganda via various instruments”.⁷⁸

It was argued that this was a sustained campaign, lasting for many years and even to the present day, based upon allegations which were known to be untrue, and that it was intended “to discriminate, as well as to dehumanise, the target group and laid down the basis for the mass atrocities committed against them.” The target group was said to be not only members and sympathisers of the PKI, but all those who were allegedly members of organisations affiliated to the PKI, and that this amounted to “a significant part of the civilian population [of Indonesia].” This propaganda campaign was said by the Prosecution to focus 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.”

The Prosecution argued that this official version of events was entirely false, and to have been manufactured under the auspices of the military. It 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 sympathisers.

⁷⁸ Prosecution Brief, para.154.

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In order to consider this case, the following questions should be asked:

1. *Was this version of events substantially true or substantially false? If so, did those advancing it know that it was false?*
2. *Did the dissemination of this version of events incite or encourage people who heard it to commit mass murder or other crimes, and could those who disagreed with this version argue against it:*

1. The official version of events and knowledge of the true story

a) The role of the PKI in the 30 September events

It is well established among mainstream scholars of this period that several senior leaders of the PKI were involved in the 30 September events. As put by Robert Cribb of the Australian National University, 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.”⁷⁹

The extent of knowledge among the PKI leadership of Aidit's plan to participate in military action against the Council of Generals (which, it was alleged, was likely to launch its own coup before long against President Sukarno) is still unclear. It has been claimed that the Party's Politburo was kept in the dark, while Aidit operated through a so-called "Secret Bureau" in the leadership. However, according to one first-hand account, the Politburo did agree at a meeting in August to provide "political support" for such action, which was regarded as pre-emptive in nature.⁸⁰ But this falls a long way short of justifying the allegation that the PKI, as an institution, was responsible for the whole action.

Whatever the extent of the PKI leadership's knowledge, it is not disputed that “the hundreds of thousands of Indonesian communists who were subsequently slaughtered, however, knew nothing of these plans.”⁸¹ The same applies *a fortiori* to all those members of affiliated organizations and other individuals who were also killed or persecuted. It has long been noted also that no attempt was made by the coup leaders to mobilize the PKI membership, which at the time was said to number some three million.

⁷⁹ Robert Cribb, “Indonesia 1965: The attempted coup and the rise of Suharto,” *The Strategist*: (Australian Strategic Policy Institute), 30 Sept. 2015.

⁸⁰ This account was given by Aidit's note-taker and Politburo archivist, Iskandar Subekti, both when on trial in 1972 and much later in a confidential memorandum written in 1986. For a full discussion of this difficult question, see John Roosa. *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia*, ch.5.

⁸¹ Robert Cribb, “Indonesia 1965: The attempted coup and the rise of Suharto,” *The Strategist*: (Australian Strategic Policy Institute), 30 Sept. 2015.

b) The alleged castration of the captured generals, and the “immoral” behaviour towards them by Gerwani women

The bodies of all seven prisoners were retrieved on 4 October from the well-known *Lubang Buaya* (Crocodile Hole), into which they had been thrown three days earlier. A post-mortem was carried out the same day, on the orders of General Suharto, before their ceremonial procession through the streets of Jakarta and burial at the Heroes Cemetery, symbolically held on Armed Forces Day, 5 October.

Over the following week, increasingly explicit accounts were published in the press of alleged torture and mutilation, especially in two military newspapers and those civilian papers that were allowed to continue printing. By 11 October it was being reported that one or more of the officers had had their eyes gouged out and their genitals mutilated. In the absence of other evidence, it might be inferred that the newspapers had been briefed on the contents of the post-mortems.

However, two decades later the US scholar Benedict Anderson chanced upon copies of the post-mortems, which he found among papers from the trial proceedings against an air-force officer accused of participation in the original coup plot. The autopsy reports (which Anderson then published in 1987, and extracts from which are included as Appendix D1.a) tell a very different story, clearly showing that there was no evidential basis for the claims of torture, mutilation and castration.

In summary, the autopsies show that six of the seven officers died as a result of gunshot wounds, and the seventh as the result of a wound to the abdomen, perhaps caused by a bayonet. The non-gunshot wounds recorded on their bodies were consistent with being beaten by rifle butts or as a result of being thrown down a 36-foot well. None of the bodies bore the marks of torture or of mutilation. Most significantly, the doctors carrying out the post mortems did not record any damage to the officers’ genitals, which were apparently intact (they were able to observe in all seven cases whether or not the victim was circumcised).

It is therefore not surprising that, as noted by Anderson, “in his speech of 12 December 1965, to the Indonesian News Agency, *Antara*, President Sukarno chastised journalists for their

exaggerations, insisting that the doctors who had inspected the bodies of the victims had stated there were no ghastly mutilations of eyes and genitals as had been reported in the press.”⁸²

c) Knowledge of the true story

The presence of the PKI leader D.N. Aidit at the Halim Airbase, adjacent to Lubang Buaya, in the immediate aftermath of the 30 September action and murder of the generals, and the active role of his “Special Bureau” colleagues in the affair, may have given grounds for an initial suspicion that this was an attempted “communist coup.” This was indeed the interpretation that was immediately announced and disseminated by the military (and continues until today)—that the PKI attempted to carry out a coup. However, additional evidence that the affair was more complex was very soon available. Colonel Untung and other military leaders of the action, whose identities were known at the time, were not PKI members, and testimony from some surviving PKI participants revealed that it had not been supported by the majority of PKI leadership. Many versions have been advanced as to the real perpetrators and their motives and intent (an overview of which was presented to the panel of judges in the IPT Research Report).

But, however the facts may be interpreted, they 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—far less that members of affiliated or left-leaning organisations had anything to do with the action or themselves presented any sort of threat. It is reasonable to conclude that General Suharto and his colleagues in the military leadership were well informed on the details and capable of reaching a more balanced conclusion than the one that was presented through their propaganda outlets.

In relation to the particular claim that the prisoners at Lubang Buaya were tortured and mutilated with the active participation of female Gerwani members, the evidence of the official autopsy makes it clear that this claim was entirely false. Since the autopsy was commissioned by General Suharto, it is at least reasonable to suppose that he and his close associates were very soon made aware of its findings. President Sukarno was after all well aware of it within a week, when he criticized the press for publishing lurid stories not based upon fact. It is significant too that, as

⁸² Ben Anderson, “How did the Generals Die,” *Indonesia*, Volume 43 (April 1987), 109--134. Accessed at <http://cip.cornell.edu/seap.indo/1107009317>

far as we know, the Government of Indonesia has never referred to the autopsy or published details of it, let alone the full text.

2. Did the official version of events encourage mass murder, persecution and other crimes, and was it possible for those who did not accept this version to bring forward alternate scenarios?

Two expert witnesses testified in the IPT Hearings on the propaganda campaign: Dr. Saskia Wieringa and Dr. Herlambang Wijaya, whose PhD thesis was precisely on this topic, interpreted as a case of “cultural violence”.

The official line was first set out systematically in what became the master narrative, *The Forty Day Failure of the 30 September Movement*, written by the historian, General Nugroho Notosusanto, first published in December 1965 and revised on several occasions. During the period of mass killings, evidence shows that PKI suspects were often accused of being “killers” and told that they deserved death themselves, while women who had been arrested (sometimes haphazardly or on the basis of mistaken identity) were accused of being Gerwani “whores” and subjected to sexual violence.

For example, Witness Mr. Martono, testifying before the Tribunal under the Count of Imprisonment, reported that after he was arrested by soldiers in Solo, “they held both my hands, also my feet and threw me up until I hit the ceiling. Repeated it several times, face up face down. They did it three times, and after that questioned me. Are you from the PKI? No, and I don’t know what it is. How many people did you kill?”

Evidence was also presented that the charges against the Gerwani women of “immoral” behaviour and of mutilating the imprisoned officers at Lubang Buaya were invoked by officials and militia at local levels—when arresting women suspected of a PKI connection—and were used to justify the use of sexual violence against them. For example, the 2007 report of the Komnas Perempuan into sexual violence against women cites a case from October 1965 where the witness, aged 14 at the time, was seized with other women by soldiers who screamed at them: “You are prostitutes, aren’t you? You were trained by the PKI on how to mutilate bodies, weren’t you?” They were kept naked for two nights and on one occasion a soldier inserted the point of a rifle into her vagina.

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The official version of events continued to be portrayed actively throughout the New Order period, and indeed persists today. In 1973 the monument complex at Lubang Buaya, which featured a mural depicting the alleged atrocities in vivid detail, was opened to the public. In 1983 the main points were embodied in a film which became required viewing, especially in schools, on every anniversary of the alleged coup: *The Treachery of the 30 September Movement*. This film provided a vivid depiction of the alleged torture of the officers, with wild dancing by women at Lubang Buaya and images of the bloodied face of a general and of bodies being dragged around. This was followed by gory scenes of torture, including eye-gouging and genital mutilation, before the generals were shot to the chant of “kill, kill” (*bunuh, bunuh*), and their bodies then thrown into a well. In 1991 the Armed Forces History Centre added an even more vivid diorama representation of the torture of the army heroes to the monument complex at Lubang Buaya. Many millions of Indonesians were presented with this propaganda version of history over a period of more than three decades. Expert witness Dr. Herlambang Wijaya testified that the government commissioned or provided grants to support the 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, including sharp restrictions on press and publishing houses. Other witnesses testified to the fact that writers and journalists who had previously published in outlets considered to be pro-PKI found themselves black-listed. It is common knowledge that dissenting views were not allowed during the New Order, and that anyone voicing them would risk severe punishment. (We note that even today those who organize meetings or discussions on this subject may be refused permission to do so by local officials, or be harassed by local militia).

Legal Considerations

The Prosecution Indictment put before the panel of judges the count of “Persecution through propaganda as a crime against humanity,” charging that “the State of Indonesia is responsible for using propaganda and hate speeches as part of the widespread and/or systematic attack against members of the PKI and PKI-affiliated organisations, and/or civilian population in Indonesia from 1965 onwards by spreading hate propaganda via various instruments.”

The false propaganda campaign was essential to the widespread systematic attack on the PKI and all those deemed to be connected with it. The false propaganda was the first significant step in the attack and is therefore a crime against humanity.

The propaganda version of the events of 30 September–1 October 1965 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.

B7 Complicity of Other States

The Prosecution presented evidence for what it described as the complicit behaviour of other States, specifically the US, UK and Australia, in facilitating the wrongful acts of mass killings and other crimes against humanity by the Government of Indonesia in 1965–66, comprising a part of the widespread systematic attack on the PKI and all those deemed to be connected with it.

Two expert witnesses testified at the IPT Hearings: Dr. Bradley Simpson and Dr. Herlambang Wijaya. Their evidence, and supporting documents furnished to the panel of judges by the Prosecution, presented the case in the following terms: 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 international 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.

Before examining these allegations in detail, it is necessary to consider the issue of “complicity” in broader terms. It might be argued that since the international community as a whole was

largely indifferent to the mass killings in Indonesia at the time (for example, no official notice was taken of these events by the Security Council or the General Assembly of the United Nations) many other states could be accused of complicity. However, this does not amount to complicity in terms of international law. If international protest or condemnation might have deterred the killings to some extent, then the failure to do so may be reprehensible. But we take the view that such acts of omission do not carry the same weight as acts of commission, and that the threshold for “complicity” is a high one.

The following questions need to be asked:

1. *Did the acts of which the three named outside states are accused materially assist the Indonesian army in carrying out crimes against humanity?*
2. *Did those responsible for committing such acts know this to be the case?*

1 Role of other states

a) The US

i) The provision of lists of names of PKI members, when the US officials concerned must have been well aware that this would probably lead to their execution

The initial source for this was an article in 1990, published widely in the US media by the journalist Kathy Kadane,⁸³ based on an interview with Robert J. Martens, previously political officer at the US Embassy in Jakarta, and with other Embassy officials at the time. Martens was quoted as saying that several lists containing thousands of names were turned over piecemeal over a number of months. In a direct quote, Martens is reported as saying, "It really was a big help to the army. They probably killed a lot of people, and I probably have a lot of blood on my hands, but that's not all bad. There's a time when you have to strike hard at a decisive moment." In evidence to the Tribunal, the US scholar Dr. Bradley Simpson stated that Martens and CIA analysts at the Embassy created “detailed profiles of the PKI and its affiliate organizations from the national leadership down to regional, provincial and local cadres. “These were passed through Indonesian officials “to Suharto, who used them to track down PKI members for arrest and execution.”

⁸³ “U.S. Officials' Lists Aided Indonesia Bloodbath in 60's,” *The Washington Post*, 21 May 1990.

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Martens and other Embassy officials subsequently objected to the interpretation placed on the provision of these lists, although no one denied that these had been provided. Martens claimed that the names on the lists were widely available, that they only involved PKI leaders and not rank and file, and that he supplied the lists on his own initiative (*Washington Post*, 2 June 1990). However, a document later published by the US Department of State in its official compilation of material relating to these events, quoted the then US Ambassador, Marshall Green, as signing a telegram to the Department which stated that:

A sanitized [i.e. Embassy attribution removed,] version of the lists in A-398 [a previous telegram] has been made available to the Indonesian Government last December [1965] and is apparently being used by Indonesian security authorities who seem to lack even the simplest overt information on PKI leadership at the time (lists of other officials in the PKI affiliates, Partindo [a left-wing group] and Baperki [an Indonesian-Chinese association] were also provided to GOI [Government of Indonesia] officials at their request).⁸⁴ (brackets in original)

According to another official document, Ambassador Green, in a conversation with US Secretary of State Dean Rusk in February 1966, also stated that “The Army, as well as Moslem political groups who have a vested interest in preventing the resurgence of the Communists *that have been decimated by wholesale massacre*, will prevent a renaissance of the PKI.”⁸⁵ (IPT editors’ italics)

ii) The provision of small arms, communications equipment etc. by the US to the Indonesian government

The general aim of US policy was clearly expressed by Secretary Rusk when on 13 October 1965 he said that, “If the army's willingness to follow through against the PKI is in any way contingent on or subject to influence by the United States, we do not want to miss the opportunity to consider US action.”⁸⁶ The Prosecution provided evidence, based on US official sources, that at the end of October 1965 White House officials established an inter-agency working group on Indonesia, and that over the coming weeks US officials approved the provision of small arms, communications equipment and medical supplies, by covert means, to the Indonesian army or to volunteer Muslim and nationalist youth for use against the PKI.

⁸⁴ “Editorial Note,” Document 185 in *Foreign Relations of the United States, 1964–1968, Volume XXVI, Indonesia; Malaysia-Singapore; Philippines*, ed. Edward C. Keefer (Washington DC: USGPO, 2000). (Short title: *FRUS 1964-1968*)

⁸⁵ “Memorandum of Conversation.”, Document 191 in *FRUS 1964-1968*.

⁸⁶ Quoted in H. W. Brands, *The Wages of Globalism: Lyndon Johnson and the Limits of American Power* (Oxford: Oxford University Press, 1995), p. 174.

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Initially there was evidently some hesitation. A CIA memorandum of 9 November observed that supplying such materials to the Indonesian army “create[s] a definite risk for us of deliberate assistance to a group which cannot be considered a legal government nor yet a regime of proven reliability or longevity.” Those arguing in favour initially also appeared to believe that these were needed because of the danger of a “Communist insurgency.”⁸⁷

However, as will be shown below, evidence soon reached Washington that the army was not dealing with a Communist insurgency (except for some limited resistance in Central Java) but that it was carrying out or instigating a large-scale anti-Communist purge and mass killing. At this particular time US material aid to the Indonesian army was of a limited scale. In part this appears to be because US officials (a) were unsure of the army’s overall reliability and preparedness to acquire political power, and (b) because if this aid did become publicly known, the adverse popular reaction might strengthen the hand of President Sukarno. In February 1966 Ambassador Green personally assured President Johnson that “...all United States assistance to Indonesia, including assistance to the military, had been terminated.” Green recommended “that the United States not extend further assistance to Indonesia until it really begins to set its house in order.”⁸⁸

However, although the volume of these supplies was not great and was limited in time, they were regarded as crucial in order to fill perceived deficiencies. More important, they could be seen as giving a “green light” to the Indonesian military that the US approved, at least tacitly, of its course of action against the PKI and would not object to any further action taken.

b) The UK

During the period 1963–65 in which Malaya/Malaysia assisted by Britain sought to counter Indonesian armed incursions into Borneo/Kalimantan under Sukarno’s policy of Konfrontasi, the UK developed a sophisticated propaganda apparatus mainly based in Singapore, using both black propaganda and informal links with Western media. (Indonesia also used various forms of propaganda which sought to discredit and undermine the Federation of Malaysia).

According to evidence provided by the Prosecution, the “failed 30 September coup” was seen by Britain as an opportunity to be exploited, using this propaganda apparatus, in the hope of ridding

⁸⁷ Documents 164 and 172 in *FRUS 1964-68*.

⁸⁸ “Memorandum of a conversation,” 15 February 1966, Document 194 in *FRUS 1964-1968*.

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Indonesia of communist influence and weakening the political strength of President Sukarno. On 8 October, Foreign Office guidance was sent to Singapore advising British operatives there that:

Our objectives are to encourage anti-Communist Indonesians to more vigorous action in the hope of crushing Communism in Indonesia altogether, even if only temporarily, and, to this end and for its own sake, to spread alarm and despondency in Indonesia to prevent, or at any rate delay, re-emergence of Nasakom Government [government including the PKI – Note in source] under Sukarno.⁸⁹

Over the next months, information culled largely from the Indonesian military press by the UK embassy in Jakarta was sent to Singapore where it was conveyed in briefings to selected foreign media including to the BBC. (This operation was conducted jointly with similar US and Australian efforts). Many of the stories focused on alleged communist atrocities, retailing the Indonesian army's version of event at Lubang Buaya, or on alleged communist threats, and were picked up again by Indonesian media and re-circulated with some supposed authority as having come from foreign press sources. In addition, the Indonesian army was given a clear hint via the US that Britain would refrain from active operations in Borneo, thus allowing it to transfer troops from the area. This was conveyed in a message of 14 October, which included the assurance that "we have good reason to believe that none of our allies intend to initiate any offensive action against Indonesia."⁹⁰ Indonesia ended its armed confrontation in May 1966 as General Suharto established his political ascendancy.

c) Australia

It is well established that Australia too ran a sophisticated propaganda operation, with information favourable to the Indonesian army being relayed by its Embassy in Jakarta to Canberra and disseminated through various media including Radio Australia. A recent study notes that the Australian Department of External Affairs had always taken a "keen interest" in the way in which Radio Australia reported events in Indonesia, and that after 30 September the Department "received and acted" upon advice from the Australian Ambassador in Jakarta, Keith Shann, who in turn "received advice from the Indonesian Army on how it wanted the situation in Indonesia reported." The Department sought to direct Radio Australia in these matters and

⁸⁹ Foreign Office telegram no. 1863, quoted in David Easter, "British Intelligence and Propaganda during the 'Confrontation', 1963-1966," (available online via King's College London Research Portal), p. 20.

⁹⁰ Mark Curtis, "US and British complicity in the 1965 slaughters in Indonesia," *Third World Resurgence*, Issue 137, 2002.

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was also successful in "convincing [Australian] newspaper editors to report and editorialize in a manner sensitive to the Department's concerns,"⁹¹

Another study relates in detail how Shann was approached on 9 November 1965 "by an unnamed colonel from the army's Information Section, who told him that Radio Australia should 'mention as often as possible youth groups and other organisations, both Moslem and Christian' that were involved in anti-communist actions (thus clearly hoping to dilute the army's culpability)." He also discussed a list of other internal and external issues to be reported that would favour the army. Shann concluded his report to Canberra "with the comment that he could 'live with most of this, even if we must be a bit dishonest for a while'. Radio Australia was also told to avoid 'giving information to the Indonesian people that would be withheld by the army-controlled internal media', to avoid compromising the army's position."⁹² It should be noted that Australian forces had also taken part in the operations in Borneo against Indonesian military incursions.

2 Knowledge of these other states

There is abundant evidence, provided to the Tribunal, that within a few weeks after 30 September, the governments of the countries examined here were well aware through reports from their own diplomats in Jakarta, as well as from foreign media and some non-government observers, that communists and many others accused of association with them were being slaughtered on a large scale. By the beginning of 1966, the numbers which were reliably reported to Washington, London and Canberra ranged from a minimum of 100,000 to four times that amount. For example, a British Foreign Office memorandum in January 1966, summarizing the information received to that date, notes that:

The slaughter of Communists in Indonesia has been widespread. No reliable figures are available, but assaults by Muslim fanatics, Army security operations and reprisals in settlement of old vendettas have resulted in the deaths of large numbers of Indonesians (some estimates say as many as 100,000) during the past three months. President Sukarno's own estimate was 87,000. Although this slaughter has dealt a crippling blow to

⁹¹ Karim Najjarine and Drew Cottle, "The Department of External Affairs, the ABC & Reporting of the Indonesian Crisis 1965–1969", *Australian Journal of Politics & History*, Volume 49, Issue 1, March 2003, pp. 48–60.

⁹² Marlene Millott, "Accomplice to Atrocity?," *Inside Indonesia* 124: Apr-Jun 2016.

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the Indonesian Communist Party, it must have aroused widespread bitterness and resentment.⁹³ (parentheses in original)

A picture of killings on a vast scale was quickly built up through the exchange of information between Western embassies in Jakarta, much of it based upon first-hand observation in the field. One account, often quoted in secondary sources, came from the Swedish ambassador who, after a tour of Central and Eastern Java in early 1966, came to the conclusion that a suggested death total of 400,000 was "a very serious under-estimate." (The estimate of 400,000 had been made by the British ambassador and shared with his US counterpart) The vivid and detailed observations of the Swedish ambassador, based on contacts with reliable witnesses on the ground, were relayed to London by the British ambassador in a report which we publish here in full (see Appendix D1.b (ii)). The ambassador added this laconic note to his report: "P.S. The Iranian Ambassador has recently seen three Iranian doctors working in Bali and other islands who report killings 'by hundreds and thousands'; and the work, they say, proceeds."

Abundant information also reached the US embassy from intelligence sources: in one example the CIA reported in November 1965 that "an Indonesian intelligence officer in East Java described several mass killings of PKI activists and supporters in Kediri (where 300 peasant farmers were killed, reportedly by mistake), Wates (1,200 killed), and Ponggok (about 300 killed), with 'many of those being killed...followers who do not know much'" (see Appendix D1.b (i)). Similar information was also passed regularly to Canberra from the Australian embassy in what was described as "the methodical slaughter of PKI prisoners" (see Appendix D1.b (iii)). This was presumably the basis for a remark in July 1966 by the Australian Prime Minister, Harold Holt, who when asked about events in Indonesia commented that "with 500,000 to a million communist sympathisers knocked off ...I think it is safe to assume a reorientation [in Indonesia] has taken place."⁹⁴

Whatever the discrepancies in number, it is evident, as expert witness Dr. Bradley Simpson has commented, that "U.S. and British officials were certainly aware by early 1966 that hundreds of

⁹³ Foreign and Commonwealth Office (FCO), "Guidance No 26," sent to certain British missions, 16 January 1966,

⁹⁴ *New York Times*, 6 July 1966, quoted by Adam Hughes Henry, "Polluting the Waters: A Brief History of Anti-Communist Propaganda during the Indonesian Massacres," *Genocide Issues International*, 2014. 8:2, pp. 153-175, n. 35.

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thousands had been killed."⁹⁵ The mass killings were also described in a number of media reports, although these did not always receive prominence when published. Examples include a vivid report in *The Age* (Melbourne) in January 1966 by journalist Robert Macklin describing what he and his wife had witnessed in Bali, where "We saw four villages where every adult male had been killed....We saw mass graves in each of which up to 10 Communist men and women had been packed after being stabbed to death."⁹⁶ On 4 March 1966, *The Boston Globe* published a commentary by the well-known journalist Joseph Kraft in which he posed the question: "Indonesia, the fifth most populous country in the world, has been the scene of a continuing massacre on the grand scale--some 300,000 persons killed since November but here the slaughter evokes no concern. Why?"⁹⁷

In April 1966 the chief foreign correspondent of the *New York Times*, C. L. Sulzberger, described the Indonesian killings as "one of history's most vicious massacres," rivalling in scale and savagery "Turkey's Armenian massacres, Stalin's starvation of the Kulaks, Hitler's Jewish genocide, the Moslem-Hindu killings following India's partition, the enormous purges after China's Communisation."⁹⁸ In one of the fullest accounts, the experienced US journalist Seymour Topping reported his findings at length in the same newspaper in August 1966. He observed that "executions were usually carried out by the military in Central Java and that the people in East Java and in Bali were incited by the army and the police to kill. The military executed Communists by shooting, but the population was left to behead the victims or disembowel them with knives, swords and bamboo spears, often with ritual forms of extreme cruelty."⁹⁹

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, but the rare dissenting voice of Senator Robert Kennedy in January 1966 is noteworthy. He declared that "we have spoken out against the inhuman slaughters perpetrated by the Nazis and the Communists. But will we speak out

⁹⁵ Written evidence to the Tribunal by Bradley Simpson, University of Connecticut, Director, Indonesia and East Timor Documentation Project, based on his book *Economists with Guns: Authoritarian Development and US-Indonesian Relations, 1960-1968* (Stanford, California: Stanford University Press, 2008).

⁹⁶ Robert Macklin, "The Killings Go On....Troubled Times in Indonesia", *The Age*, 20 January 1966 [quoted in Tanter, *Witness Denied*, where he notes that Macklin's report was "buried in the later parts of the paper's finance section, next to the prices from the cattle yards."]

⁹⁷ Joseph Kraft, "No Political Gain in Indonesia Inter-Army Bloodbath", *The Boston Globe*, 4 March 1966. [quoted in Henry, "Polluting the Waters" Chronology].

⁹⁸ C. L. Sulzberger, "Foreign Affairs: When a Nation Runs Amok," *New York Times*, 13 April 1966.

⁹⁹ Seymour Topping, "Slaughter of Reds Gives Indonesia a Grim Legacy," *New York Times*, 24 August 1966.

also against the inhuman slaughter in Indonesia, where over 100,000 alleged Communists have not been perpetrators but victims?"¹⁰⁰

We note that, in seeking to explain the widespread indifference to the human suffering in Indonesia, academic studies of this period place these events within the broader international context of cold war, heightened in Asia at the time by the war in Vietnam. Gabriel Kolko has observed that "Indonesia by late 1965 presented US strategy in Southeast Asia with a danger at least as great as Vietnam...", "because of the logic of the "domino theory" which saw communism as a threat to be opposed, even when as in Indonesia it took a peaceful form. Thus "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." Hence it was logical, Kolko continues, for US policy to encourage the Indonesian army and to convey the message early through US ambassador Marshall Green that "[the US] Embassy and USG [US Government] [are] generally sympathetic with and admiring of what [the] army [is] doing". In return the Indonesian army, as Green also reported, saw the opportunity for a bargain, asking "how much is it worth to the US for the PKI to be "smashed."¹⁰¹ Similarly, the Southeast Asia specialists George and Audrey Kahin have noted that the US fully approved of a policy to "eliminate the PKI" and that as a result "for the United States the political landscape of Indonesia had become vastly simpler."¹⁰²

Legal Considerations

The Prosecution Brief made reference to the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), reflecting customary rules, which reads as follows:

Article 16

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State."

¹⁰⁰ Quoted in Alex J. Bellamy, *Massacres and Morality: Mass Atrocities in an Age of Civilian Immunity* (Oxford: OUP, 2012), p. 211.

¹⁰¹ Gabriel Kolko, *Confronting the Third World: United States Foreign Policy 1945-1980* (New York: Pantheon, 1988), pp. 178-85.

¹⁰² Audrey R Kahin & George McT Kahin, *Subversion as Foreign Policy The secret Eisenhower and Dulles Debauch in Indonesia* (New York: New Press, 1995), pp. 229-30.

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Article 41(2)

[N]o State shall recognize as lawful a situation created by a serious breach (...), nor render aid or assistance in maintaining that situation.”

1. Role of other states

a) US The evidence above indicates 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. The clearest evidence for this was the supply of lists of names when there was a strong presumption that these would be used for execution. The supply of small arms, communications equipment etc. was on a small scale and limited in time, and it was unlikely to have made any significant difference to the outcome. Less tangible but more significant were the assurances given to the Indonesian military which allowed them to infer that the US would approve of any measures they took to destroy communists and communist/left-wing influence in Indonesia

b) & c) UK and Australia The position is less clear-cut with regard to the UK and Australia. Both countries were engaged in conflict with Indonesia, in an undeclared war started by Indonesia on territory which did not belong to it. The 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). However, in extending their propaganda operations to legitimize the false propaganda of the Indonesian army after 30 September (and in the UK's willingness not to take military advantage of the situation), both governments evidently hoped that this would assist the army to eliminate the PKI as well as remove Sukarno. They continued with this policy even after it had become abundantly clear that killings were taking place on a mass and indiscriminate basis. On balance, this appears to justify the charge of complicity.

(It was brought to the judges' attention that the same charge could be brought against other states, including the Soviet Union which continued to supply arms to Indonesia during this period. However, the panel of judges did not have sufficient evidence presented nor time to go into such additional charges.)

2. Knowledge of other states

The claim that the events in Indonesia were too obscure or confusing to be understood at the time has no merit. The countries referred to above were fully aware of what was taking place

through their diplomatic reports, from contacts in the field and accounts in Western media. Nor were the mass killings a secret to the international community in general, even if they were only reported intermittently. Yet there is no record that any of the governments considered above made the slightest attempt to urge restraint upon the Indonesian government or army.

B8 Genocide

Qualification as Genocide

The IPT Research Report presented to the Tribunal made the case “for the applicability of the concept of ‘genocide’ for the massacres following the ‘events of 1965’” and also raised the possibility that the killing of ethnic Chinese Indonesians “would plausibly amount to genocide under the Genocide Convention.”¹⁰³

Furthermore, an *amicus curiae* (friend of the court) Brief was submitted to the Tribunal on 11 November 2015 by Dr. Daniel Feierstein and Ms. Irene Victoria Massimino of the Universidad Nacional de Tres de Febrero, Buenos Aires, Argentina making the following Petition:

In light of the case under consideration and the evidence presented, we respectfully ask the Honourable Judges of the International People's Tribunal to analyse such evidence to determine that the events of the case at issue constitute genocide as the partial destruction of the Indonesian national group.

However, as the Prosecution did not include this charge in the Indictment presented to the Tribunal, and neither did the agenda for the four days of hearings in November allocate time for presenting evidence on this question, the judges decided that they were not in a position to consider this issue during their deliberations at that time, but that they would do so in their Final Report.

Some may argue that it is superfluous to qualify acts as genocide if they have already been found to constitute crimes against humanity. Such a position fails not only to take account of the importance of calling things by their correct name, but in so doing fails to provide a framework

¹⁰³ IPT Research Report, Part 1, pp. 50, 53.

to comprehend the true nature of what took place in Indonesia in 1965-66 and beyond. As Daniel Feierstein argues elsewhere:

The big difference between genocide and crimes against humanity is that the victims are not seen as part of a “national group” but as individuals whose individual rights have been violated. This is the most important legal difference between the concept of crimes against humanity (which refers to indiscriminate actions against members of a civilian population) and the concept of genocide (which refers to the deliberate targeting of specific population groups for complete or partial destruction).¹⁰⁴

In considering this matter, the following questions need to be addressed:

1. *Do the facts brought before the Tribunal by the Prosecution include acts that fall within the provisions of the Genocide Convention?*
2. *Were these acts committed against a protected group as enumerated in the Genocide Convention?*
3. *Were these acts against a protected group committed with the specific intent to destroy that group in whole or in part?*
4. *Is the state of Indonesia bound by the provisions of the 1948 Genocide Convention?*

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

The Convention on the Prevention and Punishment of Genocide, adopted by the United Nations General Assembly on 9 December 1948 (Genocide Convention), states:

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable:

- (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

¹⁰⁴ Daniel Feierstein, “The Concept of Genocide and the Partial Destruction of the National Group,” *Logos: a journal of modern society & culture*. Winter, 2012 accessed at http://logosjournal.com/2012/winter_feierstein/ p.4-5.

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Article IV

Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

In its above consideration of the acts brought by the Prosecution, it has been established that a number of these acts were committed against alleged leaders of the PKI and those alleged to be its members or sympathisers, 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.

These include the commission of a number of the acts proscribed by the Genocide Convention.

It therefore now needs to be determined:

- whether these acts were committed against a protected group as enumerated in the Genocide Convention; and
- whether these acts were committed with the specific intent to destroy that group in whole or in part.

2. Were these acts committed against a protected group as enumerated in the Genocide Convention?

i) “Indonesian national group”

Both the *amicus curiae* Brief and the IPT Research Report argued that the “Indonesian national group” was a target of the above acts.

The Genocide Convention’s definition of 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” says nothing about the need for the perpetrator to come from outside the victim group.

However, it has generally been interpreted as applying to acts committed on one such group by another. Nor does the list of protected groups include political groups. Therefore, it has been argued, that the Genocide Convention does not apply to the majority of crimes committed in the

case of Indonesia or indeed Cambodia, which some have termed “politicide” or even “auto-genocide.”¹⁰⁵

However, this conservative approach stands in stark contrast to the original concept of genocide developed by Raphael Lemkin that genocide, in essence, is “the destruction of the national identity of the oppressed group [and] the imposition of the national identity of the oppressor.”¹⁰⁶ Such an interpretation of the Genocide Convention was proposed for Cambodia in the mid-1980s by Hurst Hannum and David Hawk, although never pursued in the courts.¹⁰⁷

However, in recent years a similar approach has indeed been adopted, notably in prosecutions and convictions in Spain and in Argentina, where crimes committed by the Argentine military dictatorships during the 1970s and 80s were found to constitute genocide in 25 cases heard in 11 different tribunals up until the time of the IPT’s hearings in November 2015.

Of particular relevance are the judgements issued in 2006 by the Federal Tribunal 1 of the city of La Plata (Case 2251/06), in 2013 by the Federal Tribunal 1 of the city of Rosario (Case 95/2010, ruling on 20/12/2013) and most recently in 2015 again by the Federal Tribunal 1 of the city of La Plata (Case N° 17/2012, ruling on 19/10/2015), which includes the following:

... it is clear that the Argentine national group has been wiped out ‘in part’ and in a part substantial enough to alter the social relations within the nation itself.... The annihilation in Argentina was not spontaneous, it was not casual, it was not irrational: it was the systematic destruction of a ‘substantial part’ of the Argentine national group, destined to transform it, to redefine its way of being, its social relationships, its destiny, its future.¹⁰⁸

The Concluding Statement issued by the Judges at the end of the hearings on 13 November 2015 stated:

It has been established that the State of Indonesia during the relevant period through its military and police arms committed and encouraged the commission of these grave human rights violations on a systematic and widespread basis. The judges are also

¹⁰⁵ Those opposing the use of the term genocide in such cases include William Schabas, who argues that “confusing mass killing of the members of the perpetrators’ own ethnic group with genocide is inconsistent with the purpose of the Convention, which was to protect national minorities from crimes based on racial hatred.” (William A. Schabas, “Problems of International Codification – Were the Atrocities in Cambodia and Kosovo Genocide?” (*New England Law Review*, Vol. 35:2, 2001 pp. 287-302). This position has been criticised by Gregory Stanton as “definitionalist denial,” with specific reference to the case of Cambodia (Gregory H. Stanton, “The Khmer Rouge Did Commit Genocide,” *Searching for the Truth*, Number 23, November 2001 – Khmer version, reproduced at English version available at http://www.d.dccam.org/Tribunal/Analysis/Debate_Genocide.htm).

¹⁰⁶ Raphael Lemkin, *Axis rule in occupied Europe*, Washington, DC: Carnegie Endowment for International Peace, 1944, p.79.

¹⁰⁷ See Hurst Hannum, “The Sounds of Silence,” pp. 82-138, n.19.

¹⁰⁸ Cited in the Judgement from Daniel Feierstein and Guillermo Levy, [translation from the Spanish text] *Hasta que la muerte nos separe* [Till Death do Us Part]. Genocidal social practices in Latin America, La Plata: Ediciones al Margen, 2004, p. 76.]

convinced that all this was done for political purposes: to annihilate 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.

The considerations on the acts submitted to it by the Prosecution (discussed above in Sections B3-B7), 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.”

ii) the Chinese ethnic group

The IPT Research Report asserts:

In Indonesia most Chinese were murdered because they belonged to Baperki, an association of Chinese Indonesian[s] associated with the PKI, but ethnic motives played a role in mass killings of Chinese-Indonesian citizens as well, particularly in Medan, Makassar and Lombok.... To the extent that they were killed because of their Chinese identity, their murders would plausibly amount to genocide under the Genocide Convention. (Part 1, p.53)

A more detailed examination was brought before the Tribunal as Part 3.1.2 of the IPT Research Report, “Mass killings of Chinese people” by Jemma Purdey. In addition to this, Jess Melvin’s research in Aceh has uncovered events of mass killings of Chinese in that province, which indicates that members of the Chinese community were targeted through three distinct wave of violence. Melvin has proposed that the violence that occurred against the Chinese community in Aceh at this time can and should be classified as genocide.¹⁰⁹

Further investigation is required to determine whether this qualification can be made.

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

Robert Cribb has recently reflected on the fact that denial of intent, in particular the lack of a specifically outlined plan, has been used in what he calls “hyper-scepticism,” as a means to deny attributing the label of genocide to situations such as Armenia and Indonesia. Cribb argues that

¹⁰⁹ (Melvin, Mechanics, p. 247. See also, Jess Melvin, “Why Not Genocide? Anti-Chinese Violence in Aceh, 1965- 1966,” in *Journal of Southeast Asian Affairs* (GIGA), 3/ 2013.) p. 35.

the qualification of acts must be analysed through contextualisation. In the case of Armenia, the context of a supposed civil war has been used to deny the qualification of genocide to the acts; while similarly in Indonesia the context was crafted of a “malicious fantasy” 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 1948.¹¹⁰

As demonstrated clearly above, there is no basis in fact for the assertion that the acts were committed in a context of the need to “kill or be killed.” To the contrary, the very small-scale rebellions had mostly collapsed within several days, and only sporadic resistance was mounted in several places against the continuing persecution by army and militia.

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

Since its adoption by the United Nations General Assembly, the Genocide Convention has been open for ratification. It entered into force on 12 January 1951 and, as of the time of the IPT hearings, the Convention had been ratified by 147 states, and signed by 47 states.

It is essential to note that Indonesia has to date (and therefore at the time of the commission of the crimes considered by this Tribunal) neither signed nor ratified the Genocide Convention. It is therefore necessary to consider whether Indonesia is nevertheless bound to apply its provisions. The Genocide Convention encoded what was already part of *jus cogens*, which all states are bound to respect and enforce as international customary law, whether or not they have specifically signed or ratified the Genocide Convention.

¹¹⁰ Notes by Robert Cribb for his oral presentation “Modes of Denial: Indonesia and genocide in comparative perspective” at International Conference, “1965” Today: Living with the Indonesian massacres, Amsterdam, 2 October 2015. Used with permission.

C FINDINGS AND RECOMMENDATIONS

1 Findings

1. The State of Indonesia is responsible for and guilty of crimes against humanity consequent upon the commission and perpetration, particularly by the military of that state through its chain of command, of the inhumane acts detailed below. All these acts were an integral part of a broad widespread systematic attack against the Communist Party of Indonesia (Partai Komunis Indonesia, PKI), its affiliate organizations, its leaders, members and supporters and their families (as well as those alleged to have been sympathetic to its aims), and more broadly against many people having no connection at all with the PKI, in what became a widespread purge, which included many supporters of President Sukarno and progressive members of the Nationalist Party of Indonesia, PNI. Each inhumane act was, in addition, a crime in Indonesia and in most civilized countries of the world. The attacks began with the false propaganda discussed below and consisted of the following inhumane actions that were part of the broader attack.

The State of Indonesia also failed to prevent the perpetration of these inhumane acts or to punish those responsible for their commission. To the extent that some crimes were committed independently of the authorities, by so-called "spontaneous" local action, this did not absolve the State from the obligation to prevent their occurrence and to punish those responsible.

These acts are now summarized below:

a. Killings -The most likely number of people killed is in the region of 400–500,000 although, in view of official secrecy maintained to this day, the figure may be much higher or possibly lower. These brutal murders were sufficiently widespread to constitute the crimes against humanity of mass murder and/or extermination as well as violations of Indonesian domestic law, including the Indonesian Criminal Code (KUHP) Article 138 and Article 140, and especially Law No. 26/2000. These murders were also part of the widespread systematic attack on the PKI and all those deemed to be connected with it.

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b. Imprisonment - Statistics are also lacking for the number of people detained in various forms of imprisonment, including forced labour and virtual enslavement, but was at least as many as 600,000, and probably much higher. The unjustified imprisonment was a crime in Indonesia and in most parts of the world at the relevant time and was sufficiently widespread and systematic to also constitute a serious crime against humanity as well as a violation of Law No. 26/2000. These acts of imprisonment were also part of the widespread systematic attack on the PKI and all those deemed to be connected with it.

c. Enslavement - There is considerable evidence that many of the people who were detained were forced to work under conditions which amounted to the crimes against humanity of enslavement as well as violation of the 1930 Convention concerning Forced or Compulsory Labour and was again a violation of Indonesian domestic law, especially Law No. 26/2000. These acts of enslavement were also part of the widespread systematic attack on the PKI and all those deemed to be connected with it.

d. Torture - Considerable evidence is available of the wide-scale use of torture having been inflicted upon prisoners and detainees in the period of the mass killings and imprisonment. Many instances are recorded in the Reports of Komnas HAM and Komnas Perempuan, and other individual cases are described in witness statements and written evidence. There are explicit provisions against torture in Indonesian law, and there is an absolute ban on torture in international customary law. These acts of torture were part of the widespread systematic attack on the PKI and all those deemed to be connected with it.

e. Enforced Disappearance - Considerable evidence is available of wide-scale enforced disappearances, sometimes as a prelude to imprisonment or execution, while in other cases the victim's fate has never been determined. Evidence of these was provided in the *Komnas HAM Report* and by witnesses and case studies presented to the Tribunal. Enforced disappearance is prohibited by international customary law. These acts of enforced disappearance were part of the widespread systematic attack on the PKI and all those deemed to be connected with it.

f. Sexual Violence - Evidence of sexual violence, recorded in the *Komnas Perempuan Report* and submitted in oral and written forms is compelling and conclusive. The details provided to the Tribunal are mutually corroborative and present a picture of widespread systematic acts of sexual violence aimed against women alleged to be associated with the PKI in any way. These acts

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included rape, sexual torture, sexual enslavement, and other forms of sexual violence. These acts were and are crimes in Indonesia, especially Law No. 26/2000 and also constitute crimes against humanity as part of the widespread systematic attack on the PKI and all those deemed to be connected with it.

g. Exile - Those Indonesians whose passports were confiscated abroad were deprived of their full and unconditional rights of citizenship. The policy of involuntary or forcible exile, apart from being inhumane conduct, formed part of a widespread systematic state attack against a substantial and significant targeted sector of the civilian population, and may well be a crime against humanity in the form of persecution.

h. Propaganda - The official version of what happened to the prisoners at Lubang Buaya was totally false. The true facts were known to the military leadership under General Suharto from early on but were deliberately distorted for propaganda purposes. The sustained propaganda campaign against those accused of being linked to the PKI helped to justify the extra-legal persecution, detention and killing of alleged suspects, and to legitimize sexual violence and all the inhumane conduct already described. Unchallenged for more than three decades, this propaganda contributed not only to the denial of civil rights of survivors but also to their continued persecution. Spreading false propaganda for the purpose of preparing the ground for violence is integral to the commission of that violence. The act of preparing for the crime cannot be said to be separate from the crime itself. This preparation paved the way and was the beginning and part of the overall, broad attack.

i. Complicity - The United States of America, the United Kingdom and Australia were all complicit to different degrees in the commission of these crimes against humanity.

The US gave sufficient support to the Indonesian military, knowing well that they were embarked upon a programme of mass killings and other, criminal conduct for the charge of complicity in crimes against humanity to be justified. The clearest evidence of this was the supply of lists of names of PKI officials when there was a strong presumption that these would facilitate the arrest and/or execution of those named.

The UK and Australia conducted a sustained campaign repeating false propaganda from the Indonesian army, and that they continued with this policy even after it had become abundantly

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clear that killings and other crimes against humanity were taking place on a mass and indiscriminate basis. On balance this justifies the charge of complicity in the above crimes against humanity.

The governments of the countries referred to above were fully aware of what was taking place in Indonesia through their diplomatic reports, from contacts in the field and accounts in Western media.

j. Genocide - The facts brought before the Tribunal by the Prosecution include acts that fall within those enumerated in the Genocide Convention. These acts were committed against a significant and substantial section of the Indonesian nation or "Indonesian national group," a protected group as enumerated in the Genocide Convention, and were committed with the specific intent to annihilate or destroy that section in whole or in part. This possibly applies also to crimes committed against the Chinese ethnic minority group. The State of Indonesia is bound by the provisions of the 1948 Genocide Convention under international customary law.

2 Recommendations

This Report calls upon the Indonesian government urgently and without qualification to:

- 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.

This Report fully supports and urges all relevant authorities to heed and comply with:

1. the call of Komnas Perempuan for a full investigation by the government of Indonesia, and full compensation to the surviving victims of sexual violence and their families;
2. the call of Komnas HAM that the Attorney General should act on the basis of its 2012 report to conduct investigations into what are deemed to have been grave violations of human rights that occurred during the events of 1965-1966 and afterwards;
3. the call made by victims and other individuals as well as Indonesian human rights groups for the government and all sectors of Indonesian society to:
 - a. Fight impunity, agreeing that impunity for past serious crimes against humanity poisons a society and breeds new violence;
 - b. Rehabilitate the victims and remove any still outstanding persecution by the authorities or restrictions on their full enjoyment of all human rights guaranteed under international and Indonesian law;
 - c. Establish the truth about what happened so future generations can learn from the past.

D APPENDICES

D1 Key Documents

D1.a Autopsy of the Generals

Ben Anderson, "How Did the Generals Die?", *Indonesia*, Volume 43 (April 1987), 109-134.

The original Indonesian text of the autopsy report (but not Ben Anderson's introduction) can be found at <http://www.slideshare.net/indoleaks/visum-02>.

Introduction:

Surprises often come to light when one rummages through dusty, crowded attics. In the course of casually rummaging through the hundreds of photocopied pages of the stenographic record of Air Force Lieutenant-Colonel Heru Atmodjo's trial before the judges of the Extraordinary Military Tribunal, Mahmilub, I came across the documents translated below, which in their original form were included as appendices to the trial record. They consist of the reports composed by the team of five experts in forensic medicine who examined the bodies of the six generals (Yani, Suprpto, Parman, Sutojo, Harjono, and Pandjaitan) and one, young lieutenant (Tendean) killed on the early morning of October 1, 1965. Their sober accounts offer the most exact, objective description of how these seven died that we will ever have. In view of the long-standing controversy on the matter, and the widely differing reports offered to the public in news-papers and magazines, it seemed to me worth translating them in full for the scholarly community.

The heading to each *visum et repartum* (autopsy) shows that the team was assembled on Monday, October 4, as a result of written orders from the then Major General Suharto, as KOSTRAD Commander, to the head of the Central Army Hospital (RSPAD). The team was composed of two army doctors (including the well-known Brig. Gen. Dr. Roebiono Kertopati), and three civilian specialists in forensic medicine at the Medical Faculty of the University of Indonesia. The most senior of these civilians, Dr. Sutomo Tjokronegoro, was then the foremost expert in forensic medicine in the country. The team worked for 8 hours, i.e., from 4:30 p.m., October 4, to 12:30 a.m., October 5, in the Dissection Room of the Central Army Hospital.

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They clearly had to work fast, since we know from many press accounts that the bodies were only removed from the well at Lubang Buaja (into which they had been thrown by the killers) in the late morning of October 4, over 75 hours after the murders. By then, as was to be expected in a tropical climate, the corpses were already in an advanced state of putrefaction. And after daylight on Tuesday, October 5, the remains were ceremonially interred in the Garden of Heroes (Taman Pahlawan) at Kalibata. One final point is worth noting. Given the fact that the autopsies were ordered personally by Maj.Gen. Suharto, it is unlikely that the doctors' reports were not immediately communicated to him upon their completion.

Each of the seven reports follows the same format: 1) a statement of Maj. Gen. Suharto's instruction to the five experts; 2) identification of the corpse; 3) description of the body, including any clothing or body-ornaments; 4) a detailing of the wounds detected; 5) a conclusion with regard to time and cause of death; and 6) a statement by all five experts, on oath, that the examination had been fully and properly performed.

For public accounts of the seven deaths, we today, like Indonesian readers in 1965, must rely largely on the reporting of two military newspapers, *Angkatan Bersendjata* (The Armed Forces) and *Berita Yudha* (War News), and the ABRI information service that supplied them. Although several civilian newspapers continued to publish, the left-wing press had been suppressed by the evening of October 1, and the state-run radio and television were fully in military hands before October 1 was out. It is therefore instructive to compare the accounts provided by the military newspapers with the contents of the army-appointed medical experts' reports, completed, we may infer from the appended documents, some time on Tuesday, October 5.

Given the fact that the two newspapers were morning newspapers, and thus their October 5 editions were probably "put to bed" while the doctors were still completing their examinations, it is not surprising that their reporting that day was perhaps hasty, without the benefit of detailed information. *Angkata Bersendjata*, which featured some blurred photos of the decomposing bodies, described the deaths as "barbarous deeds in the form of tortures executed beyond the bounds of human feeling."¹¹¹ *Berita Yudha*, always more vivid, noted that the corpses were "covered with indications of torture. Traces of wounds all over the bodies, the results of tortures

¹¹¹ The Indonesian original words and phrases were sometimes included in the source, either in the text or as footnotes, as followed here. *Perbuatan biadab berupa penganiayaan yang dilakukan diluar batas perikemanusiaan.*

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inflicted before they were shot, still covered our heroes' remains.¹¹² Maj. Gen. Suharto himself was quoted as saying that "it was obvious for those of us who saw [the bodies] with our own eyes what savage tortures had been inflicted by the barbarous adventurers calling themselves 'The September 30th Movement.'"¹¹³ The newspaper went on to describe the last moments of General Yani's life, saying that after being gunned down in his own home, he had been thrown still alive into a truck, and was tortured from that moment until the "final torture at Lubang Buaja".¹¹⁴ Proof of this torture was provided by wounds on his neck and face, and the fact that "his members were no longer complete."¹¹⁵ What this somewhat obscure phrase meant became clearer in the following days. On Thursday, October 7, *Angkatan Bersendjata* observed that Yani's "eyes had been gouged out,"¹¹⁶ a finding confirmed two days later by *Berita Yudha*, which added that the face of the corpse had been found wrapped in a piece of black cloth.

That same October 7 *Angkatan Bersendjata* went on to describe how Generals Harjono and Pandjaitan had died in hails of gunfire in their own homes, with the corpses tossed onto a truck which vanished into the night with "its engine roaring like a tiger thirsting for blood."¹¹⁷ *Berita Yudha*, however, noted torture scars on Harjono's hands.

On October 9, *Berita Yudha* reported that, although General Suprpto's face and skull had been smashed by savage terrorists (*penterror2 biadab*), his features were still recognizable. Lieutenant Tendean had knife wounds on his left chest and stomach, his neck had been mutilated, and both eyes had been gouged out (*dijungki*). The following day it quoted eyewitnesses of the October disinterment as saying that some of the victims had had their eyes torn out, while others had "had their genitals cut off as well as many other inhuman horrors."¹¹⁸ On October 11, *Angkatan Bersendjata* elaborated on Tendean's death by saying that he had undergone severe tortures at Lubang Buaja where he was handed over to members of the Indonesian Women's Movement, Gerwani (Gerakan Wanita Indonesia--the Communist Party's women's affiliate). He was made a "vile plaything (*permainan djabat*)," by these women, who used him for target practice.¹¹⁹

¹¹² *Bekas2 luka disekundjur tubuh akibat siksaan sebelum ditembak masih membalut tubuh2 pahlawan kita.*

¹¹³ *Djelaslah bagi kita jang menjaksikan dengan mata kepala betapa kedjamnja aninja jang telah dilakukan oleh petualang2 biadab dari apa jang dinamakan 'Gerakan 30 September'.*

¹¹⁴ *Penjiksaan terachirnja di Lubang Buaja.*

¹¹⁵ *Anggota2 tubuhnya jang tidak sempurna lagi.*

¹¹⁶ *Matanja dijongkel.*

¹¹⁷ *Deru mesinnja jang seperti harimau haus darah.*

¹¹⁸ *Ada jang dipotong tanda kelaminnja dan banjak hal 2 lain jang sama sekalai mengerikan dan diluar perikemanusiaan.*

¹¹⁹ *Bulan2an sasaran latihan menembak sukwati Gerwani.*

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Where the army newspapers led, others quickly followed. On October 20, for example, *Api Pantjasila*, organ of the army-affiliated IPKI party, announced that the eye-gouges (*alat pentjungkil*) used on the generals had been discovered by anticommunist youths ransacking Communist Party buildings in the village of Harupanggung, outside Garut, without suggesting, however, why the Party had thought fit to preserve them there. On October 25, the same paper carried the confession of one Djamin, a member of the Communist Party's youth organization Pemuda Rakjat, who said he had witnessed General Suprpto being tortured "obscenely [*diluan batas kesusilaan*]" by Gerwani members. Similar confessions followed, culminating in the remarkable story of Mrs. Djamilah, issued on November 6 to the whole press by the ABRI information service. Mrs. Djamilah, described as a three-month pregnant, fifteen-year-old Gerwani leader from Patjitan, revealed that she and her associates at Lobang Buaja had been issued penknives and razors by armed members of the September 30th Movement. They then, all one hundred of them, following orders from the same men, proceeded to slash and slice the genitals of the captured generals.¹²⁰ Evidently this was not all. For the Army-controlled *Antana* of November 30 described how Gerwani women had given themselves indiscriminately to Air Force personnel involved in the September 30th Movement; while *Angkatan Bersendjata*, on December 13, described them as dancing "The Dance of the Fragrant Flowers" naked under the direction of Communist Party leader D. N. Aidit, before plunging into mass orgies with members of the Pemuda Rakjat.

In these accounts, which filled the newspapers during October, November, and December, while the massacres of those associated with the Communist Party were going on, two features are of particular interest here. The first is the insistence that the seven men were subjected to horrifying tortures--notably eye-gouging and castration; the second is an emphasis on civilians in organizations of Communist affiliation as the perpetrators.

* * *

What do the forensic experts' reports of October 5 tell us? First, and most important, that none of the victims' eyes had been gouged out, and that all of their penises were intact: we are even told that four of the latter were circumcized, and three uncircumcized.

¹²⁰ *Dibagi2kan pisau ketjil dan pisau silet.... menusuk2 pisau pada kemaluan orang2 itu (Api Pantjasila, November 6, 1965).*

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Beyond that, it may be useful to divide the victims into two groups: those whom most of the nonforensic evidence indicates were killed by being shot dead in their own homes by their kidnapers, namely Generals Yani, Pandjaitan, and Harjono; and those who were killed after being taken to Lubang Buaja, namely Generals Parman, Soeprapto, and Sutojo, as well as Lieutenant Tendean.

Group 1. The fullest accounts of their deaths appeared long after they occurred: in the case of Yani in *Berita Yudha Minggu*, December 5; of Pandjaitan, in *Kompas*, October 25, *Berita Yudha Minggu*, November 21, and *Berita Yudha*, December 13; and of Harjono in *Berita Yudha Minggu*, November 28. All indicate that the generals were abruptly and immediately killed at home by heavy gunfire delivered by members of the Tjakrabirawa Presidential Guard Regiment under the operational command of First Lieutenant Doel Arief. The forensic reports confirm this picture only in part. The experts observed that the only wounds on Yani's body were ten entering and three exiting gunshot wounds. Pandjaitan suffered three gunshot wounds to the head, as well as a small slit-wound in the hand. On the other hand, the wounds suffered by Harjono are puzzling, since no mention is made of gunshots. The cause of death was apparently a long deep incision in the abdomen, of a type much more likely to be caused by a bayonet than a penknife or a razor. A similar, nonfatal wound appeared on the victim's back. The only other damage was described as "on the left hand and wrist, wounds caused by a dull trauma." There is no obvious way to interpret these wounds except to say that they seem unlikely to be the result of torture--torturers rarely pick left wrists to do their work--and may have been the result of the dead body being thrown down the 36-foot well at Lubang Buaja.

Group II. The fullest accounts of the deaths of these victims appeared in the following newspaper reports: Parman, *Berita Yudha*, October 17, and both *Berita Yudha* and *Angkatan Bersendjata*, December 12; Soeprapto, *Berita Yudha Minggu*, December 5; Sutojo, *Berita Yudha Minggu*, November 21; and Tendean, *Berita Yudha Minggu*, October 24. It was these four men that most reports of savage and sexual torture concerned. What the forensic reports reveal is as follows: 1) S.Parman suffered five gunshot wounds, including two fatal ones to the head; and, in addition, "lacerations and bone-fractures to the head, the jaw, and the lower left leg, each the result of a heavy dull trauma." We have no way of knowing what caused these dull traumas--rifle butts or the walls and floor of the well--but they are clearly not "torture" wounds, nor could they have been inflicted by razors or penknives. 2) Soeprapto died of eleven gunshot wounds in various parts of his body. Other wounds consisted of six lacerations and fractured bones caused by dull

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traumas around the head and face; one caused by a dull trauma on the right calf; wounds and fractured bones "resulting from a very severe, dull trauma in the lumbar region and on the upper right thigh"; and three cuts, which, to judge from their size and depth, may have been caused by bayonets. Again "dull trauma" indicates collision with large, irregularly shaped hard objects (rifle butts or well-stones) rather than razors or knives. 3) Sutojo suffered three gunshot wounds (including a fatal one to the head), while "the right hand and the cranium were crushed as a result of a heavy dull trauma." Once again, the odd combination of right hand, cranium, and heavy dull trauma suggests rifle butts or well stones. 4) Tendean died of four gunshot wounds. In addition, the experts found graze wounds on the forehead and left hand, as well as "three gaping wounds resulting from dull traumas to the head."

Nowhere in these reports is there any unmistakable sign of torture, and any trace of razors and penknives is absent. Not only are almost all the non-gunshot wounds described as the result of heavy, dull traumas, but their physical distribution—ankles, shins, wrists, thighs, temples, and so on -- seem generally random. It is particularly striking that the usual targets of torturers, i.e., the testicles, the anus, the eyes, the fingernails, the ears, and the tongue, are not mentioned. It can thus be said with reasonable certainty that six of the victims died by gunfire (the case of Harjono, who died in his own home, remains puzzling), and that if their bodies suffered other violence, it was the result of clubbing with the butts of the guns that fired the fatal bullets,¹²¹ or of the damage likely to occur from a 36-foot--i.e., roughly three-story-- fall down a stone-lined well.

* * *

It only remains to be said that in his speech of December 12, 1965, to the Indonesian News Agency, *Antara*, President Sukarno chastised journalists for their exaggerations, insisting that the doctors who had inspected the bodies of the victims had stated there were no ghastly mutilations of eyes and genitals as had been reported in the press¹²².

AUTOPSY OF GENERAL YANI

[The editors are including in this appendix the first of the seven autopsies analyzed in the Introduction above by Ben Anderson]

¹²¹ It is interesting that on November 16, Angkatan Bersendjata featured the confession of a certain Suparno, who stated that five of the seven victims were simply shot; the remaining two -- Suprpto and Tendean--were tortured only to the extent of receiving blows from rifle butts. Compare the forensic reports on the bodies of these two men.

¹²² See *Suara Ilam*, December 13, 1965; and *FBIIS* (No.239), December 13, 1965.

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Department of the Army Directorate of Health Central Hospital

Copy of copy

Visum et Repertum Number: H. 103

On the orders of the KOSTRAD COMMANDER as COMMANDER OF THE OPERATION FOR THE RESTORATION OF SECURITY AND ORDER to the HEAD OF THE CENTRAL ARMY HOSPITAL in Jakarta, by written instruction per October 4, 1965 number PRIN-03/10/65, signed by Major-General TNI SOEHARTO, transmitted by the HEAD OF THE CENTRAL ARMY HOSPITAL to us the undersigned:

1. ROEBIONO KERTOPATI, doctor, Brigadier-General TNI, senior officer seconded to the Central Army Hospital.
2. FRANS PATTIASI NA, doctor, Colonel, Army Medical Corps Nrp . 14253, Health Officer of the Central Army Hospital.
3. SUTOMO TJ OKRONEGORO, doctor, Professor at the Medical Faculty of the University of Indonesia, expert in Pathology and Forensic Medicine.
4. LIAUW YAN STANG, doctor, Lecturer in Forensic Medicine, University of Indonesia.
5. LIM JOE THAY, doctor, Lecturer in Forensic Medicine, University of Indonesia.

We from 4:30 p.m. October 4, 1965 to 12:30 a.m. October 5, 1965, in the Dissection Room of the Central Army Hospital, Jakarta, have carried out an external examination of a corpse [dzenazah] which, according to the above-mentioned written order, is the corpse of:

Name: ACHMAD YANI.

Age/ Birth Date: 43.

Born: 19 - 6 - 1922.

Sex: Male.

Nationality: Indonesian.

Religion: Islam.

Rank: Lieutenant-General TNI.

Office: Minister/Commander of the Army/Chief of Staff of Koti.

Address: Taman Suropati 10, Jakarta

victim of shooting and/or violent assault on October 1, 1965, during what is called the affair of the "September 30th Movement ."

The corpse [*majat*] was identified by Major SOEDARTO of the Military Police Corps, adjutant to the Minister/Commander of the Army, and by Colonel ABDULLAH HASSAN of the Army

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Medical Corps, personal physician to the Minister/Commander of the Army, as the corpse of Lieutenant-General ACHMAD YANI by the scar on the back of the left hand and by the clothes, as well as by an extra, conical tooth in the middle of the upper front row (mesiodens).

The results of the external examination are as follows:

1. The corpse was clothed as follows:

a. blueish pyjama bottoms with a dark blue vertical seam . On the left front of these pyjama bottoms, 15 cm below the upper hem and 6 cm from the outside seam, there was a hole one and a half centimeters square. Around it were a number of smaller holes scattered across an area measuring 19 cm by 11 cm. On the left front also, 2 cm below the upper hem and 12 cm from the outside seam, was a hole measuring 8 mm by 9 mm. On the right front of the pyjama bottoms, 6 cm from the upper hem and 5 cm from the outside seam, was a curving tear one and a half cm long.

b. a pair of Standard Master 32 underpants. At the upper front hem, exactly by the buttons, was a tear measuring one and a half by one and a half centimeters. The brand-mark was pierced. On the left front, 3 cm below the upper hem, 8 1/2 cm from the buttons, was a hole measuring 1 1/2 by 1 cm. On the left front, 17 cm from the upper hem and 15 cm from the row of buttons, was a hole measuring one and a half by one centimeter. Around it were smaller holes scattered across an area nine by nine and a half cm square with a large hole below the center of the scatter; at the rear center of the underpants, 17 cm from the upper hem, was a hole measuring 8 mm by 9 mm.

2. The corpse was that of an Indonesian male, about 40 years old; skin-color undeterminable as putrefaction far advanced; epidermis no longer in existence. Nutritional condition hard to establish. Penis circumcized. Height of the corpse was 175 cm high, weight 45 kilograms.

3. Rigor mortis was no longer present. Subcutaneous discoloration was indeterminable because of putrefaction.

4. Most of the hair on the temples was gone; color black, growth fairly thick. Eyebrows and eyelids gone. So also the whole moustache, except for a few hairs on the upper lip. Black beard-

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growth about two and a half mm long. Of hair on the limbs only a little remained, on the lower portion of the legs.

5. Both eyes were open, with the eyeballs liquescent, protruding outwards.

6. The dental condition was as follows:

An extra tooth (mesiodens) between the two first-series teeth of the middle upper jaw.

On the upper left jaw, the eighth tooth missing.

On the upper right jaw, the eighth tooth missing.

On the lower left jaw, the fifth tooth missing.

On the lower right jaw, the eighth tooth missing.

7. No emissions from bodily orifices

8. On the back of the index finger of the left hand there was a blackish scar 1cm long, running from the first joint towards the lateral.

9. The following wounds [*vulnera*] were found on the body:

- a) On the left chest, 3 1/2 cm from the midsternal line, 2 cm below the medial end of the clavicle, an entering gunshot wound measuring 8 mm by 8 mm.
- b) On the left chest, 5 cm from the midsternal line, 3 cm below the medial end of the clavicle, an entering gunshot wound, spherical in form, measuring 3 cm by 3 cm; at the base muscle tissue; within the wound, palpation indicated fracture of the first rib at its lower edge. Around this wound were a number of small, shallow wounds; from one of these an opaque crystal was extracted.
- c) On the lower right chest, 2 cm from the midsternal line, at the height of the seventh rib, an entering gunshot wound measuring 3 1/2 cm by 2 1/2 cm; at the base muscle tissue.
- d) Seven cm below and to the right of wound c. (above) an exiting gunshot wound. Wounds c. and d. connected to each other.

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- e) On the inner side of the upper right arm, 3 cm above the elbow fold, an entering gunshot wound, measuring 2 cm by 2 cm.
- f) On the rear right arm, 6 cm above the elbow, an exiting gunshot wound, measuring 1 1/2 cm by 1 cm.
- g) On the mid-abdominal line, 15 cm below the navel, an entering gunshot wound, measuring 3 cm by 2 cm.
- h) Six cm below and to the right of wound g. (above), palpation detected a solid object beneath the skin; on removal it turned out to be a divided metal button, yellowish-white in color, evidently originating from the corpse's underpants . Wound g. (above) was probably caused by this button being hit by a bullet. The bullet itself, tipless, and about 13 mm long, was located 5 cm away from the site of the button.
- i) On the lower left abdomen, 10 cm from the mid-abdominal line, 7 cm above the inguinal fold, an entering gunshot wound measuring 2 cm by 1 1/2 cm.
- j) On the lower right abdomen, precisely at the crest of the pelvic (sacroiliac) bone, an entering gunshot wound, measuring 2 1/2 cm by 1 1/2 cm.
- k) On the outer side of the upper left thigh, 8 cm below the crest of the sacroiliac bone, an entering gunshot wound, measuring 2 cm by 2 cm. Around this wound were a number of smaller shallow wounds; from some of these opaque crystals were removed.
- l) On the left back, 10 cm from the mid-dorsal line, 5 cm below the shoulder, an entering gunshot wound, measuring 3 1/2 cm by 2 cm
- m) Three centimeters inwards (medial) of wound 1. (above), an exiting gunshot wound, measuring 2 cm by 1 1/2 cm.
- n) On the right back, 11 cm from the mid-dorsal line, at the height of the eighth rib, palpation detected a bullet beneath the skin.

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- o) In the lumbar (gluteal) region, 4 cm above the coccyx, an entering gunshot wound, measuring 8 mm by 8 mm.

CONCLUSION:

1. The corpse was already putrescent; death had occurred approximately four days previously.
2. On the corpse were discovered eight entering gunshot wounds on the front., and two to the rear.
3. On the abdomen were discovered two exiting gunshot wounds, and one on the back.

Carried out fully in accord with the oath of office,
sealed/signed SUTOMO TJOKRONEGORO
signed LIAUW YAN SIANG
signed LIM JOE THAY
sealed/signed ROEBIONO KERTOPATI
signed FRANS PATTIASINA

Copied faithfully to the original
Copyist
SECRETARY
signed HAMZIL RUSLI Be.Hk.
Captain CKH - Nrp .303840

Copied faithfully to the copy
SECRETARY IN THE CASE OF EX-AIR FORCE LIEUT.-COL. HERU ATMODOJO
(SOEDARJO Be. Hk.)
Air Force First Lieutenant/ 473726

D1.b Diplomatic Reports

(i) US embassy reports, November 1965

[Note: This extract from a paper by Dr. Bradley Simpson details the information on mass killings reported by the US Embassy in Jakarta to the State Department in Washington DC during the single month of November 1965]¹²³

The day before the 303 Committee approved the shipment of medicines to the army, the embassy cabled the State Department that RPKAD forces in Central Java under Edhie's command were "providing Muslim youth with training and arms and 'will keep them out in front' against PKI." While army leaders arrested higher-level PKI leaders for interrogation, "smaller fry" were "being systematically arrested and jailed or executed."¹ In North Sumatra and Aceh a few days later, "IP-KI [sic] Youth Organization [the Ikatan Pendukung Kemerdekaan Indonesia, or League of Upholders of Indonesian Independence, was an army-affiliated party], and other anti-Com elements" were engaged in a "systematic drive to destroy [the] PKI...with wholesale killings reported"; the "specific message" from the army "is that it is seeking to 'finish off' the PKI."² On November 13 police information chief Colonel Budi Juwono reported that "from 50–100 PKI members are being killed every night in east and central Java by civilian anti-Communist groups with blessing of [the] Army." Three days later "bloodthirsty" Pemuda Pantjasila members informed the consulate in Medan that the organization "intends to kill every PKI member they can get their hands on." Other sources told the consulate that "much indiscriminate killing is taking place." Consular officials concluded that, even accounting for exaggerations, a "real reign of terror" was taking place.³ The CIA reported late in the month that former PKI members in Central Java were being "shot on sight by [the] Army." Missionaries in East Java told the consulate in Surabaya that 15,000 Communists had reportedly been killed in the East Javanese city of Tulungagung alone. Again, even discounting for exaggerations, the consulate reported that a "widespread slaughter" was taking place.⁴ An Indonesian intelligence officer in East Java described several mass killings of PKI activists and supporters in Kediri (where 300 peasant farmers were killed, apparently by mistake), Wates (1,200 killed), and Ponggok (about 300 killed), with "many of those being killed...followers who do not know much."⁵

¹²³ Bradley Simpson, "The United States and the 1965–1966 Mass Murders in Indonesia," *Monthly Review*, 2015, Volume 67, Number 7 (December).

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(Note: brackets and parentheses and following footnotes are taken from the source)

1. Telegram 1326 from Jakarta to State, November 4, 1965, RG 59, Central Files, 1964–1966, POL 23-9, Indonesia, NA.
2. Telegram 1374 from Jakarta to State, November 5, 1965, NSF, CO Files, Indonesia, v. 5, LBJL; Telegram 1401 from Jakarta to State, November 10, 1965, RG 59, Central Files, 1964–1966, POL 23-9, Indonesia, NA.
3. Telegram 1438 from Jakarta to State, November 13, 1965; and Telegram 65 from Consulate in Medan to State, November 16, 1965, both in RG 59, Central Files, 1964–1966, POL 23-9, Indonesia, NA.
4. CIA Intel Memo, OCI 2943/65, “Indonesian Army Attitudes Toward Communism,” November 22, 1965, NSF, CO Files, Indonesia, v. 6, LBJL; Telegram 41 from Surabaya to State, November 27, 1965, RG 59, Central Files, 1964–1966, POL 23-8, Indonesia, NA; Telegram 32 from Surabaya to State, November 14, 1965, NSF, CO Files, Indonesia, v. 5, LBJL.
5. “Report from East Java,” Indonesia 41 (April 1966), 145–46; see also Hermanawan Sulistyono, “The Forgotten Years: The Missing History of Indonesia’s Mass Slaughter (Jombang-Kediri 1965–1966),” (PhD diss., Arizona State University, 1997), 188–214.

(ii) British embassy report, February 1966

*Telegram from the British ambassador in Jakarta, Andrew Gilchrist,
to A.J. de la Mare, Head of Far Eastern Department at the Foreign Office London, 23
February 1966*

Dear Arthur,

In my telegram No. 281, I referred to the Swedish Ambassador’s estimate of the recent mass slaughters.

2. Travel is not easy in Java at present, in the sense that diplomats are restricted in their movements by the Department of Foreign Affairs on security grounds. This applies particularly to air journeys: for road travel, the Indonesians tend to shrug their shoulders and say: “Well, it’s your own responsibility”.

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3. The Swedish Ambassador is young and vigorous; he found an opportunity to tour Central and East Java in the company of a Swedish telephone expert who was inspecting exchanges installed by Ericsson.
4. The main roads, he found, were all in relatively good order for normal passenger cars. Check points were few, except near Surabaya, where they were frequent and the guards more suspicious.
5. The Ambassador and I had discussed the killings before he left and he had found my suggested figure 400,000 dead quite incredible. His enquiries have led him to consider it a very serious under-estimate.
6. He points out that his contacts – thanks to his companion (whose wife is Indonesian). – were not with senior government officials remote from actual events but with small men in charge of local telephone exchanges. It is from their stories that he has made his estimates – formed, of course, by projecting over a huge population proportions roughly authenticated in small towns, and areas; but the supposition that similar events did take place over wide areas is one which is on the surface not unreasonable, though it requires to be tested.
7. Leaving aside his telephone contacts, he came upon a Swedish girl student living in an up-country kampong. She said that 25 or 30 men out of about 100 had been taken away one night and killed. (The cant phrase is “tranquillized.”)
8. A bank manager in Surabaya with 20 employees said that four had been removed one night and (to his certain knowledge) beheaded.
9. The British expert, employed in setting up a spinning factory near Surabaya said that about a third of the factory technicians, being members of a Communist union, had been killed.
10. Four workers temporarily employed in the garden of the British Consul in Surabaya asked the Consul to withhold a certain holiday, since they were scheduled to take part in a Communist-killing that day and did not like the thought.
11. The killings in Bali, according to what the Ambassador could pick up, had been particularly monstrous.
12. In certain areas, it was felt that not enough people had been killed. Near Surabaya, a battalion of troops just back from Borneo were occupying a temporary camp; this led to the comment in the neighbouring telephone exchange: “These are reliable people – they have come to help us to kill more Communists”.
13. I had also asked the Ambassador to see whether there was any sign of famine. The Swedish girl told him that in her kampong no-one had eaten meat for over a year, and there had

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been a switch from rice to maize, bananas and jungle fruit. But no starvation – that was the general impression – a lowering of living standards but nothing in the nature of a famine.

14. Surabaya, according to the Ambassador, made a deplorable impression, so crowded with beggars that it was embarrassing to walk through the streets.

15. He also reports seeing a large number of temporary camps holding Communist suspects. These are mostly installed in disused factories, with a small number of guards, and a large number of women outside who cook for the inmates. His impression of the prisoners was that they were determined, strong-minded men, not in the least cowed by their treatment, determined to turn the tables when opportunity offered.

16. In Djakarta of course there have been no mass killings. A large number – possibly thousands – were rounded up in the early days and thrown into prison or, when the prisons were full, taken to one of the small islands offshore. It seems likely that some of these people have been killed if only because (as in Medan) the problems of feeding them were so burdensome; but we have no hard evidence for this. The important point however, and a fair deduction, is that in West Java and Djakarta, where the killings and arrests have been comparatively light, there are probably more Communists lying low and ready to reassemble than in other parts of the country. The President's present policy seems obviously designed to favour their survival.¹²⁴

17. An interesting point brought out in recent months has been the high penetration of technical workers by the PKI. Construction work on the three large Embassies now being built has been much slowed down by the disappearance of many qualified workers. The airport union, SERBAUD, a notorious haunt of Communists, was very inadequately purged in October last because the airport authorities warned the Army that if the PKI members were removed, particularly those in the radio branches, the result would be that foreign airlines would cease to call at Djakarta.

18. I am copying this letter to Singapore and to Kuala Lumpur.

[signed]. Andrew Gilchrist (A. G. Gilchrist)

P.S. The Iranian Ambassador has recently seen three Iranian doctors working in Bali and other islands who report killings “by hundreds and thousands”; and the work, they say, proceeds.

¹²⁴ President Sukarno at this time had not yet been compelled to cede power completely to the army, and he was still attempting to maintain a balance of forces. In this and the subsequent paragraph, Ambassador Gilchrist implies his own disapproval of Sukarno, and his support for the purge of the PKI [Report editors' note].

(iii) Australian Embassy Report, February 1966

Australian Embassy, Djakarta, 25 February 1966, "Weekly Political Savingram", to the Department of External Affairs. (extract)¹²⁵

Physical Measures Against the PKI

26. While political manoeuvring proceeds at a quickening pace in Djakarta, it can be safely assumed that in other areas of Indonesia, particularly outside Java, the effective authorities (i.e. the Army and the Police), are at present quite unable to follow the intricacies of a situation which baffles most people living in Djakarta itself. Such news as does filter through from Sumatra, Kalimantan, etc. points to a continuing campaign to break up, by decree and physical force, the local influence of the PKI.

27. It is probably fairly safe to generalize from the first-hand experience of a member of the Embassy staff who last week visited East Nusa Tenggara on an inspection of our Colombo Plan Roads Project. He found that in Bali, Lombok, Flores and Timor, not only had a brutal anti-PKI campaign been in progress for several months, but was continuing unabated and showing no signs of easing up. In all of these places, the Army was taking the lead, with apparent widespread popular support, in the methodical slaughter of PKI prisoners. The pattern was one of nightly mass executions (by beheading) of PKI people, ranging from groups of two or three to as many as 40 or 50. Arriving in Ende, Flores, for example, the Embassy officer happened across the spectacle of two severed heads on public display in the main park. Everywhere he went the story was the same - it was necessary, people said, to exterminate the PKI thoroughly (thoroughly meaning wives and children as well), as some sort of guarantee against future reprisals. As of last week, the prisons in the area still contained adequate numbers of PKI detainees (including women) for the grisly process to continue for weeks, if not months, to come.

28. While no doubt in Java, much of the PKI underground organization remains intact, it is not unreasonable to postulate that the party has probably been dealt a smashing blow in most of the regions, especially in the smaller islands and communities. PKI people in these areas would probably be better known to the military authorities, and less able to fade away into the anonymity of the mass (a possibility always at hand in over-crowded Java). True, we would

¹²⁵ Reproduced in National Archives of Australia, *Indonesia - Political - Coup D'Etat of 30th September 1965*, (A1838, 3034/2/1/8 PART 10). This extract from p.12. Accessed at <http://naa12.naa.gov.au/SearchNRRetrieve/Interface/ViewImage.aspx?B=583616&S=1>

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imagine that whatever the outcome of Sukarno's recent efforts to whitewash the PKI, there will be for a considerable time pressing reasons (not the least self-preservation) why the authorities and communities of Indonesia outside Java will seek to guard against any resurgence of PKI or neo-PKI influence in their areas.

D1.c The ABC classification system

[Source: Amnesty International 1977 report, Appendix 1]

THE DECISION OF THE COMMANDER OF THE *Kopkamtib* No.KEP-028/KOPKAM/10/68 (ISSUED AND OPERATIVE FROM 18th OCTOBER 1968) AS AMENDED BY THE DECISION OF THE COMMANDER OF THE *Kopkamtib* No.KEP-010/KOP /3/1969 (ISSUED ON 3rd MARCH 1969 TO OPERATE RETROACTIVELY FOR THE PERIOD SINCE 18th OCTOBER 1968)

The Commander of the Operational Command for the Restoration of Security and Order...
Herewith Decides

To improve the policy of screening of civil military personnel in Government service in the following ways:

CHAPTER 1

Article 1

This decision is an improved guide to activities concerned with purging of the civil and military personnel of Government Departments, Bodies and Institutions of persons and elements belonging to the treasonable G-30-S/PKI movement, including previous and subsequent activities covert and overt, so that the optimum results are achieved, with a balanced matching of efforts and goals.

Article 2

The principles of policy contained in this decision shall provide guidelines for acting according to the same norms in all matters of similar character in so far as this is possible...

[No Article 3 is shown in the Amnesty text. Note by Report Editors.]

CHAPTER 2

Article 4

Those involved in the treasonable G-30-S/PKI movement are classified as follows:

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A. Those who were clearly *involved directly*, that is

1. those who planned, took part in planning or helped in the planning of the treasonable movement, or had foreknowledge of its planning and failed to report it to the authorities;
2. those who, conscious of the aims of the movement, engaged in the execution of activities of that movement, i.e.

(a) Principal Protagonists, that is persons who co-ordinated the operation and other activities;

(b) Protagonists, that is persons who implemented the actual operation or the activities mentioned in 2(a);

(c) Participants, that is persons who took part in implementing the operation and activities mentioned in 2(a).

B. Persons clearly *involved indirectly*, are

1. those who, knowing of the treasonable movement, and/or its subsequent activities, have assumed an attitude, whether by deed or word demonstrated support for this movement or opposed or hindered efforts to suppress it;
2. committee members, leaders and members of the banned PKI and/or those who had taken an oath or made promises before the PKI or before committee members or leaders of mass organizations based on the same principles as this party or operating under its aegis, together with all their activists.

C. Persons *of whom indications exist or who may reasonably be assumed to have been directly or indirectly involved*, are:

1. those who according to the existing antecedents were involved in the *Madiun* Affair [A major clash between the PKI and the Army in September 1948. Amnesty Editors note.] and after the September 1965 attempted coup did not clearly oppose it in any way open to them, bearing in mind their respective situations and abilities, or whose actions have always tended to support the PKI;
2. those who were members of mass organizations based on the same principles as the banned PKI or operating under its aegis;
3. those who have shown sympathy for the PKI in their attitudes and actions.

Article 5

1. Measures taken against personnel involved may be classified thus:

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— Repressive actions, comprising:

- a) prosecution under criminal law;
- b) administrative prosecution, i.e.
 - (1) dishonourable dismissal;
 - (2) restriction of opportunities in relation to certain offices and positions, due regard being paid to all regulations existing in this respect;

— Preventive actions, comprising:

- 1) indoctrination;
- 2) observation of mentality.

Article 6

The application of the several kinds of prosecutive measures shall be as follows:

1. Those classified under Article 4, letter A, shall be prosecuted under criminal law and subjected to administrative action in the form of dishonourable dismissal. While action against them is in progress they shall be kept in custody. Alternatively the Commander of the *Kopkamtib* or the Deputy Commander of the *Kopkamtib* may assign them in the interests of public order to reside in a particular place.
2. Those classified under Article 4, letter B, shall be subjected to administrative measures in the form of dishonourable dismissal. The Commander of the *Kopkamtib* or Deputy Commander of the *Kopkamtib* may assign them in the interests of security to reside in a particular place.
3. Those classified under Article 4, letter C, shall be subject to the following measures:
 - a) those classified under Article 4, letter C1, shall be dismissed and placed under the supervision of the appropriate Government agencies;
 - b) those classified under Article 4, letter C2, shall be subjected to restrictions in relation to particular offices and positions and shall undergo indoctrination;
 - c) those classified under Article 4, letter C3, shall be placed under supervision and shall undergo indoctrination.

D1.d Testimony on sexual violence

Kinkin Rahayu (pseudonym)

11 November 1965.

Testimony to the IPT Tribunal (edited extracts)

Witness: In 1965, I experienced something very dark and a frightening experience particularly for my family, which felt the immediate impact of this event. I was blacklisted, I was arrested for the first time... I was living a normal life and was active as a young student, but I was arrested suddenly. And even this arrest didn't only happen to me, but two months before my father had been arrested.

Every day there was an interrogation. The men were continuously tortured, we heard screaming from those being interrogated. And we, the female detainees were interrogated asked where is the mark of the Gerwani. Mark? I said I wasn't [Gerwani] and said I was IPPI [*Ikatan Pemuda Pelajar Indonesia*, Indonesian Students' Youth Association) Even so, I was told to remove my clothing up to the waist. ... I was examined to see if there was a mark of the Gerwani.

After they were convinced there were no marks I was asked all sort of questions, including, "have you ever been to the Crocodile Hole, Lubang Buaya?"

I asked "What is that and where is it? I am from Jakarta."

Finally, [I was asked] who in your family is involved in the aborted communist coup?

[I replied] "My mother and father are farmers. We don't know anything about the PKI. My parents know only about the village arts."

In our house we often had shadow puppet and dance activities. In our village there was a famous puppeteer he was often invited to play the shadow puppets. Our village had developed a culture of art. Our house was used for shadow puppet training and instrument playing. But my instrument was confiscated by the soldiers, it was considered to belong to the [communist] party....

After the interrogation was finished, I was told to sign that I was only a member of the IPPI [and was given a letter of release].

After I was released I got my documents and finished studies and was a teacher. And I started a business, because of the economy, with my father in jail and three younger brother and sisters.

Unknowingly, one night at 2am, my house was raided -- I had not long gone to sleep [after preparing my teaching materials]. [There was a] loud noise and knocking. I came to the door

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shocked. I opened. After I saw six people carrying weapons and two without them. I was shocked and extremely frightened [and asked] "What is going on?"

And they asked [about another] person.

"Are you this name?"

"No [I replied], my name is so and so".

They didn't believe me and searched my home. When they found the letter of release from the camp they were angry [and asked]

"Are you a Communist Party member?"

"No. That is my letter of release! I'm not part of the PKI."

I was slapped on the ear.

"You have carried out women guerrilla politics."

"I don't know what you're talking about, what is that? I don't have time for that. In the morning and afternoon I study and I teach and prepare."

And then I was hit again. Every time, I could not answer it right away. So I was stripped naked and told to get on the table.

"If you do not confess of being a political women guerrilla fighter..."

"I cannot confess to that."

They burned my body with cigarettes. And I said no.

Finally, my vagina and my pubic hair were burned. I just cried the name "Jesus, Jesus help me."

They thought I was lying and cheating them and that I was not a religious person, that I was an atheist.

"Don't call out to Jesus! What are you doing?"

While extinguishing their cigarettes on my body I cried out to Jesus. They didn't believe me. The table I was on was turned over and I fell to the floor. After that, they asked me again:

"Are you going to confess or not?"

"I cannot do anything, sir!"

Finally I was dragged to a wall and beaten with a bicycle. Then everything was dark, everything went black.

Suddenly, I was in the military police office when I woke up. I was introduced to a man and was asked:

"Do you know this person?"

"I don't know him."

So we were handcuffed together and thrown into a cell. The man had wounds because of beating and being burned by cigarettes and fire. ...

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After three days, I was taken out of the cell with the man and taken into the interrogation room of the police. Same questions again.

"Do you know this man or not?"

"I do not know him, sir, I do not know him." I could not answer differently. And the man was questioned.

We were told to choose: to confess to be involved in political guerrilla warfare or be stripped naked. I said that wasn't a choice: I could not choose. But finally, I was stripped naked. And while naked I was asked again,

"Admit that you confess that you carried out guerrilla politics!"

And I could only cry, because they would never listen to my answer. It was like they never heard me. We were beaten again until they said:

"We're waiting for your confession."

And I could only pray: "God, God look at me!"

In the end, after a very long time my body was lifted and ... [witness pauses]

....

I was ill, I could not recover my health and therefore they transferred me to Wirogunan prison [in Jogjakarta].

My body was filled with wounds. There were some ladies that attended my wounds. I couldn't answer their questions -- I was so ashamed I couldn't even talk. Finally, these ladies advised me that if you don't start eating you will die. Think of your family, think how much stress you will cause them. Remember don't punish yourself like that by not eating....

After I was better, I was again summoned and I met another man who asked me if I knew some person. I was amazed and surprised. Why do they always ask the same question. How long must I suffer like this?

"Sir, I was never involved in guerrilla politics. I have a position as a student and teacher. My siblings need me, my mother needs me."

They hit me on the head and stripped me naked. I was naked and touched by two men and I had to kiss the genitals of the men who was questioning me. [witness pauses]

Judge Yacoob: We will stop for a moment. [pause]

Witness: After that all the men that were present asked me once again about the same thing. The same subject I could not answer. They became very angry with me. They scolded at me and then I had to lie on my belly and they stamped over me. And they cut my hair. I don't remember what else they did, once again everything became dark. When I woke up I was in the room of the [prison] again. The women carried me in since my body was covered in wounds and I could not

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walk any more. After that, I refused to talk and eat. I felt that this would be the end of my life... As a result I didn't menstruate for about eight months. According to the doctors I had to calm down and have peace of mind in order to menstruate again. How was that possible? My life had no value for me anymore....

Prosecutor: Do you know who detained you?

Witness: The persons who detained me were military personnel and military police who tortured me. One was the most brutal of all. Can I mention his name?

Prosecutor: Yes

[Witness mentions a name]

D1.e Recommendations of the Komnas Perempuan, 2007¹²⁶

Based on these findings, *Komnas Perempuan* recommends that the state immediately implement a **national program of reparation**, as follows:

Right to satisfaction

Immediately:

- **The President of the Republic of Indonesia** shall admit that these violations occurred, make an official apology, and provide a guarantee that all types of violations committed against victims of the 1965 Tragedy will immediately cease, and shall revoke all legal instruments that discriminate against victims, and shall issue a declaration in accordance with the law that restores the dignity of victims.

- **The government**, after consultation with victims and civil society, shall establish a mechanism to reveal the facts about violations that occurred during the New Order, including violations committed against women, and efforts to search for the whereabouts of the disappeared, including the exhumation of mass graves.

- **The Government** shall provide support to *Komnas Perempuan*, in conjunction with its stakeholders, to construct a memorial, and/or a documentation centre that pays respect to the victims as a symbolic pledge that such crimes will not be repeated. This memorial and/or documentation centre shall collect and protect archives that can be accessed by the public and used as historical references about gender based crimes committed by the New Order.

- **The Government, especially the Department of Education**, shall safeguard and support education on history, both formally and informally, which reflects the truth and reveals the experiences of women and children who were victims of the 1965 Tragedy. This education should be directed at the younger generation who need to know the truth about the violations that were committed and the impact on the victims. This education should encompass history about women's movements.

¹²⁶ Komnas Perempuan, *Laporan Pemantauan Ham Perempuan: Kejahatan Terhadap Kemanusiaan Berbasis Gender -- Mendengarkan Suara Perempuan Korban Peristiwa 1965*. Jakarta: Komnas Perempuan, 2007. English translation Gender-Based Crimes Against Humanity: Listening to the Voices of Women Survivors of 1965, Jakarta: Komnas Perempuan, 2007. Accessed at http://lib.ohchr.org/HRBodies/UPR/Documents/session13/ID/Komnas_Perempuan_UPR_IDN_S13_2012_KomnasPerempuan_Annex8_E.pdf

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□ **The Peoples Representative Assembly**, based on investigations led by the National Human Rights Commission's inquiry [KPP-HAM] on 1965 shall recommend the establishment of an Ad Hoc tribunal to handle cases relating to the 1965 Tragedy.

□ **The Peoples Representative Assembly** and **the Government** shall prepare a mechanism, based on the law, to guarantee that the public can gain access to confidential information held by state institutions, after a period of 25 years.

The National Commission on Human Rights and the **Office of the Attorney General** shall follow-up investigations into cases from Buru Island that were started by the National Commission on Human Rights, and shall investigate other serious crimes related to the 1965 Tragedy, with standards of inquiry and examination that adhere to the interests of justice, that do not ignore violations committed against women and children, to bring the perpetrators most responsible before an Ad Hoc Human Rights Court.

If the judiciary in Indonesia is neither willing nor able to conduct judicial hearings into these serious crimes, then **the Government** shall immediately ratify the Rome Statute and refer cases of enforced disappearance relating to the 1965 Tragedy to an International Criminal Court. Pursuant to international law, enforced disappearance is a continuing crime as long as the circumstances remain unclarified.

The right to restitution (to restore the victim to the original situation, as much as possible, before the violation occurred).

The Government shall immediately:

□ Provide restoration of liberty, enjoyment of human rights, identity, family life and citizenship (issue of ID Cards), return to one's place of residence, restoration of employment and return of property rights

□ Revoke Minister of Interior Directive No. 32/1981 on the Enlightenment and Supervision of Former Prisoners and Convicts related to the 30 September Movement/PKI, Minister of Interior Document dated 17 November 1981, No. 200/4652 (Further clarification about Directive Guidelines for the Implementation of Minister of Interior Directive No. 32/1981) and

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Minister of Interior Document dated 26 April 1982, No. 200/1550 (Instructions on the use of administrative forms for former prisoners and convicts related to the 30 September Movement/PKI).

- Eradicate all discriminatory practices which have been directed at former prisoners from the 1965 tragedy.
- Engage in a process to guarantee the settlement of issues relating to the looting/destruction/confiscation of land and property.
- Guarantee the pension rights of victims, civil servants and members of the army etc who are supposed to receive pensions from the state.
- Provide social security for those victims who are not entitled to a pension.
- Restore the rights of victims, their families and descendants to engage in any type of work that they choose.

Right to compensation

The Government shall immediately:

- Work together with civil society and through consultation with victims, to establish a specific mechanism to deal with the economic difficulties faced by former women prisoners, the wives of former prisoners, and the most vulnerable group: widows (and the children of widows) whose husbands were murdered or disappeared.

Right to Rehabilitation

The Government shall immediately:

- Mobilize health and social institutions, including the provision of services to elderly victims free of charge.

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- Provide psychological and medical care, legal and social services in accordance with the needs of victims as well as the provision of any other services deemed necessary, in collaboration with civil society agencies which it funds.

- Guarantee education, including scholarships and vocational training for the descendents of victims.

- Guarantee that victims are given access to nursing homes and ensure the availability of other residential facilities.

- Establish a mechanism within the relevant state department or agency to involve NGOs to ensure the transparency of the rehabilitation process.

D1.f Statement by Komnas HAM (National Commission for Human Rights) on The Results of its Investigations into Grave Violation of Human Rights During the Events of 1965 – 1966¹²⁷

1. INTRODUCTION

The events of 1965-1966 were a human tragedy, a black page in the history of the Indonesian people. These events occurred as the result of state policy to exterminate members and sympathisers of the Communist Party of Indonesia (PKI) which was deemed to have conducted resistance against the state.

This state policy was accompanied by acts of violence against citizens who were accused of being members of the PKI or sympathisers of the PKI on a truly massive scale which took the form of inhuman acts resulting in loss of life and injuries.

According to reports from the victims as well as the families of victims, the events of 1965-1966 involved grave human rights violations, including killings, extermination, slavery, evictions or forced removals, arbitrarily destroying people's rights to freedom or other physical violations such as torture, rape, persecution and enforced disappearances.

In addition, the victims as well as the families of the victims and their descendants have suffered continuing mental distress because of discrimination perpetrated against them with regard to their civil and political rights as well as in economic, social and cultural affairs.

Because of all this, the victims as well as the families of the victims of the 1965-1966 events have made numerous efforts to struggle for their basic human rights in pursuit of justice and the restoration of their basic rights (redress). One of the actions they took was to present their complaints to Komnas HAM, the National Human Rights Commission.

In response to the many complaints submitted by the victims, the families of victims and the public, Komnas HAM, in accordance with its function and tasks as laid down in Law 39/1999 on Basic Human Rights, set up an Investigation Team to investigate these events. Komnas HAM

¹²⁷ Unofficial translation of Chapter One *Ringkasan Eksekutif: laporan penyelidikan pelanggaran HAM berat* [Executive summary: report of its Investigations into Grave Violation of Human Rights], *Komnas HAM Report* (Jakarta: Komnas HAM RI, 2012) by Carmel Budiardjo, TAPOL, 16 August 2012. [Note: The IPT Report editors have inserted several words from the Indonesian original text that were omitted in this translation.]

followed this up by setting up an Ad Hoc Team to Investigate Grave Violation of Human Rights during the Events of 1965-1966.

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II. Facts about the Event

The events of 1965-1966 occurred in a number of places throughout Indonesia. In view of the limited availability of human resources and the lack of funding, while bearing in mind the fact that the events occurred in a number of places, Komnas HAM decided to focus on a certain number of places.

Furthermore, in order to analyse in depth and explain the nature of these crimes, certain districts were selected in order to focus on incidents in greater detail. The districts chosen were Maumere, the Denpasar Gerobokan Prison in South Sumatera, South Moncong Loe, South Sulawesi, the Island of Buru, Maluku, and the Jalan Gandhi Detention Centre in Medan, North Sumatera.

These four districts are considered to be representative of other places where investigations have been undertaken and where similar events also occurred

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CONCLUSIONS

After having carefully examined and analysed all the findings discovered in the field, the statements of the victims, witnesses, reports, relevant documents and other information, the Ad Hoc Team to Investigate the Committal of Grave Crimes Against Humanity During the 1965/1966 events has reached the following conclusions:

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1. There is adequate initial evidence to believe that the following crimes against humanity, which are serious crimes against basic human rights occurred:

- a. Killings (Article 7 jo Article 9 letter a of Law 26, 2000 on Human Rights Courts).
- b. Exterminations (Article 7, letter b jo Article 9 letter b, of Law 26, 2000 on Human Rights Courts).
- c. Enslavement (Article 7, letter b jo Article 9 letter c of Law 26, 2000 on Human Rights Courts).
- d. Enforced evictions or the banishment of populations (Article 7 letter b jo Article 9 letter d of Law 26, 2000 on Human Rights Courts).

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- e. Arbitrary deprivation of freedom or other physical freedoms (Article 7 letter b jo Article 9 letter e of Law 26, 2000 on Human Rights Courts).
- f. Torture (Article 7 letter b jo Article 9 of Law 26, 2000 on Human Rights Courts).
- g. Rape or similar forms of sexual violence (Article 7 letter b jo Article 9 letter g of Law 26, 2000 on Human Rights Courts).
- h. Persecution (Article 7 letter b and Article 9 letter h of Law 26, 2000 on Human Rights Courts).
- i. Enforced disappearances (Article 7 letter b and Article 9 letter i, of Law 26, 2000 on Human Rights Courts).

The afore-mentioned actions were part of an attack aimed directly against the civilian population, namely a series of actions against the civilian population as a consequence of the policy of the authorities in power. As these actions were widespread and systematic, these actions can be classified as crimes against humanity.

2. The types of acts and the pattern of the crimes against humanity that occurred during the events in 1965/1966 were as follows:

a. Killings

Civilians who fell victim to killings as a result of operations conducted by the state apparatus which occurred in a number of

INREHAB [*Instalasi Rehabilitasi*, Rehabilitation Installation]: the island of Buru, Sumber Rejo, Argosari, the island of Balang, the island of Kemarau, Tanjung Kasu, Nanga-Nanga, Moncong Loe, Ameroro, Nusakambangan, the office of the mayor of Tomohon, Plantungan, Sasono Mulyo, Municipal buildings in Solo, Nirbaya, Ranomut, Manado.

Prisons: Salemba, Rice Factory in Lamongan, the building owned by the Chinese Association in Jalan Liloyor, Manado, Wirogunan Prison, Yogyakarta, Solo prison Kediri, Denpasar.

Places where torture [is suspected to have been] committed: Kalong (Jalan Gunung Sahari), Gang Buntu (Kebayoran), building in Jalan Latuharhari, Chinese house in Jalan Melati, Denpasar, school in Japan Sawahan, Malang, Manchung Schoolm Jalan Nusakambangan, Malang;

Military prisons: TPU Gandhi, Budi Utomo, Budi Kamulyaan.

b. Exterminations

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Civilian populations who were victims of extermination as a result of operations committed by the security forces in a number of places, among others: Sragen 300 people, Sikka-Maumere, 1,000 people, Kali Sosok prison, Surabaya, 600 people.

c. Enslavement

Civilian populations who fell victim to enslavement as a result operations by the state authorities were recorded as the following places: about 11,500 people in the island of Buru (which consisted of 18 units plus three RSTs each of which held 500 prisoners) and also in Moncong Loe, Makassar.

d. Evictions or enforced removal of the population

Civilian populations who fell victim to eviction or forced removal as a result of the operations committed by the state apparatus were recorded as being more or less 41,000 people.

e. Arbitrary deprivation of freedom or other types of deprivation of physical freedoms:

The number of civilians who were victims of the arbitrary deprivation of their freedom or other physical freedoms as a consequence of operations conducted by the state apparatus were roughly 41,000 people

f. Torture

The torture of civilians as a consequence of operations conducted by the state apparatus in a number of

INREHABs (prisons): island of Buru, Sumber Rejo, Argosari, island of Balang, island of Keramau, Tanjung Kasu, Nanga-Nanga, [Moncong Loe, Ameroro, Nusakambangan] office of the mayor of Tomohon, Plantungan, Sasono Mulyo, municipal buildings in Solo, Nirbaya, Ranomut, Manado. Prisons: Salemba, Rice Factory in Lamongan, the Chinese-owned building in Jalan Liloyor, Manado, Wirogunan, Yogyakarta, Prisons in Solo, Kediri, Denpasar. Places where torture [is suspected as having] occurred: Kalong HQ, (Jalan Gunung Sahari), Gang Buntu (Kebayoran) a building in Jalan Latuharhari, the Chinese house in Jalan Melati, Denpasar, a school in Jalan, Malang, the school in Jalan Sawahan, Malang, Manchung School in Jalan Sawahan, Malang, Jalan Nusakambangan, Malang, Military prisons: TPU Gandhi, Guntur, Budi Utomo, Budi Kemulyaan.

g. Rape or similar forms of sexual violence

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Civilians who were the victims of rape or similar forms of sexual violence as a consequence of acts during operations which were committed by the state apparatus, altogether about 35 people.

b. Persecution

i. Civilian populations were victims of persecution as a result of operations conducted by the state security forces in a number of places:

INREHABs: Island of Buru, Sumber Rejo, Argosari, island of Balang, island of Kemarau, Tanjung Kasu, Nanga-Nanga, Moncong Loe, Ameroro, Nusakambangan, Office of the mayor of Tomohon, Plantungan, Sasono Mulyo, mayoral offices in Solo, Nirbaya, Ranomut, Manado.

Places of detention: Salemba, Rice factory in Lamongan, building owned by the Chinese Association in Jalan Liloyor, Manado, Wirogunan Prison, Yogyakarta, prisons in Solo, Kediri, and Denpasar.

Places where torture occurred: Kalong HQ (Jalan Gunung Sahari), Gang Buntu, (Kebayoran), building in Jalan Latuhahrhari, Chinese house in Jalan Melati, Denpasar, school in Jalan Sawahan, Malang, Manchung school, Jalan Nusakambangan, Malang.

Military prisons – Gandhi, Guntur, Budi Utomo, and Budi Kemulyaan.

j. Enforced disappearances

Civilians who were recorded as being the victims of enforced disappearances as a consequence of operations conducted by the state security forces amounted to roughly 32,774 people.

3. Based on the wide range of crimes which occurred and the picture of victims who have been identified and the mountain of evidence that is available, the names of those who implemented these crimes and were responsible for the events of 1965/1966 are the following added to which there may be more.

A. Individuals/military commanders who can be called to account:

a.1 The commander who decided on the policy:

a. PANGKOPKAMTIB – the Commander of KOPKAMTIB from 1965 until 1969.

b. PANGKOPKAMTIB – the Commander of KOPKAMTIB from 19 September 1969

at the least until the end of 1978.

a.2 The commanders who had effective control (duty of control) over their troops.

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The PENGANDAs and/or PANGDAMs during the period from 1965 until 1969 and the period from 1969 until the end of 1978.

B. Individuals/commanders/members of the units who can be held responsible for the actions of their troops in the field.

Individuals/commanders/members of units who can be called to account as those who implemented the series of crimes that occurred in the field, as well as the pictures of the victims who have been identified in the mass of the available evidence along with the names of those thought to have been involved on the ground in the events of 1965-1966, particularly, but not only confined to these names, as follows:

- a. Names that have been mentioned by the witnesses, in connection with the six regions that were analysed by the Team.
- b. The commanders and the functionaries at the INREHABs: the island of Buru, Sumber Rejo, Argosari, island of Balang, the island of Kemarau, Tanjung Kasu, Nanga-Nanga, Moncong Loe, Ameroro, Nusakambangan, the office of the Mayor of Tomohon, Plantungan, Sasano Mulyo, municipal offices in Solo, Nirbaya, Ranomut, Manado.
- c. The commanders and their apparatus in the following prisons: Salemba, the Rice Factory in Lamongan, the building of the Chinese association in Jalan Liloyor, Manado, Wirogunan Prison, Yogyakarta, the Solo, Kediri and Denpasar prisons.
- d. The apparatus in the places of torture: Kalong HQ (Jalan Gunung Sahari), Gang Buntu (Kebayoran), the building in Jalan Latuharhari, the Chinese house in Jalan Melati, Denpasar, the school in Jalan Sawahan, Malang, Manchung school in Jalan Nusakambangan, Malang.
- e. The commanders and functionaries in military prisons (RTM): TPU Gandhi, Guntur, Budi Utom, Budi Kemulyaan.

RECOMMENDATIONS

On the basis of the above conclusions, the Ad Hoc Team to Investigate the Events of 1965-1966 makes the following recommendations:

1. In accordance with the provisions of Article 1, paragraph 5, and Article 20, para (1) of Law No 26, 2000 on Human Rights Courts, the Attorney General is requested to take forward the above investigations with further investigations,

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2. In accordance with the provisions of Article 47, para (1) and (2) of Law No 26, 2000 on Human Rights Courts, the results of these investigations may also be resolved through non-judicial mechanisms in fulfilment of the sense of justice of the victims and their families.

This statement has been made in fulfilment of the mandate that was given to the National Human Rights Commission, in order to conduct investigations into what are deemed to have been grave violations of human rights that occurred during the events of 1965-1966.

Jakarta, 23 July, 2012

AD HOC TEAM TO INVESTIGATE GRAVE VIOLATIONS OF HUMAN RIGHTS
DURING THE EVENTS OF 1965/1966
CHAIRMAN, NUR KHOLIS, S.H., M.A.

D1.g UN HRC -- Indonesia dialogue.

1. July 2013: UN HRC: "Concluding observations on the initial report of Indonesia"¹²⁸

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8. The Committee regrets the failure by the State party to implement article 43 of Law 26/2000 in order to establish a Court to investigate cases of enforced disappearance committed between 1997 and 1998 as also recommended by Komnas HAM and the Indonesian Parliament (DPR). The Committee particularly regrets the impasse between the Attorney General and Komnas HAM with regard to the threshold of evidence that should be satisfied by Komnas HAM before the Attorney General can take action. The Committee further regrets the prevailing climate of impunity and lack of redress for victims of past human rights violations particularly those involving the military (art. 2)

The State party should, as a matter of urgency, address the impasse between Komnas HAM and the Attorney General. It should expedite the establishment such a Court to investigate cases of enforced disappearance committed between 1997 and 1998 as recommended by Komnas HAM and the Indonesian Parliament (DPR). Furthermore, the State party should effectively prosecute cases involving past human rights violations such as the murder of prominent human rights defender Munir Said Thalib on 7 September 2004, and provide adequate redress to victims or members of their families.

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32. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 8, 10, 12 and 25 above.

2. January 2015: "UN presses Indonesia on human rights progress report"¹²⁹

¹²⁸ UN HRC, 108th session 8–26 July 2013, "Consideration of reports submitted by States parties under article 40 of the Covenant", Agenda item 6. The para nos. in this and the third document below are the actual numbers in the (unexcerpted) text.

¹²⁹ *Jakarta Post*, 17 January 2015

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The United Nations Human Rights Committee (UNHR Committee) has demanded that the Indonesian government fulfill its promise of submitting a long-overdue report on the state of the country's human rights.

Indonesia should have submitted the report before a July 2014 deadline.

UNHR Committee member and special rapporteur for Indonesia, Cornelis Flinterman, said on Friday that Indonesia must submit the report as a follow-up to a UN review session in Geneva in July 2013.

During the review session, members of the UNHR Committee questioned Indonesia's commitment to resolving human rights abuses, protecting religious minorities and curbing the use of excessive force, after which the UNHR Committee issued a list of recommendations for the government to act upon.

"We adopted 26 concerns and identify four which require immediate attention from the government. Then the government was required to submit a follow-up report [on the four recommendations] by July 2014. Regrettably, the committee has not received any report," □ □ Flinterman told a press conference in Kuningan, South Jakarta, on Friday.

As the Indonesian government had not made any follow-up report on the recommendations, two UNHR Committee members flew to Jakarta earlier this week to talk with members of President Joko (Jokowi) Widodo's administration.

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3. March 2015: Information received from the Indonesian Government.¹³⁰

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Recommendation 8:

3. In his speech at the commemoration of International Human Rights Day in December 2014, President Joko Widodo (Jokowi) reaffirmed the Government's commitment to further promote and protect human rights. This includes formulating appropriate means and way to address past human rights issues, through, inter alia, comprehensive reconciliation process and the possibility of establishing ad hoc human rights tribunal/ court. The Government is also committed to preventing human rights violations through, inter alia, legal reform aimed at strong, reliable, consistent, and indiscriminative enforcement.

¹³⁰ UN HRC, "Addendum: Information received from Indonesia on follow-up to the Concluding Observations of the Human Rights Committee on the initial report of Indonesia", date received: 4 March 2015.

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4. With regard to efforts to address past human rights issues, Indonesian National Human Rights Institution (Komnas HAM) and Attorney General's Office have agreed to convene series of meetings to share views in order to resolve the issue of data which was previously considered insufficient by the latter.

5. At the same time, the Government has also undertaken parallel measures, including finalising the revision of Law No. 27 Year 2004 on the Truth and Reconciliation Commission (TRC) which was annulled by the Constitutional Court. Currently, the revised bill is the process of harmonization coordinated by the Ministry of Law and Human Rights. When this process is completed, the revised bill will be transmitted by the Government to the Parliament for deliberation and endorsement. In order the Bill can be directly implemented when it is adopted, the Government, i.e. the Directorate General of Human Rights, Ministry of Law and Human Rights, is also preparing the implementing mechanism for (future) TRC law, including, inter alia, preparing for the establishment of TRC Secretariat and informally beginning the selection process of TRC Commissioners.

6. On the issue of rehabilitation and compensation mechanism for the victims or their family members, Indonesia has enacted Law No. 31 of 2014 on the Amendment of Law No. 13 of 2006 on Protection of Witnesses and Victims. Article 6 specifically emphasizes that (1) Victims of gross human rights violation, terrorist act, human trafficking, torture, sexual violence, and grave persecution, in addition of being entitled to what is referred in Article 5 of Law No 13 n of 2006, is also entitled to receive: medical assistance and psychosocial and psychological rehabilitation assistance; (2) Assistance as referred to in paragraph (1) is provided based on Victim and Witness Protection Board's decision. Article 5 of Law No. 13 of 2006 itself stipulates the rights and entitlements of victim and witness.

7. A notable progress is achieved at the end of 2013 when the Government submitted a bill to ratify the Convention for the Protection of All Persons from Enforced Disappearance to the Parliament. At this stage, the Bill is expected to be discussed by the parliament at its earliest.

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D1.h Decision of the President/ Commander of the Armed Forces of the Republic of Indonesia/ Mandate Holder of the MPRS/ Great Leader of the Revolution No. 1/3/1966¹³¹

In view of the fact:

1. That in recent times there have been dark actions carried out by remnants of the “30 September Movement” of the Communist Party of Indonesia (PKI) counter-revolutionary forces;
2. That these dark actions take the form of spreading slanders, incitement, rumours and scape-goating as well as the setting up of armed forces that are once again disturbing the peace and security of the people;
3. That these dark actions are clearly endangering the course of the revolution in general, and interfering with the completion of the current phase of the revolution, especially countering economic difficulties and crushing the Nekolim¹³² “Malaysia” project;
4. That for the sake of the firm consolidation of the unity of all progressive forces of the Indonesian people, and for the sake of the security of the course of the anti-feudal, anti-capitalist and anti-Nekolim revolution heading towards a just and prosperous society based on the Pancasila, and on a Socialist Society for Indonesia, it is necessary to take swift, firm and determined action against the PKI.

Bearing in mind:

The results of the investigations and decisions of the Extraordinary Military Tribunals, Mahmilub, against leading figures of the “30 September Movement”/PKI.

Considering:

The Order of the President/ Supreme Commander of the Armed Forces of the Republic of Indonesia/ Mandate Holder of the MPRS/ Great Leader of the Revolution dated 11 March 1966¹³³

Decides

To determine:

Holding fast to the five Principles of the Indonesian Revolution

¹³¹ Keputusan Presiden/ Panglima Angkatan Bersenjata Republik Indonesia/ Mandataris MPRS/Pemimpin Besar Revolusi No. 1/3/1966, translated from the copy reproduced in Alex Dinuth, *Dokumen Terpilih*, p.168-169.

¹³² Acronym formed from “Neo-Colonial Imperialist”.

¹³³ Known as Supersemar.

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First:

To dissolve the PKI, including all its structures, from the centre to the regions, as well as all organisations that hold to the same principles or are affiliated or nurtured by it.

Second:

To declare the PKI to be a banned organisation throughout the territory of Indonesia.

Third:

This Decision is effective from the date of its determination.

Determined in: Jakarta

Date: 12 March 1966

President/ Commander of the Armed Forces of the Republic of Indonesia/ Mandate

Holder of the MPRS/ Great Leader of the Revolution

In the name of his honour

Signed

Soeharto

Lt-Gen, TNI [Indonesian Army]

D2 Attempts at Redress and Reconciliation

by Saskia E. Wieringa, Chair Foundation IPT 1965 and Nursyahbani Katjasungkana,
General Coordinator IPT 1965

The Foundation IPT 1965 was established in 2014 to end the impunity for the crimes against humanity committed in Indonesia in and after 1965 and to foster efforts at reconciliation. Impunity involves a “failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those respected of criminal responsibility are prosecuted, tried, and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.”¹³⁴ To fight impunity for past serious crimes against humanity is imperative as impunity poisons a society and breeds new violence. A crucial first step is to establish the truth about what happened so future generations can learn from their society’s violent past. Reconciliation is not possible without truth finding. Victims must be rehabilitated, and the stigma and restrictions under which they live must be lifted; they must be compensated and receive health care and social services. The goal of reconciliation is to build a society that is more peaceful, tolerant and democratic in which human rights and the rule of law are guiding principles. However, 50 years after the genocide and other crimes against humanity were committed in Indonesia very few steps on the path towards reconciliation have been set. Even in the more liberal reformasi era (after the fall of Suharto in 1998), the Indonesian State has done virtually nothing to heal society from its violent past.

Post-conflict resolution and reconciliation takes time, has many dimensions and takes place at all levels of the society. In the process of establishing a more democratic and peaceful post- conflict society, the concept of transitional justice plays a major role. Two concepts are relevant: retribution and reparation or restoration.¹³⁵

The IPT 1965 advocates a mix of retributive and restorative ways for the redress and reconciliation of the post 30 September 1965 crimes against humanity. This mix includes but is not limited to the following elements: truth finding, retribution or access to justice, restoration

¹³⁴ Diane Orentlicher, *Report of the independent expert to update the Set of Principles to Combat Impunity*, 2005. UN Commission on Human Rights E/CN.4/2005.102. add.1.p.7.

¹³⁵ See for instance Howard Zehr, *The Little Book of Restorative Justice*. New York: Good Books, 2014.

and reparation, and guarantees for non-recurrence. These elements are interlinked. A full process of redress and reconciliation should address all elements in combination.

Truth finding

In 2004 a Law on the Truth and Reconciliation Commission was drafted, which was expected to open up past cases of human rights violations. However, after being passed in Parliament, this was revoked after a judicial review by the Constitutional Court.

The National Human Rights Commission appointed an ad hoc investigation team to report on seven different situations. The team conducted an investigation from 2008 to 2012 into past human rights violations. Its 400-page report, issued in 2012, was the first national effort at truth finding. Its Chapter One contained 40 pages on the events related to the events of 1965 and 1966.

The major recommendation was that the Attorney General's Office (AGO) should conduct further investigations, and effect non-judicial remedy via a Truth and Reconciliation Commission "to provide a sense of justice for victims and their families." It also advocated that perpetrators be brought to court. However the AGO has not yet acted on this recommendation, and has made no effort to assess the truth about the crimes against humanity committed in the aftermath of 30 September 1966.

The President, Mr. Joko Widodo (in office since 20 October 2014), promised to deal with past human rights violations including those related to 1965 during his election campaign. This was explicitly mentioned in his programme, called the Nawacita (nine aspirations). However, this issue was subsequently dropped from his list of priorities. The Attorney General, H.M. Prasetyo, declared that a "permanent solution" should be sought for old human rights violations including the "1965 tragedy,"¹³⁶ but he insisted that this solution would be sought solely in reconciliation only. The Government of Indonesia has so far ignored the phase of truth finding without which reconciliation has little value. The dignity of the victims and their families can only be restored, and other efforts to correct the historical memory can only be undertaken once truth finding is taken seriously. This will strengthen the rule of law in Indonesia and help ensure that those atrocities will not recur. The Government of Indonesia has not only thwarted or prohibited all efforts to find out the extent of the mass crimes against humanity committed after 30 September

¹³⁶ *Jakarta Post*, 22 May 2015

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1965, it has also effectively banned all discussions on socialist themes. The study of Marxism, Leninism and Communism was prohibited and history textbooks for school children were rewritten by the military and they have still not been revised. The Indonesian Communist Party and all its affiliated organisations were banned in 1966 and, during the New Order regime (1966-1998), this ban extended to all pro-democratic movements and mass organizations. The ban has not yet been revised or abolished.

At the local level several efforts at truth finding have been undertaken. The most extensive research was done in East Indonesia. In Kupang a women's study group called Jaringan Perempuan Indonesia Timur untuk Studi Perempuan, Agama dan Budaya (JPIT -- Eastern Indonesia Women's Network for the Study of Women, Religion, and Culture) collected oral testimonies of women survivors from various ethnic and religious backgrounds from 2010. The goal was the reconciliation of victims with church members who have been among the perpetrators of the human rights violations. The researchers were related to the two main Protestant churches, and they were all female ministers or ministers in training. The book based on their research was published in 2012 and led to a formal apology by church leaders.¹³⁷

Some victims' organisations have also carried out their own investigations. Their data are not yet public. But the coordinator of YPLP 1965, Mr Bedjo Untung, has provided a list of 122 mass graves to the Komnas HAM, in the wake of the national symposium (held 18-19 April 2016) in which doubt was cast on the existence of mass graves. President Joko Widodo then ordered an investigation of these mass graves.¹³⁸

However, there is still a serious gap in knowledge and documentation of what went on after 30 September 1965. The following are suggestions of what must be done immediately to further the process of truth finding.

- the number of victims of the massacres must be determined – a nationwide effort is required to investigate and document the members of those murdered or disappeared;
- the voices of the victims must be heard and their memories preserved. Individual researchers have carried out some oral history projects. The NGOs ISSI (Institut Sejarah Sosial Indonesia, Indonesian Institute for Social History) and ELSAM (Lembaga Studi dan Advokasi Masyarakat,

¹³⁷ *Memori-Memori Terlarang: Kisah Perempuan Penyintas Tragedi '65 di NTT*). English edition: *Forbidden Memories: Women's Experiences of 1965 in Eastern Indonesia*.

¹³⁸ "Looking into the massacres of Indonesia's past," accessed at <http://www.bbc.com/news/world-asia-36431837>.

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Institute for Policy Research and Advocacy) have limited but important collections. These initial efforts must be taken up nationwide;

- the archives of Kopkamtib and other institutions, both civil and army-related, involved in the mass crimes against humanity must be opened and made available for researchers;
- not only the CIA archives but archives from other countries, especially those which supported the Suharto regime must be opened;
- universities all over the country must be encouraged to teach and research the history of the post 30 September 1965 massacres and/or set up departments of genocide studies.

Retribution and Right to Justice

The National Human Rights Commission's report submitted to the Attorney-General in 2012 was sent back to the Commission by the Attorney General, with the argument that its findings were not legally proper and insufficient. Since then the Report has gone back and forth a few times and the process appears to be stalled at the moment of writing.

The government, at the time represented by the Coordinating Minister of Political, Legal and Security Affairs, Djoko Suyanto, rejected the evidence presented as well, adding that the 1965 mass killings were justified as they were aimed at "saving the country."¹³⁹ Likewise, 23 civil society groups, including Ansor, the youth wing of the largest Muslim mass organisation, the Nahdlatul Ulama (NU), which played a key role in the killings, also rejected the report, affirming their continuing determination to protect Indonesians from a "Communist atheist threat."¹⁴⁰

Some limited progress, however, has been made since reformasi in 1998. In the following year the last political prisoners were released and the anti-Subversion Law was abolished. The Election Law of 1999 restored the right of ex-tapol (former political prisoners) to elect candidates, though they themselves could not yet be elected. Since 2003 ex-tapol can also be candidates in elections. In 2011 the Supreme Court abolished all restrictions on the citizenship rights of ex-tapol.¹⁴¹ However, the Criminal Code was changed in 1999, and a number of clauses were added which made the spread of communist teachings a crime.¹⁴² These clauses have again been invoked after the 2016 national symposium. President Abdurrahman Wahid lifted the

¹³⁹ *Jakarta Post*, October 1, 2012

¹⁴⁰ *Jakarta Post*, 15 and 16 August 2012

¹⁴¹ Adriaan Bedner, "Citizenship restored", *Inside Indonesia* 122: Oct-Dec 2015.

¹⁴² KUHP, Articles 107 a) to f).

Presidential Decree on the screening and registration of tapol. However he was not able to lift the MPRS/1966/XXV decree in which communism was banned. In 2003, under the presidency of Megawati, parliament decided to uphold that decree.

Rehabilitation and Reparation

At the national level no president has made a formal apology so far. As discussed in this Report (B2. Responsibility and Chain of Command), in 2000, Abdurrahman Wahid, the country's fourth, and first elected President (from 1999 – 2001) came closest to an apology during a TV programme saying he had previously apologised to the victims, and he advocated a judicial process. However, he did not follow this up with a formal apology nor with initiating a judicial process, after a storm of protest arose.

But his words and his progressive stance have made an impact. Another progressive NU leader, Imam Aziz, established the organisation Syarikat in 2000 with the goal to help NU members and victims of the human rights violation reconcile.¹⁴³ Imam Aziz promoted a restorative justice process of community level reconciliation. It has been investigating the massacres, helping the victims with small-scale projects, for instance in Blitar, Salatiga, Semarang and Yogyakarta. However, getting the issues recognised within the NU was very difficult, due to strong opposition from powerful conservative religious leaders, *kyai*. Some younger progressive *santri*, students studying at Islamic religious schools or *pesantren*, primarily from East Java have set up the group Gus Durian, which regularly holds discussions with victims and organizes seminars both within and outside of NU to promote the idea that human rights and Islam are compatible.

When the National Human Rights Commission submitted its report in 2012, hopes were raised that the then President, Susilo Bambang Yudhoyono, would make a formal apology. However, this did not happen, again due to strong opposition from both NU leaders and conservative army generals. During his presidential election campaign, Joko Widodo promised to redress the country's past human rights violations. However, so far he too has not yet issued a formal apology to the victims.

¹⁴³ The name is an acronym of Masyarakat Santri untuk Advokasi Rakyat- (Santri Society for People's Advocacy). *Santri* are (former) students at a *pesantren*, an Islamic boarding school. These are led by a *kyai*. The *kyai* and their *pesantren* constitute the core of the NU. Some of them were also targeted during the unilateral one-sided actions between 1963-1965 to enforce the Land Reform laws of led by the PKI-oriented Farmers's Union between 1963-1965, to enforce the Land Reform laws.

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A civil case concerning 1965 was brought forward by the Jakarta Legal Aid Foundation, through a 2005 class action civil suit against five former presidents. The action primarily sought compensation and rehabilitation for victims of the mass killings of 1965 and also sought an order compelling the government to issue a written apology, erect monuments to the 1965 victims, include an accurate history of events in the national curriculum, and repeal discriminatory legislation. One of the goals of this action was to redress the continuing discrimination victims still face with respect to their civil and political rights, property ownership, access to employment, and political freedom. The Central Jakarta District Court rejected the claim in September 2005, citing a lack of jurisdictional authority.¹⁴⁴

Following the November 2015 hearings of the IPT 1965, in April 2016, a 2-day symposium was held in Jakarta, instigated by the Coordinating Minister of Security, Political and Legal Affairs, General (Ret.) Luhut Binsar Panjaitan. General Agus Widjojo was the chair of the organizing committee. He was advised by amongst others a member of the Presidential advisory council, Sidarto Danusubroto. This was the first time these abuses were discussed nationally. Both supporters of the New Order and victims as well as researchers and activists spoke out. This symposium triggered a flood of reactions both in the mainstream and on social media.¹⁴⁵ Minister Luhut Panjaitan made it clear in his opening speech that the president was not going to issue a formal apology but that the government was at the same time committed to resolving past human rights abuses. He ruled out that a criminal investigation would be held. In reaction to this national symposium a counter symposium was organised by retired generals (supposedly to uphold the Pancasila), 1-2 June 2016. This was accompanied by a strong backlash against anything and anybody deemed communist. Activists wearing red T-shirts with the letters “PKI” were arrested,¹⁴⁶ and a few raids on bookshops were held.¹⁴⁷

At the local level several efforts at reconciliation have been and are being made. The best known example is that of Palu.¹⁴⁸ Mayor Rusdi Mastura, himself as a boy scout tasked with guarding prisoners in the late 1960s, and later a member of the Pancasila Youth and the Golkar party, has formally apologised and since then led efforts bringing survivors and victimisers together. This

¹⁴⁴ *Transitional Justice in Indonesia Since the Fall of Soeharto*; A joint report by ICTJ and KontraS. New York : ICTJ –KontraS , 2011. Box 5, p55

¹⁴⁵ See for instance <http://www.thejakartapost.com/news/2016/04/19/1965-symposium-indonesias-way-to-face-its-dark-past.html>

¹⁴⁶ Even though the shirts state clearly that this stands for “Pecinta Kopi Indonesia” -- Indonesian Coffee Lovers, the cup and spoon image depicted resembles the hammer and sickle emblem.

¹⁴⁷ See for instance <http://www.thejakartapost.com/academia/2016/05/20/from-red-bogey-to-anti-intellectualism.html>

¹⁴⁸ Nurlela Lamasitudju, Rekonsiliasi dan Permintaan Maaf Walikota, in Wardaya, Baskara (ed), *Luka Bangsa Luka Kita: Pelanggaran HAM Masa Lalu dan Tawaran Rekonsiliasi*, Galangpress, 2014, pp. 371-383.

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followed in the wake of pressure from activists and victims. A day of public reconciliation was held on 24 March 2012, sites of human rights abuse were marked, and a program of reparation and restitution was set up: free healthcare was announced for survivors and family members, and education scholarships and government grants for economic cooperatives as well as start-up funding for descendants of victims.

Perhaps due to the fact that relatively few people were killed or disappeared in Palu, there was less resistance to these efforts at reconciliation than elsewhere. So far, the program has identified 485 local victims of the 1965-66 anti-Communist actions. In 2013 Palu declared itself as a 'City of Human Rights Consciousness' with a broad mandate to help victims.¹⁴⁹

In various places memorialisation efforts have been made, especially around mass graves. The first mass grave to be opened was in 2000 in Wonosobo, Java. Reburial of the victims was prevented by anti-communist militias. Near Semarang, in the community of Plumbon, a mass grave was marked, with the participation of community members. In Solo, memorial rituals have been held on the Jembatan Bacem bridge, from which many victims were thrown into the river Brantas. In Jembrana, Bali, a mass grave has been opened and the bodies have been given the last rites. Hundreds of mass graves still await exhumation, but this can only be done when the security of the participants is guaranteed and when adequate forensic expertise is available.

In relation to compensation to the victims very limited progress has been made. The enactment of the Law on Witness and Victims Protection (Law No. 13/2006) was a positive sign. The Witness and Victim Protection Agency (LPSK), which was subsequently established, provides limited medical assistance, rehabilitation and housing to victims, including those of the 1965 massacres and human rights violations. A few local authorities (such as in Palu and Solo), as well as the church in Kupang, have recognised this provision. But the process is very bureaucratic. So far less than 2,000 victims of gross human rights violations cases in 1965 have submitted requests to the LPSK. Victims' organisations such as YPKP 1965 have organised various meetings to inform their members on the procedure; these meetings were often disturbed by members of anti-communist groups.

On a limited scale, memorialisation activities have been instigated by individuals and non-governmental organisations. These include the production of some documentary films such as

¹⁴⁹ http://www.nytimes.com/2015/07/13/world/asia/a-city-turns-to-face-indonesias-murderous-past.html?_r=0

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Jembatan Bacem (2014, ELSAM), *The Act of Killing* (2012) and its sequel *The Look of Silence* (2014, both by Joshua Oppenheimer), *The Women and the Generals* (2012, by Maj Wechseltmann) and others. Certain mass graves have become sites of memory, such as in Semarang (Plumbon). Several authors have written novels, such as *Amba* by Lakshmi Pamuntjak, *Return* by Leila Chudori and *The Crocodile Hole* by Saskia Wieringa. There were other artistic productions related to the theme in various forms, such as prose, poem, theatre and song.

Non-recurrence

Very limited steps have been set on the path towards non-recurrence. These include the inclusion of a Human Rights section in the 1945 Constitution (2000) and the ratification of key international human rights treaties. In December 2006 Indonesia's Constitutional Court declared unconstitutional a law establishing a Truth and Reconciliation Commission (TRC) in Indonesia. The law empowered the TRC to award amnesties to perpetrators of past crimes and barred victims from taking any future legal action against them. Reparations to victims were made contingent upon victims signing formal statements exonerating the perpetrators. The Court declared that provisions of the TRC law violated Indonesia's international obligations and domestic laws. The decision came after two years of legal challenges by Indonesian human rights groups.

Some oversight agencies have been established (Ombudsman, Judicial Commission, Police Oversight Commission, Prosecutor Oversight Commission). Limited efforts at the needed reform of the security sector are underway. The military are prohibited to involve themselves in politics and the police force has been separated from the military. This however does not prevent the military from claiming a leading role in politics, particularly on the issues of the rights of the victims of the Events of 1965. The subject of human rights has been included in the curriculum of training courses and internal regulations of the police and the military. But the Rome Statute has still not been signed and ratified. Moreover, overall implementation of progressive legal and institutional changes has been poor.

In conclusion, the Indonesian state is still reluctant to accept its obligations to hear the voices of the victims, to carry out effective redress and reconciliation, and to provide overdue justice for them. Much work remains to be done to overcome 50 years of impunity.

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D3 Judges' Biographies

Mireille Fanon Mendes-France, member of the Permanent People's Tribunal, served as a judge in several people's tribunals; Chair of the UN Working Group of Experts on People of African Descent; Director of Association Frantz Fanon.

Cees Flinterman, former member of the UN Human Rights Committee for the International Covenant on Civil and Political Rights (ICCPR), former member of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), Honorary Professor of International Human Rights Law, Maastricht University, Netherlands.

John Gittings, well known for his work on modern China and the Cold War as well as peace studies; former chief foreign leader-writer and journalist with the Guardian (1983-2003), research associate at the School of Oriental and African Studies (SOAS) China Institute.

Helen Jarvis, Vice-President of the Permanent People's Tribunal and member of the International Advisory Committee of UNESCO's Memory of the World program; former Chief of the Victims Support Section of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

Sir Geoffrey Nice, QC, Former Lead Prosecution Counsel in the Slobodan Milosevic case at the International Criminal Tribunal for Yugoslavia (ICTY) and prosecutor of other ICTY cases.

Shadi Sadr, Founder and Director of Justice for Iran, award-winning and leading human rights lawyer on Iran, co-author of *Crime and Impunity, Sexual Torture of Women in Islamic Republic Prisons*

Zak Yacoob, (Retired) Justice of the Constitutional Court of South Africa, Former Chancellor of the University of Durban-Westville, involved in several institutions that represent the Blind.

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¹⁵⁰ A selection of significant works in this field: some but not all are cited in the text.

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