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A SLOW-MOTION GENOCIDE: INDONESIAN RULE IN WEST PAPUA

DR JIM ELMSLIE AND DR CAMELLIA WEBB-GANNON*

This paper examines and extends the debate on genocide in West Papua. Referring to the 1948 United Nations Genocide Convention, examples of genocidal acts are listed: killings, causing serious bodily and mental harm, the deliberate infliction of conditions of life calculated to cause the destruction of a group, and the forcible removal of children to another group. Whereas previous examinations of the issue have failed to prove intent on the part of the Indonesian Government – a necessary pre-requisite under the Convention – this article finds that such intent exists. The authors show that West Papua has suffered a military occupation since 1962-63 under which the West Papuan people have been treated as the enemy by the Indonesian armed forces. Explicit and implicit government policy has been consistently directed towards countering and eliminating Papuan attempts to create an independent state for their nation or enjoy political freedom on a par with other Indonesians. In this tightly controlled situation genocidal acts have been undertaken as government policy, effectively thwarting the Papuan nationalists in the era when information emerging from the province(s) could be tightly controlled. In this internet age, however, this is no longer possible, as evidence of both genocidal acts and government 'intent' is emerging. This augurs poorly for Indonesia and the region as the little known, but deeply entrenched, conflict in West Papua seeps into global consciousness as a 'slow-motion' Pacific genocide.

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I INTRODUCTION

This paper argues that genocide is taking place in Indonesian-controlled West Papua, the western half of the island of New Guinea. Using the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide ('*Genocide Convention*') as the basic analytical template, the conflict is examined to argue that the West Papuan people constitute a 'group' under the *Genocide Convention* who have suffered most of the specific 'acts' that constitute genocide. These claims have been made before, particularly in a Yale University report from 2004,[1] which we refer to in some detail. The difficulty in the case of West Papua is to establish that genocidal actions have been committed

[1] Elizabeth Brundige, Winter King, Priyneha Vahali, Stephen Vladeck and Xiang Yuan, *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Rule* (Paper, Allard KLowenstein International Human Rights Clinic Yale Law School, April 2004).

intentionally by the Indonesian Government, with the aim of destroying 'in whole or in part' the West Papuans as a distinct racial and ethnic group.[2]

We claim that Indonesian rule constitutes a military occupation, established in 1962-63, with strict control over the population by a hierarchical and repressive command structure, enjoying impunity for its many and entrenched human rights violations. Its express purpose is to counter West Papuans' desire for independence and to preserve the "territorial integrity" of Indonesia. Actions carried out by the military and police are the result of explicit government policies aimed at countering West Papuan "separatism".[3] The goal is to destroy that part of the West Papuan "group" who are pro-independence: a very substantial part of the West Papuan population.

While the popular understanding of genocide is that they occur on a large scale in a short period of time, there are also "slow- motion genocides". Such is the case of West Papua, where intentional killings and other acts in violation of the *Genocide Convention* have been committed regularly by Indonesian military and police forces since 1962. In aggregate many tens, if not hundreds of thousands of West Papuan people have been killed under Indonesian rule as the direct result of explicit government policies.

In the past the Indonesian Government could block the flow of information out of West Papua and deny the scale and nature of their occupation, whereas this is much more difficult in the age of internet communications. The Papuan people have also become much more adept at organising themselves and in liaising with a growing network of international supporters.

While other countries, with the notable exception of Vanuatu, choose to pursue close ties with Indonesia over their obligations under the *Genocide Convention* to prevent genocide, civil society groups in many countries are now demanding accountability. The case of East Timor shows that government policies ultimately reflect popular sentiment and public sympathy in Australia and elsewhere.[4] That sentiment is starting to grow and

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[2] *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, (entered into force 12 January 1951) art 2.

[3] 'Separatism' is the term that the Indonesian government uses to stigmatise West Papua independence activists. It has a meaning loosely analogous to 'traitor' and makes those thus designated legitimate targets for the depredations of the Indonesian armed forces.

[4] Following a referendum in East Timor on 30 August, 1999 demonstrating overwhelming support amongst the Timorese for independence from Indonesia, pro-Indonesian militias set out on a violent rampage, razing much of East Timor with no intervention from the Indonesian army or state. Under the

embrace the West Papuan cause. The claims of genocide being made by West Papuan leaders are being heard and believed. This presents a considerable challenge for Indonesia, in particular, and the Pacific region generally.

II WEST PAPUAN CLAIMS OF GENOCIDE

A near-ubiquitous cry for help from West Papuan political, civil society, and religious leaders in the decades since Indonesia's takeover of West Papua asserts that Papuans are suffering genocide. Recently deceased West Papuan leader, Clemens Runawery, has famously labelled the demographic crisis of "missing" Papuans and a continuing settler flood into West Papua a 'slow-motion genocide'.[5] Spokesperson for the influential independence activist group, Komite Nasional Papua Barat (KNPB, or West Papua National Committee), Victor Yeimo, describes the conflict in West Papua as a national emergency constituting genocide. He declares:

> We don't have to think [an] emergency is like a bomb [or] like war. Systematically, we have…an emergency. People from outside they come and they have places [in our society], and we are dying. Genocide [is] still happening in West Papua. And we are saying that it is an emergency for us.[6]

Political leader, Benny Wenda, a West Papuan refugee living in Oxford, England, argues that there is a 'silent genocide' taking place in West Papua as the killing of thousands of West Papuans by Indonesian state actors is committed with impunity.[7] Student leader, Selpius Bobii, currently imprisoned in West Papua for his independence-related activism, describes the processes leading to the 'annihilation of indigenous Papuans' as genocidal in a 2013 opinion piece.[8] Head of the Baptist Church in West Papua, Reverend Socratez Sofyan Yoman, argues that military operations, stigmatisation and racism

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weight of pressure from an outraged Australian public, Australia led a United Nations peacekeeping mission into East Timor, despite previous Australian official assurances that it respected Indonesia's territorial integrity over East Timor.

[5] See Jim Elmslie, 'Not Just Another Disaster' (2009) 97(Jul-Sept) *Inside Indonesia* <http://www.insideindonesia.org/weekly-articles/not-just-another-disaster>.

[6] Interview with Victor Yeimo (Skype interview from Sydney to Jayapura, West Papua, 1 May 2010).

[7] Leah Hyslop, 'Benny Wenda: "There's a Silent Genocide Going on in West Papua"', *The Telegraph* (online), 28 November 2011 <http://www.telegraph.co.uk/expat/expatlife/8920491/Benny-Wenda-Theres-a-silent-genocide-going-on-in-West-Papua.html>.

[8] Selpius A Bobii, 'Annihilation of West Papuans: A Challenge and a Hope', *Scoop Independent News* (online) 26 March 2013 < http://www.scoop.co.nz/stories/HL1303/S00152/annihilation-of-indigenous-west-papuans-challenge-and-hope.htm>.

affecting West Papuans, the spread of HIV,[9] and the systematic populating of West Papua with Indonesian migrants — now a majority — all together constitute genocide.[10] Founder of the West Papuan Kingmi (indigenous Protestant) church, Benny Giay, has observed:

> The word 'genocide' is usually defined by institutions and powerful states that are perpetrators of violence. West Papuans have the right to define this word for ourselves. We have experienced a genocide during the last 40 years of Indonesian rule.[11]

In 2011, a 'theological declaration' was issued by several Papuan church denominations stating:

> The discourse of genocide has long been voiced by so many observers who are deeply concerned over the very existence of Papuans. The term genocide perhaps does not meet the criteria set forth by the UN, or other nations, or by Indonesia. But, from our own view as victims, genocide is indeed taking place through the conditioning staged by Jakarta in the forms of ideology and development policies that are against the indigenous Papuans.[12]

We contend, however, that Indonesia's actions in West Papua do meet the criteria set forth by the United Nations under the *Genocide Convention*. There is ample evidence both that acts of genocide have been committed and that the requisite intent has been present on the part of the Indonesian authorities, as we now delineate.

[9] HIV is often viewed as part of a genocidal strategy by West Papuans due to the government's apparent lack of will to curb infection rates in the province which are 40 times the Indonesian national average rate (see Susan Rees and Derrick Silove, 'Speaking Out About Human Rights and Health in West Papua' (2007) 370(9588) *The Lancet* 637.

[10] Socratez Sofyan Yoman, 'Systematic Genocide of the Indigenous People of West Papua Under Special Autonomy' (Press Release, 6 April 2004) <http://www.infopapua.org/artman/publish/printer_2183.shtml>.

[11] Eben Kirksey, *Freedom in Entangled Worlds: West Papua and the Architecture of Global Power* (Duke University Press, 2012) 225.

[12] West Papua Media Alerts, 'Papuan Churches: Declaration of the Failure of the Indonesian Government in Governing and Developing the Indigenous Peoples of Papua' (Press Release, 1 March 2011) <http://westpapuamedia.info/2011/03/01/papuan-churches-declaration-regarding-failure-of-the-indonesian-government-in-governing-and-developing-the-indigenous-peoples-of-papua/>.

III THE 'GROUP' AND 'ACT' ELEMENTS

The *Genocide Convention* is the product of a sustained campaign by lawyer,[13] Raphael Lemkin, and views genocide from a legal standpoint. It states that the crime of genocide is comprised of any of the following acts committed with the:

> '[I]ntent to destroy, in whole or in part a national, ethnical, racial or religious group:
>
> (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'.[14]

West Papuans have established themselves as a distinct national group which distinguishes itself from Indonesians along national, ethnic and religious lines. Many West Papuans have also organised themselves politically, although attempts to wipe out groups that are purely political (a reason Indonesian authorities might give to justify their actions in West Papua) are not considered genocidal under the *Genocide Convention.* Nevertheless, what is ethnic, national and political amongst West Papuan independence seekers is often inseparable — at the heart of West Papuan political identity is a sense of ethnic and national uniqueness. As other reports and sources have documented comprehensively, as will be described momentarily, at least four of the five acts specified under the *Genocide Convention* have been committed against West Papuans. We will briefly outline the instances in which the various criteria of genocide have been met.

A *Are West Papuans a 'Group'?*

The Dutch administered the island of New Guinea from the 141st meridian westward over a time period spanning 1872 to 1962, toward the end of which they prepared the West Papuan population for independent nation-statehood. Through nationalised

[13] At the time of writing Indonesia is not a party to this Convention, although Australia has ratified it.
[14] *Genocide Convention* art 2.

education, the selection of national symbols including the cherished Morning Star flag,[15] and a national anthem, and through the establishment of a parliamentary body, West Papuans, at least at an elite level, anticipated in 1961 that they would soon be a self-governing people. However, with the violent takeover by Indonesia in 1962-63, this expectation was quashed.

Under an agreement concocted by the Dutch, Americans and Indonesians, but not the West Papuans, an 'Act of Free Choice' referendum was supervised by the United Nations in 1969. The referendum was to decide whether West Papua joined Indonesia or became independent. Less than one per cent of the West Papuan population was selected by the Indonesian Government to represent the entire people and was coerced to vote for the official integration of West Papua into Indonesia. Since that time, a West Papuan resistance movement has campaigned for political independence using a variety of methods.

Indigenous West Papuans are ethnically Melanesian and most identify with the Christian faith, both identifiers which distinguish them from Asian, predominantly Muslim, Indonesians. It is sufficiently evident then that West Papuans constitute a "group" for the purposes of applying the *Genocide Convention*, which covers groups that identify along national, ethnical, racial or religious lines. We now turn to an examination of those acts committed in West Papua that, together with proof of intent, constitute the crime of genocide under the *Genocide Convention*.

B *Killings*

Contemporary estimates state that up to 500 000 West Papuans have been killed as a result of Indonesian occupation.[16] While many of these deaths have been the indirect (although not necessarily unintended) consequence of Indonesian military and government policies and practices, many have also simply been murders in the form of massacres, assassinations and killing rampages. Examples abound. For instance,

[15] The maximum penalty issued to an indigenous West Papuan for displaying the Morning Star flag is 15 years' imprisonment, a sentence given to West Papuan Filep Karma in 2004. Amnesty International, Submission to the United Nations Human Rights Committee, *108th Session of the Human Rights Committee*, 8 – 26 July 2013, 12. Amnesty International considers Karma a "priority" prisoner of conscience.
[16] Jennifer Robinson, 'UN's Chequered Record in West Papua' *Al Jazeera* (online), 21 March, 2012 <https://www.globalpolicy.org/nations-a-states/emerging-states--claims-to-autonomy-and-independence/west-papua/51421-uns-chequered-record-in-west-papua.html?itemid=id#707>.

throughout 1977, the Indonesian military strafed and bombed the highlands Akimuga people, ostensibly in retaliation for flag raisings and an attack on a pipeline and other infrastructure at the Freeport McMoRan gold and copper mine by local people, many of whom were victims of the mining operation. Reports emerged that thousands were killed or forced from their homes and left to starve.[17] The Baliem River brimmed with corpses.[18]

In 1996, several international students were taken hostage in the Southern Highlands, the kidnap coordinated by the late OPM (Free Papua Movement) leader, Kelly Kwalik, in an attempt to broadcast the West Papuans' plight to the world. The Indonesian military seized the opportunity to impersonate International Committee of the Red Cross (ICRC) workers and commandeered their helicopter which displayed the ICRC logo trusted by the West Papuan highlanders. When the aircraft came within close range of the Papuans gathered to greet it, 16 people were killed point-blank.[19] Many others died in subsequent military operations in the Mapenduma region.

On Biak Island on 6 July 1998, the Indonesian military opened fire on a crowd of West Papuans, gathered around a water tank in the downtown area, who were praying and singing for independence. Some 32 people died in the initial assault. At least 100 people were then forced onto navy vessels and dumped into the ocean, their bodies washing up for days afterwards.[20]

Following a major Papuan political gathering to declare independence on 19 October 2011 in Jayapura, the Indonesian army again began firing upon the remaining crowd with at least six people being killed.[21] Several key West Papuan political figures have also been assassinated by Indonesian police and armed forces, including West Papuan performer, anthropologist and folk hero Arnold Ap in 1984; the charismatic leader of the Papua Presidium Council, Theys Eluay, in 2001; revered OPM leader, Kelly Kwalik, in

[17] Brundige, King, Vahali, Vladeck and Yuan, above n 1, 23.
[18] Otto Ondawame, '*One People, One Soul: West Papua Nationalism and the Organisasi Papua Merdeka*' (Crawford, 2010) 102.
[19] Australian Broadcasting Corporation, 'Blood on the Cross', *Four Corners*, 12 July 1999 (Mark Davis) <http://www.abc.net.au/4corners/stories/s39706.htm>.
[20] Australian Broadcasting Corporation, 'The Biak Massacre', *Radio National 'Perspective'*, 1 August 2008 (Sue Clark) <http://www.abc.net.au/radionational/programs/perspective/the-biak-massacre/3197192>.
[21] Australian Broadcasting Corporation, 'West Papuans Attacked By Indonesian Army', *Lateline*, 27 October 2011 (Hamish Fitzsimmons) <http://www.abc.net.au/lateline/content/2011/s3350029.htm>.

2009; the deputy chair of the West Papua National Committee (KNPB), Mako Tabuni, in 2012, and others.

'Mysterious' killings of civilians by unknown assailants (possibly military or paramilitary officers) take place on a weekly basis in West Papua, and are rarely prosecuted.[22] It has also become commonplace for West Papuan civilians to be 'disappeared' by government forces and never seen again.[23] 'Killing members of the group', part (a), Article 2 of the *Genocide Convention*, is a criterion that has certainly been met in West Papua.

C *Serious Bodily and Mental Harm*

The flagrant use of torture on indigenous West Papuans by military personnel came to international attention in 2010 when a YouTube video showed two West Papuan men being tortured. Between them they had their genitals burnt, were hogtied, kicked in the head, suffocated with a plastic bag and menaced at knifepoint by Indonesian troops.[24] More videos soon emerged on social media and in the mainstream media of West Papuans being tortured by Indonesian troops.[25]

West Papua specialist Budi Hernawan has documented 431 cases of torture in West Papua from 1963-2010, drawn from 12 public documents and three personal archives. Hernawan argues that the use of torture in West Papua is intended less as a means of procuring information from victims than as a method of public humiliation and intimidation. It is a corporeal spectacle with a psychological message to those who witness it to abandon all affiliation with West Papuan nationalism.[26] Rape of West Papuan women by members of the military in West Papua is also commonplace,

[22] 'ELSHAM Reveals That Acts of Violence Have Increased in West Papua', *Bintang Papua*, (Jayapura) 20 December 2012.
[23] Brundige, King, Vahali, Vladeck and Yuan, above n 1.
[24] *Indonesia: Video of the Military Torturing Indigenous Papuans Surfaced* (uploaded to the Asian Human Rights Commission website, 2010) <http://video.ahrchk.net/>.
[25] See for example Asian Human Rights Commission, 'Guards Torture 20 Prisoners at Abepura Correctional Facility, Papua' (Press Release, 22 February 2013) <http://westpapuamedia.info/2013/02/26/ahrc-guards-torture-20-prisoners-at-the-abepura-correctional-facility-papua/>.
[26] Budi Hernawan, 'Torture in Papua: A Spectacle of Dialectics of the Abject and the Sovereign' in Peter King, Jim Elmslie and Camellia Webb-Gannon (eds), *Comprehending West Papua* (Centre for Peace and Conflict Studies, University of Sydney, 2011) 339-57.

especially in villages situated near military posts along the border with PNG, causing both bodily and mental harm to women, their families and their communities.[27]

Expressing political aspirations for independence or exercising political rights, such as organising demonstrations, has landed many West Papuans in prison. This is terrifying not only for the prisoners themselves, but for their communities who live in fear of being apprehended for similar reasons or for alleged association with activists. More than 200 West Papuans are currently political prisoners in West Papua.[28] The Indonesian military also uses psychological warfare techniques to enforce its reign of terror in West Papua. Sinister SMS messages are sent and telephone calls are placed to activists containing death threats. Military troops monitor church services and patrol villages throughout West Papua. Even indigenous social events attract a military presence. Colonisation of West Papuan minds through the use of terror tactics is a method of ensuring the colonisation of their land.[29]

D *Inflicting Life Conditions Calculated To Bring About Physical Destruction*

A recent report by West Papuan political prisoner, Selpius Bobii, outlined the conditions leading to what he contends is the gradual 'annihilation of indigenous West Papuans'.[30] The reasons he compiles, many of which have been validated by various other research projects, arguably constitute deliberate conditions inflicted by the Indonesian Government and/or military on West Papuans to bring about their physical destruction — one of the acts specified as genocidal under the *Genocide Convention*. Bobii mentions the dozens of military operations conducted in West Papua since Indonesia's invasion in 1962, which, apart from directly killing people who came into contact with the operations, have also forced local populations to flee their villages and go into hiding and, ultimately, starve to death. To quote Bobii:

> Military operations during this time have included bombings, shootings, kidnapping, murder, forced disappearances, detention and imprisonment, torture, rape, theft of

[27] Wenislaus Fatibun, 'Sepi Maria Tanpa Sang Prada' on Wenislaus Fatibun, *IndoPress.com* (August 2009) <http://indoprogress.blogspot.com.au/2010/09/sepi-maria-tanpa-sang-prada.html>.
[28] Papuans Behind Bars, *Home* (2013) <http://www.papuansbehindbars.org/>.
[29] Jim Elmslie and Camellia Webb-Gannon with Peter King, *Anatomy of an Occupation: The Indonesian Military in West Papua* (Centre for Peace and Conflict Studies, University of Sydney, 2011) <http://westpapuamediaalerts.files.wordpress.com/2011/08/anatomy-3.pdf>.
[30] Bobii, above n 7.

> domestic livestock, destruction of crops/vegetable gardens (which are people's source of survival), burning of homes to the ground, burning of churches, killing by poisoning of food and water, and others. There have been killings carried out in sadistic ways such as victims whilst still alive, having their body parts chopped off with a short machete/chopping knife or axe; or victims being sliced up with razors or knives, then the open flesh being filled with chilli water; males and females being forced to have sex before their torturers then the male genitals being cut off and the their wives forced to eat them, following which they are both killed; being killed by being suspended (strung up) until dead; being thrown alive into deep chasms where there is no way out; being placed tied alive into a sack then thrown into the sea or a lake or river; being buried in the earth alive; iron bars being heated in a fire then inserted into the anus, the mouth or into the female internally through the genitals.[31]

Bobii also cites a belief commonly held by West Papuans that the introduction of HIV to West Papua is part of a genocidal strategy. Recent statistics from a Dutch study in West Papua on infant mortality rates are telling of structural discrimination against West Papuans. Indigenous West Papuans have an infant mortality rate of 18.4 per cent, whilst the infant mortality rate among the non-indigenous population in Papua is 3.6 per cent.[32] The study claims that the shocking health conditions faced by West Papuan children constitute a violation by the Indonesian Government of the Convention on the Rights of the Child.

E *Forcibly Transferring Children of the Group to Another Group*

A report published in the Sydney Morning Herald in May 2013 by Fairfax's Indonesia Correspondent, Michael Bachelard, detailed an organised operation in the trafficking of West Papuan children to hard-line Islamic schools in Jakarta.[33] The children have been taken from vulnerable families in West Papua by agents who either lie to destitute parents about the education their children will receive or who do not gain the consent of the children's parents or guardians. The children's names are changed, they are forced to imbibe a religion that is not their own, and they are kept under lock and key in harsh conditions. Many of the families never hear from their children again. Whether the

[31] Ibid.
[32] Stella Peters and Wouter Bronsgeets, 'Extremely High Infant Mortality in West Papua Result of Discrimination' (Press Statement, 12 November 2012) <http://www.sdsp.nl/>.
[33] Michael Bachelard, 'They're Taking Our Kids', *The Sydney Morning Herald* (online), 4 May 2012 <http://www.smh.com.au/lifestyle/theyre-taking-our-kids-20130429-2inhf.html>.

transferring of West Papuan children is part of a current and explicit government scheme could not be confirmed by Bachelard, although he did state that such actions are encouraged by the Religious Affairs Ministry. In any case, genocidal intent need not be explicit – implied intent together with genocidal acts can comprise sufficient evidence of the crime of genocide as will be discussed below. That such an act is in keeping with longer term Indonesian Government planning is evident in Bachelard's recollection of Suharto's 1969 proposal to transfer '200 000 children of the "backward and primitive Papuans, still living in the stone age" to Java for education'. The separation of children from their families has no justification under international law, whether for better education or for 're-education', as Bachelard points out.[34]

IV INTENT ELEMENT

Several academic articles and reports on the topic of genocide in West Papua have examined the issue of intent, that is, whether there is evidence that acts of killing, acts causing mental and physical harm, conditions calculated to bring about the physical destruction of West Papuans, and the forcible removing of children have occurred in West Papua and whether there is an ultimate intention to destroy the West Papuan nation in whole or in part. Proving intent is crucial to establishing that genocide has taken place. The key sentence in the *Genocide Convention* in this respect is — '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'.[35]

Intent therefore is the ingredient that changes the 'following acts' referred to in the *Genocide Convention* from being crimes in their own right, to constituting the crime of genocide. As signatories of the *Genocide Convention* have agreed that they will abide by it and not commit genocide, it follows that governments engaged in genocide will seek to deny its existence and suppress or hide evidence to the contrary.

In *Genocide in West Papua?,*[36] John Wing and Peter King report in graphic detail the multitude of violent acts inflicted on the West Papuan people by the Indonesian security

[34] Ibid.
[35] *Genocide Convention,* above n 2.
[36] John Wing and Peter King, *Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the West Papuan People* (Centre for Peace and Conflict Studies, University of Sydney, 2005). <http://sydney.edu.au/arts/peace_conflict/docs/WestPapuaGenocideRpt05.pdf>.

apparatus. They do not however make a sustained argument for Indonesian 'intent to destroy', and therefore leave open the question of whether the decimation of West Papua's population amounts to genocide under the *Genocide Convention*.

In Tracey Banivanua-Mar's 2008 article, '"A Thousand Miles of Cannibal Land": Imagining Away Genocide in the Re-colonization of West Papua', the author also shies away from making a definitive legal claim about whether genocide has occurred. While Banivanua-Mar holds that 'Colonial genocides are frequently passive in their aggression, and state actions of neglect, omission, silence and inaction accumulate to knowingly inflict destruction on indigenous peoples',[37] she contends that the legal debate is a 'potentially diversionary' one which, she holds, undermines the experiences of the victims of genocide.[38]

The 2004 Yale Law School report, *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control*,[39] has been the closest inquiry into the issue of genocide in West Papua to date. As has been indicated above, the report clearly established the West Papuan people as a distinct group under the *Genocide Convention*. Furthermore it presented an extensive array of acts that, it said, constituted genocidal behaviour as listed in the *Genocide Convention*. However, the report was somewhat inconclusive on 'intent'.

The authors of the Yale report grappled with this and failed to produce a clear answer. In their conclusion they state:

> In the final analysis, whether the sum of acts committed by the Indonesians against the West Papuans rises to the level of genocide turns largely on the question of whether these acts were committed with the requisite *mens rea* or intent to destroy the West Papuan group… In the West Papuan case, any such inference necessarily remains tentative given the difficulties in procuring comprehensive qualitative or quantitative data about human rights abuses in West Papua, past and present.[40]

Even given this rather serious caveat the report's conclusion went on to find:

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[37] Tracey Banivanua-Mar, '"One Thousand Miles of Cannibal Lands": Imagining Away Genocide in the Re-Colonization of West Papua' (2008) 10(4) *The Journal of Genocide Research* 587.
[38] Ibid 586.
[39] Brundige, King, Vahali, Vladeck and Yuan, above n 1.
[40] Ibid 75.

> However, the historical and contemporary evidence set out above strongly suggests that the Indonesian Government has committed proscribed acts with the intent to destroy the West Papuans as such, in violation of the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* and the customary law prohibition this convention embodies.[41]

In their report, the authors found that intent might be inferred from the context of the act itself, but qualified that by saying:

> In the case of West Papua, inferring intent from the acts seems to be a difficult proposition, because the relevant acts, on their own, do not clearly suggest the kind of systematic campaign that the text of the *Genocide Convention* explicitly requires.[42]

Perhaps the report's most concrete statement is:

> Without further research, it may not be possible to determine conclusively whether the acts perpetrated by the Indonesian Government against the West Papuans were committed with the intent to destroy the West Papua group, as such.[43]

We find this unsatisfactory and suggest that these acts have been intentional from the very beginning of Indonesian rule in October 1962-63, up until the present. We contend that West Papua has been under a form of military occupation since 1962 in which most government acts and policies have been guided by an implicit or explicit aim: to intentionally destroy those West Papuans who have opposed Indonesian rule. This means that, since even the Indonesian Government acknowledges that large numbers of West Papuans oppose Indonesian control and, in fact, yearn for and promote an independent state, genocidal policies have been pursued in West Papua for over 50 years, with intent. Genocide has been committed to destroy that "part" of the West Papuan "group" or people seeking independence, by any measure a substantial proportion of the West Papuan population.

[41] Ibid.
[42] Ibid 71.
[43] Ibid 74.

A *The Nature of Indonesian Rule Since 1962*

As has been written elsewhere a rapid demographic transition has taken place whereby the Melanesians now make up slightly less than half the population from being over 96 per cent as recently as 1971.[44] A new generation of better educated and internet literate independence activists are pushing their dreams for freedom in a way that the Indonesian state finds hard to counter. The international community is starting to sit up and take notice of the murderous conflict that has gone on unnoticed for far too long. Talks about negotiations between Jakarta and West Papuan leaders have been quietly, but firmly, shelved by Jakarta over the past couple of years. So the issue of whether or not genocide has occurred is no moot point: on the contrary it is perhaps the most pressing contemporary issue. If the Papuans are suffering genocide it is an international obligation of all the signatories of the *Genocide Convention* to raise this matter in the United Nations.

The United Nations Temporary Executive Authority (UNTEA) took over administrative control of West Papua on 1 October 1962 with a force of 1537 Muslim troops from Pakistan.[45] The 1500-odd Indonesian paratroopers who had already entered 'West Irian' as a putative invasion force were allowed to stay and help police the transfer. In effect Indonesian forces immediately started to take control and establish a military administration, which has continued substantially unchanged to the present day. The attitude of the Indonesian forces was to treat the West Papuan population as the enemy — they had sided with the Dutch against Indonesia; many Indonesian troops had been captured or killed by Papuans. The Papuans were also racially different from the Indonesians and that difference is and was exacerbated by the religious divide: Indonesian Muslims versus Christian West Papuans. Deep-seated conflicting mindsets persist to this day.

Since 1962 there have been many distinct military operations, as mentioned above, but they have all operated within a broad framework aimed at tightly repressing West Papuans' political freedom with the explicit goal of thwarting any activities promoting independence. Overlying this policy base has been the various economic and social goals and opportunities that the Indonesian state and actors have pursued throughout their

[44] Elmslie, above n 5.
[45] Jim Elmslie, *Irian Jaya Under the Gun* (University of Hawaii Press, 2002) 32.

occupation — promoting a demographic transition by the large-scale immigration of non-Papuan settlers; providing security/extorting revenue through 'guarding' mining companies such as Freeport, and controlling all aspects of the economy, both legitimate (for instance the forestry industry) and illegitimate (such as prostitution and selling alcohol). But the main focus of Indonesian Government policy has been the intentional suppression of Papua pro-independence activities and activists.

This has been a concerted policy. A vast military and police network, both overt and clandestine, has monitored and controlled most aspects of Papuan life. This was the subject of a University of Sydney report in 2011, *Anatomy of an Occupation: the Indonesian Military in West Papua,* which clearly shows the mechanics of the Indonesian occupation.[46] At times this has entailed military campaigns against specific districts in the form of 'sweeping' operations: searching for and killing 'separatists' in remote villages, burning houses, destroying gardens and harassing village people viewed as 'pro-separatist'. As most Papuan villagers are pro-independence (a view that even the Indonesian military hold), they are regarded by the Indonesian state and armed forces as the 'enemy' and therefore legitimate targets. There is continuous surveillance, monitoring and harassment of Papuan activists.

None of the perpetrators of these crimes are dealt with by the judicial system – most have enjoyed impunity (although Theys Eluay's killers did face a military court and received light sentences). This confirms that there is a military occupation under way in West Papua, hence civilian courts have a limited role in political justice. Soldiers engaged in atrocities and crimes are just doing their duty. They are not operating as rogue forces but the loyal servants of a military following a clear policy: to crush West Papuan nationalism and resistance.

The policy is evident in select statements issued by Indonesian military and state leaders since the occupation of West Papua. In the lead-up to the 1969 Act of Free Choice, Brigadier-General Ali Murtopo, who was in charge of ensuring the Act 'succeeded', threatened that if Papuans did not vote for integration with Indonesia then their 'accursed tongues' would be cut out. Additionally, he told the Papuans that Indonesia was not interested in them, but in their land: if they wanted independence, they had

[46] Elmslie and Webb-Gannon with King, above n 25.

better look for another Pacific island to move to, or even consider the Moon![47] In 1985, Indonesia's then Transmigration Minister stated the government's intention to destroy ethnic groups and nations within Indonesia:

> By way of transmigration, we will try to realise what has been pledged, to integrate all the ethnic groups into one nation, the Indonesian nation … The different ethnic groups will in the long run disappear because of integration … and there will be one kind of man.[48]

Former Indonesian President, Megawati Sukarnoputri, instructed her armed forces in 2001 in an Army Day speech to 'carry out your duties and responsibilities in the best possible manner without having to worry about [accusations of] human rights abuses'.[49] And when Theys Eluay was murdered by Kopassus soldiers in 2001, his killers were hailed as national "heroes" by the army commander-in-chief for upholding the "territorial integrity" of Indonesia.[50] Statements such as these do tend to demonstrate genocidal intent on the part of Indonesia's top-tier leaders.

As outlined above, the work of Budi Hernawan reveals the horrific extremes to which the state will go in its repression. Innocent people are tortured in public — not for information, but as an example of state power and control. That part of the Papuan body politic who harbour a desire for an independent West Papua is attacked as the enemy, yet the feeling is so pervasive that it is evident in most West Papuan people.

Far from being difficult to prove intent, it seems hard to escape that conclusion. What else could it be? It is not rogue soldiers running amok and acting outside of command control. It is not a case of settler — Papuan conflict: there is in fact very little direct violence perpetrated by settlers on Papuans (although settlers have been killed by Papuans). This last point is important in two aspects: firstly it shows just how well controlled the general population is; there is little petty crime and internecine violence as such. The pervasive nature of the occupation, which includes military and police check points throughout the country and a highly visible armed presence, underscores

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[47] Carmel Budiardjo and Soei Liong Liem, *West Papua: The Obliteration of a People* (TAPOL, 1998) 25.
[48] Quoted in Letter, 'Open Letter to Mr Clausen, Retiring President of the World Bank, and Mr Conable, President Elect' (1986) 16 (2/3) *The Ecologist* 58.
[49] Marwaan Macan-Markar, 'Politics Indonesia: Activists Hit Megawati on Aceh', *Inter Press Service* (online), 3 January 2002 <http://www.ipsnews.net/2002/01/politics-indonesia-activists-hit-megawati-on-aceh/>.
[50] Benny Giay, 'The Role of the Church in West Papua' in Gerrie ter Har and James J Busuttil (eds), *Bridge or Barrier: Religion, Violence and Visions for Peace* (Institute of Social Studies, Hague, Netherlands, 2001) 213.

the fact that West Papua is far from out of control, which also indicates that actions undertaken by the security forces are not haphazard or erratic but are planned and intentional.

The low level of settler-Papuan violence indicates that the dynamic of the genocide taking place in West Papua is completely different to the mass killings that occurred in Australia, with which it is often compared. While it is true that Australian Aborigines suffered genocidal acts, the perpetrators of these acts were generally white settlers occupying and claiming traditional lands. Driven by economic motives and inflamed by a fear of Aboriginal retaliation, white settlers ignored government policy and killed large numbers of Aborigines, driving survivors into the "protective" sanctuaries of Christian missions, cattle stations and the slum camps of outback towns. Claims of genocide in Australia have been generally dismissed because there has never been evidence that the killings were part of intentional government policy. This is not the case in West Papua. The settlers have not been the ones killing the Papuans; Papuans have been killed by Indonesian soldiers and police following orders. Their actions and the instructions they have followed have been *intentional.*

Doubtless some will disagree with this analysis. They will dispute our characterisation of West Papua as an occupied country. They will be offended at the use of the term "genocide". For them West Papua is a restive province, with a low level insurgency carried out by a few poorly armed separatists. Yet genocide has a clear legal definition in the *Genocide Convention*. It constitutes one or more acts described in the *Genocide Convention*, carried out with intent. The acts are undeniable; we have put forward a case that the intent is also undeniable.

The legal responsibility of signatories of the *Genocide Convention* is explicit — 'the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish'.[51] Signatories such as the United States, Britain and Australia, are legally duty bound to examine these claims. Yet their own national interests are served best by ignoring them and continuing to have close trade and strategic partnerships with Indonesia. This is hardly surprising given the *real politik* nature of international

[51] *Genocide Convention*, n 2, art 1.

relations. Yet the trends underway suggest that the situation in West Papua will continue to deteriorate and draw foreign states into its conflict. In particular, Australia, a quasi military ally of Indonesia through the 2006 Lombok Treaty (which was itself based on suppressing international support for West Papua), will find itself in an increasingly awkward position: a self proclaimed promoter of human rights, yet a supporting actor in a military occupation entailing crimes against humanity and genocide.

B *The Trends Underway in West Papua*

The broad picture of West Papua is one where the trends of past decades will continue, but also where recently emerged trends will play an ever-bigger role. These are likely to exacerbate the conflict and push it further onto the international stage, requiring some delicate diplomatic manoeuvring for Indonesia's erstwhile foreign friends and, most particularly, for Indonesia itself.

Long-term trends such as the influx of non-Papuan settlers will continue, further minoritising the Papuans. However settlers tend to stay in the urban centres and heavily populated coastal regions. This means that the mountainous interior of the country will remain predominantly Melanesian, while many coastal and urban areas become predominantly populated by Asian, Muslim non-Papuan settlers. Combined with the trend of increasing militarisation — new military bases and more troops — this is a recipe for heightened armed conflict, human rights abuses and continued genocide.

Recent trends include the increasingly strident claims of West Papuan leaders that they are suffering a genocidal occupation, with many demanding independence. Violent actions taken against these individuals and groups are being recorded and disseminated to an international (and national) audience as never before. Smart phones, YouTube, and the internet generally, allow information to be easily and extensively broadcast. Images of West Papuans being tortured receive wide attention; statements by Papuans are now heard; the Indonesian Government is no longer able to prevent news from leaving West Papua. As the amount and quality of information emerging from West Papua grows, so too does the size and strength of the international community responding to it.

The creation of International Lawyers for West Papua and International Parliamentarians for West Papua has greatly bolstered the profile of the conflict, and not

just in the Western world. Pacific nations such as Papua New Guinea and Fiji are joining long-time supporter, Vanuatu, in having prominent individuals take up the cause of West Papua, and taking it to such regional forums as the Melanesian Spearhead Group (MSG). Indeed the issue helped bring down the Vanuatu Prime Minister, Sato Kilman, recently when his government was seen as becoming too close to the Indonesians, including by giving them permanent observer status in the MSG. This is perhaps the most dramatic impact that the West Papuan issue has had on another country's domestic affairs but is likely not the last. Politics in PNG, which shares an 800-kilometre border with West Papua (and therefore Indonesia), is sure to become more fraught since this explosive issue has finally emerged onto the domestic stage. Expatriate West Papuan spokespeople and independence leaders, such as Benny Wenda, John Otto Ondawame and Rex Rumakiek, are also attracting much more attention and authority, both inside West Papua and internationally, than previously, and they are playing to the now sympathetic ear of the international media.

V CONCLUSION

While the conflict on the ground grows and repression of West Papuan 'separatism' increases, the capacity to broadcast news of atrocities, public protests and leaders' statements increases exponentially. This means that more attention is going to be focused on what is actually happening in West Papua, and how the conflict might be resolved or mitigated. The issue of genocide is front and centre in all of this. If Indonesia has only been able to hold West Papua within the Republic by engaging in genocidal policies, what does that bode for the future? It certainly implies that if Indonesia were to loosen its rule in West Papua there would, indeed, be more widespread calls and demonstrations for independence. Yet is the international community, given its obligation to prevent genocide, really prepared to ignore the brutality of Indonesian repression in West Papua in return for good relations with Jakarta? Governments may be able to rationalise genocide in such a manner, but the case of East Timor showed that the public ultimately will not. And is Indonesia really going to allow its international image to be dominated by another bloody occupation, as was the case with East Timor?

These are questions that go to the heart of Indonesia's self-perception as a country, a nation made up of the disparate parts of the former Dutch East Indies empire. It is a

post-colonial dilemma which is bitterly cruel for both the Indonesians and, even more so, the West Papuans. Indonesia faces the diabolically difficult dilemma to either engage in serious negotiation with the West Papuans to try and devise a form of association that will address West Papuan grievances and aspirations and make them *want* to stay in the Indonesian Republic, or to lose international support for their claims of sovereignty over West Papua. There is no argument that justifies genocide — not even territorial integrity.

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