



Introduction

ANDREW BYRNES AND GABRIELLE SIMM

From 10 to 13 November 2015, in the seventeenth-century Nieuwe Kerk (New Church) in The Hague, an international people's tribunal took place to examine the suppression of the Indonesian Communist Party and those presumed to be associated with it that was carried out by the Sukarno government in 1967.¹ During this crackdown, tens and probably hundreds of thousands of people were killed and many more were subjected to enslavement, imprisonment, torture, sexual violence, persecution and forced disappearances.

This tribunal, held fifty years after the occurrence of events that it examined, was a response to the continuing failure of the Indonesian state over that period to fully acknowledge the systematic violations of human rights that had taken place. The violations had been the subject of a 2012 report by the Indonesian National Human Rights Commission (Komnas HAM) as well as of other national and international examinations. The Indonesian government had failed to provide justice to survivors and the families of those who had not survived. The Final Report adopted by the judges found that the allegations of systematic violations of human rights amounting to crimes against humanity had been established and that the Indonesian government should take concrete steps to acknowledge the wrongs, correct the historical record and ensure justice and reparation to survivors and the families of victims.²

This tribunal, significant in itself, was only one of several major international peoples' tribunals that have been held or instituted in the last few years. Others have included an international people's tribunal

¹ International People's Tribunal 1965, www.tribunal1965.org/en/. See Lena Bjurström, 'Indonésie: juger l'histoire' (9 November 2015) 1398 (1) *Politis* 21–22, www.politis.fr/Indonesie-juger-l-histoire,33057.html, and Wieringa, Chapter 5 in this volume.

² *Final Report of the IPT 1965: Findings and Documents of the IPT 1965*, 20 July 2016, <http://www.tribunal1965.org/en/tribunal-1965/tribunal-report/>.

into alleged crimes against the Filipino people³ and into systematic violations committed in Iran in the 1980s,⁴ a number of tribunals engaging with historical and current Israel-Palestine issues,⁵ issues relating to the 2003 Iraq war,⁶ on the Canadian mining industry in Latin America,⁷ international tribunals for nature,⁸ on water and environmental rights in Latin America,⁹ on minimum wage for garment workers in Asia,¹⁰ violations of labour rights,¹¹ violations of women's rights,¹² the situation of human rights in Mexico and Central America,¹³ the role of

³ The International People's Tribunal (IPT) on Crimes against the Filipino People by Pres. Benigno S. Aquino III and the US Government represented by Pres. Barack Obama, Washington, DC, 16–18 July 2015, <http://internationalpeopletribunal.org/>.

⁴ Payam Akhavan, 'Is grassroots justice a viable alternative to impunity? The case of the Iran People's Tribunal' (2017) 39(1) *Human Rights Quarterly* 73.

⁵ Russell Tribunal on Palestine (2010–2014) [RtoP], www.russelltribunalonpalestine.com/en/; Kuala Lumpur War Crimes Tribunal Hearing on Palestine (2012–2014), www.legal-tools.org/en/browse/ltfolder/0_28267/ (the official website of the KL War Crimes Tribunal is no longer available). See also Frank Barat and Daniel Machover, 'The Russell Tribunal on Palestine' in Chantal Meloni and Gianni Tognoni (eds.), *Is There a Court for Gaza?: A Test Bench for International Justice* (T. M. C. Asser Press, 2012) 527–43. For a critical view of the RtoP, see NGO Monitor, 'Russell Tribunal on Palestine', 3 October 2012, www.ngo-monitor.org/article/russell_tribunal_on_palestine. The NGO Monitor's work critiquing the work of the Russell Tribunal on Palestine is part of its overall work of responding to actions taken by state, UN organs and groups and individuals in relation to alleged human rights committed by Israel, in particular the use of 'lawfare' by some of these bodies.

⁶ See Müge Gürsöy Sökmen (ed.), *World Tribunal on Iraq: Making the Case against War* (Olive Branch Press, 2008); Kuala Lumpur War Crimes Tribunal, *Chief Prosecutor of the Kuala Lumpur War Crimes Commission v. George W. Bush and Anthony L. Blair*, Judgment, 22 November 2011, www.globalresearch.ca/chief-prosecutor-of-the-kuala-lumpur-war-crimes-commission-v-george-w-bush-anthony-l-blair/27821.

⁷ Permanent Peoples' Tribunal, *Session on the Canadian Mining Industry in Latin America*, 29 May–1 June 2014, www.tppcanada.org/a-propos-du-tpp/session-canada.

⁸ International Rights of Nature Tribunal, www.therightsofnature.org/rights-of-nature-tribunal/.

⁹ Tribunal Latinoamericano del Agua (Latin American Water Tribunal), 'Ciudad de Guatemala, 2015', <http://tragua.com/audiencias/ciudad-de-guatemala-2015/> (7 cases throughout Latin America).

¹⁰ National People's Tribunals on Living Wage for Garment Workers in Asia. See Matthew Burnett-Stuart, 'Transnational Advocacy Networks as Counter Hegemonic Actors: The Asia Floor Wage Alliance and the Living Wage People's Tribunals', www.academia.edu/7276015/The_Asia_Floor_Wage_Alliance_and_the_Living_Wage_Peoples_Tribunals.

¹¹ Tribunal Internacional de Libertad Sindical (International Tribunal on Trade Union Freedoms), www.tribunaldeibertadsindical.blogspot.no/.

¹² www.hartford-hwp.com/archives/51/002.html.

¹³ Tribunal Hearings on the Human Rights Crisis in Mexico and Central America International Tribunal of Conscience of Peoples in Movement, <http://internationaltribunalofconscience.org/>.

transnational corporations and international organisations in the commission of human rights violations¹⁴ and the human rights impacts of the global trade regime¹⁵ and of international financial institutions.

While the number of such tribunals and the variety of topics they address may have increased over the years, the phenomenon of the international peoples' tribunal is not a recent one.¹⁶ In this book we bring together a series of essays examining the phenomenon of international peoples' tribunals, their history and political justification, the types of issues with which they engage, the criticisms commonly made of them and the different roles that they can perform. Our focus is on international peoples' tribunals rather than on domestic peoples' tribunals.¹⁷ Peoples' tribunals are diverse in their subjects and forms; we are interested in those that place the forms of legal process, and the standards of international law, at the centre of their activities. For our purposes, an international peoples' tribunal is a process initiated by civil society that involves the presentation to a body of eminent persons of evidence and arguments that seek to establish whether a state, international organisation,

¹⁴ Permanent Peoples' Tribunal, *The European Union and Transnational Corporations in Latin America: Policies, Instruments and Actors Complicit in Violations of the Peoples' Rights*, Deliberating Session, Madrid, 14–17 May 2010, the Judgement (2010); Permanent Peoples' Tribunal, *Session on Agrochemical Transnational Corporations*, Bangalore, 3–6 December 2011, Verdict.

¹⁵ Global People's Tribunal on WTO and Free Trade Agreements (2013), www.popularresistance.org/global-peoples-tribunal-on-wto-free-trade-agreements/.

¹⁶ See generally Arthur Jay Klinghoffer and Judith Apter Klinghoffer, *International Citizens' Tribunals: Mobilising Public Opinion to Advance Human Rights* (New York: Palgrave, 2002). In his 1992 article on the subject, Blaser lists dozens of tribunals held since the late 1960s: Arthur Blaser, 'How to advance human rights without really trying: An analysis of nongovernmental tribunals' (1992) 14 *Human Rights Quarterly* 339, 366–70.

¹⁷ There are many examples of peoples' tribunals at the national level. Standing tribunals include the Indian People's Tribunal on Environment and Human Rights, www.iptindia.org/. There are also many instances of ad hoc peoples' tribunals inquiring into one situation or series of events: see, e.g., farmers' tribunals in India (Muzaffar Assadi, 'Seed Tribunal: Interrogating farmers' suicides' (21 October–3 November, 2000) 35 (43/44) *Economic and Political Weekly* 3808–10; the New Zealand People's Inquiry into the Impacts and Effects of Aerial Spraying Pesticide over Urban Areas of Auckland, 2006, <https://web.archive.org/web/20130214091720/http://www.peoplesinquiry.co.nz/>; El Tribunal de Conciencia contra la Violencia Sexual hacia las Mujeres en Guatemala durante del Conflicto Armado Interno [The Tribunal of Conscience on Sexual Violence against Women in Guatemala during the Internal Armed Conflict], 2010, www.cicig.org/index.php?page=tribunal-de-conciencia-contra-la-violencia-sexual-hacia-las-mujeres. See Alison Crosby and M. Brinton Lykes, 'Mayan women survivors speak: The gendered relations of truth telling in postwar Guatemala' (2011) 5(3) *International Journal of Transitional Justice* 456.

corporations or, less frequently, specified individuals have committed breaches of international law or of another body of law or norms. It may evaluate the adequacy of existing international law, institutions or structures with broader notions of law or justice including 'peoples' law'.

While individual peoples' tribunals have been examined – and the last decade has seen a burgeoning literature – there has been only limited attention to the phenomenon as a whole. We seek to provide a framework for understanding the significance of these institutions within a broader context of international advocacy by civil society groups and to explore the common elements, as well as the diversity, of different peoples' tribunals.

The first part of the book, setting out the history and theory of peoples' tribunals, opens with a chapter by the editors in which we provide a *tour d'horizon* of the phenomenon of international peoples' tribunals from their emergence on the stage in the late 1960s to the present. We explore the nature, composition, normative frameworks, legitimacy, impact and special contributions that peoples' tribunals have made to the development of a just international order and the implementation of human rights guarantees.

In Chapter 2, Gianni Tognoni, Secretary-General of the Permanent Peoples' Tribunal (PPT), describes and analyses its role. This institution has been influential, not just in its own work of holding more than forty tribunals since its founding in the late 1970s, but in providing a model and support for many other peoples' tribunals. Tognoni explores the origins of the PPT, tracing its history from the First Russell Tribunal and its conceptual foundation in the rights of peoples. The chapter examines the different types of cases that the PPT has examined and shows its evolution as a body that engages with a wide range of issues, including international power structures and the role of international law in resisting or reinforcing them.

In Part 2 the focus moves to the role of peoples' tribunals in relation to international criminal law and violence against women. In Chapter 3 Gabrielle Simm compares peoples' tribunals with women's courts, focusing on international crimes of sexual violence. International criminal law has been the focus of much feminist activism and contestation to the extent that it has been claimed that 'feminism rules'. At the same time, unofficial or peoples' tribunals and women's courts – civil society initiatives – continue to proliferate. This chapter examines the treatment of international crimes of sexual violence by peoples' tribunals through a focus on the former Yugoslavia. It explores two key questions. First, what do peoples' tribunals offer to victim-survivors of international crimes of

sexual violence that is lacking in official courts? Second, to what extent do 'mainstream' peoples' tribunals suffer from the same defects as official courts, thereby rendering 'women's tribunals' necessary? In addressing these questions, she analyses the Berne and Barcelona hearings of the Permanent Peoples' Tribunal and the Women's Court feminist approach to justice against the backdrop of the International Criminal Tribunal for the former Yugoslavia.

In Chapter 4 Ustinia Dolgopol explores these and related issues in her revisiting of the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery held in Tokyo in 2000. This is one of the most important peoples' tribunals of the last twenty years and one at which Dolgopol was a prosecutor. Better known as the Tokyo Women's Tribunal, it resulted from civil society's perceptions about the shortcomings of the state system and a desire to influence how the international community understands state violence. For many of the participants, law was seen as a way of presenting their efforts as 'neutral' – that is, not based on political ideology. However, law is not neutral. Its power to exclude those not conversant with its language or rituals can exclude the very people for whom such a tribunal is created. This chapter addresses ethical issues about the use of law for organisers of and participants in people's tribunals. Ultimately peoples' tribunals cannot provide full accountability. In this context, the chapter raises questions about the extent to which organisers are accountable and whether they sufficiently acknowledge the limits of what peoples' tribunals can offer those in whose name they are established.

In Chapter 5 Saskia Wieringa outlines the establishment of the International Peoples' Tribunal on 1965 crimes against humanity in Indonesia. The surviving victims are haunted by stigma and the perpetrators live with impunity. The government of Indonesia has never taken any judicial steps to deal with this period and it seems unlikely to do so in the near future. The chapter discusses the author's role in organising the tribunal and assesses the significance of the tribunal both inside and outside Indonesia. The chapter also deals with some ethical and practical concerns and concludes with reflections on this tribunal in the light of other peoples' tribunals.

Part 3 addresses how peoples' tribunals can contribute to the development of a more participatory, fairer international law. In Chapter 6 Fraudatario and Tognoni expand on the discussion in Chapter 2 by outlining the way in which the PPT has sought to involve peoples in the critique and development of international law. Peoples' tribunals

document and judge gaps in international law, a process that underlines the centrality of peoples as alternative subjects capable of thinking of themselves as judging the delays, absences and ambiguity of international law. This chapter presents the history and experience of the PPT as an example of an experimental laboratory of the possible paths that are increasingly necessary when aiming for a law for and by peoples. It explains how the Tribunal formulates a framework of rules that see peoples as subjects and holders of rights and not just as victims of breaches unpunished by an international law that has abdicated its role as an effective instrument for promoting and protecting the self-determination and dignity of peoples.

In Chapter 7 Sara Dehm examines Tribunal 12, an international peoples' tribunal held in Stockholm in 2012 that explored the liability of 'Europe' for the systematic violations of the rights and dignity of refugees, asylum seekers and migrants. The Tribunal, as an internationalised articulation of migrant justice, adopted a legal and aesthetic framework in order to put 'Europe' on trial. This chapter unpacks the Tribunal 12 project as an international civil society initiative ambivalently situated within a legacy of peoples' tribunals and their entanglement with international law and institutions. The Tribunal differed significantly from many other international peoples' tribunals in that it did not hear any witness testimonies from migrants themselves. Nonetheless the Tribunal 12 project can be read as contributing to a 'popular' form of international law, that is, a form of law belonging to the people.

In Chapter 8 Rosalba Icaza problematises the work of peoples' tribunals, taking as her case study the PPT and the struggle of indigenous people in Mexico. The chapter investigates the potential of the PPT to contribute to epistemic justice in Mexico by focusing on indigenous people communities' long-term struggle for legal pluralism and autonomy. It analyses the coloniality of international human rights law operating in non-governmental mechanisms such as the PPT, a perspective that has remained absent in critical international and global studies. In particular, the article argues that the PPT in Mexico overlaps with Eurocentric modes of legal production but that it nonetheless has the potential to contribute, in a relevant but fragile way, to epistemic justice.

In Chapter 9 Nicola Edwards analyses a tribunal held in Sydney in 2013 that sought to bring about accountability for a massacre that took place on 6 July 1998 on the island of Biak, in the disputed Indonesian region of West Papua. This chapter evaluates the importance of the Biak Tribunal in the broader context of scholarly activism about human rights

violations in West Papua. It addresses the argument that West Papuans have been denied the right to self-determination and the related accusations that Indonesia is committing genocide in the region. It assesses the contribution of this tribunal to the broader struggle for human rights in West Papua.

In Chapter 10 Belén Olmos Giupponi examines another major international repeat player in the field of peoples' tribunals, the Latin American Water Tribunal (LAWT). This chapter analyses the role played by the LAWT in resolving environmental disputes over water resources. Since its inception in 1998, the LAWT has emerged as a non-governmental body with a multidisciplinary composition and a mandate based on both formal and informal sources of law that holds public hearings to address water-related complaints. Whereas the traditional model of interstate dispute settlement offers only limited possibilities of redress to non-state actors (mainly individuals and groups), the LAWT provides them with the opportunity to present their demands before an environmental justice forum.

In Chapter 11 the editors draw together the major themes of the essays and reflect on the future of peoples' tribunals. The chapter engages with three substantive questions. First, to what extent are the peoples' tribunals discussed here representative of international peoples' tribunals more generally? Second, what is the relationship between peoples' tribunals, social movements and international law? Third, what impact do peoples' tribunals have on the implementation and development of international law?

We conclude that, despite all the criticism of the lack of legitimacy of peoples' tribunals, they continue to offer a valuable means of social activism for those whose rights have been violated and who, despite the proliferation of formal institutions and mechanisms for redress, still frequently fail to achieve recognition of and redress for violations of their rights. The possibilities and the limitations of this form of juridically oriented activism are illustrated by the case studies presented in this book.