

A highly political verdict: Indonesian court convicts Islamic cleric

John Roberts
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In what was clearly a political decision, the Central Jakarta District Court last week convicted prominent Indonesian Islamic extremist cleric Abu Bakar Bashir of treason and immigration violations and sentenced him to a four-year jail term. But it failed to find him guilty of the primary charges related to terrorist plots allegedly carried out by Jemaah Islamiah (JI)—the organisation accused of the Bali bombings in October 2002.

The verdict reflects both the flimsy case against Bashir and the competing political pressures that were brought to bear on the judges. The court was under intense pressure from the US, Australia, Malaysia and Singapore to prove Indonesia's commitment to the "war on terrorism" by convicting Bashir. At the same time, however, it was conscious of concerns in ruling circles over the political consequences inside Indonesia of a guilty verdict.

While the verdict has been extensively commented on the international media, there has been scant interest in the legal basis for the decision. Nowhere in the coverage is there a clear explanation of the charges, the laws under which they were brought or the grounds on which the charges were either sustained or dismissed. Even from what has been reported, however, the court findings were fraught with internal contradictions.

The five-judge panel found that the main accusations of Bashir's involvement in terrorism were unproven. The court stated that there was insufficient evidence to demonstrate that Bashir was JI's leader, that he was involved in plotting to assassinate Indonesian President Megawati Sukarnoputri or that he was linked to a series of terrorist church bombings in Indonesia on Christmas Day, 2000.

By dismissing these prosecution contentions, the judges effectively discounted the evidence from a number of alleged JI members imprisoned in Malaysia and Singapore. None of these witnesses was present in court. Instead they gave their testimony via video conferencing from the respective countries in which they are being detained indefinitely without trial. Bashir's lawyers walked out in protest at this basic breach of court procedure.

The most important testimony came from Faiz bin Abu Bakar Bafana who has been held in Singapore since his arrest with 12 others in December 2001. Bafana explicitly linked Bashir to JI discussions on terrorist attacks and organisational matters and to the authorisation of the Christmas 2000 bombings.

Bafana's testimony, however, was given from an empty government office in Singapore under the control of Singapore security personnel. He is still being held under the country's draconian Internal Security Act (ISA) that provides for indefinite detention without trial and his testimony may well have been coerced. He was not subject to cross-examination.

But having dismissed the charges of terrorism as unproven, the court nevertheless found Bashir guilty of treason for having taken part in "subversion with the aim of overthrowing the government." The grounds for the conviction were that Bashir had assisted Abdullah Sungkar to establish JI a decade ago when the two were in exile together in Malaysia. The "element of initial implementation of subversion has been proven, that is by the existence of efforts of JI to set up an Islamic state," the judges declared.

One of the judges subsequently declared outside the court that Bashir was convicted of treason because he knew of and approved the sending of JI members to Afghanistan and the southern Philippines for military training.

Bashir's defence lawyers pointed to the tenuous and contradictory character of the conviction. Adnan Buyung Nasution commented: "On the one hand, the judges acquit him of being a mastermind of terrorist acts, but on the other hand, they say that he was involved in treason." Another of Bashir's lawyers, Mahendradata, said: "It was a political compromise. The judges were just trying to save face. They did not have enough evidence to even implicate him in acts of sedition. But they had huge pressure to convict him."

Throughout the trial, Bashir maintained his innocence and after the judgement indicated he would appeal the decision. His defence lawyers filed a petition last week. The prosecution announced on Monday that it also intended to

appeal—against the length of the sentence imposed for treason and the dismissal of one of the lesser immigration charges.

The verdict provoked immediate international criticism. Australian Prime Minister John Howard declared: “Because many of us here in Australia believe that he was at least spiritual leader of Jemaah Islamiah and therefore at least knew about the attack in Bali, we are disappointed he wasn’t convicted on that and didn’t get a longer sentence.”

Defending the decision outside the court, Judge Andi Samsan Nganro declared: “We can sense that he is the leader of JI but we cannot prosecute someone based on our own feelings or assumptions... Only witnesses from Singapore and Malaysia gave damaging evidence against Bashir but we can see that even they had no direct knowledge that Bashir was the head of JI.”

Two Australian legal experts on Indonesian affairs, Tim Lindsay and Ross Clarke, wrote in the *Australian*: “The weak evidence before them left the five judges little choice but to acquit Bashir on the main charges and convict him only on the lesser ones... The real question in this case is why the evidence before the court was so poor.”

Lindsay and Clark point to the fact that two key figures—Omar al Faruq and Riduan Isamuddin alias Hambali—are being detained without trial by the US authorities who refused to allow them to testify in the Indonesian court. In fact, the Bush administration has not permitted any of the detainees from its so-called war on terrorism to give evidence in any court, including in the US.

If anyone could shed light on the exact nature of JI and Bashir’s role, it would be Hambali and al Faruq. Hambali, who is widely accused by Western intelligence services of being JI’s operations chief, was arrested in Thailand last month after an extensive manhunt throughout South East Asia. Al Faruq was detained by Indonesian intelligence in June 2002 and handed over to the CIA. After three months intensive interrogation in Afghanistan, he allegedly admitted to being an Al Qaeda operative and to being involved in the Christmas 2000 bombings and a plot to assassinate Megawati Sukarnoputri.

There are a number of reasons why the US has refused to allow Hambali and al Faruq to testify. Firstly, it would undermine the ability of the Bush administration to hold hundreds of detainees indefinitely at Guantanamo Bay in Cuba and other locations in complete violation of international law and their basic democratic rights. As Lindsay and Clark pointed out: “If Faruq or Hambali testified in an Indonesian court then the Bush administration could hardly refuse to present other detainees in American courts.”

Secondly, the Bush administration is concerned that

information provided in court by Hambali and al Faruq could prove to be politically damaging. Hambali could shed light on the history of US involvement with Islamic extremist networks in South East Asia and the Middle East going back to the mid-1980s when he, along with hundreds of others, took part in the CIA-sponsored anti-Soviet jihad in Afghanistan.

Hambali’s testimony could also provide unwanted answers to the many questions surrounding the failure of the US security apparatus to act on information prior to the September 11 terrorist attacks on the US. He is alleged to have taken part in a high-level planning meeting in Kuala Lumpur in January 2000 that included two of the September 11 hijackers. The meeting was monitored by Malaysian intelligence, acting on a CIA tip-off, but what was discussed has never been made public.

Howard’s comments expressing disappointment with the Bashir sentence simply highlight the fact that Canberra and Washington expect Jakarta to prosecute and impose heavy sentences regardless of the available evidence. Immediately after the Bali bombings, before any of the suspects had been traced and arrested, the Howard government was pointing the finger at Bashir and calling for his arrest. He was eventually detained after the Indonesian administration rushed through draconian new anti-terrorist legislation to allow for detention and interrogation without trial, and applied it retrospectively.

Criticism of the court decision produced an angry response inside Indonesia. Just a day after the verdict, Indonesian Vice President Hamzah Haz made a point of visiting Bashir’s Islamic school in central Java to declare that the US was the “king of the terrorists” for invading Iraq. “We are being cornered and Islam is being scrutinised,” he said.

Haz, head of the rightwing Muslim-based United Development Party (PPP), is no doubt attempting to jump on the Islamic extremist bandwagon with an eye to next year’s national elections. But his comments reflect the concerns in ruling circles over the impact of the verdict and their nervousness at the rising hostility to the Megawati administration’s close ties with Washington and its lack of any solution to the country’s deteriorating social and economic conditions.



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