

HUMAN RIGHTS WATCH

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July 19, 2011

Hillary Clinton
Secretary of State
US Department of State
2201 C Street NW
Washington, DC 20520

Via facsimile: +1-202-647-2283

Re: Visit to Indonesia and Human Rights Issues

Dear Secretary Clinton,

Human Rights Watch writes to you concerning your upcoming trip to Indonesia from July 21-24, 2011. We believe this trip is an important opportunity to raise issues such as accountability of the military, freedom of expression, and freedom of religion. The United States has placed great emphasis on its deepening relationship with Indonesia since 2009, and we believe this in turn creates an opportunity and an obligation to discuss serious human rights violations continuing in the country.

Impunity for abuses by the military

Impunity for members of Indonesia's security forces remains a serious concern for Human Rights Watch, and we note that your arrival in Indonesia falls exactly one year after US Secretary of Defense Robert Gates formally announced the resumption of US military relations with Indonesia's special forces, Kopassus, the last significant barrier to full-fledged US-Indonesian military ties.

On July 22, 2010, Secretary Gates articulated the standards agreed to by the US and Indonesian governments and militaries:

The Ministry of Defense has publicly pledged to protect human rights and advance human rights accountability and committed to suspend

from active duty military officials credibly accused of human rights abuses, remove from military service any member convicted of such abuses, and cooperate with the prosecution of any members of the military who have violated human rights.

However, one year on, the Indonesia military has failed to live up to the pledges made by the Defense Ministry. Without taking action against senior officers suspected human rights abusers in the military, it has instead made several high-level appointments of individuals with questionable human rights records. The recent appointments of Deputy Minister of Defense Lt. Gen. Sjafrie Sjamsoeddin and Chief of the Army Lt. Gen. Pramono Edhie Wibowo, neither of whom was fully investigated over allegations of involvement in serious human rights abuses in East Timor, suggest that the Indonesian military has not given priority to accountability.

Human Rights Watch remains gravely concerned about the outcome of a recent military trial of three Battalion 753 members who allegedly tortured two Papuan farmers in May 2010. We considered this a test case with respect to the commitments made by Indonesian and US officials last year, and concluded that Indonesia failed miserably. On January 24, 2011, the military court convicted the three soldiers of disobeying orders and sentenced them to 8, 9, and 10 months' imprisonment. The case was only prosecuted after much international public pressure following the posting on the Web of a phone video graphically documenting the torture. Yet only three of six assailants seen in the video were charged, none were charged with torture despite video evidence showing the soldiers kicking the victims, threatening one with a knife to the face, and repeatedly jabbing the second in the genitals with burning wood. The prosecutors only sought sentences of up to 12 months rather than the maximum 30 months as allowed under the military criminal code. And because the three soldiers prosecuted were not charged with torture, there is no indication that they will even be discharged from service when they complete their sentences. Yet US Defense Department officials characterized the prosecution of this case as "a success."

The US should use its deepening ties with the Indonesian government to promote, rather than disregard, the Indonesian military's failure to hold its personnel to account for serious abuses. Otherwise the US will increasingly be called to task for its uncritical support for the Indonesian military. Past problems persist: the Indonesian military still shows no inclination to adequately and transparently investigate soldiers and especially officers responsible for abuses, involve civilian authorities in their investigations, or ensure the safety of witnesses.

In order to promote accountability by the Indonesian government generally and the military specifically, Human Rights Watch recommends that you publicly raise concerns about the Papua trial in your meeting with President Susilo Bambang Yudhoyono. You should state that the soldiers' release from incarceration be publicly disclosed, inquire whether they will be subject to discharge from the military

because of their conviction, and question whether the three other soldiers in the video will be brought to justice. We also urge you to ask the Indonesian government for full disclosure of all military tribunal cases involving alleged abuses against civilians. Until the Indonesian government takes steps to reexamine these cases, in line with the Leahy law, which prevents the US from cooperating with abusive military units, the US government should not participate in joint endeavors with military personnel or units implicated in abuses against civilians.

Intelligence bill

Ongoing deliberation on a proposed Law on State Intelligence before the Indonesian House of Representatives has raised concerns among human rights activists in Indonesia. Particularly problematic is whether the State Intelligence Agency should have arrest and detention powers; whether wire-tapping and other intercepts should require a court order; and how to ensure oversight and accountability mechanisms. A number of provisions would give intelligence officers sweeping powers or are worded so broadly that they could be used to infringe upon acts of peaceful expression. The Yudhoyono government wants the House to pass this bill later this year, citing a need to curb what it considers to be rising radicalism among Muslim activists in the country.

Any national security bill enacted by the Indonesian government needs to ensure protection for basic rights. Without a strong legal infrastructure, we are concerned that if the Law on State Intelligence is passed as worded, intelligence services will be empowered to misuse their authority for political purposes. A mandate for security and surveillance must also respect human rights standards and ensure strong accountability mechanisms.

In 2004, Indonesia's most well-known human rights defender, Munir bin Thalib, was fatally poisoned aboard a Garuda Indonesia airliner. His widow, Suciwati, met you in February 2008 during which she discussed the involvement of the State Intelligence Agency in his murder. We urge you to ask President Yudhoyono to withdraw this bill from consideration until effective mechanisms can be put in place to ensure the accountability of the intelligence agency before expanding its powers.

Threats to free expression

In the years immediately after Suharto was forced to step down from power, Indonesia made huge strides in opening space for free expression and the media. But recent years have seen some troubling developments. Indonesian officials continue to enforce a number of laws that criminalize the peaceful expression of political, religious, and other views. These laws include offenses in Indonesia's criminal code such as treason or rebellion (*maka*) and "inciting hatred" (*haatzai artikelen*), which have been used repeatedly against peaceful political activists,

including those from the Moluccas and Papua. More than a hundred such activists are currently behind bars in Indonesia for peaceful acts of free expression. For instance, Filep Karma, a civil servant, made a speech in December 2004 in Jayapura that was critical of the government's policies in Papua. He is currently serving a 15-year sentence in Abepura on charges of treason. Ruben Saiya, a farmer from the Moluccas, joined a protest dance in front of President Yudhoyono in an Ambon stadium in June 2007. He was sentenced to 20 years' imprisonment for treason.

Human Rights Watch takes no position on claims to self-determination in the Moluccas Islands and Papua. Consistent with international law, however, Human Rights Watch supports the right of all individuals, including independence supporters, to express their political views peacefully without fear of arrest or other forms of reprisal. Indonesian laws, however, consider these non-violent acts as "treason" with the maximum penalty of life imprisonment.

Restrictions on the right to freedom of expression are not limited to cases or incidents stemming from calls for self-determination. Criminal libel, slander, and "insult" laws are also problematic, as they have been invoked against individuals who have raised controversial issues concerning public officials or powerful individuals. For instance, in August 2008, Prita Mulyasari wrote an email complaining about the service she received at a private hospital in southern Jakarta. After her email went viral on the internet, the hospital filed a report to the police. In July 2011, the Indonesian Supreme Court upheld Prita Mulyasari's sentence of six months' imprisonment for distributing a slanderous email against the hospital.

We urge that you raise your concerns on the right to free expression in Indonesia with President Yudhoyono, and particularly urge that you ask Indonesian authorities to unconditionally release all prisoners held for the peaceful expression of their views. The Indonesian government should also amend or repeal laws that criminalize peaceful political expression and repeal laws that criminalize defamation and "insulting" public officials, which are subject to misuse by authorities and individuals seeking to silence criticism.

Freedom of religion

In its 2011 voluntary pledges to the UN General Assembly, Indonesia said that the country is "underpinned by the principle of religious freedom and tolerance" and is "living proof that democracy and Islam can coexist peacefully, harmoniously and productively." At the same time, senior Indonesian government officials, including by the Minister of Religious Affairs Suryadharma Ali, have made multiple public statements that appear to legitimize religious discrimination, and have not been asked by President Yudhoyono to retract or clarify those remarks.

Moreover, longstanding impunity for violence against religious minorities in Indonesia has fostered larger and more brutal attacks by Islamist militants. According to the Communion of Churches in Indonesia, more than 430 churches have been attacked since President Yudhoyono took office in 2004. Since President Yudhoyono issued a decree restricting activity by the Ahmadiyah religious community in June 2008, the Jemaah Ahmadiyah Indonesia, the organization of the community in Indonesia, has recorded more than 180 attacks against its mosques and other properties. In February 2011, Islamist militants killed three Ahmadiyah men and seriously wounded five others in Cikeusik, western Java. While 12 people are currently standing trial for the attack, none of the accused is charged with murder.

We urge you call on President Yudhoyono to withdraw the 2008 decree on Ahmadiyah and take other actions to protect religious freedom including amending the 1965 blasphemy law, which designates official religions. You should also urge him to ensure that Indonesian prosecutors and police be held accountable, and fully and fairly investigate and prosecute individuals and organizations implicated in attacks, threats and harassment of religious minorities anywhere in the country.

Thank you for your consideration. We look forward to working with the State Department and the US Embassy in Jakarta to address these concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brad Adams". The signature is fluid and cursive, with the first name "Brad" being more prominent than the last name "Adams".

Brad Adams
Executive Director
Asia Division