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August 3, 2015

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### Re: Indonesian Armed Forces and Human Rights

Dear General Nurmantyo,

Congratulations on your recent appointment to the role of Commander of the Indonesian Armed Forces (TNI). We encourage you in particular to bring energy to protecting and promoting human rights in the country, and supporting renewed TNI initiatives that will help in that regard.

Human Rights Watch is an independent, nongovernmental organization that investigates and reports on violations of international human rights and humanitarian law by governments and non-state armed groups in more than 90 countries around the world.

Since the late 1980s, Human Rights Watch has worked on human rights issues in Indonesia and provided input to the Indonesian government. With your appointment, you have an opportunity – and the responsibility – to address continuing human rights concerns in Indonesia. As Indonesia is a party to the core international human rights treaties, we urge you to ensure that it lives up to its international legal obligations.

We write to you with specific recommendations to prevent human rights violations by Indonesian security forces, to promptly and impartially investigate alleged abuses by military personnel, and to appropriately discipline or prosecute those implicated in abuses.

We urge you to make these issues a priority:



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### **Abolish Discriminatory and Invasive “Virginity Tests”**

The Indonesian military should immediately end the use of so-called virginity tests, which violate the prohibition of cruel, inhuman, and degrading treatment under international human rights law. Discriminatory and invasive virginity tests are obligatory for female recruits and fiancées of military officers in the Indonesian armed forces.

Indonesia’s coordinating minister for politics, law, and security, Tedjo Edhi, acknowledged on November 18, 2014 that the military requires the tests, soon after Human Rights Watch issued a report on virginity testing for female National Police candidates. Maj. Gen. Fuad Basya, the armed forces spokesman, said that the Indonesian military has conducted virginity testing on female recruits for even longer than the police, without specifying when the practice began. Human Rights Watch research found that all branches of the military – air force, army, and navy – have used the test for decades and also extended the requirement to the military officers’ fiancées.

Virginity testing is a form of gender-based violence and is a widely discredited practice. In November 2014, the World Health Organization issued guidelines that stated, “There is no place for virginity (or ‘two-finger’) testing; it has no scientific validity.”

Human Rights Watch interviewed 11 women – military recruits and fiancées of military officers – who had undergone the test at military hospitals in Bandung, Jakarta, or Surabaya; a female officer at the military health center; and a doctor who worked in a military hospital in Jakarta. Applicants and fiancées who were deemed to have “failed” were not necessarily penalized, but all of the women described the test as painful, embarrassing, and traumatic.

All of the women interviewed, with the oldest case dating from 1962, told Human Rights Watch that it was required of all other women applying to enter the military or planning to marry military officers. They said that the only women excluded were those with “powerful connections” or who bribed the military doctors who administered the tests. Human Rights Watch found that the testing included the invasive “two-finger test” to determine whether female applicants’ hymens were intact. Finger test findings are scientifically baseless because an “old tear” of the hymen or variation of the “size” of the hymenal orifice can be due to reasons unrelated to sex.

### **Allow Foreign Media to Freely Report from Papua and West Papua Provinces**

The Indonesian government has for decades effectively blocked foreign media from freely reporting in Papua by only allowing access to foreign journalists who get special official permission to visit the island. The government rarely approves these applications or

delays processing them, hampering efforts by journalists and nongovernmental groups to report on breaking events. Official minders invariably shadow journalists who do get official permission, strictly controlling their movements and access to people they want to interview.

The government justifies its restrictions on media access as a necessary security precaution due to the ongoing conflict with the small and poorly organized Free Papua Movement (OPM). In February 2013 tensions heightened in Papua following a suspected OPM attack on Indonesian military forces that killed eight soldiers – the worst act of violence against the military in the area in more than 10 years.

President Joko Widodo told a group of foreign reporters on May 9, 2015 that he would declare a complete lifting of those restrictions on May 10. However, he did not provide any details and it is uncertain how quickly and how effectively Indonesia's Ministry of Foreign Affairs, which has long regulated foreign media access to Papua, will implement the measure. There are also serious questions about the degree to which Papuan security forces will respect the right of foreign media to freely operate in Papua. On May 29, your predecessor, General Moeldoko, announced that foreign media wishing to visit Papua would continue to require special official permission.

As TNI commander, we urge you to publicly support President Widodo's lifting of access and reporting restrictions on foreign media to Papua and to ensure that all TNI forces in Papua have full awareness of and respect for the rights to media freedom in Papua.

### **Investigate and Prosecute TNI Personnel Implicated in Serious Abuses**

On September 5 and 6, 2013, a military court in Yogyakarta, central Java, sentenced 12 members of the Special Forces Command (Komando Pasukan Khusus, or Kopassus) to prison terms of between 140 days to 11 years for their roles in the execution-style killings of four men in a prison on March 23, 2013. The guilty verdicts – ranging from failure to warn superiors of the plot to premeditated murder – marked an important departure from the prevailing impunity given to Indonesian military personnel implicated in serious crimes. However, the sentences imposed on the three soldiers found most culpable did not appear to match the gravity of the crimes. Under Indonesian law, premeditated murder permits a maximum sentence of life imprisonment, which in practice constitutes 20 years.

However, impunity for human rights abuses by TNI personnel remains a serious problem. To date there have been no arrests related to the killing of five peaceful protesters by Indonesian security forces in Paniai area, Papua, on December 8, 2014. Papua's police chief Inspector General Yotje Mende declared that the bullets from the shooting scene

were not from the police ammunition. We urge you as Commander of the TNI to publicly support a joint investigation by the National Commission on Human Rights (Komnas HAM) and to ensure that police and rights agency investigators can question military personnel who were present during the incident.

### **Allow Civilian Prosecutions of TNI Human Rights Abuses**

Indonesia's military justice system continues to lack the transparency, independence, and impartiality required to properly and fairly investigate and prosecute serious human rights violations.

Under Indonesian law, military personnel cannot be tried in civilian courts, with only a few rarely invoked exceptions. The 1997 Law on Military Courts provides that such courts have jurisdiction to prosecute all crimes committed by soldiers. Additionally, the 1997 Law on Military Courts states that military courts can only apply one of two laws: the Military Penal Code and the general Criminal Code. This means that while civilians are subject to a criminal liability under a host of criminal laws outside the Criminal Code, soldiers are not. While the 2000 Law on Human Rights Courts authorizes human rights courts to assert jurisdiction over cases involving allegations that military personnel committed serious human rights violations, at present the law applies only to allegations of genocide and crimes against humanity, and not to the broad spectrum of conduct that constitutes human rights abuses.

During the United Nations Universal Periodic Review of Indonesia's human rights record in 2007 and again in 2012, the Indonesian government committed to reforming the military tribunal system. The promised reforms included adding torture and other acts of violence to the military criminal code of prosecutable offenses and ensuring the definition of those offenses are consistent. However, to date the government has not added those offenses to the military criminal code.

Although the 2004 Armed Forces Law placed the military courts under the supervision of Indonesia's Supreme Court, in practice the military continues to control the composition, organization, procedure, and administration of the military courts. Military judges can be dismissed by an Honorary Board of Judges whose members are designated by the military commander.

The poor record of Kopassus for human rights violations and its [failure](#) to hold the abusers accountable spans its operations across Indonesia, beginning in the 1960s in Java and extending to Kalimantan, East Timor, Aceh, and Papua in the decades since. The well-documented East Timor abuses prompted the United States to impose a ban on military

contact with the elite force in 1999. In 2010, the US lifted the ban. Human Rights Watch and domestic human rights organizations criticized the lifting of the ban on the basis that the Indonesian military, and Kopassus in particular, had failed to demonstrate a genuine commitment to accountability for serious human rights abuses.

Empowering civilian courts to prosecute military personnel implicated in human rights abuses against civilians is a crucial step for ending Indonesia's long and pervasive culture of impunity for military abuses.

### **Support Government Investigations into Past Gross Human Rights Abuses**

In October 1965, the Indonesian military gave free rein to a mix of Indonesian soldiers and local militias to kill anyone they considered to be a "communist." Over the next few months into 1966, at least 500,000 people were killed (the total may be as high as one million). The victims included members of the Communist Party of Indonesia (Partai Komunis Indonesia), ethnic Chinese, trade unionists, teachers, civil society activists, and leftist artists. In the 50 years since the killings, the Indonesian government has justified the massacres as a necessary defense against the communists. Its account holds that the communists attempted a coup, murdering six army generals on September 30, 1965, as part of their attempt to make Indonesia into a communist state. In October 2012, then-Coordinating Minister of Political, Legal, and Security Affairs Djoko Suyanto responded to findings of the National Commission on Human Rights that the events of 1965-66 constituted a "gross human rights violation" by insisting that those killings were justified. Public discussion about the killings, a taboo topic in Indonesia for decades, has increased in recent years, a process substantially aided since 2012 by release of the documentary films *The Act of Killing* and *The Look of Silence*.

On May 22, Indonesian Attorney General Muhammad Prasetyo announced that the government will form a "reconciliation committee" to investigate the killings of 1965-66 as well as other "gross violations of human rights" cases including the Talangsari incident, the Trisakti and Semanggi I and II killings, the abduction of pro-democracy activists in 1997-98, the May 1998 rioting, and the Wasior shooting in Papua.

We urge you to cooperate fully with government efforts to determine the truth behind who perpetrated these abuses in order to ensure a full accounting for both the victims and their families.

Thank you for your consideration. We would appreciate the opportunity to discuss these and other human rights issues with you. Please feel free to contact me via my New York-based colleague Shayna Bauchner by email [bauchns@hrw.org](mailto:bauchns@hrw.org) or by fax +1-212-736-1300.

Sincerely,

A handwritten signature in black ink that reads "Brad Adams". The signature is written in a cursive, slightly slanted style.

Brad Adams  
Asia Director  
Human Rights Watch