



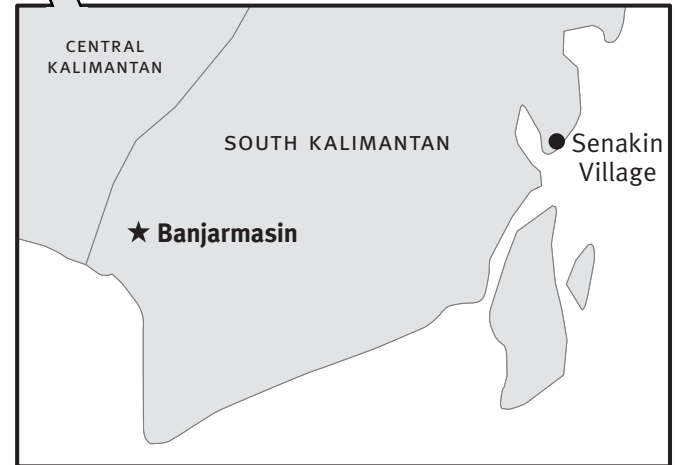
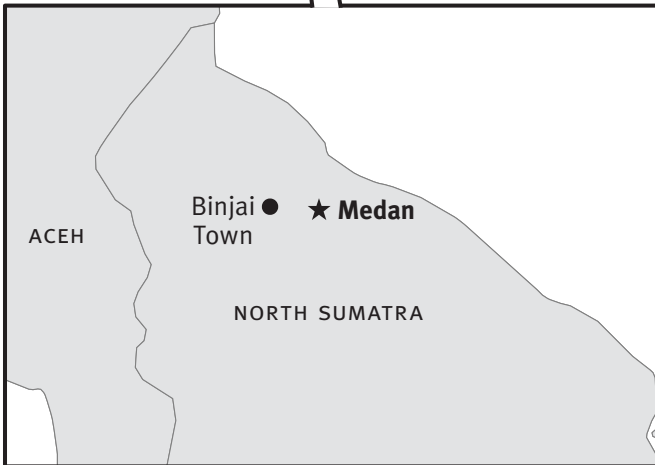
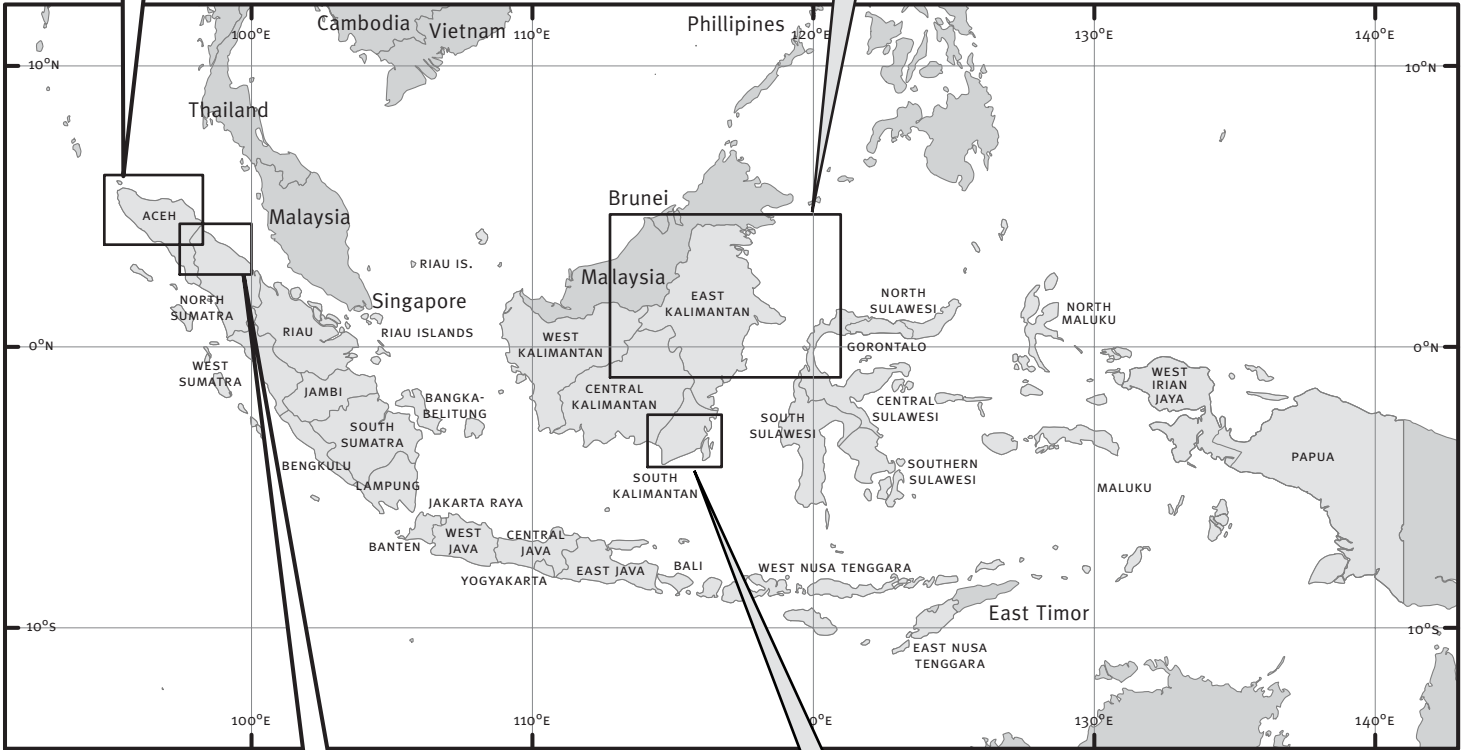
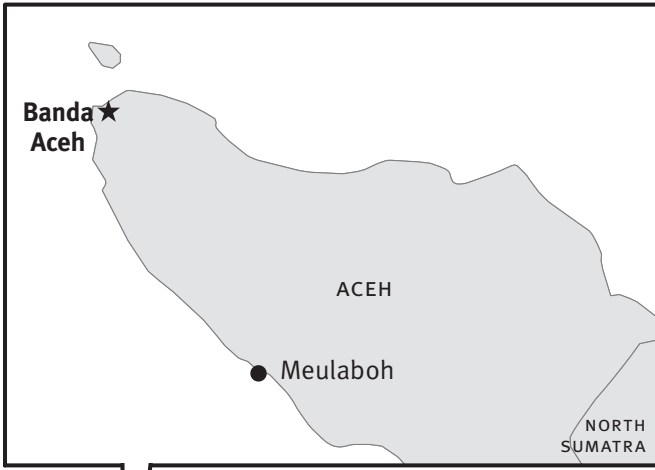
# **Too High a Price**

## **The Human Rights Cost of the Indonesian Military's Economic Activities**

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Map of Indonesia Showing Locations of Featured Examples

## Acronyms and Abbreviations

### *English*

<b>CoW</b>	Contract of Work
<b>EIA</b>	Environmental Investigation Agency
<b>GDP</b>	Gross Domestic Product
<b>ICW</b>	Indonesia Corruption Watch
<b>IMF</b>	International Monetary Fund
<b>ITCI</b>	International Timber Corporation Indonesia
<b>MPs</b>	Members of Parliament
<b>NGO</b>	Nongovernmental Organization
<b>OECD</b>	Organization for Economic Cooperation and Development
<b>PER</b>	Public Expenditure Review
<b>ROSC</b>	Report on Standards and Observance of Code
<b>SIPRI</b>	Stockholm International Peace Research Institute

### *Indonesian*

<b>ABK</b>	Agrosilva Beta Kartika	Indonesian company, BOT subsidiary
<b>ABRI</b>	Angkatan Bersenjata Republik Indonesia	Indonesian armed forces before 1999, a combined military-police structure
<b>BOT</b>	Beta Omega Technologies	Malaysian company
<b>BPK</b>	Badan Pemeriksa Keuangan	Supreme Audit Agency
<b>Brimob</b>	Brigade Mobil	Mobile Brigade, paramilitary police commandos
<b>BTPB</b>	Badan Transformasi dan Pengelolaan Bisnis TNI	TNI Business Transformation and Management Body
<b>Bulog</b>	Badan Urusan Logistik	Logistics agency
<b>DPR</b>	Dewan Perwakilan Rakyat	House of Representatives
<b>Inkopad</b>	Induk Koperasi Angkatan Darat	Army Parent Cooperative Board
<b>Kodam</b>	Komando Daerah Militer	Regional Military Command
<b>Kodim</b>	Komando Distrik Militer	District Military Command
<b>Kopassus</b>	Komando Pasukan Khusus	Army Special Forces Command
<b>Korem</b>	Komando Resort Militer	Sub-Regional Military Command
<b>Kostrad</b>	Komando Cadangan Strategis Angkatan Darat	Army Strategic Reserve Command
<b>KPK</b>	Komisi Pemberantasan Korupsi	Corruption Eradication Commission
<b>Linud</b>	Lintas Udara	Airborne Unit
<b>MPR</b>	Majelis Permusyawaratan Rakyat	People's Consultative Assembly

<b>Primkopad PT</b>	Primer Koperasi Angkatan Darat Perseroan Terbatas	Army Primary Cooperative Designation for a privately-held corporation
<b>Puskopad TNI</b>	Pusat Koperasi Angkatan Darat Tentara Nasional Indonesia	Army Central Cooperative Indonesian armed forces (since 1999)
<b>TSTB</b>	Tim Supervisi Transformasi Bisnis TNI	Supervisory Team for the Transformation of TNI Businesses
<b>Walhi</b>	Wahana Lingkungan Hidup Indonesia	Forum on the Environment in Indonesia
<b>Yakobame</b>	Yayasan Kesejahteraan Korps Baret Merah	Kopassus foundation
<b>Yamabri</b>	Yayasan Markas Besar ABRI	TNI headquarters foundation
<b>Yashbhum</b>	Yayasan Bhumyamca	Navy foundation
<b>Yasua</b>	Yayasan Adi Upaya	Air Force foundation
<b>YDPK</b>	Yayasan Dharma Putra Kostrad	Former name of YKSDP Kostrad
<b>YKBPS</b>	Yayasan Kejuangan Panglima Besar Sudirman	Ministry of Defense foundation
<b>YKEP</b>	Yayasan Kartika Eka Paksi	Army foundation
<b>YKPP</b>	Yayasan Kesejahteraan Perumahan Prajurit	Ministry of Defense foundation
<b>YKSDP Kostrad</b>	Yayasan Kesejahteraan Sosial Dharma Putra	Kostrad foundation
<b>YSBP</b>	Yayasan Satya Bhakti Pertiwi	Ministry of Defense foundation

## Summary

*The [business] involvement of army officers is a fundamental trigger for conflict, abuses of power, crime, and human rights violations.*

—An Indonesian human rights activist, email message to Human Rights Watch, September 26, 2005

*Up to now, benefits from military business are still enjoyed by the upper echelon of the military elite.*

—Minister of Defense Juwono Sudarsono, quoted in Tempo Interactive, February 23, 2005

*Business is autonomy... It is not good for the command hierarchy.*

—Lt. Gen. Sjafrie Sjamsoeddin, secretary-general of the Ministry of Defense and former spokesman for the Indonesian military, in an interview with Human Rights Watch, April 12, 2006.

*Civilian governments can't control the military if they don't control the budget. It's as simple as that.*

—A foreign military reform expert, speaking to Human Rights Watch, September 7, 2004

It matters how militaries get their money. Civilian control over a state's armed forces is fundamental for the development of a professional military that respects human rights. The more a military's revenue and spending are outside civilian government control, and the more funds it raises itself, the harder it is for civil authorities to engage in meaningful oversight of the military. The result is a government that lacks the power to demand accountability from its armed forces and to implement needed reforms. Particularly when a military has a record of exercising political power and of committing human rights abuses with impunity, financial autonomy can lead to abuse.

Military self-financing is an established practice in Indonesia. From the first days of independence, Indonesia's armed forces have found their own means. Successive governments have endorsed or chosen to ignore the military's economic activities. In recent years, Indonesian officials have contended that the military budget is sufficient only to meet half the military's minimum requirements. A thorough review would be

needed to determine appropriate levels of government financing but it is true that Indonesia's official military budget is low compared to many of its neighbors in Southeast Asia.

The Indonesian military deals with its budget constraints using a combination of approaches. In part it acts by deferring or reducing its spending in some areas, such as equipment purchases. At the same time, it seeks funds for that purpose from other government accounts, often acting outside approved budgeting processes and with little transparency. In addition to juggling government funds in this way, Indonesia's military also independently raises money through a complex web of commercial ventures whose profits bypass the treasury. It is these independent revenue sources that are the focus of this report.

The Indonesian military draws on off-budget (extra-budgetary and unaccountable) funds derived from military-owned enterprises, informal alliances with private entrepreneurs to whom the military often provides services, mafia-like criminal activity, and corruption.

Much of the revenue from such ventures goes directly to commanders, specific units, or individual soldiers. Ostensibly the funds are to support troop welfare, but often they are destined for personal enrichment instead. Some of the funds are used for day-to-day operating expenses of the armed forces. Irrespective of the purpose to which they are put, off-budget funds are not monitored or subject to financial controls. Such are the budgetary pressures and weak controls in Indonesia that it is common for government agencies to raise funds independently to help meet expenditures, which in turn helps fuel widespread corruption. Yet the problem of self-financing and its consequences are most serious with respect to the security forces, especially the military. (The question of police self-financing merits close scrutiny but is beyond the scope of this study.)

This report provides a human rights analysis of military self-financing in Indonesia. The first part of the report reviews how the Indonesian military came to be involved in business activity, and explains how such activity has spread over time. It also examines the failure of government authorities to enforce rules against military commercialism.

The second part of the report offers a detailed look at how the Indonesian military finances itself, providing the most comprehensive account to date of the nature and scope of the problem as viewed through a human rights lens. It identifies the four broad categories into which the self-financing activities fall and details how each works.

We find that the military supplements official funds using profits from its own businesses, payments from private-sector allies (often for security services), income from black market activities, and money skimmed from corrupt dealings. Formally-established businesses have performed poorly in recent years, leading the military to increasingly rely on irregular and illegal fundraising. We provide examples to illustrate the military's different economic entanglements and some of the human rights abuses associated with them.

The third part examines obstacles to change and reform efforts to date. It identifies the absence of transparency and accountability regarding military finance issues as a serious impediment to reform. Official data on military budgets and spending are unreliable and incomplete. When it comes to off-budget matters, including revenue from military businesses, no reliable figures exist and estimates have varied wildly. The difficulty in establishing credible statistics is but one indication of the need to improve financial management of military affairs. Some changes are underway, as part of wider efforts to improve public financial management, but additional, targeted measures are needed to ensure adequate oversight and reporting on military finances. The military's revenue and spending remain one of the least transparent and accountable elements of the government's accounts.

This part of the report also addresses three myths often trotted out to explain the slow pace of reform: that funds from official government sources are sufficient to meet only a fraction of the needs the military; that military businesses generate substantial revenue that goes most of the way toward filling the gap; and that the proceeds of military businesses largely are spent on troop welfare.

While it is true that official Indonesian government spending on the military is relatively low, it is higher than military budget figures suggest. Additional government outlays are hidden in other budget lines, there is a significant level of waste, and government support levels have increased substantially in recent years.

As for the second myth, the evidence we have shows that many military business ventures have been great failures and that, on net, even the businesses in which the military has a direct ownership stake contribute only modest sums to help cover unbudgeted expenses—as government officials have begun to acknowledge. In the permissive environment engendered by the expectation that the military will generate income to contribute to its costs and by the absence of monitoring of that income, the weak performance of the “regular” businesses owned by the military has contributed to the spread of informal and illegal military economic activities that are more hidden and more difficult to control.



There are also strong indications that, contrary to those who espouse the third myth, much of the funds the military raises independently (particularly but not exclusively funds raised through systemic corruption and other criminal activity) goes into pockets of individuals, instead of to improve conditions for the troops.

The report's assessment of reform efforts to date focuses on the 2004 law that is the basis of current efforts. That law mandated that the military end its business activity within five years. To make the most of the opportunity, civilian and military officials alike must commit themselves to comprehensive reform. Unfortunately, as announced to date the government's plans would not address the full scope of the problem. They focus exclusively on a subset of one type of military economic interest: formally-established businesses in which the military has a documented ownership share.

Military leaders similarly have sought to limit the scope of financing reform in order to retain many business ventures that they argue—contrary to the evidence—are independent of the institution of the military, do not make use of government resources, or only serve to support soldier welfare. All indications are that they have succeeded: at this writing, the government's draft proposal provided all these exceptions. The result would be a superficial reform that would leave untouched many military business enterprises, as well as the military's stake in irregular and illegal business activity.

The report concludes with detailed recommendations for reform. It argues that for military finance reform to succeed the government must define the problem accurately, recognize the true human rights costs of self-financing—including in terms of weakening the government's ability to bring military personnel to justice for crimes that violate human rights—and commit fully to stamping it out. That will require concrete steps to impose financial accountability on the military, ban all forms of military commercialism, develop and implement a comprehensive strategy to withdraw the military from business activity, and fund the military at appropriate levels (following a close review of actual needs and bearing in mind other national priorities).

\* \* \*

It is nearly impossible to determine the total value of the Indonesian military's various economic activities. The military's extensive network of economic interests is scattered across the country and includes businesses large and small, centralized and locally controlled, legal and illegal. No one, including top military leaders, has a full grasp of the sums involved. For years government officials repeated informal estimates suggesting that funds formally allocated to the military in the national budget covered only 25-30

percent of actual military expenditures and that the remainder was paid from off-budget funds, but by 2005 they dismissed these estimates as outdated and inaccurate. Nor is it clear if more recent estimates placing the figure at about 50 percent are any more reliable, since officials have not undertaken an analysis of the extent of off-budget activity and in any case give inconsistent information.

There is equal confusion over the number of military businesses. An initial military inventory in 2005 first put the figure at 219, but a subsequent one in 2006 gave the number as 1,520. Some government officials have questioned the credibility of the revised data and suggested the actual number of military businesses was far lower than indicated. There is equal reason to think that the official inventory undercounted the number of military businesses, since it excluded informal and illegal economic activity. The inability to quantify the extent of the military's fundraising and the exact number of its business, however, does not detract from the need for change. There is general agreement that military self-financing is a dangerous practice that should not be allowed to continue.

\* \* \*

### ***Opportunity for Reform***

The Indonesian military (Tentara Nasional Indonesia or TNI) is now required by a 2004 law to withdraw from economic activity. Under that law, the Indonesian government must take over military business holdings by 2009. The law also bars the military from engaging in business activity and receiving funds outside of the state budget. Indonesia's military leadership has pledged to cooperate and expressed willingness to give up some of its business interests before that deadline. Civilian officials have acknowledged that pervasive military economic activity takes a heavy toll on the armed forces and the country, and that it should be brought to an end. These policy commitments represent an important shift after years in which various governments made excuses for inaction and military officials actively resisted reform.

The stakes are high. If implemented fully and in a timely manner with transparency and accountability, reform of military finance could mark a major step toward structural reform of the TNI. Many in Indonesia's military share the view that they should get out of the business of private moneymaking. They recognize that the focus on fundraising reduces military professionalism and readiness. Senior military officers continue to publicly defend some types of military business activity as a way to support the basic needs of soldiers, but they are increasingly likely to acknowledge that many military businesses have given way to self-serving ventures that offer little to the troops and

instead only sully the military's reputation. A growing number of military personnel at all levels would prefer not to engage in self-finance and would rather the state took responsibility to fund the military appropriately.

There are other important reasons to end military self-financing. Military economic engagements are bad for the economy: they introduce market distortion and irrationalities; provide a platform for corruption and rent-seeking behavior (defined as the extraction of excess profits, such as through privileged access to lucrative natural resources); add to the cost of doing business (through the payment of protection money); and contribute to environmental degradation that impedes sustainable development.

The compelling human costs of the military's economic activities also must be considered. Civil society groups have long drawn attention to the many ways in which military economic entanglements fuel abuses of power, including corruption and human rights violations. The Indonesian military has a dismal human rights record, and it is widely recognized that military self-financing plays a role in facilitating such abuses. Economic incentives can motivate certain military abuses—including extortion, property seizures, and profiteering—and also can help fuel or sustain violence in conflict areas where the armed forces have access to lucrative natural resources or money-making ventures. More generally, the military's financial autonomy undermines civilian authority and accountability. Effective reform of military finance would serve to enhance accountability and help curb military abuses in Indonesia.

The drive to end the military's economic activities forms part of a wider agenda to move the military more firmly under civilian control. Indonesian policymakers and military leaders have acknowledged the public demand for military reform and have begun to carry out some structural changes. Notably, the withdrawal of the military from parliament, designed to help reduce the military's political influence, was completed in 2004. Progress to date has been limited and highly selective, but top Indonesian officials, including President Susilo Bambang Yudhoyono, the defense minister, and the chief of the armed forces, have expressed a firm commitment to advance the military reform agenda. Reform-minded officials and military officers have the support of the public. A 2005 opinion poll by the Indonesian Survey Institute found that a majority of Indonesians support a variety of reforms to reduce the military's power in society. Consistent with that view, a majority also believe that the armed forces should be funded solely by the government and that the military should not engage in business activities.

The recent recognition by Indonesian leaders of the need to address military finance and business dealings is welcome, but the pledges to undertake serious reform have not been

matched by concerted action. Government moves to begin addressing the military's economic entanglements have been slow, half-hearted, and incomplete. Proposals to address self-finance have failed to comprehensively deal with the problem and its human rights aspects. To fulfill the promise of the 2004 law, the government should radically rethink its approach.

\* \* \*

### ***Note on Methodology***

This report and associated advocacy efforts form part of a wider program of work by Human Rights Watch. Our research on business and human rights issues has resulted in reports on many countries and a range of issues. We have prepared reports that examine the activities of private companies in light of international standards on corporate behavior. We have documented widespread violations of the human rights of workers. We also have analyzed how mismanagement, corruption, and the absence of transparency over government finances can undermine human rights. We work internationally to press for public accountability of government funds, for corporate accountability for human rights abuses, and against off-budget financing mechanisms that are rife with corruption and ultimately undermine human rights protections.

The research for this report was conducted over the course of two years and entailed four research trips to Indonesia. We investigated military financing issues and researched several examples that showcase some of the human rights abuses associated with military economic activity. We also sought to understand the financial pressures experienced by the military and the difficult choices faced.

The report is based on more than two hundred interviews and extensive additional research carried out in Indonesia and from abroad. We spoke to a wide range of people to gather information. We met with government officials from the Ministry of Defense, TNI headquarters, and numerous other government ministries or agencies. We also exchanged correspondence with some of these officials. Additional sources included scholars, professional analysts and researchers, military experts, community activists, retired military officers, and journalists. We also spoke to businesspeople, diplomats, and international finance experts. We traveled to Aceh, North Sumatra, and South Kalimantan provinces to carry out detailed field research with the assistance of Indonesian colleagues. We also have relied on public disclosures, other published research, and unpublished materials to supplement our original research. We have benefited especially from the work of the many independent experts, human rights campaigners, and other civil society activists whose efforts to raise awareness of the

phenomenon of military business in Indonesia and to advocate for its abolition helped generate the political will to begin to tackle this serious problem.

## I. Military Finance in Indonesia

### ***Military Self-Finance and Human Rights***

It is widely accepted in Indonesia that military self-finance can lead to human rights abuses. The reason is that there are often inherent and direct conflicts of interest between the military's security function and its profit-seeking. Human rights too often become a victim of those conflicts. This harmful dynamic colors military operations in conflict zones and also affects more mundane military activities in other parts of the country. Human rights reports on Indonesia are replete with examples of violence, intimidation, extortion, land and property seizures, and other abuses linked to military economic interests.

Indonesia's military has a record of exercising considerable political power, particularly under the authoritarian government of General Soeharto, and still holds sway in society. The fact that the Indonesian military continues to be deployed on a territorial basis, in parallel to civilian government administrations down to the local level, leads to frequent interactions between the armed forces and the public. It provides military units and individual soldiers with added opportunities to exploit their position at the expense of civilians. The military can use its coercive authority to advance or protect its economic interests, or those of its partners.

The situation is further complicated by the fact that the Indonesian military is often called on to assist in preserving or restoring public order. The military's involvement in internal security matters can create a conflict of interest that pits its official function against the strong drive for profits and funds. Some military self-financing activities, including protection rackets, directly undermine security and fuel lawlessness.

The police, which are taking over greater responsibility for internal security, face the same conflicts of interest. Like the military, the police in Indonesia have a reputation for corruption and are deeply involved in a range of economic activities. The two forces were only separated in 1999 and share many of the same poor financial practices. Self-financing by the police merits attention but is beyond the scope of this study.

There is a second dimension to the link between military self-financing and human rights. Even if self-financing activity is entirely clean, follows good business practices, and the money is properly accounted for, money that comes directly to the military outside of proper government budgetary channels still can be expected to undermine

accountability. If civil authorities do not control the flow of money, they lose important leverage over the military. For example, if the civil authorities withhold funds to try to limit certain military activities, the military can always turn to other sources. In that way, self-financing activity tilts the balance of power away from the government and in favor of the military and its business allies. In turn, this impedes the ability of civil authorities to assert control over the armed forces and end impunity for military abuses. These problems are aggravated, and the position of the civil government further weakened, when military self-financing activity does not adhere to proper business practices, generates revenues that are not transparently reported and publicly accountable, and includes economic activity that violates the law.

The TNI, through its then spokesperson Maj. Gen. Kohirin Suganda, has argued that there is “no reason or opportunity for the TNI to deny civilian supremacy.”<sup>1</sup> It also stated that “the TNI supports the principle of public accountability and transparency” and insisted that the military is subject to strict internal and external controls on its finances.<sup>2</sup> In reality, however, the TNI largely operates independently with regard to its finances.

### ***A Brief History of Military Economic Activity***

The Indonesian military’s involvement in economic activity in Indonesia dates back to the 1945-1949 Indonesian war for independence from the Netherlands. The nascent military was responsible for raising its own funds. In addition to relying on popular backing and material support, in some areas military units turned to smuggling to finance their operations.

The pattern of self-financing continued after the formation of the Indonesian armed forces (which became known as Angkatan Bersenjata Republik Indonesia or ABRI, a combined military-police structure until 1999). Official budget allocations to the military were low. As a consequence, throughout the 1950s military commands and units continued to raise their own funds to a large degree. Their fundraising methods went beyond illegal activities such as organized smuggling and illegal levies: Increasingly, military commanders also allied themselves with local businesspeople to generate funds

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<sup>1</sup> Maj. Gen. Kohirin Suganda, “TNI commits to reform[,] upholds supremacy of law,” opinion-editorial, *Jakarta Post*, March 15, 2006. This article responded to one published a day earlier by Human Rights Watch. See Lisa Misol, Human Rights Watch researcher, “U.S. aid to corrupt TNI risks more rights abuses,” opinion-editorial, *Jakarta Post*, March 14, 2006.

<sup>2</sup> Maj. Gen. Suganda, “TNI commits to reform...,” *Jakarta Post*.

to cover military expenditures. In some cases the military command itself would be granted a stake in a business venture managed by a private partner.<sup>3</sup>

### ***Early Military Businesses***

The military began to take part in large-scale businesses by the latter part of the 1950s. In the late 1950s, under martial law, the military took over control of Dutch companies. Soon afterwards President Sukarno formally placed the newly nationalized companies under the supervision of senior military personnel. The state takeover of British companies and some United States ones followed in the mid-1960s. Control of these enterprises was likewise granted to military officers. In part, these moves responded to severe budget shortfalls that resulted in paltry salaries, poor housing, and insufficient clothing and equipment for soldiers.<sup>4</sup>

The military also became heavily involved in managing major state-owned enterprises. Oil giant Pertamina and the logistics agency Badan Urusan Logistik (or Bulog) were both dominated by military leadership throughout the 1960s and into the next decade. Profits from military-run companies were commonly directed to the military.<sup>5</sup> This “unconventional financing,” moreover, allowed the government and military leadership to give the appearance of sacrificing military spending in favor of other national priorities.<sup>6</sup>

The rapid expansion of the military’s economic engagement in the 1960s extended to the private sector. Much of the growth was from military partnerships with private businesspeople. It was the private entrepreneurs who in fact operated most military-sponsored businesses. The military’s actual contribution to its business ventures typically was nominal: military partners provided licenses and approvals, and helped secure concessions and state contracts.<sup>7</sup>

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<sup>3</sup> Richard Robison, *Indonesia: The Rise of Capital* (North Sydney: Allen & Unwin, 1986), pp. 250-252, 259-260.

<sup>4</sup> Lesley McCulloch, “*Trifungsi*: The Role of the Indonesian Military in Business,” in *The Military as an Economic Actor*, Jörn Brömmelhörster and Wolf-Christian Paes, eds. (New York: Palgrave MacMillan, 2003), p. 101.

<sup>5</sup> Harold Crouch, *The Army and Politics in Indonesia* (Ithaca and London: Cornell University Press, 1978), pp. 275-285; Robison, *Indonesia: The Rise of Capital*, p. 252; Danang Widoyoko, Irfan Muktiono, Adnan Topan Husodo, Barly Haliem N, and Agung Wijay, *Bisnis Militer Mencari Legitimasi (Military Businesses in Search of Legitimacy)*, (Jakarta: Indonesia Corruption Watch and National Democratic Institute, 2003), pp. vi, 27-33. A translation in English is available. See *Military Businesses in Search of Legitimacy*, [online] [http://www.indonesia-house.org/dbindhouse/bm/lcw\\_bis\\_mil/Daftar\\_Isi.htm](http://www.indonesia-house.org/dbindhouse/bm/lcw_bis_mil/Daftar_Isi.htm). References in this report, including page citations, refer to the original text rather than the translation.

<sup>6</sup> Crouch, *The Army and Politics in Indonesia*, pp. 274, 277.

<sup>7</sup> *Ibid.*, p. 284; Robison, *Indonesia: The Rise of Capital*, pp. 252, 268; Widoyoko et al., *Military Businesses in Search of Legitimacy*, p. 28.



## *A Military Business Empire Forms*

Military business activity was further entrenched during the New Order period, the period from 1967 to 1998 in which General Soeharto led a military-dominated government. Soeharto himself was sympathetic to commanders who engaged in self-financing. He had done the same during the time he commanded an army unit in Central Java in the late 1950s, and retained close ties with his private-sector partners.<sup>8</sup>

Early on in the New Order period, senior military posts were filled with Soeharto loyalists who also benefited from private business ventures. This pattern helped perpetuate military economic ties, since uncorrupted officers were unlikely to be promoted to senior command positions.<sup>9</sup>

The explosive growth under Soeharto of military business activity, both legal and illegal, reflected the military's strong position as a center of power in Indonesian society. The military's expanding influence was supported by the *dwifungsi* (dual function) doctrine adopted in 1966.<sup>10</sup> *Dwifungsi* officially granted the military a strong socio-political role alongside its defense role. Also key was the military's territorial command structure, in which military presence throughout the country paralleled government administrative bodies down to the village level.<sup>11</sup> This strong local-level presence, combined with the military's coercive power and political leverage, made it possible for the military to dominate economic opportunities.<sup>12</sup>

The military service branches, regional commands, local units, and individual officers took part in commercial enterprises of all kinds and used different business structures, both formal and informal. Formally owned companies were held as investments of

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<sup>8</sup> Soeharto was removed from this post by superiors concerned about "excesses" in military business activity under his leadership. Robison, *Indonesia: The Rise of Capital*, pp. 259-260.

<sup>9</sup> Email communication from a foreign military analyst to Human Rights Watch, March 25, 2005.

<sup>10</sup> In 1998 the military endorsed a "New Paradigm" calling for it to reduce its political involvement. In April 2000, the military leadership formally dropped the *dwifungsi* doctrine and announced that the TNI would no longer carry out a social-political role. In reality, however, the TNI continued to exercise functions beyond its defense role. International Crisis Group (ICG), "Indonesia: Keeping the Military Under Control," ICG Asia Report, no. 9, September 5, 2000, pp. 9-22.

<sup>11</sup> The territorial system developed in part because funding was not available for a centralized force equipped to rapidly deploy troops when needed. Marcus Mietzner, "Business as Usual? The Indonesian Armed Forces and Local Politics in the Post-Soeharto Era," in Edward Espinall and Greg Fealy, eds., *Local Power and Politics in Indonesia: Decentralization and Democratization* (Singapore: Institute of Southeast Asian Studies, 2003), pp. 246-247.

<sup>12</sup> As pointed out by scholar and activist Lesley McCulloch, *dwifungsi* opened the door to a third military role, as a major economic actor, and therefore might more accurately be called *trifungsi*. McCulloch, "Trifungsi," especially at pp. 99-100.

military foundations or cooperatives that, going beyond their mandated welfare function, developed into commercial arms of the TNI.<sup>13</sup>

Thanks to political backing and favoritism, military-linked businesses became a dominant economic force. For example, the military took over ownership of privatized state companies, gained vast forestry exploitation rights, and enjoyed favored access to government contracts, licenses, and credits.<sup>14</sup>

A range of human rights abuses tied to military economic interests emerged during the New Order period. In the late 1960s and 1970s, the government forcibly took over large swaths of land on which indigenous communities depended, dispossessing them without due process and with little or no compensation. The military was a prime beneficiary of state forestry policies that enabled the wholesale seizure of land claimed by local indigenous communities.<sup>15</sup> (See “Military Investments in Forestry,” below.) In many cases, soldiers also acted as enforcers to secure control over land. For example, indigenous communities in Riau province reported that during the Soeharto era thousands of hectares of community land were seized under intimidation from armed police and military, and without any compensation.<sup>16</sup>

For a time, companies also routinely called on troops to respond to labor and land disputes, and soldiers used excess force or intimidation to silence dissent. For example, military personnel in the role of “company security” frequently interfered in labor disputes, using intimidation and outright violence, up to the early 2000s.<sup>17</sup> In some cases, the dirty work of intimidation and violence was subcontracted to private groups of thugs.<sup>18</sup>

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<sup>13</sup> Crouch, *The Army and Politics in Indonesia*, pp. 282-285.

<sup>14</sup> Robison, *Indonesia: The Rise of Capital*, pp. 253-254.

<sup>15</sup> Human Rights Watch, “Without Remedy: Human Rights Abuses and Indonesia’s Pulp and Paper Industry,” *A Human Rights Watch Report*, vol. 15, no. 1 (c), January 2003, pp. 13-16, [online] <http://www.hrw.org/reports/2003/indon0103/>.

<sup>16</sup> Human Rights Watch, “Without Remedy,” pp. 33-34. For more examples of military involvement in land disputes, see for example the work of the Indonesian human rights group KontraS, *Ketika Moncong Senjata Ikut Berniaga: Ketelibatan Bisnis Militer Dalam Bisnis Di Bojonegoro, Boven Digoel dan Poso (When Gun Point Joins the Trade: Military Business Involvement in Bojonegoro, Boven Digoel and Poso)*, (Jakarta: KontraS, 2004), p. 28. The page numbers for citations to this report refer to the executive summary published in English.

<sup>17</sup> Human Rights Watch interviews with labor organizers, Jakarta, August 30 and September 6, 2004. Initial citations of Human Rights Watch interviews list the place and date of interview, while subsequent citations only identify the interviewee(s), unless there were multiple interview dates for the same person. See also Patrick Quinn, “Freedom of Association and Collective Bargaining: A study of Indonesian experience 1998-2003,” Working Paper 11 (Geneva: International Labour Office, September 2003), especially at pp. 29-30.

<sup>18</sup> Human Rights Watch interviews with community activists and labor organizers, Jakarta, August and September 2004.

In addition, illegal revenue-generating activity by the military continued. Commanding officers, faced with the expectation of their superiors that they would finance the units they led, devised ways to use their troops, facilities, and clout to raise money. Many of the illegal ventures they established were local schemes but others implicated higher-level officials. In some cases, military commanders openly tolerated illegal economic activity by their subordinates. More generally, military leaders looked the other way, so long as the money continued to flow. Not surprisingly, self-enrichment took place on a grand scale and impunity prevailed.<sup>19</sup>

Throughout the Soeharto era, the military remained active in commercial ventures at all levels, from headquarters to unit commands. By 1998 territorial units throughout Indonesia were considered to be “financially independent.”<sup>20</sup> Much of the money generated by military businesses was allocated to senior officers. For example, an audit of one military-linked company, covering the years 1997 and 1998, noted large payments to senior military personnel, mostly listed as “honoraria.”<sup>21</sup>

The military’s business investments were closely linked to the economic interests of the Soeharto family and its associates, and they often joined together in powerful conglomerates. In the later years of the Soeharto administration, however, private investors began to partner directly with members of Soeharto’s family, so the military lost its place as the favored business partner.<sup>22</sup>

### ***The Financial Crisis and its Aftermath***

The military’s economic standing slipped dramatically as a result of the Asian economic crisis that ultimately helped bring down the Soeharto administration and usher in the *reformasi* (reform) era. A researcher has estimated that only about one-third of the military’s companies survived the crisis.<sup>23</sup> Overall, the military reportedly experienced a

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<sup>19</sup> Crouch, *The Army and Politics in Indonesia*, pp. 285-299.

<sup>20</sup> Mietzner, “Business as Usual?,” p. 247.

<sup>21</sup> Widoyoko et al., *Military Businesses in Search of Legitimacy*, p. 59; Danang Widoyoko, “Questioning the Military Business Restructuring,” in Moch. Nurhasim, ed., *Practices of Military Business: Experiences from Indonesia, Burma, Philippines and South Korea* (Jakarta: Ridep Institute and Friedrich Ebert Stiftung, 2005), pp. 122-123. (This book was the English translation of a volume originally published in 2003.) Both sources cited an audit report of PT Manunggal Air Service (PT MAS). These payments, which totaled Rp. 68-90 million (approximately \$15,000 – \$20,000) per person over the period, allegedly were issued to the then ABRI chief commander, logistics assistant, head of general staff, and general planning assistant. (PT stands for Perseroan Terbatas and refers to a privately-held corporation. It will not be repeated here after first usage for each company name.)

<sup>22</sup> Salil Tripathi, “Merchants in Uniform: Indonesia’s generals may make good business partners,” *Far Eastern Economic Review (FEER)*, February 5, 1998.

<sup>23</sup> This estimate was attributed to Sukardi Rinakit, author of a book on the Indonesian military. Donald Greenlees, “Indonesia wants its army out of business,” *International Herald Tribune*, May 4, 2005.

30 percent decline in its purchasing power from 1997 to 1998.<sup>24</sup> Dividends from one major military investment, a timber company, fell from U.S.\$30 million in 1996 to an estimated \$19 million in 1998.<sup>25</sup>

Financial reviews of military-owned businesses confirmed their decline. An audit of the main army foundation found that in 2000 its companies returned a net loss of Rp. 8.21 billion (\$985,000).<sup>26</sup> Facing major setbacks, the TNI divested itself of some businesses, including in the formerly lucrative timber sector. It also shut down many profit-losing businesses, while others underwent restructuring. Financial concerns also led to the consolidation of some military foundations. The defense minister from 1999 to 2000, Juwono Sudarsono (who would be renamed to that position in October 2004), expressed concern about the state of the military foundations: “We must act as soon as possible to stop the loss of funds to the nation.”<sup>27</sup>

Some military businesses were able to limit the financial damage.<sup>28</sup> Yet the overall picture was bleak. The then TNI assistant for general planning estimated that military foundations contributed in 2000 a total sum equivalent to only about 1 percent of the military budget and still less (0.7 percent) in 2001.<sup>29</sup>

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<sup>24</sup> David Bourchier, “Skeletons, vigilantes and the Armed Forces’s fall from grace,” in Arief Budiman, Barbara Hatley, and Damien Kingsbury, eds., *Reformasi: Crisis and change in Indonesia* (Clayton, Australia: Monash Asia Institute, 1999), p. 152, citing Patrick Walters, “Political Update,” presentation to the 1998 Indonesian Update conference on “Post-Suharto Indonesia: Renewal or Chaos,” Australian National University, Canberra, September 25, 1998.

<sup>25</sup> The figures were attributed to Abbas Adhar, then president-director of International Timber Corp. Tripathi, “Merchants in Uniform...,” *FEER*.

<sup>26</sup> Ernst & Young, “Yayasan Kartika Eka Paksi: Strategic Review Report Phase II” [“YKEP: Strategic Review Report”], December 2001, copy on file with Human Rights Watch. Unless otherwise noted, all dollar figures refer to U.S. currency. For cases where the cited sources have not provided U.S. dollar equivalents, Human Rights Watch has converted monetary figures using the exchange rates that prevailed at the time in question (in this case, an average for 2000). The conversions were performed using an online currency converter available at <http://www.oanda.com/converter/fxhistory>.

<sup>27</sup> McCulloch, “*Trifungsi*,” p. 117, citing an interview with Sudarsono in July 2000.

<sup>28</sup> For example, after a difficult year in 1997, the navy’s foundation reportedly increased profits to Rp. 8 billion (\$800,000) in 1998 and Rp. 10 billion in 1999 (\$1.3 million), enabling it to invest Rp. 8 billion (\$1.04 million) at that time in agribusiness and form plans for a further expansion. *Ibid.*, p. 121. In 2001, TNI Assistant for General Planning Colonel Poerwadi estimated that this foundation contributed Rp. 8–10 billion (\$800,000 – \$1 million) to help cover military expenses. He estimated total contributions from the air force’s foundations that year at Rp. 6–7 billion (\$600,000 – \$700,000). Widoyoko et al., *Military Businesses in Search of Legitimacy*, p. 95, at footnote 9.

<sup>29</sup> This information was attributed to TNI Assistant for General Planning Colonel Poerwadi. *Ibid.*, p. 95.

### ***New Trends: Diversification, Decentralization, Competition***

In the years following the financial crisis, military economic activity underwent several changes. In one important trend, the TNI increasingly turned to alternative revenue sources to compensate for troubled businesses. In particular, the military came to rely more heavily on partnerships and other arrangements in which it allied with private businesses, notably by providing paid protection services. Contributions from private individuals and businesses took on special importance. The military supplemented its official budget by tapping other government resources, especially to pay for purchases of weapons. The TNI also developed new strategies to find funds. Taking advantage of a government decentralization drive, the military tapped into growing local and regional budgets to cover military expenditures.

At the same time, rampant illicit activities and corruption in the military continued unhindered. As military economic ventures became reliant on informal partnerships and criminal activity, they became more hidden. The military's economic activities and their harmful side effects thus became harder to control, even as pressure mounted for greater accountability.

In another new trend, military businesses have faced increased competition from the police. Welcome moves to give the police greater responsibility for internal security have had the unintended side effect of giving the police opportunities to take over businesses in which the military had been dominant. This has been particularly true for security and protection services, but it also has extended to many other areas. As the police have begun to displace the TNI, struggles over turf repeatedly have broken out into violence. Police business activities, like those of the military, have been associated with human rights abuses, corruption, and weak accountability.

### ***Military Business Activity and the Law***

In September 2004 a new law on the TNI was passed. The law mandated that the Indonesian military end its involvement in business. It also ordered the government to take over military businesses within five years.

Previously when legal controls on military economic activity were imposed they were not enforced. At times pressure has mounted to rein in rampant illegal business activity, but even then the authorities have cracked down only reluctantly and with little effect. Military economic activity in Indonesia had developed with few constraints in the permissive environment created by leaders who defend the military's involvement in business as a legitimate and necessary response to budget shortfalls.

Much military business activity in Indonesia had been declared improper long before the passage of the 2004 TNI law.<sup>30</sup> For decades, the main instrument governing military business activities was Regulation No. 6/1974, which dates to 1974.<sup>31</sup> Under that regulation, active military (and police) personnel were barred from taking part in private business activities except under certain circumstances. Specifically, military officers (at the rank of second lieutenant or higher) were prohibited from owning shares in a private company; taking part in the management of such a company, including in an advisory capacity; or otherwise engaging in profit-driven “trade activities,” whether formally or on a freelance basis.<sup>32</sup>

Under an important exemption, officers were permitted to work for private companies set up by non-profit institutions, either as employees or company officers (in the latter case, under the condition that they obtain permission from superiors and not receive compensation).<sup>33</sup> The conditions were somewhat more flexible for lower-ranking troops, as well as for the wives of military personnel.<sup>34</sup> The exception for soldiers to join companies via non-profit entities opened the door for military foundations, set up with an ostensibly charitable purpose, to develop into commercial arms of the military. In a further weakness, the regulation did not specify an enforcement mechanism.<sup>35</sup>

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<sup>30</sup> Some observers contend that any extra-military activity, including commercial activity, violates the military oath and thus is automatically prohibited. See, for example, Tiarna Siboro, “Generals told to set example,” *Jakarta Post*, August 13, 2003.

<sup>31</sup> Peraturan Pemerintah No. 6/1974 tentang Pembatasan Kegiatan Pegawai Negeri Dalam Usaha Swasta (Government Regulation No. 6/1974 on the Limitation on Government Employees’ Activities in the Private Sector), translated by Human Rights Watch. The regulation also addresses civil servants, but the description above focuses on the provisions specifically relevant to military (and police) personnel.

<sup>32</sup> *Ibid.*, at Article 2.

<sup>33</sup> *Ibid.*, at Article 3(1). The exemption says that they may work in various positions “in state-owned or private enterprises belonging to official institutions which have a not-for-profit goal and function...as mandated by the Competent Authority and appointed based on the prevailing regulation.” *Ibid.* Superior officers, the regulations specified, should reject or revoke requests for permission to accept positions with non-profit-oriented companies if the work would interfere with the officer’s performance of his duties or harm the military’s reputation. *Ibid.*, at Article 5.

<sup>34</sup> The regulation permitted lower-ranked soldiers—those ranked First Lieutenant and below—to be part of companies (both for-profit companies and non-profit), provided they obtain advance written permission from their superiors. It exempted from its provisions rank-and-file soldiers who were preparing to retire, were temporarily suspended, or otherwise on leave. *Ibid.*, at Articles 2, 4, and 8. Provisions requiring the wives of soldiers to seek advance permission to work for companies are addressed in Article 2 (2)(c), Article 2 (3), and Article 4 (3).

<sup>35</sup> It noted only that violators will be prosecuted according to the prevailing laws, and made it the responsibility of the military chief to ensure compliance and respond to any violations. *Ibid.*, at Article 6. The military chief, in turn, was put under penalty of prosecution “under prevailing laws” if he failed to discharge these responsibilities. *Ibid.*

## *Lack of Enforcement*

For decades, government laxity and tolerance has enabled the military to openly engage in self-financing. The lack of enforcement of the 1974 regulation has been the hallmark of government inaction to rein in military businesses. At various points, officials have openly encouraged the military to engage in business as a response to budget constraints. When public pressure has been particularly acute, the government and military leaders have pledged that they would crack down on the military's business activities. In reality, however, they have shown little interest in enforcing the rules.

So many military officers flouted the 1974 regulation that the military chief and minister of defense and security felt the need to reassert the ban on business a few years after it was adopted. Speaking in 1979, Gen. Muhammad Yusuf declared: "All serving officers are forbidden to enter the world of commerce. Forget about trade if you want to be a good soldier."<sup>36</sup> He added: "Those who violate the rules will be dismissed or will be granted early retirement."<sup>37</sup>

As a result, some 200 to 300 people reportedly were instructed to resign.<sup>38</sup> Yet military business flourished. Military commercial activity continued to take place via "front organizations" such as foundations and cooperatives.<sup>39</sup> In addition, TNI headquarters allowed field commanders "discretion" to continue fundraising as they saw fit.<sup>40</sup>

The failure to enforce the ban on military business also signaled a lax attitude toward other illicit economic activity by the military. For a time, some regional military commanders openly tolerated smuggling by their subordinates. When the Soeharto government imposed a short-lived crackdown on blatant military smuggling, it resulted only in a change in tactics: rather than risk being directly involved in the transport and unloading of smuggled goods, military officers provided "protection" for smuggling operations carried out by private associates. Even when such operations were exposed, military backers of sufficiently high rank and political clout could practically guarantee impunity for the smugglers.<sup>41</sup>

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<sup>36</sup> Indria Samego et al., *Bila ABRI Berbisnis (When ABRI Does Business)*, (Jakarta: Mizan, 1998), p. 100, citing *Info Bisnis*, edition 7, year I, 1995.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, p. 101.

<sup>39</sup> M. Taufiqrohman, "Red Beret Business," *Tempo*, April 16-22, 2002.

<sup>40</sup> The comment was attributed to Juwono Sudarsono and related to the late 1970s onward. Fabiola Desy Unidjaja, "TNI nothing more than mercenaries: Analysts," *Jakarta Post*, March 17, 2003.

<sup>41</sup> Crouch, *The Army and Politics in Indonesia*, pp. 291-292.

At the end of the Soeharto era, the military faced renewed criticism about widespread illicit business activity by soldiers. The defense minister in 1997, Edi Sudrajat, renewed the 1974 ban by declaring that military personnel could not do business, whether directly or by providing protection services.<sup>42</sup> The then armed forces commander, Gen. Feisal Tanjung, reinforced the order a week later: “All officers and their wives are barred from business. If they want to get involved in business, they must get written permission from me first.”<sup>43</sup>

The military clarified that retired officers and those working for military cooperatives or foundations were not subject to the rule.<sup>44</sup> Even so, few expected the order to be enforced. Even government officials expressed skepticism, given the pervasive nature of the military’s involvement in the economy at that point.<sup>45</sup> In the end, the “crackdown” reportedly resulted in thirty-four soldiers in Jakarta being picked up for moonlighting as nightclub security guards.<sup>46</sup> For the few caught in the net, General Sudrajat’s order outlined the punishments: delayed promotions or dismissal.<sup>47</sup> Prosecution was not contemplated.

In the face of major public pressure for political reform that began in March 1998 and ultimately led to Soeharto’s fall, Susilo Bambang Yudhoyono, then serving as the armed forces’ chief of staff for territorial affairs, defended the government against its critics. He claimed that it had “punished soldiers involved in ‘backing’ illegal operations” and was “dealing sternly with those involved in manipulation, embezzlement or corruption.”<sup>48</sup> There was little available information to support this contention, however, so observers remained highly skeptical.<sup>49</sup>

When Indonesia’s first direct presidential elections in 2004 swept Yudhoyono to power and he selected Juwono Sudarsono as his defense minister, it opened up the possibility that long-stalled military reform, including reform of military financing, might gain new life. Yudyonono, known as a cautious reformer, had campaigned on an anti-corruption platform. Sudarsono was a prominent critic of military engagement in business activities.

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<sup>42</sup> Susan Sim, “Stay out of business, Abri officials warned,” *Straits Times*, July 17, 1997. The then defense minister’s name appeared with a slightly different spelling, Sudradjat.

<sup>43</sup> Derwin Pereira, “Don’t dabble in business, Abri officers warned again,” *Straits Times*, July 23, 1997.

<sup>44</sup> Sim, “Stay out of business...,” *Straits Times*; Pereira, “Don’t dabble in business...,” *Straits Times*.

<sup>45</sup> Sim, “Stay out of business...,” *Straits Times*.

<sup>46</sup> *Ibid.*

<sup>47</sup> The commanders of the punished soldiers would face unspecified consequences, he said. *Ibid.*

<sup>48</sup> Kevin O’Rourke, *Reformasi: the struggle for power in post Soeharto Indonesia* (Sydney: Allen and Unwin, 2002), p. 82, citing *Suara Pembaruan*, April 26, 1998.

<sup>49</sup> *Ibid.*



## ***Military Resistance to Reform***

The military leadership historically has been a major obstacle to reform of military financing. On occasion, usually under outside pressure, it has said it will consider withdrawing from military businesses. But such rhetoric has rarely been matched by action. To the contrary, over the years military leaders have acted repeatedly to block reform.

The armed forces generally have argued that they cannot afford to give up their economic ventures. Experience has shown, however, that they have strongly resisted reform even when accompanied by increased funds. In the 1950s, parliament debated how the central government might go about funding the military, but the military preferred to retain its financial autonomy.<sup>50</sup> When high oil prices in the 1970s permitted an increase in the military budget, the Soeharto government made no serious effort to dismantle military businesses. Nor was the military leadership inclined to give them up. As summed up by political scientist Harold Crouch: “Although the need for military units and individuals to depend on “unconventional” sources [of funds] had greatly declined, old habits die hard.”<sup>51</sup>

When challenged by one or another scandal that came to public light, the military strongly defended its economic role. In 1995, for example, the chief of general staff of the armed forces, Lt. Gen. Soeyono, argued that the armed forces had as much right to participate in the economy as any other sector of society.<sup>52</sup> Two years later, the spokesperson for the armed forces, Brig. Gen. Slamet Supriadi, made a similar argument, in his case referring specifically to military foundations and cooperatives through which the military was involved in private business:

These groups are part of the military structure and have a legitimate right to take part in business activities. They are looking after the welfare of armed forces personnel and society. So why bar them?<sup>53</sup>

## ***Short-Lived Scrutiny***

The power of the military—including its economic power—came under greater scrutiny in the wake of Soeharto’s fall. Reformers inside the armed forces pushed to

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<sup>50</sup> Mietzner, “Business as Usual?,” p. 247.

<sup>51</sup> Crouch, *The Army and Politics in Indonesia*, p. 292.

<sup>52</sup> J. Kristiadi, “The Armed Forces,” in Richard W. Baker, M. Hadi Soesastro, J. Kristiadi, and Douglas E. Ramage, eds., *Indonesia: The Challenge of Change* (Singapore: Institute of Southeast Asian Studies [ISEAS]: 1999), p. 106, citing *Forum* 4, no. 14, October 23, 1995.

<sup>53</sup> Pereira, “Don’t dabble in business...,” *Straits Times*.

professionalize the security forces and had some limited success from 1999 to 2000. This period also was marked by increased attention to the question of military financing, and military business in particular.

Nongovernmental organizations (NGOs), think tanks, and scholars issued hard-hitting reports that documented the extent of military self-financing. Their strong critique of military business practices—including extensive illegal activities—drew considerable public attention. It made it more difficult for Indonesia’s military leaders to deflect criticism as they always had, by asserting that illicit military businesses were carried out only by rogue elements in the TNI. The issue of military self-finance also caught the attention of the international donor community, which became concerned about the effect of the military’s strong role in the economy on the country’s development prospects. In particular, bilateral donors and multilateral financial institutions saw that military business undermined civilian governance, fueled criminality, and distorted markets by raising costs and reducing competition.

Rampant military corruption and outbreaks of violence tied to military economic interests also heightened calls for reform from within government. At one point, the then defense minister openly questioned the “unclear legal status” of many military businesses established under the rubric of military foundations and cooperatives.<sup>54</sup> In 2000 a cabinet official announced that the government would try to halt its favored treatment of military businesses.<sup>55</sup> Within the TNI, some officers recognized that military self-financing was deeply problematic.

As a result of growing pressure, some official audits were initiated in 2000 and 2001 (see below), but this progress was not sustained. Reform of financing was seen as too daunting a challenge in both financial and political terms. It would entail large expenditures to bring the military on budget. By one estimate offered in 2004, this could amount to additional expenditures equivalent to 1-3 percent of gross domestic product (GDP).<sup>56</sup>

Politically, it was difficult to overcome the powerful military lobby. The government of President Abdurrahman Wahid, the first of the *reformasi* era, attempted to confront the military—including regarding its economic power and dismal levels of transparency—

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<sup>54</sup> He referred in particular to businesses that were not legally registered as private companies. “Indonesian minister warns against civilians meddling in army shake-up,” Agence France-Presse (AFP), June 14, 2000.

<sup>55</sup> “Minister – Military businesses to be audited,” BBC Monitoring Service: Asia-Pacific, March 3, 2000, citing an Antara news agency report of March 1, 2000.

<sup>56</sup> Email communication from a Western political analyst to Human Rights Watch, October 1, 2004.

but had to back down in the face of budget shortfalls and strong resistance from the military.<sup>57</sup> Conservative elements in the military soon reasserted their authority over more reform-minded officers. (A main reformer, Lt. Gen. Agus Wirahadikusumah, lost his command partly in retribution for his efforts to expose financial improprieties.<sup>58</sup>)

The resurgent military argued that it could not give up military businesses until the government provided full funding. President Megawati Sukarnoputri, who was elevated from the vice presidency in 2001 with the support of civilian political parties and the military faction in parliament, did not push that issue or other aspects of military reform. As a result, efforts to address military financing stalled. In 2001 the TNI convinced parliament that “until such time that the Government is able to entirely fund the welfare requirements of the soldiers in a fitting manner, [its] venture in business will be tolerated.”<sup>59</sup>

By 2001 army leaders had for several years promised to address the military’s business activities, but their words were not backed by action.<sup>60</sup> TNI leaders had come to recognize that the military’s business interests sullied its reputation, but the institution nevertheless clung to them out of a sense of self-preservation: the military had become dependent on the outside funds and did not trust that the government would look after its needs. Analysts observed that it would be years until the Indonesian government would be able to fully fund government operations from tax revenue and that, until that was achieved, “the TNI will not give up one rupiah of its off-budget sources that it does not have to surrender.”<sup>61</sup>

### ***Failed “Crackdowns” on Illegal Businesses***

Illicit military economic activity remained in the spotlight following the brief period in which military businesses were under some official scrutiny. Attention to such activity, however, did not result in effective measures to halt it. Pronouncements related to military involvement in illegal logging usefully illustrate the failure to crack down on military economic activities that have clearly violated prevailing laws.

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<sup>57</sup> Sukardi Rinakit, *The Indonesian Military After the New Order* (Singapore: NIAS Press/ISEAS, 2005), p. 183.

<sup>58</sup> O’Rourke, *Reformasi*, pp. 371-373. See the discussion below.

<sup>59</sup> This was the conclusion of consultations between parliament and the TNI chief regarding companies owned by an army foundation. Ernst & Young, “YKEP: Strategic Review Report.” See also Moch. N. Kurniawan, “Military and police asked to be thrifty,” *Jakarta Post*, October 7, 2002.

<sup>60</sup> “Skepticism remains over TNI internal reform,” *Jakarta Post*, January 3, 2001.

<sup>61</sup> Angel Rabasa and John Haseman, *The Military and Democracy in Indonesia: Challenges, Politics, and Power* (Santa Monica: RAND, 2002), p. 71.

In 2001, a presidential decree (Presidential Instruction No. 5/2001) addressed in part the role of the military in illegal forestry operations. As later restated by former TNI chief Gen. Endriartono Sutarto, the order mandated him to “take serious action,” including administrative and criminal sanction, against “any TNI personnel who are proven involved in illegal logging activities, transportation/distribution of illegal forest byproducts or timber smuggling.” It also ordered “serious action against foundations, cooperatives under TNI’s umbrella, and their personnel that are involved in carrying out illegal logging activities and distribution of illegal forest byproducts.” It highlighted in particular the need for the navy to “take stern action” against timber smuggling.<sup>62</sup>

Nearly two years elapsed before he issued a directive to his troops related to any of those specific provisions. In early 2003, according to his own description, he issued a letter to all TNI personnel “to prohibit and take decisive action against any TNI personnel who are proven to be involved, directly or indirectly, in illegal logging activities as well as in illegal transportation/distribution/smuggling of timber.”<sup>63</sup>

He did not indicate what measures, if any, were put in place to ensure compliance with that letter. His letter apparently did not address other elements of the presidential decree. Nor did he clarify whether anyone was in fact ever investigated and punished. Human Rights Watch is unaware of any crackdown on military involvement in illegal logging, prior to 2005, consistent with the language in the 2001 presidential decree.<sup>64</sup> To the contrary, as of early 2005 the TNI had failed to act against a captain in the military police whom NGOs had accused two years earlier of deep involvement in illegal logging activities in Papua.<sup>65</sup>

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<sup>62</sup> Endriartono Sutarto, “Komitmen TNI dalam Menjaga dan Mengawasi Penanggulangan Illegal Logging di Indonesia (TNI Commitment in the Safeguard and Oversight of the Prevention of Illegal Logging in Indonesia),” September 7, 2004, pp. 9-10, translation by Human Rights Watch. See also Instruksi Presiden No. 5/2001 tentang Pemberantasan Penebangan Kayu Illegal (Illegal Logging) dan Peredaran Hasil Hutan Illegal di Kawasan Ekosistem Leuser dan Taman Nasional Tanjung Puting (Presidential Instruction No. 5/2001 on the Eradication of Illegal Logging and Distribution of Illegal Forest Byproducts in the Ecosystem of Leuser and Tanjung Puting National Park), copy on file with Human Rights Watch.

<sup>63</sup> Sutarto, “TNI Commitment...,” p. 10. He identified the letter as “Telegram No. STR/129/2003 to all TNI Personnel,” dated January 30, 2003. Sutarto also described TNI efforts to support conservation programs at a national park, enhance cooperation with forestry officials, and improve border control. *Ibid.*

<sup>64</sup> The TNI did not respond to written questions from Human Rights Watch about disciplinary actions against soldiers. It did provide a table with information on military trials, as discussed further below, but the information was general and did not identify the types of crimes that were prosecuted.

<sup>65</sup> Two NGOs, Environmental Investigation Agency (EIA) and Telapak, carried out a joint investigation and in 2003 reported their findings to government authorities who informed the TNI leadership, but as of early 2005 this person remained involved in logging activities. EIA and Telapak, “The Last Frontier: Illegal Logging in Papua and China’s Massive Timber Theft,” February 2005, p. 18.

A further military crackdown was announced in mid-2003, following a scandal over a murder-for-hire in which two people were killed (the case is described in more detail below). Sutarto vowed to make an example of the four active-duty marines accused in the case.<sup>66</sup> Ultimately, two of the marines were court-martialed and convicted of the double murder.<sup>67</sup> Sutarto also responded by issuing an order banning criminal activity by soldiers, including the protection of criminals:

I have instructed all units to ensure that none of their soldiers are involved in (criminal) business. We will not tolerate that... The TNI has dismissed many soldiers for this sort of thing and will continue to do so.<sup>68</sup>

Publicly available reporting indicates that some soldiers have been rounded up for their involvement in illegal economic activity, but they have almost invariably been low-ranking troops and have faced dismissal rather than legal action. For example, two soldiers and a staff official were dishonorably discharged for drug trafficking but were not reported to the police; a news report commented that it remained unclear if another seventy soldiers similarly dismissed for drug trafficking had ever been charged with a crime.<sup>69</sup> Prosecutions of military personnel remain uncommon, particularly as compared to the frequency of crimes.<sup>70</sup> Those prosecuted under the military court system are almost always low-ranking soldiers who face dismissal or light sentences if found guilty.<sup>71</sup> (For a further discussion, see the section titled “Plans Fail to Promote Accountability” in Part III: Obstacles to Reform.)

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<sup>66</sup> Fabiola Desy Unidjaja, “TNI to get tough on members backing criminals,” *Jakarta Post*, August 12, 2003. Sutarto promised they would get “the harshest sentence possible” (death) if found guilty. *Ibid.* Human Rights Watch opposes the death penalty in all circumstances.

<sup>67</sup> The two marines, who had been sentenced to death, escaped from prison in May 2005. As of June 2005 one had been caught. ID Nugroho, “Fugitive marine captured, shot,” *Jakarta Post*, June 3, 2005.

<sup>68</sup> Unidjaja, “TNI to get tough...,” *Jakarta Post*. See also Siboro, “Generals told...,” *Jakarta Post*.

<sup>69</sup> See, for example, “More soldiers fired for drugs,” *Jakarta Post*, June 14, 2005. The commander of these soldiers sought to explain their behavior, without excusing it, stating: “Despite whatever economic reasons they had, they have misused their positions to commit a crime.” *Ibid.*

<sup>70</sup> Asian Development Bank (ADB), *Country Governance Assessment Report: Republic of Indonesia* (Manila: ADB, 2004), p. 101.

<sup>71</sup> For example, in early 2006 a military court in Makassar gave sentences of only ten weeks (as compared to the maximum sentence of six years) to six army soldiers found guilty of attacking a village, causing injuries to five civilians, and damaging dozens of houses. Dwi Atmanta, “Military and civilians equal before the law,” *Jakarta Post*, April 8, 2006.

### *The Situation Today*

The September 2004 law mandating that the Indonesian military end its involvement in business was a watershed initiative, but one that left many questions unanswered. The language of the law is subject to multiple interpretations, and the provisions have not yet been enforced. Some preliminary steps have been taken but these have been slow and insufficient: the promise of the law remains untested. A more detailed critique is given below in the chapter on “Obstacles to Reform.” It finds that those in a position to make change happen have not shown a commitment to addressing the full costs of military self-finance, including in human rights terms. To the contrary, they have defined military business narrowly, focusing only on select elements of what is a much deeper structural problem, they have provided a number of exemptions that would leave vast parts of the military’s commercial structure in place, and they have not pursued real accountability.

## II. An Anatomy of Military Economic Activity

This chapter outlines the main features of the military's economic activities and some of their negative consequences. It offers a typology of military economic ventures in Indonesia that places them in four broad categories: businesses owned or partly owned by the military, often via foundations and cooperatives; alliances with private businesses, many of which revolve around payments for security or other services; involvement in organized illicit business activity; and corruption. We explain the defining characteristics of each category and identify some sample ventures to show how the different kinds of economic activity play out in practice. Several of the examples illustrate that, in ways both large and small, military economic engagement helps undermine accountability, fuel conflict and criminality, and facilitate human rights abuses. This human rights analysis affords two key lessons: that the problem of military involvement in the economy is a serious one requiring immediate attention; and that any solution must be comprehensive in nature if it is to be effective.

### ***Military-Owned Businesses***

Companies owned in whole or in part by the Indonesian military span the full range of the economy, from agribusiness to manufacturing and from golf courses to banks. In September 2005 the TNI complied with a request from the Ministry of Defense for an inventory of its business interests.<sup>72</sup> (Preparation of the inventory was a first step toward implementing the TNI law passed a year earlier that mandated the transfer of these businesses to government control.) The initial inventory identified 219 military entities (foundations, cooperatives, and foundation companies) engaged in business activity.<sup>73</sup> As of March 2006, the TNI had provided information on 1,520 individual TNI business units.<sup>74</sup> (See Table 1, below.) By April 2006, the Ministry of Defense had initiated a separate review process to examine whether its three foundations were engaged in business activity.<sup>75</sup>

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<sup>72</sup> In the Indonesian language, the defense ministry is called the Department of Defense but it is in English as usually referred to as the Ministry of Defense.

<sup>73</sup> By comparison, according to a 2001 estimate provided by Minister of Defense Juwono Sudarsono, who served a first term as defense minister from 1999 to 2000, the military then owned some 250 companies. ICG, "Indonesia: Next Steps in Military Reform," ICG Asia Report, no. 24, October 11, 2001, p. 13. It is reasonable to assume that the 2001 figure reflected the outcome of an effort Sudarsono announced a year earlier, in which the defense ministry was "cooperating with the TNI headquarters to find out the number of foundations, cooperative units or companies owned by the TNI." "Indonesian minister warns..." AFP.

<sup>74</sup> Major General Suganda, "TNI commits to reform..." *Jakarta Post*.

<sup>75</sup> Human Rights Watch interview with a person involved in that review, Jakarta, April 18, 2006.

**Table 1: TNI Inventory of Military Businesses**

<b>Initial Inventory (September 2005)</b>	
Foundations	25
Companies under Foundations	89
Cooperative Units Engaged in Business	105
<b>Revised Inventory (March 2006)</b>	
Individual Business Units	1520

Source: Ministry of Defense letter to Human Rights Watch, December 22, 2005; Maj. Gen. Suganda, then TNI spokesman, "TNI commits to reform[,] upholds supremacy of law," opinion-editorial, *Jakarta Post*, March 15, 2006.

The TNI and other authorities who have access to the inventory results have not publicly identified the individual business interests held by the military or provided information on their total value. Officials involved in the review of the military's businesses declined to share a copy of the inventory with Human Rights Watch, to provide the names of the businesses listed on it, or to reveal the businesses' total declared value.<sup>76</sup> They said the data supplied by the TNI could not be considered final because it was "very rough" and included many entities that, in their view, did not constitute "real businesses."<sup>77</sup> According to these officials, the list incorporated many small-scale ventures, some with assets of negligible value, alongside other, much larger enterprises.<sup>78</sup>

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<sup>76</sup> Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin, secretary-general of the Ministry of Defense and former TNI spokesman, Jakarta, April 12, 2006; Human Rights Watch interview with Muhammad Said Didu (commonly known as Said Didu, the name used hereafter in this report), secretary of the Ministry of State-Owned Enterprises, Jakarta, April 19, 2006.

<sup>77</sup> The question of how the government would define military business for the purpose of implementing the TNI law's mandate that these businesses be transferred to government control is discussed further below (see the chapter on "Obstacles to Reform"). Human Rights Watch interviews with Lt. Gen. Sjafrie Sjamsoeddin and Said Didu, April 2006.

<sup>78</sup> Ibid.



### **Box 1: How Much are Military-Owned Businesses Worth?**

No reliable information is currently available about the value of the military's business holdings. Most military-owned companies are privately held, rather than publicly listed, so their financial statements are not available for scrutiny.<sup>79</sup> Up to mid-2005, when the TNI submitted an initial inventory of its businesses, even top military officials credibly maintained that they did not know the number, scope, value, or profits of the military's business investments. In May 2005, for example, the air force chief said he lacked data about the number or profits of air force-owned companies.<sup>80</sup> Ongoing government efforts to verify the financial condition of the companies listed in the TNI inventory should provide answers to such basic questions.

In the meantime, public statements offer some indications. In mid-2005, unnamed officials told the Singapore-based *Straits Times* newspaper that the top twenty or so military companies in Indonesia had a total estimated annual income of \$200 million.<sup>81</sup> For the sake of comparison, perhaps the best available historical figure is one used by foreign finance officials. An "informal review" of a selection of eighty-eight military businesses in Indonesia found that they had a combined turnover of Rp. 2.9 trillion (\$348 million) in 1998/1999.<sup>82</sup> The *Far Eastern Economic Review*, referring to the same study, further revealed that annual revenue from the selected military businesses amounted to approximately Rp. 500 billion (\$60 million).<sup>83</sup> Contrasting this to the \$200 million figure offered in mid-2005 (which covered a smaller number of companies), it appears that those military businesses that survived the Asian financial crisis of the late 1990s were able to rebound significantly from that low point. (See below for additional data specifically for businesses held under military foundations.)

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<sup>79</sup> Email communication from a corporate lawyer to Human Rights Watch, April 9, 2006.

<sup>80</sup> "President Urges Fair Regional Elections," *Laksamana.net*, May 4, 2005.

<sup>81</sup> John McBeth, "Tough job to wind up Armed Forces Inc," *Straits Times*, June 4, 2005. The remaining formally-established military businesses were considered not to be economically viable. *Ibid.* Elsewhere, the total value of the military's business holdings has been estimated, variously, at Rp. 326 billion (more than \$35 million), Rp. 10 trillion (\$1.06 billion), and more than \$8 billion, to offer but a few examples. In most cases, it was unclear how these figures were calculated.

<sup>82</sup> The data was cited in a report prepared for international donors. World Bank, *Accelerating Recovery in Uncertain Times: Brief for the Consultative Group on Indonesia* (Washington, DC: World Bank, 2000), p. 29.

<sup>83</sup> John McBeth, "The Army's Dirty Business," *FEER*, November 7, 2002. The article, presumably using 2002 exchange rates, gave the dollar equivalent as \$55.5 million.

Many of the military's business holdings are little more than empty partnerships. The military's stake in a company is typically a passive interest, also known as "golden shares" or "goodwill shares," donated by the true investors with no expectation that the military will play an active role in the operation or management of the company.<sup>84</sup> For example, in 2005, the commander of Kostrad (the army strategic reserve—see below) acknowledged publicly that over the years private investors had given Kostrad ownership stakes in various companies—and had done so for free.<sup>85</sup> According to the Ministry of Defense, almost all TNI businesses have private-sector partners.<sup>86</sup> Many are run as closely held companies, making it all the more difficult to obtain information on profits.<sup>87</sup>

Since the passage of the TNI law of 2004, the military has begun to liquidate some of its business holdings. The description below reflects the limited information that is publicly available about the extent of such restructuring. The military has argued that the TNI should be allowed to continue limited economic activity under its foundations and cooperatives. Thus, while some of the military's business investments have been dropped, the presumption here is that the overall structure of military economic activity has not fundamentally changed.

Inevitably, formalized military businesses have led to a variety of independent economic ventures by military officers. These officers also have many opportunities to use their positions of power and influence to establish business ventures on their own or with private partners. High-ranking officers are in the most advantageous position to make business connections and form private-sector alliances. In addition, many mid-level officers are believed to run small businesses to earn extra income.<sup>88</sup> In one example, a

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<sup>84</sup> This pattern was especially obvious in the late 1960s and early 1970s, when the Soeharto government granted vast timber concessions to well-connected generals who, in turn, entered into partnerships with investors. Human Rights Watch, "Without Remedy," p. 13, citing McCulloch, "*Trifungsi*."

<sup>85</sup> Tiarna Siboro, "Kostrad off-loaded business units," *Jakarta Post*, April 25, 2005; "President Urges....," [Laksamana.net](http://Laksamana.net).

<sup>86</sup> Written response from the Ministry of Defense to Human Rights Watch ["Ministry of Defense letter to Human Rights Watch"], December 22, 2005. Human Rights Watch posed questions to the Ministry of Defense in a letter submitted in October 2005.

<sup>87</sup> Email communication from an Indonesian corporate lawyer familiar with military business issues to Human Rights Watch, April 2006.

<sup>88</sup> Rabasa and Haseman, *The Military and Democracy in Indonesia*, p. 65.

military intelligence officer reportedly owned an ebony business in Central Sulawesi.<sup>89</sup> Commonly, an officer's stake is assigned to his wife or another family member.<sup>90</sup>

It is worth noting that in many cases, though not all, the private business holdings of retired military personnel can be traced to the military as an institution.<sup>91</sup> Many military retirees launch businesses or form relationships with private entrepreneurs while on active duty. For example, the former armed forces commander General (ret.) Wiranto has stated that he intends to build a resort in Sukabumi, on the West Java coast, on land he obtained, along with permission to build, in the 1990s.<sup>92</sup> Local farmers, however, say they have farmed that land since the late 1960s and, under an agrarian reform law, claim to own it.<sup>93</sup> Wiranto was a very senior official throughout the 1990s but was suspended from the post of security minister early in 2000 following allegations he presided over atrocities in East Timor.<sup>94</sup>

### *Foundations*

Many important military business holdings have been established under the umbrella of tax-exempt foundations (*yayasan*). Military foundations were set up beginning in the 1960s to provide social services, such as housing and education, for the troops and their families. They soon expanded into businesses ventures as a way to generate revenue, ostensibly to pay for their welfare activities. The best known foundations have been those established by each of the service branches and special commands, as well as by TNI headquarters itself, but foundations also exist at other levels.<sup>95</sup>

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<sup>89</sup> The officer reportedly served in the Hasannudin (now Wirabuana) regional military command area at the time he founded the business and remained on active duty as of 2004. Kontras, *When Gun Point Joins the Trade*, p. 36.

<sup>90</sup> Human Rights Watch interview with a foreign military analyst, Jakarta, August 31, 2004. See also Crouch, *The Army and Politics in Indonesia*, p. 285; ICG, "Indonesia: Next Steps in Military Reform," p. 14.

<sup>91</sup> See, for example, "In the Shadow of The Stars," *Tempo*, no. 23/VI, February 7-13, 2006, provided via Joyo Indonesia News Service. At the same time, some military retirees direct funds and business opportunities to enterprises affiliated with the military branch in which they served.

<sup>92</sup> Marianne Kearney, "Indicted Indonesian war criminal plans beachside resort 'to help jobless,'" *Telegraph* (London), August 20, 2004.

<sup>93</sup> *Ibid.*

<sup>94</sup> Human Rights Watch, "Unfinished Business: Justice for East Timor," *A Human Rights Watch Press Background*, August 2000. In September 1999, at the height of the atrocities in East Timor, Wiranto was armed forces commander and minister of defense. He was appointed coordinating minister for security and political affairs by President Abdurrahman Wahid at the end of October 1999. Wahid suspended him from this post in February 2000.

<sup>95</sup> Human Rights Watch interview with a person who has been part of official reviews of the businesses of military foundations, Jakarta, April 2006.

Despite their nominally independent status, the military foundations were set up with funds donated by the government.<sup>96</sup> As acknowledged by a senior Indonesian military official, Lt. Gen. Sjafrie Sjamsoeddin, for thirty years under Soeharto the military foundations benefited from monopoly control in many areas, priority for government licenses, and more generally the full backing and authority of an authoritarian government.<sup>97</sup> As a result, the military's foundations were economically prominent during the Soeharto years. They declined sharply in value as a result of the Asian financial crisis and poor management. Increased competition also was a factor. Military businesses still enjoyed certain privileges but after Soeharto's fall they lost their dominance in many sectors.<sup>98</sup> Some military-owned businesses were forced to close, while others underwent major changes.

Additional changes were required to comply with a 2001 law on foundations.<sup>99</sup> That law specified that foundations could take part in business activities only indirectly through related entities whose activities were consistent with the foundation's designated social (or religious or humanitarian) purpose.<sup>100</sup> This measure prompted military foundations to restructure their business interests and place them under holding companies. A separate provision in the law set a limit on the profit-making of foundations by capping investments at 25 percent of their assets.<sup>101</sup>

Foundations also continued to benefit from government resources. At least through 2001 government funds continued to flow to the foundations to help cover operational expenses, according to a government auditor who reviewed their accounts.<sup>102</sup> Speaking that year, the auditor added that the military foundations "can and usually do take

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<sup>96</sup> Rear Adm. (ret.) I. Gde Artjana (then member of the Supreme Audit Agency, BPK), "Akuntabilitas Pendapatan dan Penggunaan Anggaran Militer Dalam Rangka Penguatan Hubungan Sipil-Militer di Indonesia (Accountability in the Revenue and Expenditure of the Military Budget to Improve Civilian-Military Relationship in Indonesia)", (paper presented at an investigative journalism training organized by the National Democratic Institute and Indonesian Institute for Investigative Journalism, Jakarta, July 10, 2001), translation by Human Rights Watch.

<sup>97</sup> Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>98</sup> See, for example, Awan Wibowo Laksono Poesoro, "A look at the military's business ventures," opinion-editorial, *Jakarta Post*, September 5, 2005.

<sup>99</sup> This law also helped prompt an audit of one military foundation, Yayasan Kartika Eka Paksi (discussed below) and led the foundation to eliminate ex officio positions for senior military officers, among other changes. Widoyoko, "Questioning the Military Business Restructuring," p.127; Lt. Gen. (ret.) Kiki Syahnakri, "Restructuring of Kartika Eka Paksi Foundation: The Army's Effort toward Professionalism," in *Practices of Military Business*, pp. 105-107. As discussed further below, the law also contained a provision that impeded the ability of government auditors to review the accounts of military foundations.

<sup>100</sup> Law No. 16/2001, at Articles 3 and 7. See also *Toward Professional TNI: TNI Business Restructuring*, Beni Sukadis and Eric Henra, eds. (Jakarta: LESPESSI and Friedrich Ebert Stiftung), pp. 125-127.

<sup>101</sup> Law No. 16/2001, at Article 7. See also Widoyoko, "Questioning the Military Business Restructuring," p.127.

<sup>102</sup> Artjana, "Accountability in the Revenue and Expenditure of the Military Budget..."

advantage of the resources and mandate of the founding department or agency” and were operated and managed by active military personnel: “In effect, these *yayasans* operate as quasi-governmental agencies.”<sup>103</sup> The Indonesian government acknowledged this was true in a 2003 statement that referred to “military and other foundations receiving state funds or financing state activities.”<sup>104</sup> In 2006, Lt. Gen. (ret.) Agus Widjojo, the former TNI chief of staff for territorial affairs and former deputy speaker of the People’s Consultative Assembly (MPR) from the armed forces faction, independently affirmed that, despite changes to staff the foundations with retired (rather than active-duty) personnel, they nevertheless retained strong ties to the military institution: “De facto, practically speaking, the foundations were established by the military command and the military command feels they own the foundation.”<sup>105</sup>

Each service branch has at least one foundation, and each foundation typically has at least one holding company that invests in individual businesses on the foundation’s behalf. The foundations may have sole or majority interest in the businesses but, as noted, often hold a minority stake though shares donated by private partners. (See “Illustrative Diagram of a Military Business,” below.)

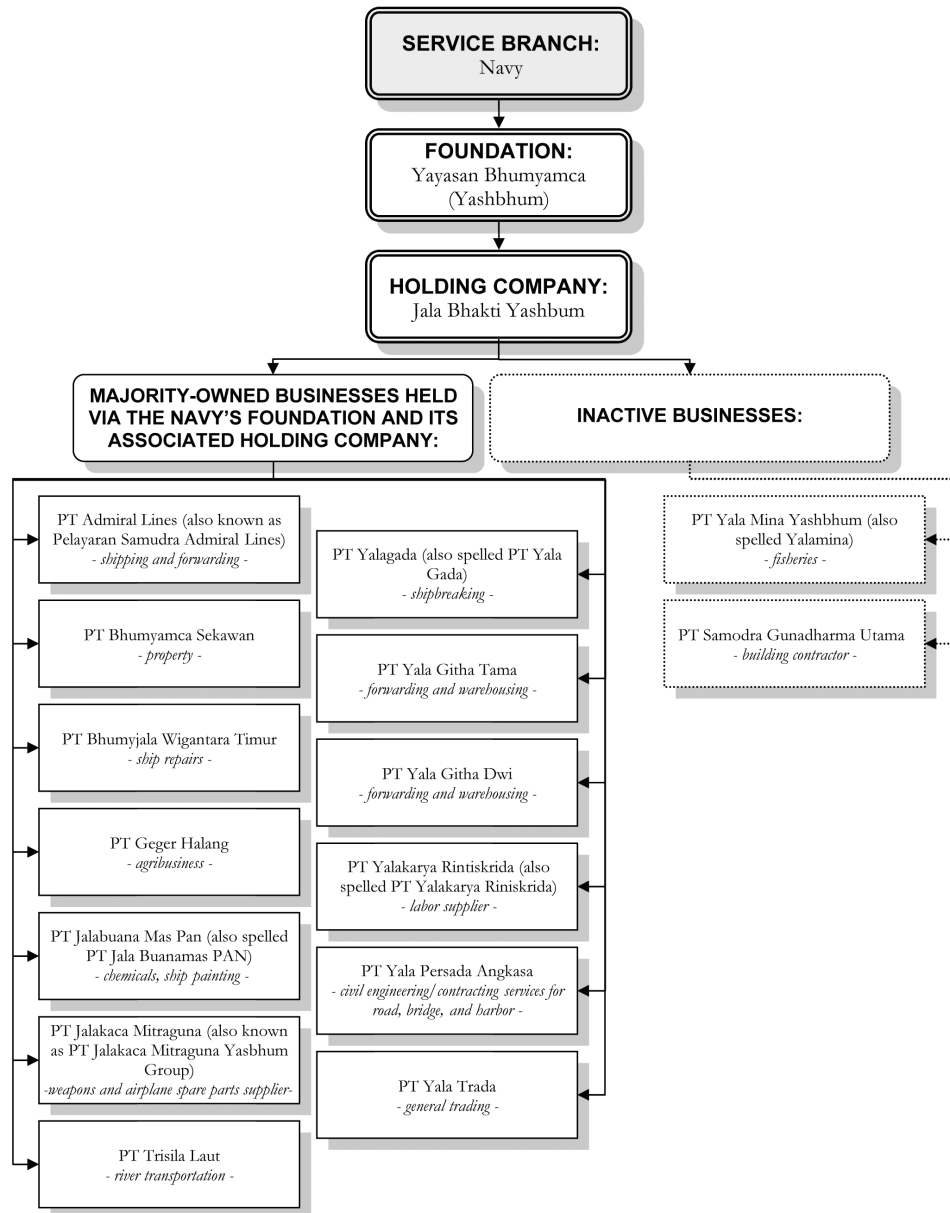
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<sup>103</sup> Ibid. See also I. Gde Artjana, “The Indonesian Military Budget Transparency and Accountability,” in *Practices of Military Business*, pp. 150-151, 163; Agam Fatchurrochman, Indonesia Corruption Watch, “Governance Yayasan Militer (Military Foundation Governance),” translation by Human Rights Watch.

<sup>104</sup> Government of Indonesia, Letter of Intent (loan agreement signed with the International Monetary Fund), June 11, 2003, para. 8.

<sup>105</sup> Human Rights Watch interview with Lt. Gen. (ret.) Agus Widjojo, Jakarta, April 6, 2006.

## Illustrative Diagram of a Military Business



Note: This example is provided here to demonstrate the ownership structure of military businesses and does not purport to make a substantive claim about the businesses listed. It is based on information provided by TNI headquarters and supplemented by two people familiar with the navy's businesses because they reviewed them (in one case, as part of an internal review by the navy and in the other independently). (Information as of May 2006.)

## Box 2: Military Foundations and their Assets

The descriptions presented below reflect the information available to Human Rights Watch at the time of writing.<sup>106</sup>

**Army: Yayasan Kartika Eka Paksi (YKEP).** The largest military foundation, at least by reputation, it was established in 1972. Foundation holdings as of 2001 included eleven subsidiaries and twenty-two joint ventures. The disparate companies at that time fell into six broad categories: forestry/plantation, construction, property, manufacturing, services, and mining.<sup>107</sup> Among its most visible holdings at one time was its part-ownership of the Sudirman Business District, a prime real estate development in Jakarta run by private partners that in 1999 was estimated to be worth \$3 billion.<sup>108</sup> Still suffering the effects of the financial crisis, YKEP suffered a net loss from its investments of approximately Rp. 8 billion (\$880,000) per year in 2000 and 2001.<sup>109</sup> The TNI chief declared in 2002 that YKEP generated a profit of no more than Rp. 50 billion (\$5.5 million).<sup>110</sup> The negative trend apparently continued: according to a former deputy army chief, Kiki Syahnakri, YKEP's profits in 2005 showed a steady decline from previous years.<sup>111</sup> As of that time, it was believed to have largely retained its earlier investments and to continue to own, among others, timber companies, hotels, property, and transport services.<sup>112</sup> In 2006, the Ministry of Defense announced that one of the army's most prominent businesses, PT International Timber Corporation Indonesia (ITCI), was in dire financial condition, as it was experiencing large losses and was unsure if it could pay its thirteen thousand employees.<sup>113</sup>

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<sup>106</sup> In addition to drawing on public sources, where noted, the information below uses a detailed list of military foundations and their investments that was made available to Human Rights Watch in late 2004 by an independent researcher. Human Rights Watch subsequently verified this list with several individuals with knowledge of military businesses, including TNI representatives. All of them independently asserted that the information was generally accurate as of 2006. In select cases where it was possible to verify that the identified business remained in military hands, the companies are identified by name. TNI headquarters provided Human Rights Watch with limited information on military foundations (and cooperatives) that included the names of some military-owned businesses. Citations for these sources are provided below.

<sup>107</sup> Ernst & Young, "YKEP: Strategic Review Report."

<sup>108</sup> Human Rights Watch interviews with researchers who have studied military business issues, Jakarta, August-September 2004; Rabasa and Haseman, *The Military and Democracy in Indonesia*, p. 74; Tom McCawley, "Business Reforms—Bullets and Bottomlines," *AsiaWeek*, February 5, 1999.

<sup>109</sup> Its overall profitability in 2001 was Rp. 8.11 billion (\$811,000), as compared to Rp. 8.21 billion (\$985,200) the year before. Ernst & Young, "YKEP: Strategic Review Report."

<sup>110</sup> Dadan Wijaksana and Musthofid, "TNI commander denies earning huge profits from businesses," *Jakarta Post*, September 17, 2002.

<sup>111</sup> Greenlees, "Indonesia wants...", *International Herald Tribune*.

<sup>112</sup> List of select foundations and associated companies ["Foundation List"], provided anonymously in December 2004, copy on file with Human Rights Watch. In 2006 Human Rights Watch shared the list with military officials and others who have examined the TNI businesses on its behalf. All independently stated that the list appeared to be accurate and largely up-to-date, as noted, but none agreed to provide further details or their own inventory of these businesses.

<sup>113</sup> The future prospects of the company were also considered poor because its forestry concession was due to expire in 2010. Rizal Maslan, "Draf Perpres Soal Bisnis TNI Dijukan ke Sekneg Juni (Draft Presidential

**Kostrad (Army Strategic Reserve Command):** Yayasan Kesejahteraan Sosial Dharma Putra (YKSDP Kostrad). This foundation was first set up as Yayasan Dharma Putra Kostrad (YDPK) in 1964, under Soeharto's command. Information provided to Human Rights Watch in 2004 showed that YKSDP was believed to have an investment in thirteen companies, including in the automobile, plastics, and insurance industries.<sup>114</sup> In April 2005, however, Kostrad commander Lt. Gen. Hadi Waluyo declared that his forces only retained an ownership stake in three companies: PT Mandala Airlines (100 percent), Darma Medika General Hospital (25 percent), and PT Darma Mandala (25 percent).<sup>115</sup> He said they had divested themselves of all other business holdings because the businesses had fared poorly.<sup>116</sup> Waluyo, in his capacity as the Kostrad chief, also served as a commissioner of Mandala Airlines.<sup>117</sup> Potential buyers were reluctant to take over the company because of concerns that financial information was incomplete and presented the risk of hidden liabilities.<sup>118</sup> In April 2006, Kostrad sold the foundering airline.<sup>119</sup>

**Kopassus (the Army Special Forces Command):** Yayasan Kesejahteraan Korps Baret Merah (Yakobame), formed in 1995.<sup>120</sup> As of 2004, it was thought to have investments in the construction business.<sup>121</sup>

**Air Force: Yayasan Adi Upaya (Yasau).** Yasau owned ten companies in 2000.<sup>122</sup> Its holdings in 2004 (eight companies) were in forestry, construction, property, airlines and related companies, and a pharmaceutical company.<sup>123</sup> Several air force-owned businesses remained active as of early 2006, including PT Konstruksi Dirgantara (construction), PT Angkasa Pura (property), and PT Dirgantara Husada (pharmacy).<sup>124</sup>

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Regulation Concerning the Problem of TNI Businesses to be submitted to the State Secretary in June),” May 13, 2006, [online]  
<http://www.detiknews.com/index.php/detik.read/tahun/2006/bulan/05/tgl/13/time/004851/idnews/594141/idkanal/10>.

<sup>114</sup> Foundation List.

<sup>115</sup> Siboro, “Kostrad off-loaded business units,” *Jakarta Post*. Other sources identified Kostrad as having a 90 percent stake in Mandala Airlines. See, for example, Bill Guerin, “Turbulence in Indonesia's skies,” *Asia Times*, September 13, 2005.

<sup>116</sup> Siboro, “Kostrad off-loaded business units,” *Jakarta Post*.

<sup>117</sup> Guerin, “Turbulence in Indonesia's skies,” *Asia Times*.

<sup>118</sup> Email communication from a corporate lawyer to Human Rights Watch, April 9, 2006.

<sup>119</sup> “Cardig takes over Mandala with big plans to up fleet,” *Jakarta Post*, April 18, 2006.

<sup>120</sup> Foundation List.

<sup>121</sup> *Ibid*.

<sup>122</sup> Artjana, “The Indonesian Military Budget Transparency and Accountability,” p. 154.

<sup>123</sup> Foundation List. The name also appears as Yayasan Adhi Upaya.

<sup>124</sup> TNI Headquarters, “Daftar Nama Badan/Unit Usaha di Jajaran TNI (List by Name of Corporate and Enterprise Units within TNI Ranks)” [“List of TNI Corporate and Enterprise Units”], February 1, 2006, copy on file with Human Rights Watch. This document provides “general data on all TNI enterprises.” According to the officials at TNI headquarters who shared it with Human Rights Watch, the document lists entities and



**Navy: Yayasan Bhumyamca (Yasbhum).** Established in 1964, Yasbhum had thirty-two companies in 2000.<sup>125</sup> The number of navy-owned companies had dwindled to six by late 2004, according to the then navy chief of staff, Adm. Bernard Kent Sondakh, who said these would be sold off to the private sector.<sup>126</sup> Information provided by TNI headquarters, however, listed the navy as owning one holding company and fifteen individual businesses as of early 2006.<sup>127</sup> (See “Illustrative Diagram of a Military Business,” above.) The TNI also identified two other navy foundations, Yayasan Nala and Yayasan Hangtuah, without indicating if they owned businesses.<sup>128</sup>

**TNI headquarters:** Yayasan Markas Besar ABRI (Yamabri). Founded in 1995 with a combination of military and civilian ownership and initial capital of only Rp. 25 million (\$11,250), it quickly expanded.<sup>129</sup> In 2004, it was believed to have holdings in agribusiness, mining, communications, transport, and a convention hall.<sup>130</sup> That year, the then TNI chief Gen. Endriartono Sutarto indicated that the total value of military businesses under TNI headquarters was no more than Rp. 100 billion (\$11 million).<sup>131</sup>

**Ministry of Defense:** Yayasan Kejuangan Panglima Besar Sudirman (YKBPS). In 2006, YKBPS owned three universities, a high school, and hospital.<sup>132</sup> A second foundation, Yayasan Kesejahteraan Perumahan Prajurit (YKPP), was involved in housing, while the ministry’s third foundation, Yayasan Satya Bhakti Pertiwi (YSBP), had numerous profit-oriented companies.<sup>133</sup>

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businesses that are dedicated to soldier welfare. This list identified individual company names only for air force and navy-owned businesses. Information on the type of business is derived from the Foundation List, as confirmed using publicly available company information (including the b2b Indonesia Business Directory, [CD-Rom] Sixth Edition, 2005-2006)

<sup>125</sup> Artjana, “The Indonesian Military Budget Transparency and Accountability,” p. 154.

<sup>126</sup> He also indicated that the navy had closed twenty businesses in the previous two years. “KSAL Setuju Bisnis TNI Ditertibkan (Navy Chief Agrees to Control TNI Businesses),” *Koran Tempo*, November 10, 2004.

<sup>127</sup> TNI Headquarters, List of TNI Corporate and Enterprise Units.

<sup>128</sup> Ibid.

<sup>129</sup> For more information on Yamabri, see Widoyoko et al., *Military Businesses in Search of Legitimacy*, pp. 53-62.

<sup>130</sup> Foundation List.

<sup>131</sup> Tito Sinipar, “TNI Chief Hopes Soldiers Can Use their Right to Vote in 2009,” *TempoInteractive.com* (the English-language website of *Koran Tempo* newspaper and *Tempo* magazine), October 4, 2004.

<sup>132</sup> Human Rights Watch interview with a person involved in a review of the defense ministry’s businesses.

<sup>133</sup> Ibid.

## Cooperatives

Military cooperatives form part of the national cooperative movement in Indonesia and, as such, are supposed to exist for the mutual benefit of their members and to be collectively controlled by these members, as well as by a national law on cooperatives.<sup>134</sup> Like military foundations, however, military cooperatives have strayed far from their stated purpose. Initially established with troop welfare in mind—to provide subsidized commodities, such as rice, to soldiers and families—they soon became a vehicle for business ownership. The business activities of military cooperatives have tended to receive less scrutiny than those of military foundations. This has helped feed the often-false perception that military cooperatives merely serve as discount stores for the troops.<sup>135</sup> Yet many cooperatives actually raise revenue not only from membership dues but also from wide-ranging business activities, including investments in private companies.<sup>136</sup> Military cooperatives, for example, have owned stakes in numerous hotels and a cargo company.<sup>137</sup> As with foundations, many are privately held companies so financial data can be difficult to obtain.

**Table 2: Businesses Owned by Military Cooperatives**

Service Branch	Number of Businesses	Internal Capital	External Capital	Dividend
Army	923	Rp. 169 billion (\$17 million)	Rp. 38 billion (\$4 million)	Rp. 13 billion (\$1.3 million)
Air Force	147	Rp. 40 billion (\$4 million)	Rp. 9 billion (\$900,000)	Rp. 4 billion (\$400,000)
Navy	124	Rp. 95 billion (\$9.5 million)	Rp. 8 billion (\$800,000)	Rp. 4 billion (\$400,000)

Source: Ridep Institute, *Practices of Military Business*, citing statistics from the planning bureau of the Ministry of Cooperatives, Small and Medium Enterprises, 2001.<sup>138</sup>

<sup>134</sup> Authority rests with the annual plenary meetings of the cooperative and regional supervisory boards under a national board, so at least in principle the activities of the cooperatives are centrally coordinated and independent of the military hierarchy. In practice, however, individual commanders often exercise considerable control and the civilian supervisory bodies do not feel empowered to oversee local military cooperatives. Human Rights Watch interview with Lt. Gen. (ret.) Agus Widjojo, April 6, 2006.

<sup>135</sup> A retired officer said that the cooperative rules permit some business activities at the central and headquarters level (explained further below) but that primary level cooperatives are strictly barred from engaging in any profit making endeavors. *Ibid.*

<sup>136</sup> As in the case of foundations, the investments of cooperatives are often held through holding companies. See, for example, Rabasa and Haseman, *The Military and Democracy in Indonesia*, p. 74.

<sup>137</sup> Samego et al., *When ABRI Does Business*, pp. 81-82, citing *ADIL*, no. 41, July 23-29, 1997, p. 4.

<sup>138</sup> Ridep Institute, "Structure of Indonesian Military Businesses: When Will it End?," in *Practices of Military Business*. Due to typographical errors in the reproduction of data in the English translation, the data above

The cooperatives of the military exist for each service branch and follow the territorial command structure. In the case of the army, for example, the Army Parent Cooperative (Induk Koperasi Angkatan Darat or Inkopad) corresponds to army headquarters, the Army Central Cooperative (Pusat Koperasi Angkatan Darat or Puskopad) to the regional military command, and the Army Primary Cooperative (Primer Koperasi Angkatan Darat or Primkopad) to the sub-regional military command level. District level offices and local posts also exist. Military cooperatives for the other services include Inkopau and Primkopau, in the case of the air force, and Inkopal and Primkopal for the navy.

An example provided below addresses military investments in forestry and agribusiness activity in East Kalimantan. In that case, an army cooperative had a minority share in a privately established company and also had its representatives on the board of the company, so the business ties were formalized. Informal business ventures are addressed separately in this chapter, in the section below on military alliances with the private sector, which includes the informative example of a military cooperative involved in coal mining activities.

### ***Example 1: Military Investments in East Kalimantan***

Military ownership in private companies is often hidden, but with assistance from NGO colleagues in the area Human Rights Watch was able to trace military interests in forestry operations in an area of East Kalimantan, near the border with Malaysia. The case of a series of military companies that held investments in the regency of Nunukan offers insight into military involvement in business.<sup>139</sup> It also sheds light on some of the negative social and environmental consequences of this activity. Over the years, officials and local residents have accused military-associated businesses in the area of contributing to illegal logging, environmental destruction, and social tensions.

## **Military Stake in Forestry Operations**

In 1967, citing “national security considerations” in the wake of a border dispute, the Indonesian government granted a military-owned company, PT Yamaker, concession rights on a huge tract of land covering more than one million hectares along the Indonesia-Malaysia border.<sup>140</sup> With this move, it dispossessed indigenous communities of

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draws from charts published in the Indonesian-language publication, at pp. 41-42, 45-46, and 49. Human Rights Watch has rounded the figures to the nearest billion Indonesian rupiah and inserted the corresponding dollar values.

<sup>139</sup> Nunukan regency was established at the end of the 1990s, when Bulungan regency was divided.

<sup>140</sup> PT Yamaker, while nominally a private company, was a military holding owned by the armed forces' foundation, Yayasan Maju Kerta (Yamaker). See, for example, Milieudéfensie – Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), “The Kalimantan Border Oil Palm Mega-Project,” prepared by AIDEnvironment, April 2006, p. 3.

their customary land.<sup>141</sup> It also set in motion a pattern that would persist for decades: military economic interests in the forestry sector would take precedence over the interests of local communities.

For decades, Yamaker grossly mismanaged the land. Local indigenous communities charged that overlogging by Yamaker disrupted their livelihoods and traditions and left “only forests with no trees.”<sup>142</sup> The communities experienced additional hardship when Yamaker blocked access to the land, which it did routinely on the pretext of security.<sup>143</sup> After the downfall of the Soeharto government in 1998 that ushered in the *reformasi* era, the new government investigated and exposed massive timber smuggling by Yamaker.<sup>144</sup> The then minister of forestry and plantations, Muslimin Nasution, denounced the company for conducting its business in an illegal manner, failing to promote the welfare of area residents, and having “plundered [the forests] on a vast scale.”<sup>145</sup> Acting on those findings, in 1999 the government revoked the entire Yamaker concession.<sup>146</sup>

The military nonetheless retained strong ties to that land. The new concession holder, the state-owned timber company Perhutani, partnered with the Inkopad army cooperative that had logging operations within the ex-Yamaker site.<sup>147</sup> The military also provided security to Perhutani.<sup>148</sup> Rather than directly engage in logging operations in the area themselves, the military instead partnered with foreign investors from Malaysia for that purpose.<sup>149</sup>

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<sup>141</sup> The land was declared to be state forest, then the concession was given to Yamaker without prior notice to communities whose traditional land had been allocated. Human Rights Watch interview with an environmental activist who worked in the area in the early 2000s, Jakarta, April 19, 2006.

<sup>142</sup> Letter No. 015/FMKD/II/2001, from two Dayak leaders (and signed by the head of nineteen villages) to the Regent of Nunukan, February 2, 2001, copy on file with Human Rights Watch.

<sup>143</sup> Human Rights Watch interview with a former resident of Nunukan, Jakarta, April 19, 2006; Human Rights Watch interviews with an NGO worker familiar with the area, Jakarta, December 2004.

<sup>144</sup> The government estimated that it lost Rp. 134 billion (\$1.8 million) in revenue due to Yamaker’s smuggling activities. “Timber firm linked...,” *Jakarta Post*; “Perhutani takes over Yamaker’s forest areas,” *Jakarta Post*, May 27, 1999.

<sup>145</sup> “Defence department’s Kalimantan timber license revoked,” BBC Monitoring Service: Asia-Pacific, April 10, 1999, reproducing excerpts from *Kompas*, April 8, 1999; and “Timber firm linked...,” *Jakarta Post*.

<sup>146</sup> “Defence department’s Kalimantan...,” BBC Monitoring Service.

<sup>147</sup> Human Rights Watch interview with an environmental activist who worked in the area in the early 2000s; Human Rights Watch interviews with an NGO worker familiar with the area. In April 2000 Perhutani penned a memorandum of understanding and an agreement with Inkopad (No. 277/017.4/Prod/I, dated April 17, 2000, and No. 304/017.4/Prod/I, dated April 27, 2000). Both are referenced in Memorandum of Understanding (MOU) No. 525/122/SOSEK – I/IX/2000, dated September 7, 2000, copy on file with Human Rights Watch.

<sup>148</sup> “Perhutani takes over...,” *Jakarta Post*.

<sup>149</sup> Human Rights Watch interview with an environmental activist who worked in the area in the early 2000s; Human Rights Watch interviews with an NGO worker familiar with the area.

## Military-Private Partnership

In 2000, Inkopad's economic stake in the ex-Yamaker land deepened further. That year it partnered with a Malaysian company, Beta Omega Technologies (BOT), that planned to develop an oil palm plantation and processing factory on land in and near Nunukan regency. Inkopad became part-owner of the BOT subsidiary set up in Indonesia, Agrosilva Beta Kartika (ABK), and had several representatives on its board.<sup>150</sup>

These military connections helped the new company secure permissions and negotiate further deals.<sup>151</sup> ABK gained the local government's approval to cut timber on the land to prepare it for palm oil planting.<sup>152</sup> Local officials said they expected the company to clear some 150 thousand hectares of land in the regency.<sup>153</sup> From an early stage, it was clear ABK planned to log the area and sell the resulting timber. To assist ABK, the Nunukan government agreed to facilitate a minimum production target of fifty thousand cubic meters of lumber per year.<sup>154</sup> (The then Nunukan regent also signed a contract to gain a partial ownership stake in ABK, though it remained unclear if he did so in his individual or official capacity.)<sup>155</sup>

These plans upset local indigenous communities living in the Simenggaris area, a forested zone in the interior of Nunukan regency along the border with Malaysia. A letter signed by some twenty community leaders outlined their concerns. They objected to the palm oil project on the grounds that it threatened to destroy the forest on which

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<sup>150</sup> ABK's ownership was divided between BOT (60 percent), a Jakarta-based entrepreneur (35 percent), and Inkopad (5 percent). A military official and Inkopad representative was named president-commissioner of ABK, a second military official was made commissioner, and the TNI was represented on the company's board by two directors. Articles of Incorporation of PT Agrosilva Beta Kartika, October 20, 2000, copy on file with Human Rights Watch.

<sup>151</sup> For example, Inkopad was referenced in a September 2000 memorandum of understanding between BOT (ABK's parent company) and the Nunukan government, and an Inkopad representative acted as a witness to the signing of that document. MOU No. 525/122/SOSEK – I/IX/2000, September 2000, copy on file with Human Rights Watch. A January 2001 agreement between the Nunukan government and ABK to undertake forestry-related activities in the ex-Yamaker area referred to "INKOPAD (PT Agrosilva Beta Kartika)," as if the military cooperative and the company were the same entity. Agreement No. 525/08/SOSEK/I/2001, between the Regent of Nunukan and PT Agrosilva Beta Kartika, dated January 17, 2001, copy on file with Human Rights Watch.

<sup>152</sup> Agreement No. 525/08/SOSEK/I/2001.

<sup>153</sup> The announcement was made by an official with the local Chamber of Commerce and Industry. "Malaysia's Beta Omega to Invest in Oil-Palm Cultivation," *Asia Pulse*, November 9, 2000.

<sup>154</sup> Agreement No. 525/08/SOSEK/I/2001. By one estimate, achieving this target would require harvesting some 100,000 cubic meters of timber per year.

<sup>155</sup> Conflicts of interest are not clearly regulated in Indonesia, and in this case the regent signed "for and in the name of" the regional government. The agreement gave the regent a 5 percent stake in the deal. *Ibid.* The regent also had been named as a commissioner of the company when it was first established. Articles of incorporation of PT Agrosilva Beta Kartika, copy on file with Human Rights Watch.

they depended for food, wood, and traditional medicinal plants.<sup>156</sup> In addition, the collection of non-timber forest products such as rattan by local communities was an economic lifeline, second in importance only to agriculture, and they derived additional income from occasional logging activities in the forests.<sup>157</sup> Nunukan residents already had the experience of severe forest depletion from logging operations in the area.<sup>158</sup> The leaders of the area also urged that the project not move forward without proper consultation and the consent of the community.<sup>159</sup> The leaders expressly opposed the involvement of the military in logging activities, stating “We are no longer willing to endure the same experience as [we had] with PT Yamaker.”<sup>160</sup>

Fears about the potential for overlogging were also informed by suspicion that the oil palm project might be nothing more than a cover to clear-cut forested areas for a quick profit, with no plantation ever being built. The practice has been prevalent enough in Indonesia to have earned a nickname, the “plantation hoax.”<sup>161</sup> NGOs have estimated that only 10 percent of the three million hectares of East Kalimantan forest allocated to oil palm concessions has actually been converted into working plantations.<sup>162</sup> Specialists who examined Nunukan’s soil as part of an independent environmental study determined that it was generally not suitable for oil palm.<sup>163</sup> In addition, the conversion of forest to other uses, including oil palm plantations, contributed to the degradation of Nunukan’s forests. A related study found that about one-quarter of the primary forest in Nunukan’s formerly lush river basin had been lost over a seven-year period.<sup>164</sup>

Nunukan officials declared in 2001 that ABK’s Malaysian parent company BOT would invest at least \$4.3 million to build an oil palm plantation and factory in the area, and

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<sup>156</sup> Letter No. 015/FMKD/II/2001.

<sup>157</sup> Kusuma Wijaya, Nussy Rosdiana, and Betha Lusiana, “Livelihood Options and Farming Systems in the Forest Margins of Nunukan, East Kalimantan,” in Betha Lusiana, Meine van Noordwijk, and Subekti Rahayu, eds. *Carbon Stocks in Nunukan: a spatial monitoring and modelling approach*, Report from Carbon Monitoring Team of Forest Resource Management and Carbon Sequestration (FORMACS) Project (Bogor, Indonesia: World Agroforestry Centre - ICRAF, SEA Regional Office, 2005), pp. 13-14.

<sup>158</sup> Human Rights Watch interview with an environmental activist who worked in the area in the early 2000s.

<sup>159</sup> Letter No. 015/FMKD/II/2001, copy on file with Human Rights Watch. See also Milieudefensie and SSNC, “The Kalimantan Border Oil Palm Mega-Project,” pp. 13-16.

<sup>160</sup> Letter No. 015/FMKD/II/2001. The company’s name appeared with an older spelling, as PT Jamaker.

<sup>161</sup> Krystof Obidzinski, “Illegal logging not just about smuggling timber,” opinion-editorial, *Jakarta Post*, June 7, 2005. Such scams, including unpaid taxes on logged timber, reportedly cost East Kalimantan some Rp. 3.5 trillion (\$385 million) in losses. Ibid, citing *Kompas* newspaper.

<sup>162</sup> Walhi—Indonesian Forum for Environment, “European Hunger for Palm Oil and Timber Expansion of Destructive Palm Oil Plantations on Kalimantan,” press release, April 12, 2006.

<sup>163</sup> Wijaya et al, “Livelihood Options and Farming Systems...,” p. 11.

<sup>164</sup> The study used satellite imagery to compare forest cover in 1996 to that in 2003. Atiek Widayanti, Andree Ekadinata, and Ronny Syam, “Land Use Changes in Nunukan: Estimating Landscape Level Carbon-Stocks through Land Cover Types and Vegetation Density,” in *Carbon Stocks in Nunukan*, especially at pp. 44-47.

that the project would employ as many as thirty-five thousand workers locally.<sup>165</sup> Ignoring community concerns and requests for consultation, in mid-2001 the then regent gave the Inkopad army cooperative and ABK permission to proceed with the project.<sup>166</sup> Community members issued protest letters to no avail.<sup>167</sup> Later that year ABK contracted a Malaysian firm to clear land in the vicinity of Nunukan regency and market the timber on its behalf.<sup>168</sup>

## A Pattern Repeats

By mid-2004, a new regent complained publicly that authorities in the region had granted logging permits too readily to unnamed forestry companies that promised to invest in oil palm plantations but instead only cut trees for export to Malaysia.<sup>169</sup> He accused these companies of destroying some twenty-five thousand hectares of forests in Nunukan and contributing to the problem of illegal logging.<sup>170</sup> The regent also pointed to a social cost. According to him, the episode sparked tensions and social unrest as people grew frustrated over promised plantation jobs that never materialized.<sup>171</sup>

The events that followed indicate the regent was referring to ABK. The contractor working for ABK was unable to renew its timber license after April 2004.<sup>172</sup> The parent company in Malaysia, BOT, did not respond to questions from Human Rights Watch,

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<sup>165</sup> "Malaysia's Beta Omega to Invest in Oil-Palm Cultivation," *Asia Pulse*; "Malaysia Ready to Invest US\$4.3 billion in E Kalimantan," *Antara*, January 21, 2001. In the second article, the Nunukan regent misstated the value of the investment (as \$4.3 billion, rather than \$4.3 million).

<sup>166</sup> Letters from Nunukan regent to Inkopad: (1) No. 521.53/112/SOSEK – I/VI/2001; (2) No. 522/200/SOSEK – I/VI/2001; (3) No. 503/108/SOSEK – I/VI/2001, all dated June 18, 2001, copies on file with Human Rights Watch.

<sup>167</sup> Opponents of the project prepared a protest letter that outlined complaints about alleged improprieties in the approval letters issued by the regent of Nunukan. Addendum to Letter No. 1st/LSM-VI/2001, June 27, 2001, copy on file with Human Rights Watch. A separate letter to the regent and members of the State Assembly of Nunukan provided greater detail. Letter to the regent and members of the State Assembly of Nunukan, copy on file with Human Rights Watch.

<sup>168</sup> ABK contracted TH Group to clear 145 thousand hectares of land on the border of the Tarakan and Bulungan regencies, in East Kalimantan. TH Group established offices in Nunukan for this purpose. The company's website identifies the contract area as Simenggaris/East Kalimantan, identifies the client (with a slight misspelling) as PT Agrosilva Beta Karti, and clarifies that TH Group established an Indonesia-registered subsidiary to which it subcontracted the work. See TH Group, "Contact Us: Contracting Services: Land Clearing Works," "Location of Contracting Services in East Malaysia," and "Contracting Services: Current Projects: Land Clearing," [online] <http://www.thgroup.com.my/thgroup11/office.html>, <http://www.thgroup.com.my/thgroup11/location2>, and <http://www.thgroup.com.my/thgroup11/current.html>.

<sup>169</sup> "Cirebon council urges stop to illegal log shipments," *Jakarta Post*, August 2, 2004.

<sup>170</sup> *Ibid.*

<sup>171</sup> "Cirebon council urges stop..." *Jakarta Post*.

<sup>172</sup> Rizal Hammim, "TH Group submits application to renew Indon timber license," *Malay Mail*, April 16, 2004. By early 2005, the contractor had given up and terminated its East Kalimantan land clearance activity on behalf of ABK. Lim Ai Leen, "Corporate: TH Group faces setback in Indonesia," *The Edge*, March 7, 2005.

but according to its joint-venture partner, Inkopad, ABK ceased operations on July 9, 2004, and subsequently lost its permits.<sup>173</sup> In August 2004, regional authorities said they would investigate the regent's allegations before taking action against any company.<sup>174</sup> In December 2004, NGOs have reported, an official Department of Interior investigation concluded that ABK had engaged in extensive illegal logging and cross-border timber sales.<sup>175</sup> That same month, the public record shows, the Indonesian Department of Forestry withdrew ABK's permit.<sup>176</sup>

In an echo of the Yamaker experience years earlier, a military-linked company once again had been accused of breaking the law, causing environmental destruction, and contributing to social upheaval, and the only penalty was eventual loss of its concession rights. To Human Rights Watch's knowledge, the military entities were not otherwise punished for their involvement in illegal activity, the individuals involved did not face prosecution, and the local community was not compensated for the damage done to the land.<sup>177</sup> Inkopad told Human Rights Watch that it relinquished its shares in ABK and returned them to the parent company, BOT of Malaysia.<sup>178</sup> The army cooperative declined to address its role in logging activities, land disputes, or environmental concerns associated with its business investment in Nunukan. On this point, its written response to Human Rights Watch stated, "Inkopad is no longer connected to problems related to [the planned] palm oil plantation in Simenggaris [area], Nunukan regency, East Kalimantan."<sup>179</sup>

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<sup>173</sup> Letter from Inkopad in response to questions from Human Rights Watch ["Inkopad letter to Human Rights Watch"], December 6, 2005.

<sup>174</sup> "Cirebon council urges stop...", *Jakarta Post*.

<sup>175</sup> Milieudéfensie and SSNC, "The Kalimantan Border Oil Palm Mega-Project," p. 3, citing "Analysis of Indonesian Border Policy Relating to Social, Cultural, and Economic Problems of Border Regions, PT xx together with the Interior Ministry of the Republic of Indonesia," December 2004.

<sup>176</sup> Decision Letter of the Minister of Forestry SK. 460/Menhut-II/04, "Pembatalan Keputusan Bupati Nunukan No.522.11/027/EK-PRODA/II/2002 tgl. 27-2-2002 ttg Pemberian IUPHHK-HT kepada PT. AGROSILVA BETA KARTIKA seluas 50.000 ha di Simenggaris, Kecamatan Nunukan, Kab. Nunukan, Prop. Kaltim (Annulment of the Decision of the Regent of Nunukan No.522.11/027/EKPRODA/II/2002 dated 2/27/2002 on the issuance of IUPHHK-HT (Logging License – Regrown Forest) to PT. AGROSILVA BETA KARTIKA for 50.000 hectares in Simenggaris, District of Nunukan, Regency of Nunukan, Province of East Kalimantan," December 3, 2004, referenced in Peraturan Perundang Udangan Kehutanan Tahun 2004 (Laws and Regulations on Forestry, 2004), [online] [http://www.dephut.go.id/INFORMASI/BUKU2/DI\\_2004/II\\_16.pdf](http://www.dephut.go.id/INFORMASI/BUKU2/DI_2004/II_16.pdf).

<sup>177</sup> Human Rights Watch interviews with an NGO worker familiar with the area; Human Rights Watch interview with an environmental activist who worked in the area in the early 2000s. It is typical that concession holders are not held accountable for illegal logging. See also Milieudéfensie and SSNC, "The Kalimantan Border Oil Palm Mega-Project," which asserts that concession holders that violate the law are rarely held accountable, especially at pp. 32-33.

<sup>178</sup> Inkopad also stated that the military representatives who helped found ABK were no longer with the cooperative. Inkopad letter to Human Rights Watch.

<sup>179</sup> *Ibid*.



The issue was unlikely to end there, however. In 2005, the Indonesian government announced a plan to develop the largest oil palm plantation in the world along the Malaysia-Kalimantan border area.<sup>180</sup> Nunukan was one of several regencies anticipated to host the massive plantation.<sup>181</sup> Environmentalists, international officials, and even the palm oil producers association lined up against the project.<sup>182</sup> In response to critics, the Indonesian government announced that it would reduce the size of the planned plantation, and avoid placing it on land designated for an international conservation initiative to preserve the area's biodiversity, but that it still intended to move forward with the project in the Kalimantan border area.<sup>183</sup> There was also controversy over the prospect that the project would provide a new excuse for the military to engage in forestry activities under the pretext of security.<sup>184</sup> Human Rights Watch learned independently that the military had a stake in several forest concession areas elsewhere in Kalimantan that were slated for conversion to oil palm.<sup>185</sup>

### ***Military Collaboration with Private Businesses***

Alliances with corporations or private entrepreneurs account for a vast part of the TNI's extensive business interests. Often the military partners with foreign investors. Private businesspeople, whether domestic or foreign, have different reasons to enter into an alliance with the military. They may seek, for example, to curry favor with powerful individuals who can advance their business. The military's ability to arrange government licenses or block competition has diminished in recent years, but particularly at the local level, military officers retain the role of gatekeeper. Businesspeople also choose to align themselves with the military to gain access to goods and services. For example, the military provides transport services on military vehicles for a fee, leases out land, and trades in items such as fuel, timber, and coffee.

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<sup>180</sup> Rendi A. Witar, "Govt plans world's largest oil palm plantations," *Jakarta Post*, July 18, 2005. The China Development Bank agreed to provide \$8 billion in financing. Shawn Donnan, "Doubts grow over Borneo plantation plan: Campaigners fear the palm oil project Indonesia agreed with China would grant access to loggers," *Financial Times*, October 18, 2005.

<sup>181</sup> Tb. Arie Rukmantara, "Planned giant plantations threatens Borneo forests," *Jakarta Post*, October 24, 2005.

<sup>182</sup> See, for example, Donnan, "Doubts grow...", *Financial Times*.

<sup>183</sup> World Wildlife Fund, "Presidential support for the Heart of Borneo," press release, February 2006; Tb. Arie Rukmantara, "Govt seeks new land for border project," *Jakarta Post*, May 8, 2006.

<sup>184</sup> Donnan, "Doubts grow...", *Financial Times*; Milieudéfense and SSNC, "*The Kalimantan Border Oil Palm Mega-Project*," pp. 6-7.

<sup>185</sup> Several such concessions were controlled by a single air force foundation, Yayasan Adi Upaya. Official records on concessions in Kalimantan, as compiled into a database by two Indonesian NGOs that collected legal documents filed with local, regional, and national authorities, reviewed by Human Rights Watch in June 2006. See also Milieudéfense and SSNC, "*The Kalimantan Border Oil Palm Mega-Project*," pp. 44-44, which indicates that an army cooperative, Puskopad, had been granted a concession in West Kalimantan along the Malaysian border, and that two military companies had previously had concessions but were no longer active. The NGOs also state that retired military and police personnel are commonly the beneficiaries of smallholder oil palm concessions. *Ibid.*, p. 46, at footnote 17.

In an example described to Human Rights Watch, in 2004 a private business operated on military-owned land in Jakarta, for which the owner paid a monthly fee of Rp. 30 million (\$3,300) directly to the unit. When he refused a demand by a military unit to raise the monthly fee, the unit shut down his business until a compromise was reached. The monthly payments went directly to the unit without being reported to public accounts.<sup>186</sup>

### ***“Acquaintance Funds”: Private Contributions to the Military***

The military’s alliances with business also can involve solicitation for contributions. Businesses raise money for the military for operations and provide in-kind support, such as vehicles or office equipment.<sup>187</sup> In one example that was publicly reported, a developer provided land and buildings worth Rp. 18.5 billion (\$1.95 million) to locate an army base inside a West Java industrial zone known as Jababeka. The donation made good business sense, an official of the industrial zone argued, since the presence of military personnel “can deter people from carrying out crimes here.”<sup>188</sup>

In other cases, an analyst explained, “[t]he local military commander just picks up a phone to get money [from business patrons].”<sup>189</sup> The proceeds from these informal arrangements are sometimes referred to as “acquaintance funds” or “help from friends.” Lt. Gen. (ret.) Agus Widjojo acknowledged to Human Rights Watch that “it happens that business people make contributions” but stated that such arrangements have become less common than since the late 1990s: “Then it was easy [for a military officer] to approach a business to say what you need. Not now. The police are taking over the roles outside of defense.”<sup>190</sup>

### ***Payments for Security Services***

The Indonesian military makes itself available to provide security services for private interests. Different military units earn money by forming private security companies, and

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<sup>186</sup> Human Rights Watch interview with a source familiar with this case, Jakarta, August 30, 2004.

<sup>187</sup> Such arrangements are common but in most cases are handled confidentially. Human Rights Watch interview with a person who had hired the military to provide security at a private home, Jakarta, December 2004; Human Rights Watch interviews with military analysts who work closely with the Indonesian military and have discussed such arrangements with them, Jakarta, August 31, 2004, and December 14, 2004; Human Rights Watch telephone interviews with former military analysts who were familiar with these arrangements for the same reason, July 15, 2004, January 6, 2005, April 11, 2005, December 2005, and May 2006.

<sup>188</sup> The statement was made by Jababeka’s president-director, Setyono Djuandi Darmono, at the inauguration of the new army command headquarters in the industrial zone. Abdul Khalik, “Business welcomes new Army base,” *Jakarta Post*, July 1, 2005.

<sup>189</sup> Human Rights Watch interview with an Indonesia military analyst, Jakarta, September 3, 2004.

<sup>190</sup> Human Rights Watch interview with Lt. Gen. (ret.) Agus Widjojo, Jakarta, December 15, 2004.

individual commanders charge a fee to loan out their troops as private guards.<sup>191</sup> Some military officers who arrange such security services are later hired on by the companies they protected, to serve as security managers for company facilities.<sup>192</sup> More famously, the TNI provides security to large multinational companies. In Indonesia, companies that operate facilities that the government has declared to be “vital national assets” are required to have protection. In practice, it has usually been the TNI that fills this role, despite a 2004 presidential decree that officially shifted the responsibility to guard such facilities to the police.<sup>193</sup> For example, Indonesian authorities certified in January 2006 that the TNI would guard the facilities of three companies because neither the company nor the police could ensure adequate security.<sup>194</sup> The reliance of major companies, particularly in the extractive sector, on state security forces (military and/or police) to protect their installations in remote and dangerous locations around the world can be rife with problems if the arrangements are not carefully managed.<sup>195</sup> In Indonesia, questions surrounding company payments for military security are acute because of the armed forces’ record of corruption and human rights violations.

Companies can come under strong pressure to underwrite the expenses of military forces assigned to protect their facilities, so they do not always feel they have a choice. A former international executive commented to Human Rights Watch in frustration: “The way Indonesia sets up funding of the police and military is one grand national extortion

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<sup>191</sup> Human Rights Watch interview with a person who arranged through a military commander to hire soldiers to guard his house after a spate of robberies, Jakarta, December 2005.

<sup>192</sup> Email communication from a researcher who has investigated military–company ties to Human Rights Watch, March 22, 2006; Kontras, *When Gun Point Joins the Trade*, p. 28, citing an interview with a local NGO in east Java that identified two military officers who went on to work for a company in the area.

<sup>193</sup> Some officials have stated that the companies hold primary responsibility for security within their installations, with the police or armed forces on hand to assist as needed and to protect the surrounding area. See, for example, Tiarna Siboro, “Draft regulation bans company payments for troops,” interview with Minister of Defense Sudarsono, *Jakarta Post*, February 2, 2006. The decree itself, which had not been implemented as of this writing, states that within six months responsibility for designated vital national facilities will be transferred to a new body, the Manager of Vital National Facilities, and that the police will assist this authority with regard to protection. Under the decree, the TNI retains the right to intervene at the request of the police and in the case of providing security for military-related facilities. Keputusan President No. 23/2004 tentang Pengamanan Obyek Vital Nasional (Presidential Decree No. 63/2004 on Protection of Vital National Facilities), August 5, 2004.

<sup>194</sup> The companies mentioned were Freeport Indonesia, ExxonMobil, and PT Arun LNG. Decision on Security of National Vital Object, issued by the Coordinating Minister for Political, Legal, and Security Affairs, January 27, 2006, copy of the Indonesian text and an English translation on file with Human Rights Watch. The decision was consistent with statements by officials that companies hold primary responsibility for security within their installations, with the police or armed forces on hand to assist as needed. See, for example, Siboro, “Draft regulation...,” *Jakarta Post*.

<sup>195</sup> To respond to these challenges, governments joined together with companies in the extractive industry and nongovernmental groups to develop the Voluntary Principles on Security and Human Rights, described below.

racket.”<sup>196</sup> A former employee of a multinational company offered this view to a researcher:

It is true that the Indonesian military is underpaid and under-equipped, and the housing they are provided is terrible. But is it the company’s place to subsidize the Indonesian military?<sup>197</sup>

This same person referred more directly to financial demands made by the military:

The problem was never with Jakarta as such, not with the military hierarchy there. The biggest problem has always been with the local military. Basically once we started to pay we were backed into a corner. The demands always came in for more money.<sup>198</sup>

Moreover, Indonesian troops often are accused of using intimidation and violence in the course of “protecting” private companies. (See “Freeport’s Security Arrangements,” below.) In one example, a pending 2001 lawsuit accuses ExxonMobil of complicity in gross abuses allegedly carried out by Indonesian security forces in and near the site of the company’s operations in Aceh, while the company strongly disputes the claim that it bears any responsibility.<sup>199</sup> A coalition of environmental and indigenous rights groups described an incident in North Maluku in late 2003 in which they alleged that armed soldiers paid by a mining company delivered written notice threatening protesters with arrest if they did not leave that company’s mine site.<sup>200</sup>

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<sup>196</sup> Human Rights Watch interview with a former executive of a company that operated in Indonesia, March 2005.

<sup>197</sup> See Lesley McCulloch, “Greed: the silent force of the conflict in Aceh,” October 2003, p. 16, [online] <http://www.preventconflict.org/portal/main/greed.pdf>. The quote was attributed to an anonymous former employee of ExxonMobil.

<sup>198</sup> The same person also commented that the individuals responsible for negotiating the payments on the military’s behalf likely kept a portion of the funds. *Ibid.*

<sup>199</sup> The lawsuit was filed by the International Labor Rights Fund, acting on behalf of a group of Acehnese villagers. ExxonMobil has strongly disputed the allegations and sought to have the case dismissed. The case was cleared in October 2005 to proceed in a U.S. state court. For further information, see John Doe I et al. vs. ExxonMobil corporation et al., complaint filed June 11, 2001; ExxonMobil, “Media Statement - Statement Regarding NGO Human Rights Lawsuit - Aceh, Indonesia,” August 13, 2002, [online] [http://www.exxonmobileurope.com/Corporate/Newsroom/Newsreleases/Corp\\_xom\\_nr\\_130802.asp](http://www.exxonmobileurope.com/Corporate/Newsroom/Newsreleases/Corp_xom_nr_130802.asp); “Villagers’ suit will be in a state court,” *Houston Chronicle*, October 21, 2005.

<sup>200</sup> Coalition against Mining in Protected Areas, “Fact Sheet: Community opposition to Newcrest/PT Nusa Halmahera Mineral,” January 11, 2004.

## Freeport's Security Arrangements

A well-known case of security arrangements involving the Indonesian military and police is that of U.S.-based mining giant Freeport-McMoRan Copper & Gold Inc., which has extensive operations in Papua through its subsidiary, PT Freeport Indonesia.<sup>201</sup> The TNI has had a presence alongside Freeport for decades,<sup>202</sup> but the security presence has expanded considerably over time: as of 2005, more than 2,400 government security personnel (military and police) were located in the general area of Freeport's operations.<sup>203</sup>

## Security-Related Controversies

Freeport's security arrangements have been controversial in a number of respects. First, Freeport's ties to the military have led to accusations of complicity in human rights abuses by these forces. In the mid-1990s, troops at the mine site allegedly used company vehicles, offices, and shipping containers to transport and detain people they then tortured or killed.<sup>204</sup> The company said it bore no responsibility for how its equipment was used by the military.<sup>205</sup> Freeport's human rights policy, adopted years after these events, explicitly recognizes the risk that military or police personnel may misuse company equipment and facilities to commit abuses.<sup>206</sup>

Second, there has been widespread speculation that the military intimidated Freeport into providing financial support at its Grasberg mine in Papua.<sup>207</sup> The *New York Times* has repeated claims that the August 2002 killings of three Freeport employees in an

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<sup>201</sup> Freeport-McMoRan's website explains that the parent company's "operations are conducted through its subsidiaries," including PT Freeport Indonesia, which it controls with approximately 91 percent ownership. Freeport-McMoRan, "About Us: Company Overview," [online] at <http://www.fcx.com/aboutus/co-overvw.htm>. In 2005 Freeport-McMoRan agreed to consider selling shares in its wholly owned subsidiary, PT Indocopper Investama, that holds a partial stake in PT Freeport Indonesia. The remainder of PT Freeport Indonesia (9.36 percent) is owned by the Indonesian government. Under a joint venture agreement dating to the mid-1990s, Rio Tinto has a 40 percent interest in production from the Grasberg mine above a certain threshold. See Freeport-McMoRan, "2005 Annual Report," [online] <http://www.fcx.com/inrl/annlrpt/2005/2005%20fcx%20ar%20sec.htm>.

<sup>202</sup> Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>203</sup> Freeport-McMoRan Copper & Gold Inc., "Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2005," filed March 15, 2006. These annual Form 10-K reports are identified here as "Freeport Form 10-K" for the year in question.

<sup>204</sup> See, for example, "Firm 'morally involved' in alleged Irian killings," Reuters, September 1, 1995; Eyal Press, "Church report links U.S. firm to abuses," *National Catholic Reporter*, vol. 31, no. 41 (September 22, 1995).

<sup>205</sup> Stewart Yerton, "Freeport: Accusers Have No Evidence," *New Orleans Times-Picayune*, November 14, 1995.

<sup>206</sup> The policy warns employees that "[t]he most difficult [human rights scenario] involves property that may be construed as belonging to Freeport. This includes buildings, containers, aircraft, trucks, busses, light vehicles and other company equipment" that may be "requested" or "commandeered" by police or military personnel. Freeport-McMoRan, "Human Rights Policy and Implementation," [online] <http://www.fcx.com/envir/hrpol.htm>.

<sup>207</sup> For example, the *New York Times* reported that military personnel may have helped orchestrate riots in 1996 that it said prompted Freeport to establish security payments to the military. Perlez and Bonner, "Below a Mountain of Wealth," *New York Times*.

ambush near the town of Timika may have been carried out by soldiers to ensure the continuation of paid security arrangements, as initially suspected by police.<sup>208</sup> The TNI has disputed such claims in the strongest terms,<sup>209</sup> Freeport has said it has no independent knowledge of who perpetrated the ambush,<sup>210</sup> and a joint investigation by the U.S. Federal Bureau of Investigation (FBI) and the Indonesian police did not find evidence of military involvement. The allegation resurfaced after the FBI's prime suspect was arrested, together with several other Papuans, in January 2006.<sup>211</sup> The suspect confessed to firing on the convoy of Freeport vehicles but also sought to implicate the military in the crime. According to his lawyer, a soldier provided the bullets used in the ambush and three men in military uniform also took part in the ambush.<sup>212</sup>

Third, serious questions have been raised regarding the financial ties between the company and the Indonesian security forces. Following the Timika killings, investors concerned about the company's links to the military in Indonesia successfully pressured Freeport to reveal its spending on security. The company first publicly disclosed this information in 2003 and has reported annually since then.<sup>213</sup> By the end of 2005, the company's total spending on the military and police had topped \$66 million.<sup>214</sup> Much of the company's support was provided in-kind, in the form of barracks, transport, food, and other such items, but Freeport also provided financial support. In explaining these payments, Freeport has said, "At the [Indonesian] Government's request, we provide financial support to ensure that [its] security personnel (the military and police) have the necessary and appropriate resources to provide security for our operations."<sup>215</sup> The

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<sup>208</sup> The same newspaper also reported that military personnel may have helped orchestrate riots in 1996 that it said prompted Freeport to establish security payments to the military. Perlez and Bonner, "Below a Mountain of Wealth....," *New York Times*.

<sup>209</sup> The Indonesian military leadership has vehemently denied that the military as an institution had any involvement in the Timika killings. See, for example, "Indonesian army rejects report officers plotted Papua attack," AFP, November 4, 2002.

<sup>210</sup> Letter from Freeport-McMoRan to Human Rights Watch ["Freeport letter to Human Rights Watch"], November 28, 2005. Human Rights Watch posed questions to Freeport on this and other topics in a letter submitted October 27, 2005.

<sup>211</sup> Raymond Bonner, "Indonesian Man Links Military to Shooting of U.S. Teachers," *New York Times*, January 14, 2006. The suspect had earlier been indicted by a U.S. grand jury based on the FBI's findings. "Papuan Separatist Charged with Murders of Two Americans, Attempted Murders of Others during 2002 Ambush in Indonesia," US Fed News, June 24, 2004.

<sup>212</sup> Bonner, "Indonesian Man Links Military to Shooting of U.S. Teachers," *New York Times*.

<sup>213</sup> Freeport Form 10-K for 2002, filed March 27, 2003. Freeport said it gave "supplementary support" for the security forces that funded items including infrastructure, food and dining hall costs, housing, fuel, travel, vehicle repairs, allowances to cover incidental and administrative costs, and community assistance programs conducted by the military and police. In addition, Freeport said it spent money to provide infrastructure for housing, offices and related facilities for the security forces. It provided aggregate spending figures for each of the two types of cost categories and did the same in subsequent years.

<sup>214</sup> Freeport Form 10-K for 2002; Freeport Form 10-K for 2003, filed March 10, 2004; Freeport Form 10-K 2004, filed March 16, 2005; and Freeport Form 10-K 2005, filed March 15, 2006.

<sup>215</sup> Freeport letter to Human Rights Watch.

company, however, has not responded to queries seeking to establish to whom it made the payments and whether the payments went to government accounts.<sup>216</sup> When it first disclosed its security payments, in 2003, a spokesperson for Freeport's Indonesia subsidiary stated:

Many were shocked when they found out that we allocated millions of U.S. dollars to security personnel to guard the company, because they thought that we gave it in cash. But it is not like that because we allocated the funds to several posts, of which only a small amount was given to soldiers in cash as allowances.<sup>217</sup>

Investigative reports published in 2005 by the NGO Global Witness and the *New York Times*, by contrast, suggested that Freeport directed a large portion of its security payments to individuals.<sup>218</sup> These reports alleged that the company had made large, direct payments to individual Indonesian military and police officers, as well as to units in the field. The *New York Times*, citing company documents it obtained and verified as authentic, said such payments totaled about \$20 million from 1998 to 2004.<sup>219</sup> The *Times* reported that the company doled out large sums of money that it recorded under accounting categories such as "food costs" and "monthly supplement," but the bulk of the funds in fact were at the personal disposal of the commanders.<sup>220</sup> Freeport asserted that the *Times* "mischaracterized the support we provide for Indonesian security forces and ignored the practicalities of conducting business in a remote area."<sup>221</sup>

Indonesian military officials acknowledged that the company had provided assistance and confirmed that it was circulated to units in the field and did not go to the armed forces "as an institution."<sup>222</sup> The TNI has argued that the deployment of soldiers at the Grasberg mine and other designated vital facilities was in keeping with the duty of the

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<sup>216</sup> Human Rights Watch posed questions to Freeport on these topics in its letter of October 27, 2005, but Freeport did not respond to them in its November 28, 2005, letter to Human Rights Watch.

<sup>217</sup> The spokesperson was identified as Siddharta Moersjid. "Freeport confirms allowances for military, police in Papua," *Jakarta Post*, March 16, 2003. The then TNI spokesperson Sjafrie Sjamsoeddin (who at the time held the rank of Major General), said that these cash allowances amounted to Rp. 350,000 (\$38.50) per soldier per month. *Ibid.* Human Rights Watch understands that higher-ranking officers are given a cash allowance of Rp. 500,000 (\$55) per month.

<sup>218</sup> Global Witness, "Paying for Protection: The Freeport mine and the Indonesian security forces," July 2005; Perlez and Bonner, "Below a Mountain of Wealth....," *New York Times*.

<sup>219</sup> Perlez and Bonner, "Below a Mountain of Wealth....," *New York Times*.

<sup>220</sup> *Ibid.*

<sup>221</sup> Letter from Richard C. Adkerson, president and chief executive officer of Freeport-McMoran, to Bill Keller, executive editor of the *New York Times*, and others, dated January 11, 2006, [online] <http://www.fcx.com/news/2006/RCA%20NewYorkTimes.pdf>.

<sup>222</sup> See, for example, "Indonesian Military Admits to Taking Money," *New York Times*, December 29, 2005.

TNI and took place upon the request of the companies involved, the regional governments, and the national police.<sup>223</sup> Officials also have maintained that the government covers the essential costs associated with troop deployments, and Freeport provides additional support “without obligation.”<sup>224</sup> Regarding Freeport’s financial arrangements with the military, the TNI has stated that “institutionally the TNI has never received security money from Freeport but our members who were assigned there did receive money from the company as logistics funds.”<sup>225</sup>

Such admissions helped propel the call by Global Witness for an investigation into possible bribery-related charges against Freeport under the U.S. Foreign Corrupt Practices Act.<sup>226</sup> After Indonesian officials indicated that direct payments to officers and soldiers could constitute corruption under Indonesian law, in early 2006 U.S. authorities initiated “informal inquiries.”<sup>227</sup> Freeport staunchly defended the legality of its security arrangements and said it was cooperating with these inquiries.<sup>228</sup> The Indonesian defense minister also indicated that he would ask the armed forces inspector general to open an inquiry.<sup>229</sup>

Freeport’s payments to the police have received less attention but raise similar issues. Global Witness and the *New York Times* cited examples of cash payments to senior police officials in Papua. Earlier published accounts suggest that the company did not find it unusual to be solicited for funds. According to a 2001 press account, a member of Freeport Indonesia’s board of directors, Prihadi Santoso, received a request for a Rp. 100 million (\$10,000) loan from a person falsely claiming to be the then Papua police chief. Prihadi reportedly acted to authorize the requested bank transfer but later

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<sup>223</sup> Maj. Gen. Suganda, “TNI commits to reform...,” *Jakarta Post*. As noted above, that was the basis for the January 27, 2006, government decision confirming the TNI’s continued presence at the Freeport site.

<sup>224</sup> Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>225</sup> The statement was attributed to TNI spokesman Rear Adm. Muhammad Sunarto. “Indonesian Military Admits Some Officers Received Freeport Funds,” *Asia Pulse*, May 11, 2006. See also Maj. Gen. Suganda, “TNI commits to reform...,” *Jakarta Post*; Human Rights Watch interview with TNI officials, Jakarta, April 13, 2006.

<sup>226</sup> Global Witness, “Paying for Protection,” pp. 3, 6, 13-15, 32; “Thompson Asks U.S. Attorney General and SEC to Review Freeport McMoRan,” press release issued by William C. Thompson, Jr., comptroller of the City of New York, acting on behalf of the New York City Pension Funds, January 30, 2006, [online] [http://www.comptroller.nyc.gov/press/2006\\_releases/pr06-01-015.shtml](http://www.comptroller.nyc.gov/press/2006_releases/pr06-01-015.shtml).

<sup>227</sup> “Payments by Freeport McMoRan Trigger Probe,” Associated Press (AP), January 16, 2006. An Indonesian anti-corruption official said that payments to individual soldiers violate Indonesian law, even if intended for distribution to the troops (as described by the company and those who admitted receiving the funds). Human Rights Watch interview with Erry Riyana Hardjapamekas, vice chair and commissioner, Corruption Eradication Commission of the Republic of Indonesia, Jakarta, April 7, 2006.

<sup>228</sup> “Payments by Freeport McMoRan...,” AP. See also Freeport Form 10-K for 2005, filed March 15, 2006.

<sup>229</sup> “Security payments by Freeport trigger Indonesian government inquiry,” AP, January 25, 2006. A different person, the army inspector general, was named by Global Witness as having personally received some \$247,000 in payments from Freeport between 2001 and 2003 when he was posted in Papua. Global Witness, “Paying for Protection,” pp. 21-22.



cancelled the remittance after the police chief's office denied having issued the request.<sup>230</sup> Freeport declined to respond to a question from Human Rights Watch about the incident.<sup>231</sup> Company payments to the police are likely to receive greater scrutiny if the TNI withdraws from the Freeport mine area, as it has said it intends to do, and the police increase their presence.<sup>232</sup>

## Freeport's Perspective

Freeport has had little to say publicly, but a spokesperson has denied that it made inappropriate payments:

We don't bribe. We do give assistance to the military, not in cash, but in the form of field equipment such as hand talky [portable two-way radio], cars, food....All payments are transparent and reported to the New York Stock Exchange. And assisting security personnel on duty is just normal. If you give some food to your starving guard, that is normal, right?<sup>233</sup>

A former Freeport executive familiar with security arrangements in Indonesia told Human Rights Watch that cash disbursements, made by bank transfer or check, accounted for about 15 percent of the total funds Freeport spent on the Indonesian security forces (the rest being used for in-kind goods and services).<sup>234</sup> According to this source, the money was used for three purposes:

- “Small per diem payments” to supplement troop salaries. For a time, the payments were made to local commanders, but after the company insisted that the units establish bank accounts Freeport subsequently transferred funds to those accounts. Due to an “administrative mislabeling” some of these cash payments were listed as food costs in the company's accounts until this practice was corrected.

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<sup>230</sup> According to this account, Prihadi contacted the authorities and the person who arrived at the bank to attempt to withdraw the funds was arrested. “Bogus general nabbed for attempted fraud,” *Jakarta Post*, February 23, 2001.

<sup>231</sup> Human Rights Watch posed a question about the incident in its October 27, 2005, letter to Freeport, but Freeport's November 28, 2005, letter did not address it.

<sup>232</sup> “Indonesian Military Admits Some Officers Received Freeport Funds,” *Asia Pulse*. In 2003 the TNI similarly said it would pull out of the Freeport area at a time when the military received a great deal of negative publicity over its ties to the company, but the troops stayed on. See, for example, “Military might withdraw from Freeport security,” *Jakarta Post*, November 11, 2003.

<sup>233</sup> Kafil Yamin, “Papuans Set for Showdown With US Gold Miner,” Inter Press Service (IPS), March 2, 2006.

<sup>234</sup> Human Rights Watch telephone interview with a former Freeport executive, May 10, 2006.

- Reimbursements for administrative and logistical costs incurred by the military units in the field, such as for communications or use of helicopters, that the company provided in view of its assessment that “the [budgeted] money out of Jakarta is not enough for normal operations.” The company’s payments for this purpose amounted to approximately \$1000 to \$1500 per month for the regional military command (Kodam).
- Financing for individual “development” projects requested by the military, such as for hospital renovations. The company performed spot checks on about one-in-five of the projects.<sup>235</sup>

The former Freeport executive also maintained that the flow of funds to the military was governed by procedures outlined in a “written support agreement,” or, as other Freeport executives described it, “a contract with the military of the [security] relationship.”<sup>236</sup> That document was submitted to the military commander in Jayapura, capital of Papua province, as well as to his police counterpart, the executives said, but was returned unsigned.<sup>237</sup> The former executive maintained that the provisions of the unsigned agreement were nevertheless in effect and had been adhered to by both sides.<sup>238</sup>

The former executive defended the decision to bypass military headquarters in Jakarta by stating that corruption in the chain of command would prevent the funds from reaching the troops. Making the payments through commanders in Papua, he argued, “helped us and it helped them. We could avoid the extortion and extracurricular activities [by the military] and they could close the gap between what they needed and the available funds.”<sup>239</sup> Asked why the company withheld details about its payments to individuals by only reporting aggregate amounts, this person said he could not be sure but thought that

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<sup>235</sup> Ibid. See also John McBeth, “Freeport in Indonesia: Filling in the holes,” *Asia Times*, February 22, 2006, [online] [http://www.atimes.com/atimes/Southeast\\_Asia/HB22Ae01.html](http://www.atimes.com/atimes/Southeast_Asia/HB22Ae01.html). Note that the *Asia Times* article estimates that as much as 25 percent of Freeport’s total spending on government security was disbursed in this manner, with the rest provided in-kind. Ibid.

<sup>236</sup> Human Rights Watch telephone interview with a former Freeport executive; Human Rights Watch interview with company representatives, March 2005. These executives said that the document dated to the early 2000s, and one of them stated that it was preceded by (and largely based on) a series of individual agreements with military (and police) officials in the province.

<sup>237</sup> Human Rights Watch interview with company representatives; Human Rights Watch telephone interview with a former Freeport executive. The former executive speculated that the military and commanders declined to sign the document because they did not want to be personally associated with the arrangements and any implication that they were “selling” the services of the forces under their command.

<sup>238</sup> Human Rights Watch telephone interview with a former Freeport executive. Human Rights Watch independently obtained a copy of the agreement, which appears to be in draft format and to date from 2003.

<sup>239</sup> Ibid.

Freeport's top management did not want to draw additional attention to an issue that already was "a magnet for controversy."<sup>240</sup>

The former executive stated that the company made its security arrangements bilaterally, through a direct relationship with the military on the ground rather than through civilian government structures, because there was no government regulatory authority to fill that coordination role for the mining industry.<sup>241</sup> He also repeated company claims that Freeport's financial support to the military (and police) was a requirement of its Contract of Work (CoW) signed with the Indonesian government. Freeport's spokesman, Greg Probst, explained the company's rationale in 1999:

The original CoW [from 1967] was less specific in these areas [related to the relationship with the military] than the 1991 CoW. However, in a review of this issue, our Indonesian outside counsel found that the provisions of our [1967] CoW must be read in context with Indonesian law and that the two together provide a clear obligation on the part of [Freeport] to provide logistical and infrastructure support to the Government, including both military and civilian personnel, in all areas in which the government cannot supply such services.<sup>242</sup>

This issue has been under dispute. The author of a book on Freeport as well as the *New York Times* reported that the CoW has no language that requires security payments.<sup>243</sup> Human Rights Watch's understanding is that the CoW, as updated in 1991, contains only a general reference that the company "has been and will continue to be required to develop special facilities and carry out special functions for the fulfillment" of the CoW.<sup>244</sup>

## Conclusion

Freeport has said it wishes to avoid controversy but it instead appears to invite it by what it says and declines to say publicly. On key issues related to its security arrangements in Indonesia, the company has offered public explanations that are open to question. The company has maintained that it is required to provide financial support

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<sup>240</sup> Ibid.

<sup>241</sup> Ibid. As will be discussed, the regulatory authority for the oil and gas sector has channeled company security payments.

<sup>242</sup> Denise Leith, *The Politics of Power: Freeport in Suharto's Indonesia* (University of Hawaii Press, Honolulu: 2003), p. 233, citing a letter from Greg Probst dated July 21, 1999.

<sup>243</sup> Both had copies of the document, in the latter case provided by the book author. Ibid., p. 234; Perlez and Bonner, "Below a Mountain of Wealth..." *New York Times*.

<sup>244</sup> Information provided anonymously to Human Rights Watch by a person with ties to the company, April 2006.

to Indonesian security forces but has not provided sufficient evidence to bolster that claim, even when directly asked.<sup>245</sup> Government officials, meanwhile, insist that the company's support is entirely voluntary.<sup>246</sup> It is also difficult to reconcile the company's position that its support is fully compliant with the Voluntary Principles on Security and Human Rights, a set of international guidelines designed to ensure that company security arrangements respect human rights.<sup>247</sup> The Voluntary Principles presume maximum transparency for security arrangements, including any payments, subject only to overriding safety considerations or security situations.<sup>248</sup>

Moreover, if Freeport's decision to make payments at the local level and to seek to avoid scrutiny by withholding details about those payments was intended as a way to avoid corruption and also the glare of publicity, then it failed on both fronts. Payments to commanders and units in the field, which the former executive maintained were designed to avoid centralized corruption, served instead to raise allegations of local-level corruption by Freeport. By the same token, the company's unwillingness to fully disclose its payments at the outset, and when asked subsequently, has encouraged suspicion that it has something to hide. The misidentification of payments, as food costs rather than cash transfers, also lends itself to the implication that employees had sought to cover up the company's financial support. In short, Freeport's actions were insufficient to avoid the potential problems it identified and instead created vexing new ones.

The wave of negative publicity surrounding the military's ties to Freeport led Indonesian Defense Minister Juwono Sudarsono in early 2006 to offer to prepare official guidelines on companies' security arrangements, including associated payments.<sup>249</sup> An alliance of Indonesian civil society groups, however, strongly challenged the assumption that it was appropriate for companies to directly underwrite the military. They pointed out that such arrangements give the military an economic stake in internal security tasks for which the police have primary responsibility.<sup>250</sup> The groups added that company payments

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<sup>245</sup> This question was included in an October 27, 2005, request for information submitted by Human Rights Watch, but Freeport's reply of November 28, 2005, did not address it. Global Witness had similarly been unable to get a clear answer from the company on this issue. Global Witness, "Paying for Protection," pp. 6, 19.

<sup>246</sup> See, for example, Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>247</sup> Freeport letter to Human Rights Watch. The company has made the same comment elsewhere. See, for example, its response to the *New York Times*, referenced above.

<sup>248</sup> For more information, see [online] <http://www.voluntaryprinciples.org/>.

<sup>249</sup> His statement followed an explicit request from TNI leaders. Tiarma Siboro, "TNI wants legal recourse in protecting firms," *Jakarta Post*, January 24, 2006; Siboro, "Draft regulation...", *Jakarta Post*. Earlier, the minister had stated that a government policy dating from 2000 already banned direct payments to the military. See, for example, Tiarma Siboro, "Companies urged to stop paying soldiers," *Jakarta Post*, December 30, 2005.

<sup>250</sup> Kontras et al, "Militer Harus Tunduk Pada Negara Bukan Korporasi (Military Must Obey the State, not the Corporation)," February 20, 2006; Ridwan Max Sijabat, "Govt's [sic] plan to legalize TNI security business criticized," *Jakarta Post*, February 21, 2006.

compromise the country's security forces, since they could cause these forces to put the interest of companies ahead of their duties to the public. Another criticism that often has been made, including by civil society groups, is that financial arrangements with companies provide a platform for military corruption and serve to undermine civilian control. It also often has been suggested, as in the Freeport case, that paid security arrangements create incentives for the military in the area to cause security disturbances so they can reap the financial benefits when they are called in to assist.<sup>251</sup> In short, the military is in a position to create and sustain demand for its services. Concern over the potential for human rights abuse, as noted above, provides another reason for opposition to the military's role in providing security to companies. A case described in detail below shows how troops from a military cooperative, brought in at the request of a mining company, used abusive tactics to keep unlicensed miners in line.

### ***Example 2: Military Coal Mining and Human Rights in South Kalimantan***

When PT Arutmin, an Indonesian-owned mining company with operations in South Kalimantan, was faced with illegal mining in its concession areas, it turned to the security forces for help.<sup>252</sup> After the police response proved inadequate, the company engaged the military—through a loose partnership with an army cooperative—to help control illegal mining at its Senakin mine.

### **Army Cooperative Regularizes Illegal Mining**

The role of the army cooperative was to act as an intermediary to help reduce the illegal mining activities of local residents who used heavy equipment to mine tons of surface coal. The active-duty soldiers who worked in the cooperative were to organize the unlicensed local miners and ensure they turned the coal over for delivery to the

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<sup>251</sup> Human Rights Watch telephone interview with a former advisor to a multinational company in Indonesia, March 23, 2005.

<sup>252</sup> Arutmin Indonesia is jointly owned by PT Bumi Resources (80 percent) and PT Bakrie and Brothers (20 percent). Bumi Resources, "Company Profile: Subsidiaries: PT Arutmin Indonesia," [online] <http://www.bumiresources.com/content.php?modul=profile&varID=90&textsubsubcatid=2>. Bumi Resources has been Arutmin's majority shareholder since buying Australian mining company BHP Billiton's stake in the company in October 2001. "Creditor of Bakrie sell [sic] Arutmin to Bumi," *Miningindo.com*, March 8, 2004. BHP, in correspondence with Human Rights Watch, said that it was unaware of the arrangements with security force cooperatives, which it said took effect after it sold its stake in Arutmin. BHP maintains a business relationship with Arutmin, as the exclusive marketing agent for Arutmin coal sold on the international market. Letter from BHP in response to questions from Human Rights Watch, October 28, 2005. An NGO representative who has monitored events in Senakin also stated that Arutmin's arrangements with the military went into effect after BHP sold its stake in the company. Human Rights Watch interview with Berry Forqan, executive director, Walhi - South Kalimantan, Jakarta, April 19, 2006.

company. In exchange, the army cooperative got to earn a profit from the resale of the coal.<sup>253</sup>

Neither the army cooperative nor Arutmin responded to Human Rights Watch's requests for information. A representative of the contractor for Arutmin's operations at the Senakin mine, however, publicly explained the set-up under which the military (and police, at another mine location) organized illegal miners with the concession-holder's permission:

I actually wouldn't even call it illegal [mining] now. It is semi-organized subcontracting direct to Arutmin, who have now got the whole thing under control.<sup>254</sup>

Once the army cooperative had a financial stake in coal mining operations, it soon slipped into a realm outside the rule of law. Soldiers not only channeled to the company the coal mined by the illegal miners, as envisioned, but demanded bribes from the miners to allow black market coal sales. The army cooperative also exploited the miners. Soldiers demanded bribes, paid the miners a fraction of the value of the coal, and often did not pay them for months at a time. Moreover, the soldiers used coercion and violence to enforce their cooperative's control. Miners told Human Rights Watch of beatings and other abuse.<sup>255</sup>

The account here focuses on military abuses committed against coal miners who were controlled by the army cooperative under this arrangement. As explained to Human Rights Watch by several miners, the regional army cooperative for South Kalimantan, Puskopad B,<sup>256</sup> issued permits to miners granting them permission to mine on the

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<sup>253</sup> Several officials—the head of the military cooperative, the deputy regent of Kotabaru regency (where Senakin is located), and the governor of South Kalimantan—confirmed and described these arrangements. See “Amankan Lokasi Pertambangan Arutmin Gandeng Puskopad-Puskopol” (To Secure the Mining Location, Arutmin Engaged Puskopad-Puskopol), *Banjarmasin Post*, April 17, 2002; “South Kalimantan needs Rp3.4 trillion for reclamation,” *Miningindo.com*, July 24, 2003. See also ICG, “Indonesia: Natural Resources and Law Enforcement,” ICG Asia Report, no. 29, December 20, 2001, p. 21.

<sup>254</sup> The quote was attributed to Bruce Munro, president of Thiess Indonesia. See Andrew Burrell, “Ragtag Band Rattles Big Boys,” *Australian Financial Review*, November 27, 2003. Thiess Indonesia is a local subsidiary of Thiess, an Australian-owned firm that is the contractor for operations at the Senakin mine. See “About Arutmin: Overview,” [online] [www.arutmin.com](http://www.arutmin.com); and “Senakin Coal Mine, South Kalimantan, Indonesia,” [online] [http://www.thiess.com.au/\\_data/assets/pdf\\_file/4401/Senakin\\_coal\\_mine\\_Indonesia.pdf](http://www.thiess.com.au/_data/assets/pdf_file/4401/Senakin_coal_mine_Indonesia.pdf).

<sup>255</sup> See below for details.

<sup>256</sup> Puskopad is the regional-level army cooperative, based out of Banjarmasin, and corresponds to the regional military command Kodam VI Tanjung Pura. (The full name of the cooperative is “Puskopad B Dam VI Tanjung Pura.”) It also operates at the district level (Primkopad in Kotabaru). According to a local resident, Arutmin also hired the navy cooperative, Pusat Koperasi Angkatan Laut or Puskopal, which set up a post elsewhere in the

Arutmin concession,<sup>257</sup> required them to sell the mined coal back to the cooperative for it to resell to Arutmin at a large profit, and used intimidation and force to keep the miners in line. This was lucrative business for Puskopad, which paid the miners only about half the market value for their coal (approximately Rp. 38,000 to Rp. 44,000 [\$4.18 to \$4.84] per metric ton, compared to the Rp. 75,000 to Rp. 85,000 [\$8.25 to \$9.35] local price on the open market in late 2004).<sup>258</sup>

The miners, however, had little choice since their status was tenuous. Despite the permits granted by Puskopad, with the presumed agreement of the company, the miners were still operating outside the law and were subject to arrest by police.<sup>259</sup> One miner explained:

The Puskopad guarantee is not 100 percent. Since I have a work permit from Puskopad to mine on the Arutmin site, it's almost like I'm a legal miner. But the police will come and say I'm not authorized.<sup>260</sup>

A third miner put it more bluntly:

The TNI takes advantage of the guarantees so they can get the fee for the coal, but they do not protect us from the police.<sup>261</sup>

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Senakin area. Human Rights Watch interview with an illegal miner ("Miner 4"), Senakin (a village located in the subdistrict of Geronggang in Kotabaru regency), South Kalimantan, December 6, 2004.

<sup>257</sup> Human Rights Watch obtained copies of several mining cooperation agreements and discussed their contents with the permit holders. These permits formalize the business relationship between the miners and the military cooperative. Under the agreement, the cooperative accepts the named "entrepreneur" as a "partner," grants permission to this partner to carry out mining operations on the identified sites (all named as forming part of Arutmin's concession area), takes responsibility to ensure that the agreed mining operation on the Arutmin mine "will proceed smoothly," and specifies further that it will guarantee the security of the miner's operations. The individual miner, for his part, commits to keeping the military cooperative informed of his mining activities, to pay the cooperative a fee of Rp. 2,000 (\$0.22) per metric ton of coal, and to limit himself to mining on the Arutmin site. Mining cooperation agreements, dated January, July, and August 2004, copies on file with Human Rights Watch. Two of the permits were issued by Puskopad's local-level affiliate, the Primkopad office of the district military command (Kodim) in Kota Baru, South Kalimantan.

<sup>258</sup> Human Rights Watch interview with an illegal miner ("Miner 2"), Senakin, December 5, 2004; Human Rights Watch interview with Miner 4.

<sup>259</sup> Despite their outward appearance, the documents do not in fact legitimize the illegal miner's operation. Under Indonesian law, miners must be licensed by the appropriate authorities. The permits issued by the military cooperative do not constitute such a license, nor do they appear to place the miners under Arutmin's license. They simply make clear, as one miner put it, that he operated "in partnership with Puskopad" in exchange for protection from being arrested. The miners interviewed by Human Rights Watch all maintained that—Puskopad permits notwithstanding—they operated illegally because they lacked a government-issued mining permit or mining concession. Human Rights Watch interviews with miners and a person familiar with mining issues in the area, South Kalimantan, December 2004; Email communication from an NGO worker familiar with mining arrangements in the area to Human Rights Watch, July 14, 2005.

<sup>260</sup> Human Rights Watch interview with Miner 4. The miners indicated that a crackdown was in effect at the time, in early December 2004. They considered it to be a temporary disruption.

Puskopad also facilitated illegal mining outside the agreement. Miners said they were able to pay Puskopad a fee (Rp. 13,000 per ton, or \$1.43) so that Puskopad would not block them from selling coal they had mined on the open market.<sup>262</sup> One miner explained:

If you don't pay the royalty to Puskopad you can't sell the coal on the open market. If you don't pay the royalty you'd get taken away. Everybody knows you have to pay so no one even tries to sell [on the open market] without paying.<sup>263</sup>

## Exploitation and Abuse of Miners

Miners who spoke to Human Rights Watch said these arrangements trapped them in an exploitative relationship with the army cooperative. They said that the low price the cooperative paid them for their coal, in combination with the various fees it charged, made it very hard for them to make a living. They also complained of payments that often were made months late, leaving them to live hand-to-mouth. Several of the miners felt they were being taken advantage of and some decided it was not worth it to mine for Puskopad on the Arutmin concession.

A former miner explained why he got out of the business: "There are too many procedures. You also have to give money, lots of it, if you want to mine there."<sup>264</sup>

A more serious concern for the miners was that Puskopad enforced its economic interests with an iron hand, relying on intimidation and violence. All of the miners with whom Human Rights Watch spoke had been subjected to various forms of mistreatment by Puskopad. These cases arose when the miners acted in defiance of the permit arrangements or when they attempted to avoid the additional payments demanded by the cooperative for allowing the miners to sell coal on the open market.

For example, two miners said that Puskopad patrols forced miners to dump out truckloads of coal when they were caught leaving without having first stopped at the Puskopad office to pay the agreed fees.<sup>265</sup> Another miner was detained for several hours in September 2003 for mining without Puskopad's advance knowledge. He said an

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<sup>261</sup> Human Rights Watch interview with an illegal miner ("Miner 1"), Senakin, December 4, 2004.

<sup>262</sup> Human Rights Watch interview with an illegal miner ("Miner 3"), Senakin, December 5, 2004; Human Rights Watch interview with Miner 1.

<sup>263</sup> Human Rights Watch interview with Miner 4.

<sup>264</sup> Human Rights Watch interview with Miner 2.

<sup>265</sup> Human Rights Watch interviews with Miner 1 and Miner 3.



armed patrol escorted him to the Puskopad office, where the commander threatened to seize the miner's equipment and demanded, "If you are in the Arutmin site you have to report to me."<sup>266</sup>

Some of these encounters involved the implicit or explicit threat of violence. One miner said that on repeated occasions Puskopad patrols had threatened to shoot him and had beaten the drivers and laborers working with miners.<sup>267</sup> Late at night in November 2003, as three miners and their crews were loading the coal they had secretly mined, some twenty uniformed and armed military personnel from the Puskopad post approached and immediately began threatening and beating them:

The commander (...) arrived. He threatened me. He said, "If you do anything you'll be shot." The guns were pointed at me, they were long guns [rifles]. The people in our group were beaten for around fifteen minutes until they were bruised. They used everything to hit them—their guns, their hands, their feet. I was in a car and they threatened to shoot me. They were all in uniform and had guns.<sup>268</sup>

He went on to describe that the miners and laborers were subsequently arbitrarily detained. They were taken to the Puskopad office, where the beatings continued:

We were held until morning but some people who were not taken that night were called in for questioning the next morning. About ten people were taken to the hospital for their injuries. One was beaten in the ears and lost his hearing. He still can't hear properly. Mostly people had severe bruising, and in one case cuts to the face, from being hit with the butt of a gun. I wasn't beaten but I was handled roughly and was threatened.<sup>269</sup>

Explaining why they had dared take coal out secretly, one of the miners said:

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<sup>266</sup> Human Rights Watch interview with Miner 2.

<sup>267</sup> Human Rights Watch interview with Miner 3.

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

This happened because we had mined for three or four months and never were paid, so we went out that night to mine on our own to cover our expenses for that time.<sup>270</sup>

Late payments were a common complaint. The miners attributed the months-long delays to the arrangements Puskopad made to resell the coal back to Arutmin. They said that process involved the cooperative and company jointly measuring out the coal, combining it with the company's stockpile, and processing payment, only after which would the miners be paid by Puskopad.<sup>271</sup> As one put it, "Our community suffered over this because we couldn't get the money and we weren't able to eat."<sup>272</sup>

### Military Denies Business Activity

In October 2005, the police chief for South Kalimantan ordered the police cooperative in the area, Puskopol, to suspend its involvement in mining activities out of concern that it had become a cover for illegal mining activity.<sup>273</sup> As with the military cooperative, though in different locations, Puskopol was originally brought in by Arutmin to control illegal mining activities as an intermediary.<sup>274</sup> Like the military cooperative, the police cooperative allegedly took over illegal mining activities at these locations and expanded them.<sup>275</sup> The South Kalimantan police chief acted after a local NGO, the regional office of the Forum on the Environment in Indonesia (Wahana Lingkungan Hidup Indonesia, Walhi), urged him to crack down on illegal mining by his forces.<sup>276</sup>

There was no such crackdown by the military. In 2004 and 2005 the army cooperative declined to meet or discuss its role in coal mining activities with Walhi and Human Rights Watch, which worked together to carry out field research on the military's business activity in Senakin. After Walhi wrote to the TNI chief in Jakarta in late 2005

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<sup>270</sup> Ibid.

<sup>271</sup> Human Rights Watch interview with Miner 4.

<sup>272</sup> Human Rights Watch interview with Miner 3.

<sup>273</sup> "Polda Kalsel Bekukan Puskopol (Regional Police of South Kalimantan Suspended Puskopol)," *Kompas*, October 27, 2005.

<sup>274</sup> "To Secure the Mining Location...," *Banjarmasin Post*; "South Kalimantan needs...," Miningindo.com. See also ICG, "Indonesia: Natural Resources and Law Enforcement," p. 21.

<sup>275</sup> In late 2004, Human Rights Watch observed dozens of trucks loaded with coal causing an hours-long traffic jam through the center of the town of Sungai Danau (subdistrict of Satui, Tanah Bumbu regency), South Kalimantan, near Arutmin's Satui mine. This, Human Rights Watch was told, was the nightly process of massive coal resale by the police. Human Rights Watch interview with a South Kalimantan environmental activist, Jakarta, December 1, 2004. See also "Regional Police...," *Kompas*.

<sup>276</sup> Human Rights Watch interview with Berry Forqan.

about the situation in Senakin,<sup>277</sup> it received a response. The response, issued by the commander of the sub-regional military resort command, or Korem, headquartered in Banjarmasin, South Kalimantan (known as Korem 101/Antasari) said the TNI had investigated the matter and found no evidence of wrongdoing.<sup>278</sup> Ignoring the economic dimension of the army cooperative's role in Senakin, the TNI investigators concluded that "Puskopad B is a partner of PT Arutmin in a non-technical operation to prevent illegal mining and the siphoning of coal."<sup>279</sup> Disregarding Walhi's call for military personnel involved in illegal mining to be punished, the Korem commander's report concluded:

Up to now there are no TNI personnel, specifically members of Korem 101/ANT, who participate in or are involved directly or indirectly in illegal coal mining activities.<sup>280</sup>

The commander's rationale that the Puskopad cooperative simply acted to regularize illegal mining directly contradicted the statements of more senior military officials. When informed by Human Rights Watch of the activities of the cooperative in Senakin, military representatives at the TNI headquarters asserted: "This activity is definitely outside of [proper] cooperative activity and TNI activity so must be stopped and will be stopped."<sup>281</sup> The secretary-general of the Ministry of Defense responded similarly: "I agree that brokering is illegal for us [military personnel] and we have to regulate that. It's not the military itself [that is responsible.]"<sup>282</sup> Yet some six months after Walhi sent its letter to the TNI chief—which it copied to numerous other authorities, including the Minister of Defense and military officials at the headquarters, regional, and sub-regional levels, as well as the regional police chief—no such action had been taken. The only response was the Korem commander's report to his superior that the cooperative's activities did not constitute a business and therefore were not banned.

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<sup>277</sup> Letter from Berry Nahdian Forqan, executive director, Walhi-South Kalimantan, to Endriartono Sutarto, then TNI commander-in-chief, November 9, 2005, copy on file with Human Rights Watch.

<sup>278</sup> Telegram from Korem 101/Antasari commander to the regional military commander and copying five others, document STR/420/2005 ["Telegram from Korem 101/Antasari commander"], December 15, 2005, copy on file with Human Rights Watch, translation by Human Rights Watch.

<sup>279</sup> *Ibid.* It referred specifically to preventing "PETI" mining, where PETI is an Indonesian acronym for "mining without a license." The same telegram said that the other accusations made by Walhi (concerning military involvement in coal mining businesses elsewhere in South Kalimantan) were also baseless.

<sup>280</sup> *Ibid.*

<sup>281</sup> Human Rights Watch interview with Brig. Gen. Bibit Santoso, deputy TNI spokesman, and other TNI representatives (most of them responsible for analysis and information on legal issues and military justice), TNI headquarters at Cilangkap, April 13, 2006.

<sup>282</sup> Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

The willful failure to act to halt the coal brokering activity by TNI troops made clear that, despite the reassuring words, military business activities continued to be officially tolerated, and at times even justified, as they had been for years.<sup>283</sup> The investigation into Puskopad's activities in and near the Senakin mine apparently did have one effect: Within days of receiving the Korem commander's response, Walhi was contacted by an Arutmin representative who said that the company had decided to end its cooperation with the military.<sup>284</sup> As of this writing, it was not possible to determine if the situation had in fact changed on the ground in Senakin.<sup>285</sup>

### ***Military Involvement in Criminal Activity***

This section considers some of the main areas in which the military has been implicated in criminal activity. The presentation here is by no means exhaustive, given that military personnel have been accused of direct involvement in a range of criminal enterprises. Persistent patterns of illegal business activity by the military, often concentrated in sectors such as logging and mining, indicate that the problem is widespread. Across the country, units and commanders, not just low-ranking soldiers, are commonly implicated. In a number of cases it can be shown that their illegal businesses are known to their superiors, and only very rarely do the authorities act to enforce the law against these military personnel.<sup>286</sup> These characteristics point to the structural nature of the problem of illegal military business.

At the same time, it must be acknowledged that some cases involve relatively isolated incidents by rogue individuals. Paid assassinations are among the most extreme examples of economically-motivated criminal acts by individual soldiers. One case involved the July 2003 murder-for-hire of a businessman in which his bodyguard, a moonlighting Kopassus soldier, was also killed.<sup>287</sup> The marines who were convicted in the killings reportedly confessed that they had been paid Rp. 2 million (\$237) each to commit the

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<sup>283</sup> Walhi and a second NGO first publicly drew attention to military involvement in various coal mining businesses in South Kalimantan in 2001, and the authorities took no action at that time either. "Gali Info: Bisnis Militer di Perusahaan Bambang: Berkedok Kepentingan Pakyat! (Gali Info: Military Business in Mining Corporations: Using Public Welfare as a Mask!)," *Gali-Gali*, vol. 3, no. 8 (January 2001), citing allegations by Walhi and ELSAM, translation by Human Rights Watch. Walhi included the allegations in its November 2005 letter to the TNI chief, to which the Korem commander replied by saying that they were baseless. Telegram from Korem 101/Antasari commander, December 15, 2006.

<sup>284</sup> Human Rights Watch interview with Berry Forqan.

<sup>285</sup> The representative declined to provide details or documentation to support the claim, and Walhi was not immediately able to visit Senakin to assess for itself. *Ibid.* The Arutmin representative declined to respond to a further request from Human Rights Watch for information.

<sup>286</sup> For more information, see the examples that follow, and also refer to the South Kalimantan coal case and the section on military business activity and the law, above.

<sup>287</sup> Unidjaja, "TNI to get tough...", *Jakarta Post*; Siboro, "Generals told...", *Jakarta Post*.

murder.<sup>288</sup> Another case came to light in early 2005; this time an army soldier was identified as a suspect in a paid killing.<sup>289</sup>

### *Illegal Logging*

Military involvement in forestry operations can include illegitimate activity by military enterprises, such as overlogging at concessions owned by military foundations or processing illegal timber at sawmills run by military commands.<sup>290</sup> The example provided above (see “Military Investments in East Kalimantan,” above) offers one illustration of military-owned businesses that allegedly engaged in illegal logging. Also, local timber barons rely on regional military commands to use intimidation and violence to secure community acquiescence.<sup>291</sup> These timber barons benefit from impunity thanks to their links to the security forces.<sup>292</sup> A timber expert explained that the role of the military also extends to “providing protection for timber mafias or transport on military trucks or helping smuggle logs across the border or extortion—to seize legal or illegal logs.”<sup>293</sup>

The problem has been best documented with respect to the remote and conflict-torn regions of Indonesia. For example, a joint report by the Environmental Investigation Agency (EIA) and the Indonesian NGO Telapak spotlighted the pervasive role of the military “in every aspect of illegal logging” in Papua, where massive timber smuggling takes place. Two timber dealers interviewed by the investigators acknowledged paying dozens of soldiers to look after their illicit timber interests. The report also drew attention to alleged acts of military intimidation in support of an illegal logging operation.<sup>294</sup>

Prompted by the EIA/Telapak report on Papua, President Yudhoyono announced a crackdown on rampant illegal logging that he promised would not spare military personnel.<sup>295</sup> He issued a presidential order against illegal logging that called on military personnel to help combat illegal logging.<sup>296</sup> A handful of military personnel were among

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<sup>288</sup> Untitled article, Laksamana.net, September 12, 2003. The assassinated businessman’s son-in-law was convicted of murder in the case. He and the two marines were sentenced to death (and the marines also dishonorably discharged) in separate trials.

<sup>289</sup> Abdul Khalik, “Soldier implicated in brutal killing,” *Jakarta Post*, February 17, 2005.

<sup>290</sup> See, for example, Moch. N. Kurniawan, “Audit sought for illegal logging funds,” *Jakarta Post*, August 12, 2003. As a general matter, many authorized forestry companies employ illegal practices such as using false pretexts to obtain a license, logging outside approved areas, undercounting production, and evading taxes. Obidzinski, “Illegal logging...,” *Jakarta Post*.

<sup>291</sup> Human Rights Watch interview with an international forestry expert, Jakarta, September 3, 2004.

<sup>292</sup> ICG, “Indonesia: Natural Resources and Law Enforcement,” p. 10.

<sup>293</sup> Human Rights Watch interview with an international forestry expert.

<sup>294</sup> EIA and Telapak, “The Last Frontier,” pp. 8, 16, 18.

<sup>295</sup> “SBY Orders Arrest of Illegal Logging Bosses,” Laksamana.net, February 23, 2005.

<sup>296</sup> Presidential Instruction No. 4/2005, issued March 18, 2005, translation by Human Rights Watch.

the hundreds reported to have been arrested in operations against illegal logging.<sup>297</sup> Campaigners expressed disappointment that, in the end, many of those arrested were released without charge and that in most cases they had not been able to get information about the outcome of military trials.<sup>298</sup> In one prominent case, previously mentioned, EIA/Telapak first reported to the authorities in 2003 that a military policeman was deeply implicated in illegal logging activities in Papua but no action was taken for two years. After the EIA/Telapak report was made public, this person was brought in for questioning, but Telapak researchers learned that by the end of 2005 he had been released.<sup>299</sup>

In addition to undermining the rule of law, military involvement in illegal forestry activity has been associated with human rights abuses. In Papua, for example, communities that dare protest military-backed logging activities have been accused of being separatists.<sup>300</sup> They also have been directly victimized by soldiers who seize their timber for resale, sometimes using violence and intimidation tactics.<sup>301</sup>

### ***Racketeering***

Protection rackets provide another source of illicit income to military personnel who are involved. Military backers reputedly protect drug traffickers, gambling operations, and prostitution rings.<sup>302</sup> As with other revenue sources, racketeering also is linked to military abuses. Human Rights Watch received reports that in 2004 soldiers smashed the windows and burned the property of those who refused their demands for protection payments.<sup>303</sup>

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<sup>297</sup> "Army officers linked to illegal logging," *Jakarta Post*, April 14, 2005.

<sup>298</sup> Human Rights Watch interview with Telapak representatives, Jakarta, April 11, 2006.

<sup>299</sup> Ibid. See also EIA and Telapak, "The Last Frontier," p. 18.

<sup>300</sup> ICG, "Indonesia: Resources and Conflict in Papua," ICG Asia Report, no. 39, September 13, 2002, p. 16.

<sup>301</sup> See, for example, Institute for Human Rights Study and Advocacy in Papua (ELSHAM), "Army's Tainted Logging Business in Papua," July 21, 2002.

<sup>302</sup> See, for example, Otto Syamsuddin Ishak, "Ganja Aceh Serdadu Indonesia dalam Periode Perang Aceh 1989-2003 (Aceh's Marijuana and Indonesian Soldiers in the Period of the Aceh War 1989-2003)," in *Negeri Tentara: Membongkar Politik Ekonomi Militer (Military State: Deconstructing Military Economy Politics)*, *Wacana*, edition 17, no. III (2004); George Junus Aditjondro, "Kayu Hitam, Bisnis Pos Penjagaan, Perdagangan Senjata, dan Proteksi Modal Besar: Ekonomi Politik Bisnis Militer di Sulawesi Bagian Timur (Black Wood, Guarding Post Business, Arms Trade, and Protection of Large Investment: the Economics and Politics of Military Business in Eastern Sulawesi)," *Wacana*, edition 17, no. III (2004); and O'Rourke, *Reformasi*, pp. 293-294, 338.

<sup>303</sup> Human Rights Watch telephone interview with a person who at the time advised multinational companies in Indonesia on security issues, July 15, 2004; Human Rights Watch interview with a researcher who conducted extensive interviews on Medan's organized crime networks, Medan, November 29, 2004. Earlier, a 2000 study found that extortion operations by the military were on the rise. World Bank, *Accelerating Recovery in Uncertain Times*, p. 23, citing a document prepared for the Bank: Michael Ross, "Civil Conflict and Natural Resources—The case of Indonesia" (mimeo), World Bank.

In Medan, North Sumatra, military involvement in crime is well-organized. Medan residents said that the protection rackets are regularized, with shop owners and trucks paying monthly fees and showing stickers designating which military group or associated gang supported them.<sup>304</sup> A person who for years worked in Medan's underworld told Human Rights Watch that the military was deeply involved "[e]verywhere in Medan where illegal businesses exist," including in prominent roles as backers of illegal logging and the drugs trade.<sup>305</sup>

### ***Military-Police Conflicts***

Military engagement in the criminal economy has often brought soldiers into tension with the police. Welcome moves to give the police greater responsibility for internal security have had the unintended side effect of displacing the military from some of its lucrative money-making opportunities, including illicit ones. This trend has aggravated rivalries that at times flare up into violence. Clashes between the Indonesian security forces were a regular occurrence in the early 2000s, with at least a dozen incidents from 2001 to 2003.<sup>306</sup> In late 2004, a member of the Brimob ("Brigade Mobil" or Mobile Brigade) paramilitary police commandos was killed and three others were seriously wounded in an armed brawl with TNI soldiers in Aceh that was reportedly sparked by competition over oil palm interests.<sup>307</sup>

The security forces also can come into conflict with each other when police, acting in their law enforcement role, interfere with the economic interests of soldiers. For example, soldiers and police clashed in 2002 in West Kalimantan after police reportedly moved to shut down a TNI-protected gambling operation.<sup>308</sup> That same year a notorious military-police firefight, detailed below, was sparked by the arrest of a drug dealer who reputedly had military backing. In another, more recent example, in March 2005 a local army unit battled with Brimob police forces in Papua, reportedly when they attempted to

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<sup>304</sup> Human Rights Watch interview with a city resident, Medan, November 25, 2004.

<sup>305</sup> Human Rights Watch interview with a former member of a Medan youth gang who had subsequently become involved in local efforts to combat corruption, November 28, 2004. This person's description is consistent with research on Medan's underworld. Human Rights Watch interview with a researcher who conducted extensive interviews on Medan's organized crime networks; Human Rights Watch telephone interview with the person who led that research project, November 2004.

<sup>306</sup> ICG, "Indonesia: Next Steps in Military Reform," pp. 19-20; "Soldiers Attack Police, One Killed," *Laksamana.net*, December 10, 2003. Many of the armed battles in the years immediately after the 1999 separation of the police from the armed forces were rooted in non-economic factors, including the lack of discipline of the forces, but some had an economic dimension.

<sup>307</sup> "Conflict of Business Interests Behind TNI-Brimob Clash in Aceh," *Sinar Harapan*, November 29, 2004, translation attributed to James Balowski, [online] [http://www.infid.be/military\\_brimob.htm](http://www.infid.be/military_brimob.htm). Twenty-five TNI soldiers reportedly were arrested for involvement in the attack. United States Department of State, "Country Reports on Human Rights Practices – 2004," February 28, 2005.

<sup>308</sup> U.S. Department of State, "Country Reports on Human Rights Practices – 2002," March 31, 2003.

crack down on illegal logging operations that implicated a TNI officer.<sup>309</sup> As a result, it comes as no surprise that police officials complain about the difficulty of acting against the military.<sup>310</sup>

### ***Example 3: Turf Battle in Binjai, North Sumatra***

In September 2002 police in Binjai, North Sumatra arrested an accused drug dealer who allegedly operated with military backing. The suspect's associates in the military sought to have him released and became enraged when the police refused. What began as a battle over authority between the police and the military soon took on more ominous dimensions: In revenge, the military unit organized an armed assault on the police station, setting off a shootout that engulfed the town for hours and terrified the townspeople. Some fifteen people were killed, most of them police officers, and at least four civilians were among the dead. Of the more than sixty people estimated to have been wounded, twenty-three were civilians.<sup>311</sup>

### **Drug Arrest Triggers Dispute**

The dispute that erupted into armed battle was triggered by an incident in the police station the day before. A fight broke out when police refused a demand from a small group of soldiers to release a suspect. Angry soldiers attacked the police, cutting the ear of the commanding police officer, and police responded by firing on the assailants.<sup>312</sup> Police then retaliated by severely beating two of the attackers who had not managed to flee; their bodies were "covered in bruises."<sup>313</sup>

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<sup>309</sup> A military police official, Deputy Commander of the Military Police Brigadier General Hendarji, confirmed the clash but later said it was unrelated to illegal logging operations or the TNI officer. "Bentrok TNI AD-Brimob di Nabire tak terkait illegal logging (Army-Brimob Quarrel in Nabire Not Related to Illegal Logging)," *Kompas*, March 18, 2005; "Marthen Renau Dikeluarkan dari Satgas; Diduga Terlibat Kasus Penebangan Liar (Marthen Renau released from Satgas [task force]; suspected of being involved in illegal logging case)," *Kompas*, March 19, 2005.

<sup>310</sup> See, for example, Abdul Khalik, "Police stage half-hearted war against gambling," *Jakarta Post*, May 10, 2005.

<sup>311</sup> The account here draws primarily on Human Rights Watch interviews with Binjai residents who witnessed the events. The incident also has been widely reported in the Indonesian press. See, for example, Apriadi Gunawan, "Eight killed in gunfight between police, soldiers," *Jakarta Post*, October 1, 2002.

<sup>312</sup> Human Rights Watch interviews with two police officers in Binjai, one who was nearby at the time and another who was familiar with the report of the police investigation on the incident, Binjai, November 27 and 30, 2004. The local and regional military commands did not make themselves available for an interview with Human Rights Watch in late 2004.

<sup>313</sup> Human Rights Watch interview with Dr. HTM Fuad, director of the Djoelham Binjai Public Hospital, Binjai, November 30, 2004.



The suspect whose arrest was at the center of the dispute was a suspected drug dealer reputed to operate with military backing from Linud 100, an airborne reserve unit based in Binjai.<sup>314</sup> A senior police officer in the town explained:

The suspect at the time of his arrest was protected by military personnel. There's a lot of business activity going on. We know there are military people behind it.<sup>315</sup>

A lower-ranking police officer in the town commented further:

There were individuals from Linud who were doing illegal activities so there were some problems when the police would stop their activities, things like gambling and drugs. The Linud members aren't directly involved but they back up these activities, provide protection.<sup>316</sup>

### The Military Revenge Attack

Linud troops waited until the night of the following day to respond to the incident. Scores of troops in combat gear launched a major attack against the police station in the center of town, firing small arms, rockets, and grenades. They also blocked the entrances and exits to the town, obstructed access to the local hospital, and deliberately cut electricity, causing a blackout. After paramilitary police commandos from the Brimob barracks a few kilometers away were called in to help, the Linud soldiers engaged in a firefight with Brimob along the road then proceeded to attack the Brimob barracks located near the entrance to town.<sup>317</sup>

With the area's police forces scattered, in hiding, and engaged in a shootout with the military, no one was left to defend the town's population from the assault. A young man from Medan was fatally wounded at about 1 a.m. as he drove into Binjai with a group of friends. Soldiers who had set up a roadblock stopped the vehicle and shot the young man in the head. Eyewitnesses told the victim's family that the bullet was shot at short

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<sup>314</sup> "Linud" is the abbreviated form of "Lintas Udara," which translates as "Airborne." Linud 100 was the Military Regional Command I (Kodam I) operational reserve.

<sup>315</sup> Human Rights Watch interview with a senior police official in Binjai, November 30, 2004. Some people maintain that the suspect's ties to the military were more personal than financial. Human Rights Watch sought to speak with the suspect, but he was not available and his family declined to answer questions.

<sup>316</sup> Human Rights Watch interview with a junior police officer, Binjai, November 27, 2004.

<sup>317</sup> Human Rights Watch interviews with Binjai residents, November 2004. See also, for example, Gunawan, "Eight killed..." *Jakarta Post*.

range and after those in the car had identified themselves as civilians.<sup>318</sup> Separately, a restaurant owner traveling by car was killed when the vehicle was fired on, and two other passengers in the vehicle sustained gunshot wounds.<sup>319</sup> A cigarette vendor was wounded by a stray bullet and ordered taken to a military hospital.<sup>320</sup> In other incidents, a civil servant died from a gunshot wound and another person suffered unidentified wounds.<sup>321</sup> As many as twenty-three civilians sustained injuries in the attack.<sup>322</sup>

Police casualties were also high. According to police sources, eleven policemen (local and Brimob) were killed and thirty-seven were wounded.<sup>323</sup> The TNI suffered fewer casualties. One soldier died and, by one count, four Linud personnel were wounded.<sup>324</sup>

### After the Battle

The battle finally came to an end some twelve hours after it began, when top police and military officers arrived in Binjai to impose a truce.<sup>325</sup> With many police officers still in hiding, a climate of lawlessness prevailed for several days and many people remained too scared to leave homes. Even two years after the incident, the residents of Binjai remain disillusioned with the TNI. Several townspeople told Human Rights Watch that they could no longer trust the military after troops sworn to defend the security of the nation had done the exact opposite.

Military and government officials issued strong statements of condemnation, temporarily shut down the Linud battalion, and announced that those responsible would be dishonorably discharged.<sup>326</sup> But of the approximately 350 Linud soldiers that police said

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<sup>318</sup> Human Rights Watch interview with the victim's father and brother, November 29, 2004. A witness who spoke to Human Rights Watch saw the vehicle the next morning. He said it had a smashed window and a pool of blood in the interior. Another car, this one burned, was nearby. Human Rights Watch interview with a man in his forties, Binjai, November 26, 2004.

<sup>319</sup> Lembaga Bantuan Hukum (Legal Aid Society, LBH) Medan Investigating Team, "Kronologis Saling Bunuh Antara Linud 100/PS dengan Polresta dan Brimobdasu di Binjai Langkat (Chronology of the Fatal Incident between Linud 100/PS and Polresta and Brimobdasu in Binjai Langkat)," October 1, 2002, [online], <http://www.dataphone.se/~ahmad/021001a.htm>.

<sup>320</sup> Human Rights Watch interview with the victim's family, Binjai, November 29, 2004. This victim's family was the sole one to receive compensation, to Human Rights Watch's knowledge.

<sup>321</sup> LBH, "Chronology of the Fatal Incident."

<sup>322</sup> Kafil Yamin, "Dirty business between Indonesia's police, military exposed," IPS, October 13, 2002.

<sup>323</sup> Human Rights Watch interview with a senior police official; Richard C. Paddock, "Fertile Ground for Terror," *Los Angeles Times*, December 10, 2002. Human Rights Watch was not able to review the official police or military file on the case to confirm the casualty figures, and press reporting has been inconsistent.

<sup>324</sup> LBH, "Chronology of the Fatal Incident."

<sup>325</sup> Human Rights Watch interviews with Binjai residents.

<sup>326</sup> Yamin, "Dirty business....," IPS. It was widely reported that the battalion was to be disbanded, but the army chief of staff declared at the time that it would be temporarily vacated while awaiting new soldiers. (It was

were involved in the attack (about half of the battalion),<sup>327</sup> only twenty soldiers were dismissed and faced trial. The military prosecution of the twenty discharged soldiers, all of them of low rank, resulted in nineteen convictions and prison sentences of five to thirty months.<sup>328</sup> The military court in Medan declined Human Rights Watch's request for information about disciplinary action taken in response to the Binjai incident. Repeated visits to the military stations in Binjai and Medan also failed to elicit any information, but indications were that the more senior officers who oversaw the Linud battalion faced little consequence. The army transferred the Binjai battalion commander and five other officers to other locations and decided not to take immediate action against the regional military commander.<sup>329</sup>

## Conclusion

The battle in Binjai stands as a particularly outrageous example of the negative consequences of military involvement in illicit businesses. There, troops effectively declared war on the police. The police in Indonesia have a well-deserved reputation for corruption, and competition over local spoils has given rise to numerous armed clashes between the security forces, but in this case the confrontation was sparked by an altercation between a few troops and policemen over a local drug arrest. The issue could have been resolved without bloodshed, but it exploded into a major battle because the military unit as a whole had already lost its integrity. It had learned to put self-interest above institutional duty, lacked respect for the rule of law, automatically resorted to violence to protect its turf and pride, and assumed it could do so with impunity. This arrogance was a legacy of the unit's links to the criminal economy. A Binjai police officer offered a skeptical view on whether the military had learned any lessons from the experience: "The military are still involved in backing up illegal activities so it could happen again."<sup>330</sup>

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reconstituted five months later.) "20 Prajurit Linud 100 Dipecat (20 Linud 100 Soldiers Discharged)," *Suara Merdeka*, October 3, 2002, [online] <http://www.suaramerdeka.com/harian/0210/03/nas1.htm>.

<sup>327</sup> Human Rights Watch interview with a senior police official. Press reporting at the time suggested the number may have been lower.

<sup>328</sup> The highest-ranking soldiers to be convicted were second sergeants, and the prosecutions were later appealed. Apriadi Gunawan, "10 more soldiers sentenced up to 30 months for Binjai attack," *Jakarta Post*, December 26, 2002; Apriadi Gunawan, "Nine soldiers sent to prison over deadly Binjai clash," *Jakarta Post*, December 19, 2002. The twentieth soldier was due to be tried separately after recovering from injuries.

<sup>329</sup> "Army Chief Mulls Firing Regional Commander," *Laksamana.net*, October 3, 2002; "Megawati's Soldiers of Fortune," *Laksamana.net*, October 5, 2002. The regional commander was transferred to another post a month after the attack, but he said the move was unconnected to the Binjai incident. Apriadi Gunawan, "20 servicemen to face tribunal of Binjai tragedy," *Jakarta Post*, October 30, 2002.

<sup>330</sup> Human Rights Watch interview with a junior police officer.

## ***Military Corruption***

Transparency International has identified Indonesia as the world's sixth most corrupt country in its annual survey.<sup>331</sup> The group ranked the Indonesian military as among the most corrupt public institutions in the country.<sup>332</sup> The World Bank defines corruption as "the use of authority for private gain."<sup>333</sup> It includes in that definition, among other acts, an official's acceptance, solicitation, or extortion of a bribe.<sup>334</sup> Collusion, patronage or nepotism, theft of state assets, and diversion of state revenues are also considered to be corruption.<sup>335</sup> Indonesian anti-corruption laws also encompass the abuse of power, causing financial loss to the state, and self-enrichment.<sup>336</sup>

## ***Grand Corruption***

Indonesia's history offers many examples of military corruption on a major scale that involve relatively senior government officials. Often these relate to the sorts of collusive business practices and misuse of foundation funds described elsewhere in this report. Some other cases relate to individuals who take advantage of their position to take public funds for personal use. As one indication, over 100 cases of financial fraud reportedly were uncovered within the TNI in 2005.<sup>337</sup> In early 2006 an army colonel and a private citizen were arrested on charges of conspiring to embezzle as much as \$14 million from the army's housing fund.<sup>338</sup>

Kickbacks or massive markups on military acquisitions are another common feature of military corruption. Minister of Defense Sudarsono has been outspoken on the need to clean up military procurement. In 1999, for example, he said military purchases were

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<sup>331</sup> Indonesia shared the sixth-worst score with six other countries. Transparency International, "Corruption Perceptions Index 2005," [online] [http://www1.transparency.org/cpi/2005/cpi2005\\_infocus.html](http://www1.transparency.org/cpi/2005/cpi2005_infocus.html).

<sup>332</sup> "Asia: New survey shows Indon aid hub Medan 3rd worst for graft," Australian Association Press, February 17, 2005.

<sup>333</sup> World Bank, *Combating Corruption in Indonesia: Enhancing Accountability for Development* (Washington, D.C.: World Bank, 2003), p. iv. This is essentially the same definition as offered in an earlier World Bank publication, that corruption is "the abuse of public office for private gain." World Bank, *Helping Countries Combat Corruption: The Role of the World Bank* (Washington, D.C.: World Bank, 1997), p. 8.

<sup>334</sup> World Bank, *Helping Countries Combat Corruption*, p. 8; World Bank, *Combating Corruption in Indonesia*, p. iv.

<sup>335</sup> World Bank, *Anticorruption in Transition: A Contribution to the Policy Debate* (Washington, D.C.: World Bank, 2000), pp. 1-2. In this report the World Bank considers corruption as being one of two main types: state capture (in which certain actors succeed in getting "the basic rules of the game" changed to suit their advantage) or administrative corruption (in which the rules are implemented in a way that benefits them).

<sup>336</sup> Widoyoko, "Questioning the Military Business Restructuring," p. 133, at footnote 7, citing Law No. 3/1971 and Law No. 31/1991.

<sup>337</sup> "Funding Discipline for the TNI," editorial, *Tempo*, April 18-24, 2006.

<sup>338</sup> "Army colonel arrested for graft," AFP, February 18, 2006; "Indonesian military loses \$14m in graft: army chief," AFP, March 7, 2006; "Saving Private Contributions," *Tempo*, April 18-24, 2006.

subject to markups of 30 percent, causing \$90 million in losses per year.<sup>339</sup> A 2003 case of suspected fraud in the \$3.24 million purchase of helicopters by the Indonesian army reinforced the need for change.<sup>340</sup> The Ministry of Defense has made efforts to centralize military procurement and enhance oversight but it has made little headway to date. (For more information, see the section titled “Procurement” in Part III: Obstacles to Reform.)

In 2006, Sudarsono emphasized the continued problem of inflated costs in military purchases. For example, he said high markups could be attributed in part to the longstanding practice of retired generals using their influence to steer military procurement contracts to favored companies.<sup>341</sup> Active-duty senior officers also have financial ties to arms companies, according to research by Indonesia Corruption Watch (ICW). In a 2005 report, ICW alleged that state-owned arms company PT Pindad had paid out large sums to secure contracts with the military and police, and the watchdog group suggested that these payments constituted bribes.<sup>342</sup>

Additional cases have since come to light. In April 2006, for example, *Tempo* magazine reported that top Indonesian army officials had diverted some Rp. 20 billion (\$2.4 million) of government funds in mid-2003. In a convoluted transaction, the army took funds approved for the planned purchase of a helicopter and, without notifying parliament or the Ministry of Defense, instead used them to buy a transport plane. It awarded the contract, without tender, to one of its usual suppliers. Within days of receiving the payment, however, that company transferred the funds to an army official who had been involved in the army’s procurement decision, who in turn forwarded the money to someone else allegedly linked to the procurement process. The plane itself also changed hands mysteriously. Upon delivery in early 2004, it was handed over to a private aviation company rather than the army, and that company was listed as the plane’s owner. It made the plane available for army use but also leased it out for a fee to politicians who chartered it during the general election campaign. The whole affair, investigators believed, may have been an elaborate ruse to defraud the government of the budgeted funds. Asked about the matter, the general who was army chief of staff at

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<sup>339</sup> Richard Borsuk, “Indonesia’s Defense Minister Concedes Difficulty Cutting Military Corruption,” *Wall Street Journal*, December 8, 1999.

<sup>340</sup> See, for example, Satrio Yoedono, then chair of the Supreme Audit Board (BPK), “The government has yet to overhaul,” (summary of presentation to parliament of the 2004 audit results, March 15, 2005), [online] [http://www.bpk.go.id/publikasi\\_content.php?pid=100](http://www.bpk.go.id/publikasi_content.php?pid=100). The case remained under investigation in 2006.

<sup>341</sup> Hanibal W.Y.W., Widiarsi Agustina, and Fanny Febiana, “Juwono Sudarsono: The practice of generals’ references still goes on,” *Tempo*, no. 23/VI, February 7-13, 2006, via Joyo News Service.

<sup>342</sup> ICW, “Mempertanyakan dana marketing PT Pindad (Questioning PT Pindad’s marketing funds),” ICW report, October 31, 2005.

the time, Ryamizard Ryacudu, denied that he had authorized any disbursement of government funds in the case or that the army had even purchased the transport plane.<sup>343</sup>

Many military equipment purchases in Indonesia are made using alternative financing arrangements, such as export credit guarantees or counter-trade (barter) deals, that typically bypass normal procurement channels and frequently are associated with corruption.<sup>344</sup> The most famous case relates to a 2003 deal to pay for several Russian combat aircraft by providing palm oil and other commodities, with the initial down payment being paid out of funds held by a state-owned bank and the official logistics agency, Bulog.<sup>345</sup> The involvement of several prominent civilians in that deal serves as a reminder that military procurement practices in Indonesia invite abuse by military and non-military personnel alike.<sup>346</sup>

### *Petty Corruption*

Petty corruption, in contrast to grand corruption, involves relatively small sums of money and junior officials seeking personal gain. Many soldiers object strongly to acts of corruption, but those who do engage in corruption operate in an environment that largely tolerates and often encourages such behavior. An Indonesian expert on security sector reform, recognizing that Indonesian soldiers are poorly paid, has argued that “military personnel at all levels have to survive by finding alternative sources of subsistence, such as businesses and other economic activity.”<sup>347</sup>

Acts of petty military corruption have a large cumulative impact. That has been the case with soldiers’ regular demands for payments. Bribe-taking is sometimes linked to the military’s widespread involvement in organized criminal behavior, such as racketeering. One observer described protection payments as so common that, in effect, they were

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<sup>343</sup> “Flight of the Fokker Funds” and “Ryamizard Ryacudu: Don’t Pit Me Against the Army Chief,” both in *Tempo*, April 18-24, 2006.

<sup>344</sup> See, for example, Tony Hotland, “Generals ‘knew nothing’ about \$180m tank scam,” *Jakarta Post*, March 22, 2005; Laksamana.net, September 10, 2003.

<sup>345</sup> Laksamana.net, September 10, 2003. See also Munir (late executive director of Imparsial-Indonesian Human Rights Monitor), “Corruption threatens Indonesia’s defense system,” opinion-editorial, *Jakarta Post*, March 1, 2004.

<sup>346</sup> See, for example, John McBeth, “Indonesia – Flying Into Trouble,” *FEER*, July 10, 2003.

<sup>347</sup> M. Riefqi Muna, “Money and Uniform: Corruption in the Indonesian Armed Forces,” in *The Big Feast: Soldier, Judge, Banker, Civil Servant*, Stealing from the People: 16 Studies on Corruption in Indonesia, Richard Holloway, ed., no. 2 (Jakarta: Aksara Foundation, 2002), p. 6. Muna also recognizes that, as the Indonesian saying goes, “the salary is small but the benefits are great,” at least for higher-ranking officers. *Ibid.*, pp. 7-8.

“basically an informal tax” on business.<sup>348</sup> Military demands for bribes may add as much as 10-15 percent to the cost of road and building construction projects in some areas.<sup>349</sup>

Some acts of corruption by individual soldiers are associated with violence. Two soldiers were convicted of killing the wife of a former mayor of Banda Aceh. One of the soldiers had accepted a Rp. 42 million (\$4,600) bribe to help secure the release of her vehicle, which had been confiscated as part of a corruption case against her husband. When the officer demanded more money, she reported him to the military police and was murdered in retaliation.<sup>350</sup> Later in 2005, a businessman alleged that he was abducted and tortured by military personnel in an effort to force him to pay back a loan.<sup>351</sup>

### Predatory Behavior in Crisis Zones

Military corruption takes on a special character in conflict regions. Military personnel have engaged in profiteering, by imposing monopolies and charging excessive fees for transport services or basic commodities whose distribution the military controls. A study of military economic activity during unrest in Poso, Central Sulawesi, found that the military charged inflated prices to hire out military trucks and supply fuel via its cooperative and that it also charged exorbitant illegal levies along roads.<sup>352</sup> Similarly, road tolls imposed by the military went up in Maluku during unrest there.<sup>353</sup>

In some cases, the military takes advantage of humanitarian emergencies to loot or otherwise profiteer. For example, both the military and police have charged people fleeing communal violence for transport to safety.<sup>354</sup> An armed skirmish broke out in Sampit, Central Kalimantan, between the military and police over who was entitled to

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<sup>348</sup> Human Rights Watch interview with a Western diplomat, Jakarta, December 14, 2004.

<sup>349</sup> McCulloch, “*Trifungsi*,” p. 111.

<sup>350</sup> “Military business amidst GAM hunting,” AcehKita.com, May 2, 2005. See also “Pangdam Aceh Akui Istri Mantan Walikota Dibunuh Oknum TNI (Territorial Military Commander admits wife of former mayor murdered by TNI personnel),” TempoInteraktif.com, December 9, 2004; “Istri Muda Eks Walikota Banda Aceh Tewas, Eks Danramil Ditahan (Young wife of Ex-Mayor of Banda Aceh slain, Ex-Commander of Army Administration Unit Arrested),” December 12, 2004, [online] <http://www.jkt1.detiknews.com>.

<sup>351</sup> According to the victim, seven marines hired to collect the debt kidnapped him and held him against his will for several days, during which time he was robbed, beaten, and had holes drilled through the palms of his hands. Abdul Khalik, “Soldiers linked to torture case,” *Jakarta Post*, April 16, 2005. The businessman’s account was under dispute. A spokesman for one of five people arrested in the case said it was all a fabrication and that a videotape of the meeting would prove that there was no abduction or torture. The spokesman also denied that the accused had hired soldiers to assist in getting a debt repaid. Abdul Khalik, “Five detained in controversial abduction case,” *Jakarta Post*, May 10, 2005.

<sup>352</sup> Aditjondro, “Black Wood...”, pp. 146-147, 155-156, and 159-62.

<sup>353</sup> Kontras, *When Gun Point Joins the Trade*, p. 25, citing *Kompas*, March 30, 2001.

<sup>354</sup> Human Rights Watch interview with a former security analyst, Jakarta, December 14, 2004.

extract bribes from the displaced Madurese.<sup>355</sup> Military corruption also arises in Papua, where the problem was expected to increase in 2006.<sup>356</sup> Military corruption was rampant in Aceh until recently, and additional examples of corruption in the ranks are addressed here.

#### ***Example 4: Acts of Military Corruption in Aceh***

The devastation caused by the tsunami of December 26, 2004, and reductions in troop levels in accordance with a 2005 peace accord have greatly reduced the military presence in Aceh. The province is also under far greater scrutiny than was possible during the armed conflict, when international monitors were barred from entry. As a result, the economic activities of the military in Aceh have diminished as compared to past years when both the military and the insurgency extracted revenue from the population through illicit means. The experience of military profiteering in Aceh remains relevant, however, because traces of past behavior remain. Moreover, it offers important lessons about the dangers of unchecked military opportunism in conflict zones.

#### **The Military's Economic Foothold in Aceh**

The military had far ranging economic interests in Aceh before the tsunami hit. Up through 2004, military-linked businesses were known to be engaged in transport, construction, and security services, and to have run extensive timber operations. Some of the TNI's business activities were legal and formally organized, while others were illicit and hidden.<sup>357</sup> In combination, these economic activities made Aceh a lucrative posting, especially for the officer ranks. More than one person shared with Human Rights Watch an adage about serving with the military in Aceh: "You leave with an M-16 and return with 16 M," referring to the military-issue rifle and Rp. 16 billion (*milyar* in Indonesian, equivalent to \$1.76 million, an exaggerated estimate of the earnings of corrupt officers).

#### **Corruption-Linked Abuses before the Tsunami**

Government troops have taken advantage of civilians in Aceh to extort, steal, or demand bribes. Human Right Watch gathered testimonies of people who had experienced extortion in Aceh after the imposition of martial law in 2003. In one example, a

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<sup>355</sup> Ibid.; ICG, "Indonesia: Communal Violence in Indonesia: Lessons from Kalimantan," ICG Asia Report, no. 19, June 27, 2001, p.10.

<sup>356</sup> See, for example, Tom Benedetti, "In Indonesia, the battleground has shifted," opinion-editorial, *International Herald Tribune*, January 3, 2006.

<sup>357</sup> For an extensive discussion, see the work of Lesley McCulloch.



businessman complained that he had to leave Aceh because of military threats in connection with extortion rackets:

Making your way in life in Aceh is difficult. If you try to make a living, they ask for money. I have a rice mill. Every day TNI asks for 450 kilograms. They say, "If you don't give it to us, tonight you'll be killed." I could have gone on the pilgrimage to Mecca twenty times by now. But if it's asked, it's given . . . I couldn't take it anymore. I was asked for Rp. 7 million (\$825) and told that if I didn't have it in three days I would not be safe. (...) I left after two days—they gave me three, right? I told my three sons to just go to [withheld], telling them, "If I'm not here they'll take you."<sup>358</sup>

A woman from North Aceh described to Human Rights Watch in 2003 that residents forcibly displaced from their homes returned to find that the soldiers had looted their property:

I fled to a refugee camp. When we returned home our things were gone. Chickens, goats were stolen during the time we had fled, taken by soldiers who then asked for Rp. 300,000 (\$35) to return our goods to us. Some people paid, but I was too scared.<sup>359</sup>

Soldiers also overcharge for needed goods and services. Speaking to Minority Rights Group International, a local journalist complained that the military charged elevated prices for fuel, explaining: "This petrol is bought from Bireuen. When the military has a supply to sell, we would not dare buy elsewhere."<sup>360</sup>

Civilians also have complained of military demands for roadside "tolls." For example, a minibus driver from Central Aceh told Human Rights Watch that he was constantly stopped at TNI and Brimob checkpoints on the road:

When I drive the vehicle they stop me for money on the road. If you don't give it to them, you're beaten. If you don't have money and try to

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<sup>358</sup> Human Rights Watch, "Aceh Under Martial Law: Inside the Secret War," *A Human Rights Watch Report*, vol. 15, no. 10(C), December 2003, [online] <http://hrw.org/reports/2003/indonesia1203/>.

<sup>359</sup> Human Rights Watch interview [name withheld], Malaysia, October 26, 2003, as cited in Human Rights Watch, "Aceh Under Martial Law."

<sup>360</sup> Minority Rights Group International (MRG), "Aceh: Then and Now," May 2005, p. 15, citing a confidential interview.

bargain—"I don't have ten, here's five"—they won't accept it. If he says ten it must be ten. You can't bargain with them.<sup>361</sup>

One traveler who spoke to Minority Rights Group International described the cumulative effect of persistent illegal fees: "The villagers in this area are much poorer because of all this extortion."<sup>362</sup>

Military personnel in Aceh also have been accused of illegally expropriating valuable land.<sup>363</sup> Troops have forced people to surrender land for plantations; some who have refused to go or who have attempted to return to reclaim their property reportedly have been injured or killed.<sup>364</sup>

### In the Aftermath of the Tsunami

The tsunami of December 26, 2004, took some 170 thousand lives in Aceh and devastated large parts of the coast. Members of the state security forces were among the victims—the armed forces and police together lost hundreds of personnel, plus buildings, equipment, and some of their lucrative businesses, notably fisheries.<sup>365</sup> Many soldiers responded admirably to the tragedy, but there were also incidents that bore echoes of past patterns of abuse.

In January 2005, for example, *Newsweek* reported that Indonesian military screeners charged displaced Acehnese the equivalent of up to \$80 for a seat on an evacuation flight.<sup>366</sup> These bribes reportedly resulted in relatively more privileged people, described as being "well-dressed," getting about half the seats on the plane, presumably displacing others who could not afford the payment.<sup>367</sup>

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<sup>361</sup> Human Rights Watch, "Aceh Under Martial Law."

<sup>362</sup> MRG, "Aceh: Then and Now," p. 18, citing a November 2004 interview.

<sup>363</sup> *Ibid.*, p. 19.

<sup>364</sup> *Ibid.*, p. 15.

<sup>365</sup> *Ibid.*, p. 28.

<sup>366</sup> George Wehrfritz and Joe Cochrane, with Eve Conant, Paul Dillon, and Eric Unmacht, "Charity and Chaos: An insurgency was bleeding Aceh before the tsunami hit. Food aid can't fix that," *Newsweek*, January 17, 2005.

<sup>367</sup> Wehrfritz et al., "Charity and Chaos....," *Newsweek*. Officials in New Zealand, whose military operated the evacuation flight, asked their Indonesian counterparts to investigate the claims. They added that the New Zealand government did not take responsibility for selecting the passengers but was satisfied that all were displaced persons in need of evacuation. See, for example, Martin Kay, "Officials Ordered to Check Bribery Claims," *Dominion Post* (New Zealand), January 28, 2004. New Zealand's own investigation did not uncover evidence to substantiate the allegation, while Indonesian officials stated that they strongly disapproved of any such payments if they occurred. "Tsunami 'cash for rescue' probe dries up," *New Zealand Herald*, March 17, 2005.

Human Rights Watch visited Aceh in early 2005 and heard first-hand accounts of looting by soldiers in the first days after the tsunami. A foreign correspondent said, “I saw soldiers looting every day during the first week when I was here.”<sup>368</sup> The head of an Acehese NGO in Meulaboh reported that soldiers took advantage of the chaos after the tsunami struck to loot from gold shops.<sup>369</sup>

Elsewhere in Aceh, volunteers from a Malaysian group, the Amal Foundation, said they were forced to pay a bribe of Rp. 500,000 (\$55) to pass through a military checkpoint in mid-January 2005. Team leader Dr. Lo’Lo’ Ghazali was quoted in the Malaysian media as telling the Indonesian soldiers that they were taking funds from the needy:

The money we have were [sic] collected from Malaysians to be given to the victims in Aceh. If we give you so much then there would be less for the people who rightfully deserve it.<sup>370</sup>

Human Rights Watch’s investigation did not find evidence of a military agenda to exploit the tsunami tragedy for economic gain. Presumably the intense scrutiny over tsunami funding, by the Indonesian public as well as by bilateral and multilateral donors, helped deter any coordinated diversion of reconstruction funds for military purposes. As described by one frequent visitor to Aceh who returned in the latter half of 2005, “The commanders know the eyes of the world are upon them.”<sup>371</sup> The same person told Human Rights Watch that, to his surprise, military spending was better managed and subject to less waste and corruption than before, and that reports of extortion had decreased significantly. He attributed the changes in part to the dire circumstances faced by an institution that had itself lost many members and infrastructure to the disaster and that was faced with massive rebuilding of its own.<sup>372</sup>

At the same time, individual acts of corruption by military personnel have continued and contributed to the hardship faced by survivors. A joint study by the Aceh Reconstruction Agency and the World Bank in 2005 and 2006 found that illegal road levies charged at security checkpoints operated by soldiers and other security officers in Aceh amounted to

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<sup>368</sup> Human Rights Watch interview with a foreign correspondent, Banda Aceh, January 24, 2005.

<sup>369</sup> Human Rights Watch interview with an Acehese human rights worker, Meulaboh, January 27, 2005.

<sup>370</sup> “Indonesian soldiers extort money from Malaysian aid volunteers,” BBC Monitoring Service, January 13, 2005, citing a report by Arfa’eza A. Aziz posted at: [online] [http:// www.malaysiakini.com](http://www.malaysiakini.com), January 13, 2005.

<sup>371</sup> Human Rights Watch telephone interview with a person who worked in Aceh for several weeks in 2005, December 16, 2005.

<sup>372</sup> *Ibid.*

“a significant tax on the reconstruction and recovery effort.”<sup>373</sup> The study found that the number of military posts declined after many troops were withdrawn from the province and international scrutiny increased, but that remaining security personnel were increasingly forcing trucks to stop elsewhere along the road to extort the drivers away from view.<sup>374</sup> In 2006 local volunteers expressed concern that the illegal levies charged at security checkpoints raised the cost of transporting timber and other supplies needed for post-tsunami reconstruction.<sup>375</sup> There also have been frequent reports that some corrupt military business ventures have survived or been reconstituted. For example, a person engaged in humanitarian work in West Aceh said in mid-2005 that local military units were heavily involved in the illegal timber trade and set their prices artificially high.<sup>376</sup>

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<sup>373</sup> Aceh Reconstruction Agency (BRR) and World Bank, “Trucking and Illegal Payments in Aceh,” April 2006, p.1.

<sup>374</sup> *Ibid.*, p. 3.

<sup>375</sup> Tb. Arie Rukmantara, “Activists decry illegal fees for Aceh-bound timber,” *Jakarta Post*, February 1, 2006.

<sup>376</sup> This information was provided by Human Rights First, based on an interview held in August 2005. According to the source’s description, the security forces and local officials jointly controlled nearly two-thirds of the timber trade in West Aceh and sold illegal timber for twice as much as the going rate for legally-obtained timber.

### III. Obstacles to Reform

For the Indonesian government to end military self-financing, it will have to overcome several challenges. Alongside needed measures to confront military businesses and eliminate the TNI's other economic activities, the government also will need to find ways to appropriately finance the armed forces from budgetary funds. To do so will require improvements to financial controls on the military. As part of that effort, it will be essential to clearly address a number of misconceptions about military economic activity that are often cited as excuses to scuttle reform. This chapter addresses these issues in turn. It begins with a critique of the current system of military finance control. Next, it addresses three myths about military business activity. It finds that the challenges, while difficult, are not insurmountable. Effective reform of military financing will necessarily be a complex process that will unfold over years, but delaying action will only make matters worse.

#### ***Unaccountable Military Finances***

Indonesia's constitution provides that government revenues and the annual budget must be set by law and implemented transparently and with accountability.<sup>377</sup> Actual practice, however, falls far from the mark.<sup>378</sup> The World Bank, for example, has critiqued Indonesian government financing, while stressing that the problem is worse in the case of the security forces:

Indonesia's budgets are systematically underfunded, with low operations and maintenance provisions, late release of budget funds, and skimming of allocations at different levels of government by oversight departments. Government agencies are implicitly expected to find other means of meeting their needs, thus blurring the lines between public and private expenditure and encouraging rent-seeking behavior. These practices are particularly egregious in the case of the military and the police. Poor financial controls allow such practices to flourish.<sup>379</sup>

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<sup>377</sup> 1945 Constitution of the Republic of Indonesia, as amended, at Article 23.

<sup>378</sup> ADB, *Country Governance Assessment Report*, pp. 30-33.

<sup>379</sup> World Bank, *Combating Corruption in Indonesia*, p.19.

Military finances, like all public spending, should follow good fiscal management practices.<sup>380</sup> This section analyzes the Indonesian government's financial management of the military sector and levels of transparency. It identifies a number of major shortcomings and finds that, despite some efforts to improve financial controls, the military remains a weak area. As a general matter, the Indonesian government has acknowledged the need to improve management of government finances and taken steps in this direction.<sup>381</sup> The progressive implementation of overall reforms is welcome, but there have been delays in applying these government-wide finance reforms to the military sector. Moreover, targeted efforts are needed to make military finances publicly accountable.

### ***Government Funding of the Military***

From budget formulation through to the execution and oversight stages, the military budgeting process in Indonesia is marked by a series of problems. The government is gradually switching to performance-based budgeting, but the military is not yet covered and has not been identified as a special priority. In the meantime, Ministry of Finance officials and members of parliament (MPs) complain that Ministry of Defense budget requests are deliberately inflated and not backed by basic information to explain why requested funds are needed. Budget amounts are set based on previous years' allocations, they say, rather than on an examination of actual needs and priorities or even accurate information on prior spending. The net result is that decisions on the allocations of funds—for example, on spending for welfare purposes versus weapons procurement—are made without adequate analysis or due consideration of the trade-offs involved. The problem, according to officials, can be partly attributed to the dearth of information, which makes it difficult for them to form adequate judgments, but they also say that the government has unclear military spending priorities.<sup>382</sup>

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<sup>380</sup> Human Rights Watch interview with government auditors, Jakarta, September 7, 2004. For an explanation of why military budgets should adhere to the rules of public expenditure management and how this should be accomplished, see, for example, Nicole Ball and Malcolm Holmes, "Integrating Defense into Public Expenditure Work," paper commissioned by U.K. Department for International Development (DFID), January 11, 2002; Nicole Ball and Len le Roux, "A model for good practice in budgeting for the military sector," in Wuyi Omitoogun and Eboe Hutchful, eds., *Budgeting for the Military Sector in Africa: The Processes and Mechanisms of Control* (Oxford: Oxford University Press/SIPRI, 2006); "Financial resources: achieving effective budgetary control in relation to security," section VI, in Geneva Centre for the Democratic Control of Armed Forces (DCAF) and Inter-Parliamentary Union (IPU), *Parliamentary Oversight of the Security Sector: Principles, mechanisms and practices* (Geneva: DCAF and IPU, 2003), pp. 129-145.

<sup>381</sup> For example, it has begun to apply performance-based budgeting methods, to track the use of budgeted funds using improved accounting standards, and to require line ministries to submit annual financial statements. Human Rights Watch interview with Ministry of Finance officials, Jakarta, April 11, 2006; Human Rights Watch interview with another Ministry of Finance official, Jakarta, April 19, 2006. The improvements were called for under laws addressing state finance (Law No. 17/2003), treasury operations (Law No. 1/2004), and auditing (Law No. 15/2004) that were adopted with the encouragement of international financial institutions.

<sup>382</sup> Human Rights Watch interview with Ministry of Finance officials; Human Rights Watch interview with Abdillah Toha, member of parliament, April 15, 2006.

One result is that approved budgets tend to be skewed toward recurring expenditures. A major portion of the budget, approximately two-thirds, is comprised of so-called routine spending that covers personnel expenses, maintenance, food, and other regular costs. Salaries alone account for about half of the official defense budget. The remainder is used for “development spending,” on items such as military hardware and infrastructure. In 2005 Indonesia moved to a unified budget framework and began tracking government finance statistics by functional and programmatic categories that correspond to international standards, but officials continue to refer to the distinction between “routine” and “development” expenditures, and to argue that not enough money is left in the budget for military modernization.<sup>383</sup>

## Budget and Spending Levels

Under Law No. 3/2002 on Defense, military spending is to be exclusively funded from the central government budget.<sup>384</sup> In 2003, Juwono Sudarsono emphasized the legal requirement: “The state should be the only source of funding for the TNI.”<sup>385</sup> A majority of Indonesians surveyed in 2005 agreed that the armed forces should be funded solely by the government, and at the same time rejected the military’s involvement in business activities.<sup>386</sup>

Yet many observers inside and outside of government have argued that Indonesia’s military budgets have not been realistic given troop strength and current force structure. Indonesian military officials have been especially vocal on this point. They complain of chronic underfunding and variously report that the official budget covers only a third, one half, or three-quarters of the military’s minimum needs.<sup>387</sup> The underlying concern that Indonesia’s budgets are not realistic in light of the current size and structure of the military has some merit, but the claims that government budgets are a mere fraction of what is required must be treated with caution. The military has defined its minimum needs without recourse to a proper strategic planning process and has every incentive to inflate the figure. Moreover, approved budget levels represent only one part of official military finance. Additional funds allocated from other budget lines subsidize the

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<sup>383</sup> Human Rights Watch interview with Ministry of Finance officials; Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>384</sup> The law states that “state defense is funded by the APBN (state budget).” Undang-undang No. 3/2002 tentang Pertahanan Negara (Law No. 3/2002 on State Defense), at Article 25 (1).

<sup>385</sup> Unidjaja, “TNI nothing more...,” *Jakarta Post*.

<sup>386</sup> The opinion poll was conducted by the Indonesian Survey Institute (LSI). “Minority believe military should keep powers,” *Jakarta Post*, October 6, 2005.

<sup>387</sup> Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin; Human Rights Watch interview with Brig. Gen. Bibit Santoso and other TNI representatives; “Peningkatkan Kemampuan Pertahanan Negara (Improving State National Security Capabilities),” sect. 2, chap. 7 in Presidential Regulation No.7/2005 on the National Central Development Plan for the Period 2004-09, p. 3.

defense budget and make it appear artificially low. (See “Myth 1,” below.) It also should be noted that the military receives the second-largest allocation in the government’s budget.<sup>388</sup>

Rather than focus on the size of military budgets, it can be more useful to consider the reported levels of military spending because military budgets have not been adhered to and, in theory, data on military spending should reflect the actual use of government funds. In Indonesia, however, spending data offer an imperfect indication of actual levels of expenditure. It captures only what is paid from government accounts and officially recorded as having gone to the military. Officials at the Ministry of Finance, which has been making efforts to improve the quality of government finance data, acknowledged that data on military spending has been very unreliable and remains a weak area.<sup>389</sup>

## Problems with Government Statistics

The Indonesian government’s approach to collecting and reporting official military finance statistics in Indonesia leaves much to be desired.<sup>390</sup> One result has been that these statistics have been reported inconsistently. For example, the military budget allocation for 2003, according to the Ministry of Finance, was around Rp. 17.2 trillion (approximately \$2 billion), but the government variously reported actual military spending that year as Rp. 9.7 trillion (\$1.2 billion), Rp. 15 trillion (\$1.8 billion), Rp. 18.3 trillion (\$2.2 billion), and Rp. 27.4 trillion (\$3.3 billion).<sup>391</sup> It was unclear why the discrepancies arose, but they were noticeably larger than for other countries providing data on military expenditures.<sup>392</sup>

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<sup>388</sup> The budget for the Ministry of Defense (which also covers the armed forces) has for several years been second only to that of the Ministry of Education. See, for example, Minister of Defense Juwono Sudarsono, “Defense Strategy and National Security Policy,” (presentation, Jakarta, November 12, 2005), p. 22, copy on file with Human Rights Watch.

<sup>389</sup> Human Rights Watch interviews with four different Ministry of Finance officials, Jakarta, April 2006.

<sup>390</sup> Some of the problems seen with regard to data on military finance characterize government finance statistics generally. The IMF, which reviewed Indonesia’s statistical system in 2005, found that government finance data largely fell short of international standards in several areas (e.g. transparency, scope, quality of source data, consistency, and level of aggregation). IMF, “Indonesia: Report on the Observance of Standards and Codes (ROSC)—Data Module,” July 20, 2005, especially at pp. 7, 12.

<sup>391</sup> United Nations, *Objective information on military matters, including transparency of military expenditures*, A/59/192 (New York: United Nations, July 30, 2004), p. 60; data provided by the Ministry of Finance in 2004 and 2006; ADB, *Key Indicators 2005: Labor Markets in Asia: Promoting Full, Productive, and Decent Employment* (Manila: ADB, 2005), p. 247, citing data obtained from Bank of Indonesia (the central bank).

<sup>392</sup> Human Rights Watch interview with SIPRI researchers, Stockholm, January 25, 2006. It should be noted that, in keeping with the U.N.’s standard reporting format, data provided to the U.N. that year (totaling Rp. 9.7 trillion (\$1.2 billion)) included spending by the army, navy, and air force for personnel, operations, and procurement, but excluded other categories and did not cover spending by the military headquarters and defense ministry.



That government officials do not trust their own numbers on military finance was made evident when Human Rights Watch requested final military budget and spending figures for a ten-year time period, as an input to this report. One Indonesian finance official declined the request, arguing that while the information was available it would not be responsible to disseminate it. He said that only statistics from the past few years were at all credible, in the time period since the government had begun improving its accounting: “Some data collected in the past is just garbage... The recording system took garbage data, so it resulted in a garbage report. There was no accounting.”<sup>393</sup> The information the Ministry of Finance did agree to provide is detailed in Table 3, below, and matched with publicly available data on approved final budgets.

Again, the official statistics contrast sharply. Statistics on military spending by Indonesia necessarily offer an imperfect indication of actual levels of expenditure, given problems in data collection (not to mention the issue of extensive off-budget spending), but the Ministry of Finance data show actual military spending as consistently lower than budgeted. This is unusual given the complaints that budget allocations are too low, and given information from the Ministry of Finance that the military typically overspends its budget and seeks end-of-year supplementary allocations to cover its deficits.<sup>394</sup> The Ministry of Finance official who provided the spending figures was not able to definitively explain the discrepancies, but it appeared likely that somewhat different categories were used in compiling data and no attempt was made to reconcile them.

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<sup>393</sup> Human Rights Watch interview with a Ministry of Finance official.

<sup>394</sup> Deficit spending by the military in recent years has been attributed to fuel costs, but officials were skeptical if that was the true reason because the requests for added funds were not accompanied by adequate documentation. Human Rights Watch interview with Ministry of Finance officials.

**Table 3: Official Military Budgets and Expenditures, 2002-2005**

Year	Approved Final Military Budgets in Indonesian Rupiah	Final Military Expenditures in Indonesian Rupiah
2002	12.7699 trillion (total) 9.8748 trillion (routine) 2.8951 trillion (development)	11.122 trillion (total) 9.6 trillion (routine, including 6.6 trillion for personnel) 1.5 trillion (development)
2003	17.1884 trillion (total) 12.0219 trillion (routine) 5.1665 trillion (development)	14.954 trillion (total) 11.7 trillion (routine, including 7.8 trillion for personnel) 3.3 trillion development
2004	21.4079 trillion (total) 13.7419 trillion (routine) 7.666 trillion (development)	19.531 trillion (total) 13.1 trillion (routine, including 8.8 trillion for personnel) 6.4 trillion (development)
2005	22.0786 trillion (total)	19.942 trillion (total) 9.0 trillion (personnel) 4.4 trillion (operational supplies) 6.4 trillion (procurement)
2006	28.2292 trillion (total)	–

Source: Budget figures were taken from annual budget documents, whenever possible using the final figures listed for each year.<sup>395</sup> Information on spending was provided by the Ministry of Finance at the request of Human Rights Watch.

It is helpful to look at spending figures over a longer timeframe in order to analyze trends. For that purpose, the work of the Stockholm International Peace Research Institute (SIPRI), a research institute with expertise tracking global military expenditures, is especially useful. SIPRI relies, as much as possible, on official data provided by governments. It reviews the available official statistics and selects the data series that most closely corresponds to its definition of military spending. SIPRI then adjusts the figures for inflation and exchange rate fluctuations to facilitate comparisons across countries and over time.

<sup>395</sup> For 2006, the data are copied from the revised annual budget statistics published for that year, whereas for previous years the annual budget reports were used. The relevant documents are available on the Ministry of Finance website, at: [online] <http://www.fiskal.depkeu.go.id/bapekki/apbn.asp?apbn=1010000>. Researchers with the Bandung Institute for Governance Studies provided additional budget information and documents.

**Table 4: Trends in Indonesia's Military Spending, 1995-2005**

<b>Year</b>	<b>Military Expenditure in Indonesian Rupiah at Current Prices</b>	<b>Military Expenditure in U.S. Dollars (at constant 2003 prices and exchange rates)</b>	<b>Military Expenditure as a share (%) of GDP</b>
1995	7.158 trillion (est.)	2.519 billion	1.6
1996	8.400 trillion (est.)	2.738 billion	1.6
1997	8.336 trillion	2.558 billion	1.3
1998	10.349 trillion	2.005 billion	1.1
1999	10.254 trillion	1.649 billion	0.9
2000	13.945 trillion	2.162 billion	1.0
2001	16.416 trillion	2.282 billion	1.0
2002	19.291 trillion	2.397 billion	1.0
2003	21.904 trillion	2.554 billion	1.1
2004	25.274 trillion (est.)	2.774 billion	1.1
2005	25.656 trillion (est.)	2.607 billion	n/a

Source: SIPRI Military Expenditure Database.<sup>396</sup> The SIPRI figures for several years are considerably higher than those provided in official Indonesian budget or spending documents (see Table 3). The reason for the discrepancy is not known but may be due to differences in the respective definitions of what constitutes military spending.<sup>397</sup>

Table 4, above, shows that Indonesia's spending on the military declined as a percentage of GDP following the Asian financial crisis and fall of the Soeharto government. This spending fell to 0.9 percent of GDP in 1999, the lowest level of the decade from 1995 to 2005. (This was also the year that the police separated from the military, and presumably their budgets were separated at that point.) In more recent years, by contrast, the figures have increased to approximately 1.1 percent of GDP.

<sup>396</sup> *SIPRI Yearbook 2006* (Oxford: Oxford University Press/SIPRI, 2006). See also SIPRI Military Expenditure Database, [online] [http://first.sipri.org/non\\_first/result\\_milex.php](http://first.sipri.org/non_first/result_milex.php).

<sup>397</sup> For its Indonesia statistics, SIPRI has relied on statistics published by the government and in recent years also has corresponded with the Ministry of Finance to seek additional information and clarification. Human Rights Watch interview with SIPRI researchers.

Limitations in the quality of the data make comparisons difficult, but the available information also shows that official military spending by Indonesia generally has been lower, as a share of GDP, than several other Southeast Asian countries. Whereas Indonesia's declared military expenditures have hovered around 1 percent of GDP for several years before rising to 1.1 percent of GDP in 2004, reported military spending in other Southeast Asian countries averaged 2.26 percent of GDP in 2004 (the most recent year for which comparative data is available).<sup>398</sup> These figures support the conclusion that budgetary spending in Indonesia is low in comparison to its neighbors, as is often stressed by Indonesian officials, but it must be remembered that total Indonesian spending on the military also must include off-budget expenditures.<sup>399</sup>

### The Extent of Off-Budget Funding

Minister of Defense Sudarsono has declared: "We must remain true to the budget. The defense forces must not exceed their budgetary capabilities."<sup>400</sup> The comment was consistent with Indonesian law and basic precepts of financial accountability, but not with present realities. The World Bank, which has expressed concern about the off-budget activity of the Indonesian security forces, has acknowledged that "no one quite knows how much of military and police expenditures are met from allocations in the government budget."<sup>401</sup> Ministry of Finance officials do not have any estimates of the amount of off-budget revenue generated by the military, nor have they attempted to gather such information.<sup>402</sup> Many published sources, often citing statements by Indonesian officials, have suggested that Indonesia's military budget only covers 25-30 percent of the TNI's actual needs.<sup>403</sup> This estimate, however, seemingly dates to the 1970s and appears to no longer be accurate.<sup>404</sup>

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<sup>398</sup> SIPRI data was available for 2004 for Cambodia (2.2 percent of GDP), Malaysia (2.3), the Philippines (0.9), Singapore (4.7), and Thailand (1.2). Average military spending in 2004 for the wider East Asia region, excluding Indonesia, was 2.17 percent of GDP. See the SIPRI Military Expenditure Database, [online] [http://first.sipri.org/non\\_first/result\\_milex.php](http://first.sipri.org/non_first/result_milex.php).

<sup>399</sup> The World Bank, in a 2000 report, stated that "independent observers estimated the true amount [of spending on the military and police in Indonesia] to be closer to 3 percent of GDP (about 0.5 percentage point higher than the average in the East Asia region.)" World Bank, *Accelerating Recovery in Uncertain Times*, p. 23. Such comparisons are complicated by the fact that the military in some other countries also makes use of off-budget funding.

<sup>400</sup> Hanibal W.Y.W., et al., "Juwono Sudarsono..." *Tempo*.

<sup>401</sup> The report added that "guestimates converge around one-third." World Bank, *Combating Corruption in Indonesia*, p. vii.

<sup>402</sup> Human Rights Watch interview with Ministry of Finance officials.

<sup>403</sup> ICG, "Indonesia: Keeping the Military Under Control," pp. 16-17, citing a statement by the defense minister published in *Kompas*, May 24, 2000.

<sup>404</sup> Harold Crouch's 1978 book, *The Army and Politics in Indonesia*, is the apparent source of this information. It, in turn, cites statements by military officials in the late 1960s and early 1970s about the inadequacy of the official budget in which they estimated that it covered as little as 30 percent of the military's needs. The

More recently, it has been suggested that budgetary spending accounts for approximately one-half of total military spending in Indonesia. This estimate was provided by Minister of Defense Sudarsono, who told Human Rights Watch in February 2005 that the military budget covered about half (46 percent) of actual spending, with the rest raised independently.<sup>405</sup> Again, it was not clear that this was a reliable estimate, and he may have misspoken. Sudarsono and other officials more commonly have stated that the military budget is sufficient to meet only 50 percent of the military's perceived minimum needs.<sup>406</sup> That does not necessarily mean, however, that the military successfully raises the other 50 percent from its off-budget activity. It is possible that the military simply scales back its planned spending to better match the amount of funds the government provides.<sup>407</sup> The latter view is supported by evidence that the military currently is not able to afford many items, such as training and additional equipment, that it argues it needs.<sup>408</sup> As will be discussed (see Myth 1, below), some of these costs, including many weapons purchases, are covered by the Indonesian government using other budget lines.

## Procurement

Systematic corruption in military purchasing has resulted in vast unneeded expenditures. (See the section titled "Grand Corruption" in Part II: An Anatomy of Military Economic Activity.) Civilian authorities have worked to improve oversight with uneven results. For example, parliamentary scrutiny of military purchases has increased in the wake of past scandals. A few parliamentarians have taken a very active role and have successfully insisted that the parliamentary subcommittee responsible for defense budgeting issues be allowed to scrutinize and approve at least some individual arms deals and those financed through export credit loans.<sup>409</sup> Other MPs serving on the House of Representatives committees on defense and on budgetary affairs continue to indicate that, despite some improvements, too little information on military procurement issues is made available, it

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suggestion that the remaining 70 percent was financed independently has been repeated many times, including by Juwono Sudarsono, but by 2006 he argued that the estimate was outdated.

<sup>405</sup> Human Rights Watch interview with Juwono Sudarsono, minister of defense, Republic of Indonesia, Jakarta, February 17, 2005. Elsewhere he repeated that the split was approximately fifty-fifty.

<sup>406</sup> See, for example, Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin; Hanibal W.Y.W., et al., "Juwono Sudarsono..." *Tempo*.

<sup>407</sup> See, for example, Andi Widjajanto, "Managing the Indonesian Defense Budgeting System," in *Practices of Military Business*, pp. 144-145.

<sup>408</sup> Human Rights Watch interviews with Lt. Gen. Sjafrie Sjamsoeddin, TNI representatives, and a retired military officer, April 2006.

<sup>409</sup> Human Rights Watch interview with Djoko Susilo, member of parliament serving on Commission I (responsible for defense and security affairs) and its subcommittee on budgetary matters, Jakarta, April 11, 2006.

is shared with only a select few, and that MPs as a whole lack the technical expertise or staff support to be able to thoughtfully review such matters.<sup>410</sup>

The Ministry of Defense has made efforts since 2005 to try to rationalize military procurement and increase its level of control over military purchases. It announced new rules requiring the parties to certain types of weapons contracts (those financed through export credit loans) to sign an integrity pact in which they promise not to engage in corruption, collusion, or nepotism.<sup>411</sup> It also declared a “one-door” policy for military procurement that would centralize control in the defense ministry. Such moves were consistent with Law No. 3/2002 on Defense, which clearly grants the civilian-led Ministry of Defense authority over military “budgetary policy, procurement, recruitment, [and] management of state resources.”<sup>412</sup>

Adherence to these rules, however, was a problem from the beginning. For example, a spokesperson for the Indonesian air force said in late 2005 that it planned to order spare parts from the United States directly, rather than coordinate defense acquisitions through the Ministry of Defense, and that other service branches would do the same.<sup>413</sup> The situation was such that civilian Minister of Defense Sudarsono called a high-level meeting with military leaders and other officials in January 2006 to try to assert the authority he had been granted by law.<sup>414</sup> He stressed in particular that the authority of the Ministry of Defense covered all budget management matters, including arms procurement.<sup>415</sup> That Sudarsono felt the need to hold such a meeting, and to make a further pronouncement a few weeks later, demonstrated that civilian control over military purchases was not yet in place.

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<sup>410</sup> Human Rights Watch interviews with Abdillah Toha and Deddy Djamaludin Malik, members of parliament serving on Commission I, Jakarta, April 15, 2006.

<sup>411</sup> The changes were contained in a decree, Decree No. SKEP/01/MI/2005. Andi Widjajanto, “Integrity pact for defense procurements,” opinion-editorial, *Jakarta Post*, December 12, 2005.

<sup>412</sup> Law No. 3/2002, at Article 16 (6), translation by Human Rights Watch. The same law continues by stating that the minister has decision-making power over “technological construction and the defense industry that is required by the TNI and other defense components” and “works with the department heads and other government agencies in arranging and planning the strategy for the management of state resources for defense requirements.” *Ibid.*, at Article 16 (6) and Article 16 (7).

<sup>413</sup> The spokesman, Vice Marshall Sagoem Tamboen, referred specifically to the air force’s intention to purchase aircraft spare parts under contracts with the U.S. that had been suspended. He argued that it would be appropriate for the air force to arrange the purchases directly because the original contracts preceded the enactment of the 2002 defense law. “Indonesian Air Force to Continue Previous Purchase Contracts with USA,” *TempoInteractive.com*, December 29, 2005.

<sup>414</sup> Hanibal W.Y.W., et al., “Juwono Sudarsono...,” *Tempo*.

<sup>415</sup> Sudarsono indicated that the armed forces should route requests for funds through his department. On arms purchases, he added that “remnants of uncontrolled purchases” that were previously negotiated would be completed, though his department would not take responsibility for paying for these past purchases. *Ibid.*

Even following these meetings, the TNI refused to recognize the Ministry of Defense as the lead agency in making defense purchases. The TNI chief, Air Marshall Djoko Suyanto, gave a press interview in which he said that the service branches “routinely” arrange weapons imports independently and that the TNI would only involve the defense ministry in the case of major weapons contracts “in the hundreds of millions of dollars” or those using export credit facilities.<sup>416</sup> This statement directly contradicted a March 2006 comment by the then TNI spokesman, Maj. Gen. Kohirin Suganda, who said weapons imports were arranged through government-to-government deals, with tenders and payments handled by civilian ministries instead of the TNI itself. The spokesman cited this claim as evidence that military purchases in Indonesia were subject to “very strict control” and to dismiss as “unreasonable” concerns that Indonesian weapons purchases from the United States might be associated with corruption.<sup>417</sup>

The concerns proved to have been well founded. In April 2006 U.S. authorities arrested arms brokers on charges of attempting to illegally export a variety of weapons to Indonesia, in a deal negotiated before the U.S. administration waived congressionally-mandated restrictions on U.S.-Indonesia military ties in November 2005.<sup>418</sup> The arrested arms brokers were an Indonesian national and a Singaporean who represented PT Ataru Indonesia, an arms-supplying company active in Indonesia, but they did not have the proper licenses to order weapons from the U.S.<sup>419</sup> The accused brokers sought to purchase 245 air-to-air Sidewinder missiles, 882 light machine guns, some eight hundred handguns, sixteen sniper rifles, five thousand rounds of strafing ammunition, and components for a radar system.<sup>420</sup>

According to the indictment against them, the brokers began arranging the deal with a U.S. company in March 2005, submitted a written purchase order for the radar parts in September 2005 (when the U.S. weapons embargo remained in effect), and ordered additional items in March 2006.<sup>421</sup> In their defense, the brokers said they were acting on

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<sup>416</sup> “Marshall Djoko Suyanto: Why is the TNI being seen as smugglers?,” *Tempo*, April 25-May 1, 2006.

<sup>417</sup> Maj. Gen. Suganda, “TNI commits to reform...,” *Jakarta Post*.

<sup>418</sup> U.S. District Court, Eastern District of Michigan, Southern Division, “United States of America, Plaintiff, vs. Hadiano Djoko Djuliarso and Ibrahim bin Amran” [“U.S. District Court indictment”], criminal indictment filed April 4, 2004.

<sup>419</sup> *Ibid.*, pp. 1-3; “Up in Armaments,” *Tempo*, April 25-May 1, 2006. The named defendants were charged with two counts: conspiracy to violate the U.S. Arms Export Control Act, which requires a license to negotiate weapons deals and to export weapons; and conspiracy to commit money laundering, a charge arising from bank transfers totaling \$445,000 into U.S. accounts that the defendants allegedly made in payment for the military equipment they ordered. U.S. District Court indictment, p. 11-13.

<sup>420</sup> *Ibid.*, pp. 6-10

<sup>421</sup> *Ibid.*, pp. 4-10.

behalf of the Indonesian air force, which sent two officers to accompany them.<sup>422</sup> The air force confirmed that it ordered radar equipment from the arms-supplying company PT Ataru Indonesia, a longtime partner, and sent the two officers to inspect the equipment, but it said this deal was legal and denied involvement in the alleged attempt to buy other weapons. The U.S. trial against the arms brokers was set to begin in May 2006.<sup>423</sup>

## Weak Financial Management

A major shortcoming in military finance has been poor management procedures and implementation. Minister of Defense Sudarsono has acknowledged that the military must improve its financial management systems and be more accountable for its use of budgeted funds.<sup>424</sup> Several problem areas have been identified and have been addressed only in part. One concern is that military requests for funds and the flow of the money itself have been subject to highly bureaucratic processes that greatly delay the release of funds and also increase the risk that money will disappear at each level.<sup>425</sup> The delays in the delivery of budgeted funds to the field, together with skimming of the funds, has encouraged self-financing and also creative accounting to cover up the practice, as officials have acknowledged.<sup>426</sup> The expenditure reports are made to match the budgeted funds, while the spending that actually took place with funds from other sources is not recorded.<sup>427</sup> Under a memorandum of agreement between the Ministry of Finance and Ministry of Defense, salary payments have been disbursed under a more streamlined procedure since 2005; delays in the release of other funds have decreased from previous levels but still stand at about four months.<sup>428</sup>

Additional problems identified by government officials include failures to adhere to procedures, inefficiency, and ineffectiveness in the use of funds.<sup>429</sup> Government auditors from the Supreme Audit Agency (Badan Pemeriksa Keuangan or BPK) said their review

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<sup>422</sup> Morgan Mellish, "Arms bust puts Indonesia under the gun," *Australian Financial Review*, April 27, 2006; "Up in Armaments," *Tempo*.

<sup>423</sup> A British national who was allegedly responsible for arranging the transport of the weapons was also arrested. See, for example, "Up in Armaments," *Tempo*.

<sup>424</sup> See, for example, U.S. Deputy Secretary of Defense Paul D. Wolfowitz and Republic of Indonesia Minister of Defense Juwono Sudarsono, "U.S. Embassy transcript of press conference," Jakarta, January 16, 2005, [online] [http://www.usembassyjakarta.org/press\\_rel/Wolfowitz-Jakarta-Jan05.html](http://www.usembassyjakarta.org/press_rel/Wolfowitz-Jakarta-Jan05.html). For an earlier reference, see Muhammad Nafik, "RI-US military ties must focus on management: Juwono," *Jakarta Post*, May 24, 2002.

<sup>425</sup> Human Rights Watch interview with a senior BPK auditor, Jakarta, September 6, 2004.

<sup>426</sup> *Ibid.*, Human Rights Watch interview with Ministry of Finance officials, Jakarta, April 11, 2006.

<sup>427</sup> Human Rights Watch interview with a senior BPK auditor.

<sup>428</sup> Human Rights Watch interview with Ministry of Finance officials.

<sup>429</sup> Artjana, "The Indonesian Military Budget Transparency and Accountability," pp. 150-151, 160-161; McCulloch, "*Trifungsi*," p. 121, citing an interview with I. Gde Artjana (then a BPK official). See also International NGO Forum on Indonesian Development (INFID), "The Anatomy of the Military Budget," background paper, INFID Civilian Supremacy and Transparency of the Military Budget Project, 2004, pp. 3-6.



of 2004 military accounts uncovered significant misstatements and the use of inaccurate accounting.<sup>430</sup> The Indonesian military uses a different accounting system than the rest of the government, and as of April 2006 no plans were in place to correct this situation.<sup>431</sup> Officials also report that the military maintains incomplete records and provides only a general list, without details or documentation of expenditures, to those responsible for monitoring military spending.<sup>432</sup> One Ministry of Finance official said of the military, “They are not reporting properly, and they are not audited fully.”<sup>433</sup> (See below for an analysis of gaps in audits of military accounts.)

### *Limited Transparency, Little Accountability*

Civilian authorities in Indonesia have made strides to increase their monitoring and reporting of military finance practices, but serious challenges remain. The pace of change has been unduly modest. Some needed steps have been delayed and other areas have yet to receive adequate attention. Transparency over military finances has improved as compared to dismal past levels, but a culture of secrecy still prevails in relation to military finance topics. Accountability is also lacking. Mismanagement, waste, and corruption remain endemic, and even well-documented cases resulting in significant losses to the state have not lead to consequences for those responsible. These issues are elaborated below.

### **Low Transparency**

In 2006 transparency on military finances was on the rise, though important restrictions remained. On the positive side, by early 2006 the findings of some official BPK reviews of government spending had been made public, consistent with a 2004 reform.<sup>434</sup> These included the results of the 2005 audit of official military spending and a special 2004 audit of the Ministry of Defense that previously had been kept from public scrutiny.<sup>435</sup>

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<sup>430</sup> BPK, “Pointer for Discussion about BPK Audit on Department of Defense and Indonesian Armed Forces” briefing document prepared for Human Rights Watch in response to a request for information [“BPK briefing document for Human Rights Watch”], April 13, 2006.

<sup>431</sup> Human Rights Watch interview with Ministry of Finance officials; Human Rights Watch interview with an international finance expert, Jakarta, April 8, 2006.

<sup>432</sup> Human Rights Watch interviews with Ministry of Finance officials, April 11 and April 19, 2006.

<sup>433</sup> Human Rights Watch interview with Ministry of Finance officials, April 11, 2006.

<sup>434</sup> Under a 2004 law (Law 15/2004 on the Supreme Audit Agency) BPK’s audit reports are to be made public. They become public when handed over to parliamentarians, which happens with some delay because the audited entities are first granted the opportunity to respond to BPK’s findings. Human Rights Watch interview with BPK officials, Jakarta, April 17, 2006.

<sup>435</sup> Audit reports on 2005 spending (including chapters on the Ministry of Defense and TNI) are available at: [online] <http://www.bpk.go.id/ikhtisar.php>, while the special 2004 audit of the defense ministry is available at: [online] <http://www.bpk.go.id/doc/parsial/lkpp2.html>. At this writing, older audits had not been publicly released in full, but some information was available. For example, the 2000 and 2001 BPK summary presentations to parliament are available at: [online] <http://www.bpk.go.id/hapsem.php?sid=30>.

This information was made available on government websites, which also began to post the more detailed budget documents that the Ministry of Finance compiled starting in 2004. The value of this information was limited by its incomplete and unreliable nature, as discussed above (see “Problems with Government Statistics,” above). As one finance expert commented with regard to improved transparency, “Numbers are easy to come by but they don’t tell you much.”<sup>436</sup>

At the same time that the government made some information public, officials have declined to release other data to which they had access. Only budget information was released with any level of detail. Preliminary data on spending based on cash flows also was available, but only in an aggregated format that did not show the breakdown of military expenditures.<sup>437</sup> Final, audited financial statements, developed as part of a package of recent reforms and available for 2005, only addressed the overall accounts of the government as a whole. The Ministry of Finance did not anticipate that audited spending figures by line ministries would be public before 2007.<sup>438</sup> It did share some disaggregated data on military spending with Human Rights Watch, reflected above (see Table 3), but said that it could not provide a copy of the document on which it was based because it contained more detailed information that was strictly for the use of the Ministry of Finance and Ministry of Defense.<sup>439</sup>

Officials frequently cited confidentiality restrictions as the rational for not sharing information on military finance, but as of this writing no law was in place to define what constituted a state secret. A draft law on secrecy introduced in 2005 would make all military matters secret, presumably blocking public access to the audit information, and contradicted a draft law on freedom of information that would allow greater transparency.<sup>440</sup> The lack of legal clarity was not the only barrier, however. In some cases, the habit of secrecy was so ingrained that officials declined to discuss information that was available on government websites.<sup>441</sup>

Transparency and accountability remain sorely absent in relation to off-budget revenue. As one official put it, “It goes without saying that they do not report off-budget activity.”<sup>442</sup> Few military businesses have been subjected to any financial scrutiny. Military

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<sup>436</sup> Human Rights Watch interview with an international finance expert.

<sup>437</sup> Human Rights Watch interviews with Ministry of Finance officials.

<sup>438</sup> Human Rights Watch interview with a Ministry of Finance official, April 19, 2006.

<sup>439</sup> *Ibid.*

<sup>440</sup> See, for example, Tony Hotland, “Bill limits public access to information,” *Jakarta Post*, January 2, 2006.

<sup>441</sup> Human Rights Watch interview with independent analysts who conducted research for the International Budget Project of the Center for Budget and Policy Priorities, Jakarta, April 9, 2006.

<sup>442</sup> Human Rights Watch interview with a Ministry of Finance official.

foundations were audited once but only in part, and that audit has yet to be made public. (See the description, below, of BPK's findings.) The TNI's then chief Sutarto said in April 2005 that he did not have information on the number, scope, value, or profits of the military's business investments and, in any case, considered such matters to be an "internal TNI matter."<sup>443</sup> When Human Rights Watch requested such information from various government officials in 2006, none agreed to provide it. Some were partially responsive to the request. While still declining to share a copy of the inventory of military businesses, the Ministry of Defense provided limited financial information on one military-owned company that was slated to be sold, and the TNI gave a partial listing of its business-related entities. (For details, see the section titled "Foundations" in Part II: An Anatomy of Military Economic Activity.)

### **Box 3: Opaque Funding of Military Operations in Aceh**

Financial control problems have been perhaps most serious with respect to "emergency" military operations that, even if anticipated, are not included in the budget.<sup>444</sup> Funds spent on the military presence in Aceh through 2005 illustrate this problem.

For years, parliamentarians complained about impediments to oversight on military spending. In 2003, for example, the TNI received at least Rp. 1.2 trillion (\$144 million) from a government reserve account intended to cover emergency financing, which was the typical way the Aceh operations were funded.<sup>445</sup> That year parliamentarian Djoko Susilo asserted that the approval process for budgetary allocations to the military was little more than a rubber stamp: "Far from controlling the budget, the DPR (parliament's House of Representatives) is still nearly impotent against the military on the budget issue."<sup>446</sup>

An Indonesian human rights activist, speaking in 2004, summarized the continuing problem: "Civilian authorities have no agenda for control of the [military] budget. There is no accountability from the center, no transparency, and no skill to audit war operations."<sup>447</sup>

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<sup>443</sup> Agus Supriyanto, "Panglima: Penertiban Bisnis TNI Selesai Dua Tahun (Chief: Reorganization of TNI Businesses Will be Completed in Two Years)," *Koran Tempo*, April 13, 2005, translation by Human Rights Watch.

<sup>444</sup> Human Rights Watch interview with a senior BPK auditor.

<sup>445</sup> Fitri Wulandari and Dadan Wijaksana, "Govt budgets Rp 1.7 trillion for Aceh war," *Jakarta Post*, May 21, 2003.

<sup>446</sup> The information was published by an Indonesian legislator who authored a newspaper article. Djoko Susilo, "DPR seeks to end 'rubber stamp' role in military budget," *Jakarta Post*, March 13, 2003.

<sup>447</sup> Human Rights Watch interview with Munir, late director of Imparsial, Jakarta, August 30, 2004.

The consequences have been felt by soldiers on the ground. Troops are poorly trained and equipped and face difficult living conditions. An analyst who conducted research on the topic found that “[t]he Aceh supplementary budget doesn’t go to the rank and file. There is huge civil and military corruption. It is institutionally systemic.”<sup>448</sup>

With the tsunami in December 2004, the TNI was granted an additional stream of money. Observers expressed concern that the military’s lack of financial accountability could hamper efforts to ensure relief and reconstruction funds were properly spent.<sup>449</sup>

In early January 2005, the Ministry of Defense submitted to parliament a budget request of nearly Rp. 237 billion (approximately \$25.4 million) to cover TNI disaster assistance for a thirty-day period.<sup>450</sup> In mid-2005 the ministry sought an extra Rp. 530.3 billion (nearly \$54.5 million) to pay for military operations in Aceh for the remainder of the year.<sup>451</sup> The defense minister and the then head of the TNI both confirmed that their intention was that this sum not be counted as part of the defense budget.<sup>452</sup>

Parliamentarians complained that the Ministry of Defense bypassed the regular budget process, and ordered it to draw the funds from the ministry’s own Rp. 2 trillion (\$206 million) emergency fund or await the 2006 budget. A member of the budget subcommittee of the parliamentary commission on defense, Djoko Susilo, declared to the *Jakarta Post*:

“Because Aceh has been given a normal status [the state of emergency was lifted in May 2005], according to the TNI law, all funds must come from the state budget specifically allocated to the (defense) ministry. (...) But in their latest proposal, it’s not clear which post they expect us to disburse the money from. They don’t even give complete details on what they will do with the money.”<sup>453</sup>

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<sup>448</sup> Human Rights Watch interview with an Indonesian analyst, Jakarta, September 6, 2004.

<sup>449</sup> “NGOs skeptical of Aceh fund transparency,” *Jakarta Post*, April 28, 2005.

<sup>450</sup> “Free Aceh Movement leaders condemn ‘sinister’ Indonesian military,” BBC Monitoring Asia Pacific, January 5, 2005.

<sup>451</sup> The majority of that sum, Rp. 314.8 billion (\$34.6 million), reportedly was intended for security operations and the remainder for supplies. “Ministry seeks defense fund payout,” *Jakarta Post*, June 30, 2005.

<sup>452</sup> “Defense Ministry Asks for More Funds,” *Antara*, August 3, 2005. This press account reported the amount of the Aceh supplementary request as Rp. 526 billion (\$52.6 million). *Ibid.*

<sup>453</sup> “Ministry seeks...,” *Jakarta Post*.

Another member of the budget committee, Happy Bone Zulkarnaen, emphasized that the problem was not new. He said the Ministry of Defense had failed to report on its spending on military operations in Aceh for the previous two years.<sup>454</sup> After MPs insisted heavily on this point, the ministry became more responsive to their requests for information.<sup>455</sup>

In 2006, members of parliament were considering a government request for some Rp. 400 billion (\$44 million) to pay for the redeployment of troops withdrawn from Aceh under the peace agreement, as well as to cover some costs associated with those that remained.<sup>456</sup> The funds, according to MP Djoko Susilo, were to come from the government's emergency budget.<sup>457</sup>

## The Audit Function

To date government auditors have limited themselves to reviews of non-operational expenditures, such as spending on salaries and other items that do not directly relate to military deployments. Former BPK officials said the reason was that the military had obstructed their efforts to examine operational spending. One complained that in 2003 the military leadership impeded the agency's efforts to audit operational funds using several tactics. For example, the military—acting outside its authority—determined on its own what information would be subject to audit, claimed that the requested information was not yet available, and limited access to documents by declaring them to be confidential.<sup>458</sup> In 2004, operational expenses continued to be treated as “off limits,” government auditors told Human Rights Watch.<sup>459</sup> Over time, BPK's authority has gradually increased as military cooperation has improved.<sup>460</sup> BPK officials, perhaps optimistically, said that they anticipated being able to undertake a review of the military's operational spending in 2007.<sup>461</sup>

Another longstanding limitation on BPK audits has been the exclusion of the military's off-budget revenues and expenditures. A government auditor explained in 2004 that,

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<sup>454</sup> Tony Hotland and Rendi Witular, “House OKs funds [for] Aceh military operation,” *Jakarta Post*, July 2, 2005.

<sup>455</sup> Human Rights Watch interview with Djoko Susilo.

<sup>456</sup> *Ibid.*

<sup>457</sup> *Ibid.* Human Rights Watch inquired about the proposal in April 2006 with members of parliament, military experts, international finance officials, and others working to support the Aceh peace process. None were aware of it.

<sup>458</sup> Artjana, “The Indonesian Military Budget Transparency and Accountability,” p. 158.

<sup>459</sup> Human Rights Watch interview with government auditors.

<sup>460</sup> Human Rights Watch interview with BPK officials.

<sup>461</sup> *Ibid.*; BPK briefing document for Human Rights Watch.

contrary to requirements, the military had obstructed his efforts to look at off-budget finances: “They insist we audit only what is paid by the budget.”<sup>462</sup> One limited BPK audit of military foundations took place in 2000, but only after international financial institutions, especially the International Monetary Fund (IMF), insisted on it. Lending agreements signed between the Indonesian government and the IMF after the Asian financial crisis, when Indonesia took out large loans, stated that “any future internal audits of financial operations of all government agencies” by BPK should “take full account of all extra-budgetary sources of support. This will begin in 2000 and will include the military.” It added, “We recognize that quasi-fiscal activities may also arise from the operations of foundations and we intend to bring their activities and accounts under government review and audit.”<sup>463</sup> (The results of this BPK audit of military foundations are described below, in the section titled “Financial Mismanagement.”)

Unfortunately, this hard-won progress was not sustained. A separate IMF-supported initiative, to press for adoption of legislation regulating foundations, had the unintended consequence of halting BPK audits of military foundations. The military foundations used a provision of this law to argue that they were only required to open up their books to review by private auditors, not government authorities.<sup>464</sup> BPK continued to assert its right to audit state wealth under foundation control, which was also the position of the Indonesian government and the IMF,<sup>465</sup> but no such audits took place. In 2006 BPK officials were following with interest the government’s plans to take over control of military businesses and anticipated that they would again audit the military foundations once the handover was completed.<sup>466</sup> That was not scheduled to happen until 2009.

## Misuse of State Assets

After negotiation to secure the TNI’s cooperation, in 2005 BPK reviewed the TNI’s use of state assets the previous year. The special BPK review confirmed what many analysts had long argued, that the military has received considerable financial benefits, including

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<sup>462</sup> Human Rights Watch interview with government auditors. In refusing to cooperate, the military apparently contravened a May 1999 government order that required all state institutions to report off-budget revenue. The government subsequently committed to audit on a regular basis those official institutions that did not comply and to make them subject to sanctions for any misreporting. Government of Indonesia, Letter of Intent (LOI) and Supplementary Memorandum of Economic and Financial Policies (MEFP), signed September 7, 2000, para. 56.

<sup>463</sup> Government of Indonesia, LOI and MEFP, signed January 20, 2000, para. 31, 32. This IMF loan agreement was the first to address the issue.

<sup>464</sup> The foundations law, Law No. 16 of 2001, mandated financial statements prepared by “public auditors,” a reference to professional auditors who work in a private capacity (as distinct from government auditors). See Widoyoko et al., *Military Businesses in Search of Legitimacy*, pp. 71-74, 80-81.

<sup>465</sup> The IMF loan agreement of 2003 provided that “military and other foundations that received state funds or help finance state functions” would be subject to government audit. Government of Indonesia, LOI, signed June 11, 2003, para. 8.

<sup>466</sup> Human Rights Watch interview with BPK officials; BPK briefing document for Human Rights Watch.

access to government infrastructure (state assets), that allow it to generate added income and to compete on an unfair basis. The results, covering 2004, revealed widespread military misuse of state assets as well as a persistent failure to disclose or pay taxes on the resulting profits.

BPK's specific findings were that the TNI misuse of state assets resulted in some Rp. 38.8 billion (\$4.27 million) in profits to its partners. These funds went to third parties, rather than to government coffers. In addition, no taxes were paid on proceeds from use (presumably leasing) of 167 thousand hectares of public land controlled by the air force, Ministry of Defense, and TNI headquarters. The military branches left unreported Rp. 7.7 billion (\$847,000) in profits from TNI-run hospitals. The BPK report drew particular attention to the navy, which it said failed to properly disclose Rp. 28 billion (\$3.1 million) in income. That figure included Rp. 1.5 billion (\$165,000) in profits earned through its cooperative, Rp. 441.9 million (\$49,000) paid by a company, Rp. 255 million (\$28,000) from housing on navy land, and lease payments from a supermarket and auto center in North Jakarta totaling Rp. 25 billion (\$2.75 million).<sup>467</sup>

In spite of BPK's findings that the military caused losses to the state, no penalties were contemplated for those responsible. Authorities cited a lack of clarity over reporting requirements on profits derived from the use of state assets and attributed the problem to technical errors.<sup>468</sup> This was consistent with past complaints that, despite laws making the misuse of state assets punishable, accountability has been lacking.<sup>469</sup>

## Other Financial Improprieties

Military financial improprieties are legion in Indonesia. Indonesian oversight officials, while recognizing that some improvements were underway, consistently cited the military as one of the worst, if not the worst, in terms of government waste and corruption.<sup>470</sup>

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<sup>467</sup> Tony Hotland and Tiarna Siboro, "Military hands in inadequate report on wealth: BPK," *Jakarta Post*, September 26, 2005.

<sup>468</sup> Human Rights Watch interview with BPK officials; Hotland and Siboro, "Military hands....," *Jakarta Post*. Parliament responded to fill the gap by adopting new regulations on the matter.

<sup>469</sup> The then deputy chairman of BPK, I. Gde Artjana Artjana, mentioned in 2002 that penalties were prescribed under civil service regulations, the criminal code, and anticorruption laws, but that these had not been employed. Muninggar Sri Saraswati and Tiarna Siboro, "Irregularities in budget spending 17 percent – BPK," *Jakarta Post*, September 18, 2002.

<sup>470</sup> Human Rights Watch interview with Ministry of Finance officials, Jakarta, April 11, 2006; Human Rights Watch interviews with Deddy Djamiludin Malik, member of parliament, April 15, 2006.

According to press accounts, a review by the BPK concluded that more than \$450 million was diverted from military funds over an eight-year period ending in 2001.<sup>471</sup> Four years later, in 2005, Defense Minister Sudarsono stated that 30 percent of all government spending, including the Ministry of Defense budget (through which allocated funds pass to the armed forces), was wasted.<sup>472</sup> An analyst and expert on security sector reform, Riefqi Muna, put it in even starker terms:

Despite the fact that the Indonesian Armed Forces has one of the lowest budgets in the region in terms of its total and its percentage of the national budget, it is important to note that there is still plenty of money in military coffers to be misappropriated and stolen.<sup>473</sup>

The Indonesian government has declared anti-corruption a priority but its efforts have only limited applicability to the military sector. Indonesia's Corruption Eradication Commission or KPK only has one investigation open into military corruption, related to a prominent arms procurement scandal from 2003, and had referred another to the Attorney General's office. KPK's ability to pursue military cases is a "sensitive" issue, according to a commission member, because its mandate limits its role to one of coordination when military personnel are involved.<sup>474</sup> Moreover, the requirement that high-level government officials submit wealth declarations has limited applicability for the military. Only a handful of Ministry of Defense and TNI officials are subject to the requirement, less than in other government departments.<sup>475</sup> KPK does not audit these reports in any case. It receives the information and says it verifies what it presented but says that it lacks the authority to investigate further if it suspects an official has withheld information.<sup>476</sup>

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<sup>471</sup> Djoko Susilo, "DPR seeks to end 'rubber stamp' role in military budget," *Jakarta Post*.

<sup>472</sup> "Defense ministry boosts efficiency," *Jakarta Post*, August 30, 2005.

<sup>473</sup> Muna, "Money and Uniform: Corruption in the Indonesian Armed Forces," p. 22.

<sup>474</sup> The statute creating KPK limits its authority over such cases because those implicated are under the jurisdiction of the military justice system or, in some cases, hybrid civilian-military courts. Human Rights Watch interview with Erry Riyana Hardjapamekas; Law No. 30/2002 on the KPK, at Article 42. The TNI and KPK signed a memorandum of understanding to clarify these and other issues. "Kerja Sama Pemberantasan Tindak Pidana Korupsi (Cooperative Efforts to Eliminate Criminal Acts of Corruption)," August 10, 2005, provided by TNI headquarters, copy on file with Human Rights Watch.

<sup>475</sup> A KPK commissioner explained that government officials holding the highest-level departmental posts are required to submit such declarations, but for the military this corresponds to only a few posts (approximately five in the case of the TNI and a few more in the Ministry of Defense). There would be no constraint to expand this number, as has been done for the judiciary branch. Human Rights Watch interview with Erry Riyana Hardjapamekas.

<sup>476</sup> *Ibid.*



### ***Three Myths about Indonesian Military Self-Finance***

The challenge of funding the Indonesian military within the constraints of a tight budget has provided a central justification for the TNI's independent revenue-generating activity. From the earliest days of Indonesia's history, official funding has been deemed inadequate to meet the military's basic needs. While there is truth in this claim, as already noted, the problem is less severe than often stated and is not insurmountable. In the form most commonly heard, the claim rests on three myths: first, that funds from official government sources are wholly inadequate to meet the essential needs of the military; second, that military businesses generate substantial revenue that goes most of the way toward filling the gap; and, third, that the proceeds of these businesses are primarily used to meet the welfare needs of the troops.

This section addresses those myths. As for the first, while it is true that official spending on the military has been relatively low over the course of many years, creating incentives for military self-financing activity, it is higher than military budget figures suggest. One reason is that outlays are hidden in other budget lines, so that total government spending on the military greatly exceeds the budgeted amount. Moreover, official budget allocations to the military are on the rise. Any plan to address under-funding in military budgets must also take on the pervasive waste that the defense minister has estimated at 30 percent. It also should account for the considerable costs to the economy of military self-financing activity.

The notion that the profits from military economic activities are keeping troops housed and fed is also a myth. The belief is strong enough, including in military circles, that government officials say it presents a "psychological obstacle" to reform of military finance.<sup>477</sup> There is considerable evidence to support claims that regular military-owned businesses are mismanaged, profits generally low or nonexistent, and that they contribute only modest sums for welfare-oriented spending. Some military officials, even while denying widespread corruption in the activities of these businesses, have acknowledged that they offer little benefit to the troops. Irregular businesses are presumed to generate more money (no total figures are available) but these funds too tend to be allocated for non-welfare purposes. Much of the money that is raised through the military's various economic activities goes into the pockets of individuals and does little or nothing to cover budgetary shortfalls.

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<sup>477</sup> Ministry of Defense letter to Human Rights Watch.

### ***Myth 1: Funds Allocated to the Military by the Indonesian Government Cover Only a Small Fraction of the Military's Needs***

The Indonesian military faces considerable financial pressure. While many observers attribute the problem to low military budgets, the issue in fact is much more complex. Importantly, official statistics only tell part of the story. Although we cannot be sure of the amounts of money involved due to lack of transparency, it is clear that the TNI has benefited from significant additional outlays made available through other budget lines and special allocations.<sup>478</sup> For example, the use of emergency funds for military operations has not been counted against the military budget. (See Box 3, above.)

Arms acquisitions financed with alternative arrangements such as barter deals, export credit financing, or presidential contingency funds represent yet another form of government subsidy of military spending.<sup>479</sup> The sums involved can be quite large. For example, export credit-backed loans were used to finance weapons purchases to the tune of \$160 million in 2002, \$448 million in 2003, and \$449 million in 2004.<sup>480</sup> In addition, official statistics do not consider the substantial payments made by companies to cover security services provided by the Indonesian military.<sup>481</sup> Foreign military aid, whether in the form of grants, subsidies, or in-kind support for items the Indonesian government would otherwise have purchased, also supplement central government outlays for the military.<sup>482</sup>

Military expenditures paid from funds managed by other levels of government can be substantial. As decentralization has made more funds available to regional and local

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<sup>478</sup> Consistent with government-wide practice, military pensions are not counted against the military budget. For critiques of military budgeting in Indonesia prepared by independent experts, see INFID, "The Anatomy of the Military Budget"; and LOGOS, "Transparency, Accountability and Control in Military Expenditure: Problems and Recommendations," *INFID Background Paper on Military Reform*, 2003.

<sup>479</sup> Government officials were inconsistent in their description of how export credit loans were counted. Government auditors indicated that the down payment for export credit-backed deals (amounting to 15 percent of their value) was counted as part of military spending in at least some cases, but that the remainder was charged as a Ministry of Finance expense. Human Rights Watch interview with BPK officials. A Ministry of Finance official, however, said the figures are excluded from the military budget but incorporated into spending figures under procurement expenses. Indonesian finance officials separately indicated to SIPRI in late 2004 that arms imports were included in reported figures for military spending. Again, it was unclear whether that information referred to all arms acquisitions for the military or only those that were financed from funds specifically allocated to the military in its budget. Human Rights Watch interview with SIPRI researchers, Stockholm, January 25, 2006.

<sup>480</sup> The 2003 figure includes \$128 million granted in an additional allocation (beyond the initial budgeted amount for that year). Sudarsono, "Defense Strategy and National Security Policy," p. 21.

<sup>481</sup> Human Rights Watch interview with Ministry of Finance officials.

<sup>482</sup> A budget line for international military cooperation in the 2005 and 2006 budgets, which provided disaggregated information, refers instead to spending on international peacekeeping deployments. *Ibid.*

governments, they frequently have been asked to help underwrite military expenditures.<sup>483</sup> Marcus Mietzner, an expert on civil-military relations in Indonesia, described how this works:

As under the New Order, the military requests a share of regional revenue, often hidden in the budget as “stability funds” or other items at the disposal of the executive. Long-serving *bupati* [regents] report that their administrations continue to receive bills for all major TNI operations, ranging from security interventions to disaster relief and development programs.<sup>484</sup>

A government advisor who spoke to Human Rights Watch said that he had personally reviewed financing proposals the military submitted to authorities in one part of Central Java province, which district government authorities approved and paid out using funds allocated for other purposes.<sup>485</sup> Indonesian finance officials told Human Rights Watch that it was not unusual for local and regional governments to cover certain military costs, including for some security operations.<sup>486</sup> Such expenditures, as well as equipment purchases made on the military’s behalf by local or regional governments, are not counted as military spending by the central government.<sup>487</sup>

It is difficult to establish how much these other outlays add up to, but it is wrong to start from the premise, as so many do, that the military only receives government funds that are explicitly designated to defense in the annual budget. Claims about major budgetary shortfalls, moreover, typically fail to take into account the pervasive waste acknowledged even by high-ranking officials. Finally, it is important to consider that the Indonesian government has increased its military budgets and spending in recent years, as seen in Tables 3, 4, and 5. The approved 2006 budget ceiling for the military was Rp. 28.2

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<sup>483</sup> For example, a church leader from West Papua, Rev. Sofyan Yoman, charged in 2005 that some Rp. 2.5 billion (\$275,000) in local autonomy funds had been used to finance military operations. Transcript of “Dateline,” Australian TV weekly news program, March 16, 2005. In another example, a district military commander in Lampung province called on the local government to underwrite proposed military action to remove illegally felled timber from a national park. Oyos Saroso H.N., “Corruption, no coordination benefit illegal loggers,” *Jakarta Post*, December 12, 2005.

<sup>484</sup> Mietzner, “Business as Usual?,” p. 255. Such activities have increased under decentralization.

<sup>485</sup> This person said that the reporting of the use of the funds given to the military did not indicate their true purpose. Human Rights Watch interview with an advisor to a district government, Jakarta, April 2006.

<sup>486</sup> Human Rights Watch interview with Ministry of Finance officials.

<sup>487</sup> In 2003 the Indonesian navy requested regional governments to purchase patrol boats. Riau province agreed to the proposal, and other provinces were considering it as well, but plans stalled after critics said only the central government was authorized to make military purchases. Imparsial, “Catatan Imparsial,” *Critical Analysis on Defense Policy*, vol. 1, March 2004.

trillion (\$3 billion), a 28 percent increase from the final 2005 budget allocation.<sup>488</sup> The Yudhoyono government also has made clear that it intends to progressively raise government spending on defense.<sup>489</sup>

### ***Myth 2: The Businesses of the Indonesian Military Significantly Help the Military Cover Its Funding Gap***

The rationale for military business activity in Indonesia rests in part on the assumption that such businesses are successful. This section reviews what we know about the operations and profits of military economic activity, both legal and illegal. It finds that military businesses, despite receiving preferential treatment that has boosted their money-making potential, in recent years have not contributed significantly to covering unbudgeted military expenses. Part of the reason is that funds have been siphoned off. Military collaborations with business, such as payments for security services, have generated large sums and have helped supplement official spending but also have been marked by corruption. Illegal economic activities are presumed to generate large sums, but not surprisingly no reliable estimates are available. In the case of unlawful businesses, it is especially easy for funds to be routed to the self-enrichment of the individuals involved rather than be used for military purposes.

### **Military-Owned Businesses**

There is little verified information regarding the profits generated by military-owned businesses and how these are allocated, but some patterns can be discerned. While some business earnings finance military expenditures, including welfare activities and even operational expenses, the amounts involved are far lower than one might expect. The economic value of military businesses has declined since Soeharto's fall and has continued to trend downwards. (See Box 1 and the section titled "Foundations" in Part II: An Anatomy of Military Economic Activity.) Unsustainable business practices, including the use of businesses as "cash cows" from which to draw funds without

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<sup>488</sup> 2006 budget documents provided by the Ministry of Finance show that Rp. 10.9 trillion (\$1.2 billion) was allocated to the army, Rp. 4.3 trillion (\$473 million) to the navy, Rp. 3.3 trillion (\$363 million) to the air force, Rp. 3.4 trillion (\$374 million) for TNI headquarters, and Rp. 6.2 trillion (\$682 million) for the defense ministry. The Ministry of Defense announced plans to raise the relative budgets of the navy and air force, which historically have been much lower than those of the army. Tony Hotland, "Air Force, Navy to get bigger chunk of funds," *Jakarta Post*, April 19, 2006.

<sup>489</sup> President Yudhoyono has argued that the ideal military budget should be between 3 and 5 percent of GDP. Ridwan Max Sijabat, "Synergies needed to build modern defense industry," *Jakarta Post*, January 29, 2005. The Indonesian military, in a 2003 white paper, argued that 3.65 percent of GDP would constitute "a reasonable budget for defense needs," to be achieved gradually over a ten-to-fifteen year time span. Ministry of Defense of the Republic of Indonesia, "Mempertahankan Tanah Air Memasuki Abad 21 (Defense of the Homeland Entering the 21st Century)," white paper, 2003, translation by Human Rights Watch. The defense minister has instead proposed dramatic increases that would result in a 2009 defense budget of more than 141 trillion (\$15 billion). Sudarsono, "Defense Strategy and National Security Policy," p. 25.

reinvesting for the future, are partly to blame. Indonesian leaders have acknowledged that the low level of profit from military businesses and the fact that many were saddled with debts helped explain why, after years of staunchly defending such businesses, in 2005 the TNI leadership committed to giving them up.<sup>490</sup>

Lt. Gen. (ret.) Agus Widjojo, in an interview with Human Rights Watch, offered his explanation for the downturn in the fortunes of military business ventures:

First, they are losing the preferential treatment they got in the past under Soeharto. Second, there's far more competition now. Third, military business is under observation and that was not the case before.... The capital and investment [of the foundations] is not all that great. It's not true that they play a major economic role or that the funds are used as part of the military budget.<sup>491</sup>

Others largely agreed but added that the foundations and other off-budget funds were used to finance some operational costs and at least limited procurement. A retired military officer who spoke on condition of anonymity told Human Rights Watch that the military foundation he helped run while on active duty had occasionally purchased items, such as transport vehicles, on behalf of the military. Such purchases were most commonly made during military operations, such as in Aceh and Papua. The officer said the foundation had purchased the items on the understanding that its expenses would later be reimbursed from the government budget, but the "loans" were never repaid.<sup>492</sup>

Minister of Defense Sudarsono has confirmed that "[t]he income earned by the business undertakings was partly used to finance operational activities."<sup>493</sup> He acknowledged that this was true of proceeds from both legal and illegal military businesses.<sup>494</sup> Similarly, an auditor involved in a 2000 review of a military foundation told Human Rights Watch he was surprised to discover that, rather than serving strictly welfare purposes, foundation funds were used for "certain operations [that] were more related to the operations of the army command and units."<sup>495</sup> For example, Kostrad, the Army Strategic Reserve

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<sup>490</sup> Human Rights Watch interview with Said Didu.

<sup>491</sup> Human Rights Watch interview with Lt. Gen. (ret.) Agus Widjojo, December 15, 2004.

<sup>492</sup> Human Rights Watch interview with a retired military officer who asked to remain anonymous, Jakarta, April 2006.

<sup>493</sup> "Minister Wants Almost Three-Fold Increase in Country's Defense Budget," LKBN Antara, October 24, 2004.

<sup>494</sup> Sudarsono referred in particular to reports that the Indonesian military's operations in East Timor were partly funded with proceeds from, in his words, "the military's efforts in the gambling sector." McCulloch, "Trifungsi," p. 114, citing a July 2000 interview with Sudarsono.

<sup>495</sup> Human Rights Watch interview with a senior BPK auditor.

Command, has used foundation funds to finance military training, and also solicited private donations for that purpose.<sup>496</sup>

#### **Box 4: Financial Mismanagement**

The poor business practices of military-owned companies have diminished their financial contribution. Audits of the military's business holdings have been rare, but invariably have uncovered major irregularities. In 2000 the newly installed chief of Kostrad, Lt. Gen. Agus Wirahadikusumah, ordered a financial review of the accounts of its foundation, Yayasan Dharma Putra Kostrad (YDPK). This reportedly was the first professional audit of YDPK since its founding nearly forty years earlier. It found that Wirahadikusumah's immediate predecessor as the head of Kostrad, Lt. Gen. Djaja Suparman, had withdrawn at least Rp. 160 billion (\$19.2 million), of which a portion was later returned, from the accounts of PT Mandala Airlines, a subsidiary of the foundation.<sup>497</sup>

A follow-up investigation ordered by Wirahadikusumah revealed a wide range of anomalies in the use and management of the foundation's funds, including payment of inflated prices, expenditures unrelated to the foundation's welfare mission (including bulletproof vests), and overspending on marketing. An audit report determined, moreover, that YDPK operated without a budget or planned activities, that it did not adhere to good bookkeeping practices, that it lacked an internal oversight mechanism, and that its financial data, including reports, was scarce and unreliable.<sup>498</sup> Total losses from the foundation were reportedly in the order of between Rp. 75 billion (\$8.1 million) and as much as Rp. 189 billion (\$20 million), the latter being equivalent to the entire worth of the foundation's assets at the time.<sup>499</sup> Prompted by the revelations, the army inspector general undertook an internal audit but, ignoring the indications of corruption, he attributed the problems to procedural error.<sup>500</sup>

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<sup>496</sup> ICG, "Indonesia: Next Steps in Military Reform," p. 14.

<sup>497</sup> See, for example, Fatchurrochman, "Military Foundation Governance"; Widoyoko et al., *Military Businesses in Search of Legitimacy*, pp. 10-12; Widoyoko, "Questioning the Military Business Restructuring," pp. 120-121; O'Rourke, *Reformasi*, pp. 371-372; and Karaniya Dharmasaputra et al., "Lubang Kebocoran di 'Kapal Keruk' Kostrad (A Leak in Kostrad's Money-Making 'Ship')," *Tempo*, October 6-13, 2000.

<sup>498</sup> Fatchurrochman, "Military Foundation Governance." See also Widoyoko et al., *Military Businesses in Search of Legitimacy*, pp. 10-12; McCulloch, "Trifungsi," pp. 118-119.

<sup>499</sup> McCulloch, "Trifungsi," p. 119. A source close to Wirahadikusumah suggested that the true losses were likely double those amounts. *Ibid.*

<sup>500</sup> Muna, "Money and Uniform: Corruption in the Indonesian Armed Forces," p. 20. A newspaper survey found that 97 percent of those asked felt the foundation's operations had been marred by corruption. *Ibid.*, pp. 8, 20.

Suparman, who went on to become the army's Inspector General, has strongly denied the allegations of corruption. He told Human Rights Watch that the charges were unfounded, politically motivated, and amounted to "character assassination."<sup>501</sup>

Wirahadikusumah was ostracized by fellow military officers who resented his reform efforts. They successfully arranged to have him removed from his command in mid-2000.<sup>502</sup>

The year 2000 was also the year of the official BPK audit of military foundations, mentioned above. The BPK performed a " cursory" review of eight military foundations and found a series of problems:<sup>503</sup>

- "weak or total absence of internal control and oversight mechanisms in the management of the foundations;
- "incoherent financial records and incompetent financial management;
- "violation of accounting principles in their financial management;
- "unclear connection between the foundation, the company, and the original military organization; and
- "inappropriate use of foundation fund for items that have nothing to do with the purpose and goals of the foundation."<sup>504</sup>

One of the BPK auditors at the time described additional findings, including as follows:

- "[T]he chief of staff or the commanding officer plays a dominant role in determining the foundations' expenses and earnings.
- "The foundation sources and the budget of the military-owned businesses are not transparent and they are not only used for the welfare of the soldiers. There are indications that the funds are used to cover its operational preparations.
- "Elements of corruption, collusion, and nepotism are very strong. There are markup practices, no regular accountability reports and an ineffective use of funds. Most of the foundation's funds are channeled into command units and used as tactical funds."<sup>505</sup>

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<sup>501</sup> Human Rights Watch interview with Lt. Gen. (ret.) Djaja Suparman, Jakarta, April 18, 2006.

<sup>502</sup> O'Rourke, *Reformasi*, pp. 371-373. Wirahadikusumah, who was not given a new posting, died in August 2001.

<sup>503</sup> I. Gde Artjana, "Audit Terhadap Yayasan Militer (Audit on Military Foundations)," May 17, 2001, copy on file with Human Rights Watch, translation by Human Rights Watch.. The audit also covered a ninth foundation, established by the police.

<sup>504</sup> Artjana, "Accountability in the Revenue and Expenditure of the Military Budget."

<sup>505</sup> Artjana, "The Indonesian Military Budget Transparency and Accountability," p. 155.

The audit, which was not made public, reportedly identified one military foundation as having misused Rp. 207.437 billion (\$20.7 million) and said funds in the amount of Rp. 87.975 billion (\$8.7 million), Rp. 14.023 billion (\$1.4 million), and Rp. 13.98 billion (\$1.4 million) were missing from three others.<sup>506</sup> The then assistant for general planning for the commander-in-chief, the outspoken Lieutenant General Wirahadikusumah, said that the absence of proper records of expenses caused him to suspect that military officers had embezzled the missing funds.<sup>507</sup> As bad as these findings were, they could have been worse. The foundations reportedly cleaned up their books before sharing them with BPK.<sup>508</sup> One of the auditors charged that “in addition to incompetence in bookkeeping, there is evidence to suggest that information has been deliberately ‘lost’ or fabricated.”<sup>509</sup> Juwono Sudarsono, then serving a first term as defense minister, added: “Incompetence and corrupt practices means we must take the results of the audit as an indication only.”<sup>510</sup>

In 2001, army headquarters asked external auditors from Ernst & Young to conduct an audit of the main army foundation.<sup>511</sup> The audit reviewed YKEP’s holdings in thirty-three companies that funneled funds to YKEP as royalties or dividends.<sup>512</sup> The report was not made public, but Human Rights Watch obtained a copy. Among its key findings, the audit found that YKEP-owned companies were marked by low profit margins, large debt exposure, overlapping of businesses, and legal uncertainties regarding business arrangements and asset ownership (the latter likely a reference to state assets used by the foundation). The majority of YKEP’s holdings showed low market share and dim future prospects.<sup>513</sup>

The audit also pointed to several management problems. It found that company directors, generally army retirees, were not appointed based on performance (suggesting a patronage system), and that third parties operated several of the companies in murky arrangements that presented potential conflicts of interest.<sup>514</sup>

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<sup>506</sup> Rinakit, *The Indonesian Military After the New Order*, citing *Tempo*, November 19, 2000.

<sup>507</sup> *Ibid.*, p. 176.

<sup>508</sup> McCulloch, “*Trifungsi*,” p. 117.

<sup>509</sup> *Ibid.*, citing an interview with I. Gde Artjana.

<sup>510</sup> *Ibid.*, citing an interview with Sudarsono in July 2000.

<sup>511</sup> In a disclaimer, the auditors said their work constituted a “high level review,” not a full audit, and that they could not express an opinion on the accuracy of the financial data, which was provided by YKEP management. Ernst & Young, “YKEP: Strategic Review Report,” December 2001. A second firm, CSA Lingkarmitra (also known as CSA Strategic Advisory) participated in the review of YKEP, and its findings were included in the Ernst & Young report.

<sup>512</sup> *Ibid.* The foundation holdings included eleven subsidiaries and twenty-two joint ventures. The disparate companies fell into five broad categories: forestry/plantation, construction, property, manufacturing, services, and mining. Of them, the timber holdings were deemed to be “cash cows.” None of the companies were publicly listed. *Ibid.*

<sup>513</sup> Human Rights Watch interviews with four people involved in the review, April 2006; Ernst & Young, “YKEP: Strategic Review Report.”

<sup>514</sup> Ernst & Young, “YKEP: Strategic Review Report.”



The audit verified that the military was not operationally engaged in the companies it owned. It recommended divestment from some companies because the foundation “has little or no control and hence [has] not been receiving any benefits.”<sup>515</sup> Military cooperatives have received less scrutiny but past reviews have found that, like foundations, they have misspent state funds and caused financial losses.<sup>516</sup>

### *Other Types of Military Business*

Little is known about the flow of funds derived from military economic activity where the military does not have a formal ownership stake. According to persistent reports, in past years such funds may have been used to facilitate unauthorized activities, such as the formation of militia groups.<sup>517</sup> More recent information strongly suggests a pattern not unlike that which characterizes military-owned businesses: while some funds might be directed for operational purposes, illegal and informal business activity is rife with corruption and individuals often benefit more than the institution.

Payments for different types of security services illustrate the point. With respect to illegal protection rackets, of the money earned by enlisted men circulates to their superior officers. A person who has researched criminality in Medan explained that when soldiers back illegal businesses “there’s an obligation to give money to the commander.”<sup>518</sup> In the case of security services organized informally at the unit level, a patronage system ensures that funds earned at lower levels flow to more senior officers. Arrangements to hire out soldiers for protection services are often negotiated by their commanders, who assign the task and keep a fee.<sup>519</sup> The commanders also send a portion of the proceeds to their superiors.<sup>520</sup> For instance, the Indonesian human rights group Kontras found that in one area of West Java, the military battalion received monthly payments from several businesses (as well as the local government). These were distributed according to rank. The sums involved were tiny compared to the payments made by Freeport (see “Freeport’s Security Arrangements” in Part II: An Anatomy of

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<sup>515</sup> Ibid.

<sup>516</sup> Otto Syamsuddin Ishak, “Sociology of the Military Business in Indonesia,” in *Practices of Military Business*, p. 85, citing *Kompas*, April 4, 2002.

<sup>517</sup> See, for example, Kontras, *When Gun Point Joins the Trade*, p. 22; ICG, “Indonesia: Next Steps in Military Reform,” p. 14; ICG, “Indonesia: Keeping the Military Under Control,” pp. 17, 25; O’Rourke, *Reformasi*, p. 371.

<sup>518</sup> Human Rights Watch interview with a researcher who has studied Medan’s underworld, Medan, November 28, 2004.

<sup>519</sup> Human Rights Watch interview with someone who had hired soldiers to provide security. See also M. Taufiqurrahman, “Military Told to Get Out of Business,” *Jakarta Post*, August 15, 2004.

<sup>520</sup> Human Rights Watch interview with a Western diplomat familiar with the arrangements.

Military Economic Activity), but in a country where salaries are very low they could add significantly to a soldier's take-home pay.<sup>521</sup>

### ***Myth 3: The Proceeds of Military Businesses are Mainly Used to Support Troop Welfare***

Military businesses in principle exist for the benefit of the troops. Troop conditions can be dismal, and—particularly at the low ranks—military pay has not been enough to meet the basic needs of soldiers and their families. Salaries for soldiers are very low, as they are for all public servants and many others in Indonesia's developing economy. Base monthly salaries for the troops start at Rp. 650,000 (approximately \$70) and top out at a little more than Rp. 2 million (\$220) for senior officers.<sup>522</sup> Soldiers receive supplementary allowances that in some cases nearly double their take-home pay, but they struggle to get by on that income.<sup>523</sup> A retired military officer informed Human Rights Watch: "It is taken for granted that a criterion for a successful commander is the ability to fund the unit to look after the welfare of the soldiers."<sup>524</sup>

Just as the pressure to find resources to provide for the troops cannot be attributed solely to official funding levels, since poor budgetary practices, waste, and corruption are also partly to blame, it is also false to suggest, as many in the military have, that independently generated funds are mainly spent on social programs.<sup>525</sup> Certainly there is some social spending. Military foundations provide soldiers and their families with added benefits, including health care, educational support, housing, and pensions for military widows and orphans. The foundations also sponsor various educational institutes. In addition, military businesses owned via foundations commonly employ military retirees and are considered an informal pension system.

Yet the funds available for such welfare spending are greatly depleted by the practices of military businesses, including graft. Commanders use the money largely at their own discretion and without proper record keeping, running them like "slush funds."<sup>526</sup> A military analyst explained that the true purpose of military companies is to siphon funds: "It's all about rent-seeking. The formal businesses don't exist to make a profit. The point

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<sup>521</sup> Kontras, *When Gun Point Joins the Trade*, pp. 33-34.

<sup>522</sup> "Daftar Gab Pokok Anggota Tentara Nasional Indonesia (Primary List of Salaries for Members of the TNI)," January 30, 2006, document provided by TNI headquarters, copy on file with Human Rights Watch.

<sup>523</sup> Human Rights Watch interview with two privates in the Indonesian army, TNI headquarters, Cilangkap, April 13, 2006.

<sup>524</sup> Human Rights Watch interview with Lt. Gen. (ret.) Agus Widjojo, December 15, 2004.

<sup>525</sup> See, for example, "Bisnis Militer (Military Business)," Jakarta Independent Media Center, April 29, 2005, [online] [www.jakarta.indymedia.org](http://www.jakarta.indymedia.org), translation by Human Rights Watch.

<sup>526</sup> McCulloch, "Trifungsi," pp. 117-118.

is to facilitate scheming.<sup>527</sup> As senior officers milk military businesses dry, little or no profits are left for the troops for whose benefit these businesses were purportedly established. Defense Minister Juwono Sudarsono has acknowledged that the top brass are the true beneficiaries of military business.<sup>528</sup> As an example, the former deputy army chief Kiki Syahnakri confirmed that his income when he was appointed to head a military-owned timber company was worth several times his military salary.<sup>529</sup> A parliamentarian, Abdillah Toha, commented: “Those who profit are the generals. So it’s all lies to say that military business is needed for soldier welfare.”<sup>530</sup>

Rather than retain military businesses of dubious economic and social value, there are other means to improve soldier welfare that are less susceptible to corruption by their superiors and do not threaten human rights and military professionalism. Soldiers would benefit more directly from measures that enhance their compensation and living conditions. Military pay was due to increase in 2006 by between 15 and 20 percent under a government plan to raise the incomes of soldiers, police, and civil servants.<sup>531</sup>

### **Conclusion**

The responsibility to provide for the troops lies with the government of Indonesia. For decades, civilian leaders have instead allowed the military to raise funds independently on the pretense that the funds will be used to meet budget shortfalls. The net result has been the spread of unaccountable off-budget military financing. A major overhaul military finance is needed to make the system compatible with democratic governance and human rights.

### **Flawed 2004 Reform Effort**

In 2004, parliament passed a law that mandated an end to military involvement in business. This initiative has promise, but implementation has been very slow and the few steps taken so far have been deeply flawed, both in conception and in execution. This section reviews flaws in the law and in the limited efforts at implementing it. Our assessment is rooted in the findings of our human rights analysis, which showed that three essential elements have been missing from the reform debate to date. First, a sense of urgency is missing, commensurate with the serious nature of the problem and its

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<sup>527</sup> Human Rights Watch interview with a foreign military analyst.

<sup>528</sup> “Four Ministries to Straighten Up Military Businesses,” *TempoInteractive.com*, February 23, 2005.

<sup>529</sup> Greenlees, “Indonesia wants...,” *International Herald Tribune*.

<sup>530</sup> Human Rights Watch interview with Abdillah Toha.

<sup>531</sup> Part of the plan was to add an extra month’s salary each year. “Govt to raise civil servants [sic] salaries,” *Antara*, October 1, 2005; Muningggar Sri Saraswati, “SBY confirms salary hike for officials,” *Jakarta Post*, August 18, 2005.

harmful effects. Second, financial accountability is needed to help combat military impunity for human rights abuses. Third, the reform effort must consider the problem of military self-financing in a comprehensive way to account for the true scope of the military's economic entanglements and associated abuses.

### ***A Mandate for Reform: The TNI Law***

In September 2004 the outgoing parliament passed a law on the TNI, Law No. 34/2004, that included several provisions related to military financing. It stated that TNI troops are entitled to an adequate income funded from the official defense budget.<sup>532</sup>

Importantly, the new law also emphasized that “professional soldiers...do not do business” and included an unequivocal prohibition on soldiers taking part in business activities.<sup>533</sup> Even more significantly, the TNI law imposed a deadline for concrete changes: “Within five years from the passage of this bill, the government must take over all business activities that are owned and operated by the military, both directly and indirectly.”<sup>534</sup>

The adoption of these provisions represented an unexpected watershed, yet the law itself left open many questions. By imposing a deadline the law recognized the need to act without delay, but it did not spell out any consequences if the government or the military failed to comply with its provisions. In addition, the question of the law's scope was not clearly addressed; the law did not define which types of military businesses were covered. This lack of clarity made it possible for some types of formally-established businesses to be excluded and for implementation efforts to ignore the military's informal and illegal economic activities. Finally, the law offered no guidance on how the government should divest the military of its business interests or where it was to draw the funds to bring the military fully on budget.

### ***Seriousness of Purpose Lacking***

Past efforts to eliminate military business activity have invariably stalled, so true reform will require strong leadership and a sense of purpose commensurate with the seriousness of the problem. In April 2005, Indonesia's then military chief, General Sutarto, pledged that the TNI would withdraw from business within two years.<sup>535</sup> This commitment, later repeated by Sutarto's successor and senior TNI staff, appeared to indicate an important

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<sup>532</sup> Undang-undang No. 34/2004 tentang Tentara Nasional Indonesia (Law No. 34/2004 on the Indonesian National Armed Forces or TNI), at Article 49. The law, at Article 50(4), defined “decent income” to include a soldier's salary and various supplemental payments such as family allowances.

<sup>533</sup> *Ibid.*, at Articles 2(d) and 39(3).

<sup>534</sup> *Ibid.*, at Article 76(1).

<sup>535</sup> “TNI to surrender businesses in two years,” AFP, April 12, 2005.

shift in attitude that would facilitate the implementation of needed reform without delay.<sup>536</sup> To date, however, President Yudhoyono and his defense minister, Juwono Sudarsono, have taken a cautious, go-slow approach. Both have argued that military budgets would need to be raised first before the government could be expected to tackle the problem of military self-financing. The defense minister told Human Rights Watch in early 2005 that bringing the TNI fully on budget would, in his estimation, take ten to fifteen years.<sup>537</sup> The TNI law imposes a much shorter timeline, but the Yudhoyono government is seemingly in no rush to meet it.

The government waited until mid-2005 to form an inter-ministerial team to plan the process of transforming military businesses. This team, known as the Supervisory Team for the Transformation of TNI Businesses (Tim Supervisi Transformasi Bisnis TNI, TSTB), includes representatives from the Ministry of Defense, the TNI, the Ministry of Law and Human Rights, the Ministry of Finance, and the Ministry for State-Owned Enterprises. The TSTB is headed by Said Didu, secretary of the Ministry of State-Owned Enterprises, with Lt. Gen. Sjafrie Sjamsoeddin, secretary-general of the Ministry of Defense, serving as the deputy. Under the TSTB's official mandate, formally issued in late November 2005, the team was tasked with conducting a verification and valuation of military businesses, including by reviewing legal, business, and financial aspects of the businesses.<sup>538</sup>

The government delayed basic information gathering by granting the military until late September 2005, a full year after the TNI law was passed, to submit an inventory of its businesses.<sup>539</sup> Next, the inter-ministerial team moved to evaluate the identified businesses according to several criteria.<sup>540</sup> That process also moved very slowly and had made little headway as of March 2006. TSTB members said their ability to complete this task was

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<sup>536</sup> Human Rights Watch interview with Brig. Gen. Bibit Santoso and other TNI representatives; Maj. Gen. Suganda, "TNI commits to reform...", *Jakarta Post*.

<sup>537</sup> Human Rights Watch interview with Minister of Defense Sudarsono.

<sup>538</sup> The reviews were to be carried out by consultants under the supervision of TSTB working groups. Ministry of Defense, "Informasi Bisnis TNI (Information on TNI Business)," briefing document prepared for Human Rights Watch in response to a request for information ["Ministry of Defense briefing document for Human Rights Watch"], April 12, 2006.

<sup>539</sup> Ministry of Defense letter to Human Rights Watch. TSTB members said the various delays were due to legal and technical problems, not any political concerns or resistance from the TNI. Human Rights Watch interview Lt. Gen. Sjafrie Sjamsoeddin, secretary-general of the Ministry of Defense and vice-chair of the TSTB; Human Rights Watch interview with Said Didu, secretary to the Ministry of State-Owned Enterprises and chair of the TSTB.

<sup>540</sup> The criteria for the evaluation were as follows: the nature of the business activities; the value of business assets; the ownership structure; and the purpose of the business (whether profit- or welfare-oriented). Secretary-general of the Ministry of Defense of the Republic of Indonesia, "Informasi Tentang Proses Pengalihan Bisnis TNI (Information on the Transfer Process of TNI Businesses)," September 9, 2005, [online] <http://www.dephan.go.id/>.

complicated further when the TNI submitted a revised inventory that listed more than 1,500 military businesses (up from 219).<sup>541</sup> Based on the judgment of the TSTB that many of these businesses would not be eligible for restructuring,<sup>542</sup> the government decided to postpone plans to assume control of the identified businesses until it could determine which ones it intended to take over.<sup>543</sup> To carry that work forward, the TSTB proposed that a new agency, the TNI Business Transformation and Management Body (Badan Transformasi dan Pengelolaan Bisnis TNI or BTPB), be created. The BTPB's task would be to review and verify information on military enterprises (the task originally assigned to the TSTB), to assume management control over these enterprises, and to then restructure the businesses to comply with prevailing laws.<sup>544</sup>

These various delays have pushed back action to implement the TNI law. Months have been spent collecting, reviewing, and verifying data on individual businesses but the parameters for how the government intends to reform these businesses have not been set. Regulations, in the form of a presidential decree, that the government had first been promised for October or early November 2005, then April 2006, never materialized, and the dates slipped without explanation.<sup>545</sup> By April 2006, expectations had again been revised downward. (That month, the government belatedly initiated a review of foundations under the Ministry of Defense, in parallel to the TSTB process for TNI-owned businesses.<sup>546</sup>)

TSTB members who spoke to Human Rights Watch were keenly aware of the strong public demand for reform of military business. They affirmed their commitment to

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<sup>541</sup> They indicated that the longer list was of only limited utility because it included many small-scale economic ventures that, in their view, were not worthy of consideration as businesses. The head of the TSTB, Said Didu, also noted that a great number of the entries were missing basic data. Human Rights Watch interviews with Lt. Gen. Sjafrie Sjamsoeddin and Said Didu.

<sup>542</sup> In the absence of an official definition of military business in the TNI law, the TSTB developed its own concept. As explained further below, it employed a very restricted definition that deliberately left out several categories of businesses.

<sup>543</sup> Human Rights Watch interview with Said Didu. See also "Indonesia sets up agency to clean up military business," AFP, March 2, 2006.

<sup>544</sup> Ministry of Defense briefing document for Human Rights Watch; Human Rights Watch interviews with Lt. Gen. Sjafrie Sjamsoeddin and Said Didu. In principle, at least, the TSTB was to have begun some of these tasks in 2005. For example, the government had announced in 2005 that two audit firms would examine the financial data of inventoried military businesses. Devi Asmarani, "Jakarta to take over only 10 military businesses," *Straits Times*, October 26, 2005; "Verifikasi Bisnis Militer, Keppres Penetapan Auditor, April 2006 (Verifying Military Business, An Auditor's Decision on the Presidential Decree, April 2006)," *Gatra*, December 28, 2005, translation by Human Rights Watch. The TSTB later concluded that a new body was needed to analyze the complex structure of TNI business as revealed in the TNI inventory. Human Rights Watch interview with Said Didu.

<sup>545</sup> "Verifying Military Business...", *Gatra*.

<sup>546</sup> Human Rights Watch interview with a person involved in the military business review process, April 18, 2006.

carrying out the task, as did the TNI, but emphasized that it would take more time. They anticipated that the new agency might be in place by mid-2006 on the basis of a presidential decree, and that the actual transformation of military businesses would follow later.<sup>547</sup> The TSTB head, Said Didu, told Human Rights Watch that the agency might need until 2009—the deadline provided by law—to take over military businesses and that turning them into state-owned enterprises, returning, or disposing of them could require more time.<sup>548</sup> The TNI continued to insist that the target date to finalize the process was two years, rather than the five provided by law,<sup>549</sup> and the Ministry of Defense expressed hope that the government handover could be completed in 2006,<sup>550</sup> but it was increasingly clear that these timeframes were not realistic. In the interim, the absence of clear rules has delayed action, created confusion, and opened up opportunities for mischief, as discussed below.

### ***Plans Fail to Promote Accountability***

The government's efforts to address military self-financing have been focused almost exclusively on the 2004 TNI law's provision requiring the government to take control of military businesses. Government planners have prioritized the identification of businesses that may be eligible for takeover, particularly the few that are profit-makers, rather than placing top priority on ending military involvement in business in any form. Similarly, they have not taken the opportunity to improve civilian control over military finances. Little attention has been given to concerns over the lack of public accountability in the monitoring, oversight, and transparency of military funds.

It does not help that the law as written overlooks important accountability issues. It refers obliquely to the requirement that the military be fully funded from government accounts, as did an earlier law, but provides no specifics about how to achieve financial accountability. It also does not define military business, which has opened the door for the government to consider exempting some business activity. The law also does not identify penalties for violations of the prohibition of military business. While it imposes a five-year timeline for the government takeover of military businesses, it does not spell out the consequences if that deadline is not met. Some of these details might be addressed in pending regulations, when those are finally issued. In the interim, however, the lack of clarity in the law and the absence of ground rules—and any anticipated

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<sup>547</sup> Human Rights Watch interviews with Lt. Gen. Sjafrie Sjamsoeddin and Said Didu. See also Maslan, "Draft Presidential Regulation...", *detik.com*.

<sup>548</sup> Human Rights Watch interview with Said Didu.

<sup>549</sup> Human Rights Watch interview with Brig. Gen. Bibit Santoso and other TNI representatives. See also Maj. Gen. Suganda, "TNI commits to reform...", *Jakarta Post*.

<sup>550</sup> Maslan, "Draft Presidential Regulation...", *detik.com*.

punishments—leave room for the military to act independently to dispose of its assets without adequate oversight.

That has already been the case. For example, the army independently sold off its stake in Bank Artha Graha, a private company in which it held shares via the YKEP foundation, and allocated the Rp. 121 billion (\$12.1 million) proceeds without notifying the authorities responsible for overseeing the transfer of military businesses.<sup>551</sup> Numerous other deals were concluded or were in the works.<sup>552</sup> Parliamentarians denounced the sales, saying they violated the TNI law, at least in spirit.<sup>553</sup>

The military was not deterred, however, and insisted that it was within its rights to manage the businesses as it saw fit. For instance, Kostrad's chief announced that Kostrad intended to sell off shares in its money-losing Mandala Airline and did not need to await government regulations on the restructuring of military businesses.<sup>554</sup> Despite concerns that advance sales or closures of businesses by the TNI undermined the ability of the government to manage the handover process in a transparent and accountable manner, the government ultimately acquiesced. It endorsed the military's rationale and argued, contrary to the dictates of the TNI law, that the Kostrad foundation was free to go forward with the sale because Mandala Airlines was a "100 percent private company."<sup>555</sup> Proponents of military finance reform pointed out that what was taking place was a "fire sale" of businesses that properly should be considered state assets.<sup>556</sup> (See discussion below.)

With regard to legal accountability, the TNI has rejected criticism that its forces remain largely above the law.<sup>557</sup> The then spokesman for the TNI argued in March 2006 that the

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<sup>551</sup> "Before a New Master Comes," *Tempo*, no. 02/VI, September 13-19, 2005; Tony Hotland, "Military allowed to sell assets from business ventures," *Jakarta Post*, September 29, 2005. For additional information on the army's financial ties to this company, see, for example, "The House Urges Gov't to Acquire Artha Graha," *Bisnis Indonesia*, February 17, 2005; Indria Semego et al., *When ABRI Does Business*, pp. 80-81; Ernst & Young, "YKEP: Strategic Review Report."

<sup>552</sup> Hotland, "Military allowed...," *Jakarta Post*.

<sup>553</sup> *Ibid.*

<sup>554</sup> Fanny Febiana, "Pangkostrad: Mandala Airlines Dijual Tanpa Perpres (Mandala Airlines to be sold without a Presidential Regulation)," *TempoInteractif.com*, October 7, 2005, translation by Human Rights Watch.

<sup>555</sup> Ministry of Defense letter to Human Rights Watch.

<sup>556</sup> Lisa Misol, "High Time for the Government to Take Over All Military Businesses," opinion-editorial, *Jakarta Post*, October 7, 2005. In principle the government retained the option to reclaim the proceeds of these sales or take other action if it later discovered that there had been improper asset-stripping by the military. Human Rights Watch interview with Said Didu.

<sup>557</sup> Human Rights Watch interview with Brig. Gen. Bibit Santoso and other TNI representatives; Maj. Gen. Suganda, "TNI commits to reform...," *Jakarta Post*.



TNI is firmly committed to holding military personnel accountable, including with regard to human rights abuses and business-related crimes:

[T]he TNI has consistently brought soldiers suspected of violating the law to justice. So far, no TNI personnel suspected of the violations have escaped prosecution, including those implicated in human rights abuses (...). The TNI will not turn a blind eye to the fact that some of its personnel were, in the past, involved in crooked business practices. But in line with its internal reform, the TNI is and will be taking legal actions against soldiers found to have breached the law in their business activities.<sup>558</sup>

The TNI's claims that it has consistently pursued justice for human rights abuses is met by overwhelming evidence to the contrary.<sup>559</sup> The TNI provided limited data on the number of military trials and convictions over a ten-year period,<sup>560</sup> but Human Rights Watch was informed separately that most of the convictions were for infractions of military discipline, not human rights abuses or economic crimes.<sup>561</sup> Moreover, military courts have a history of failing to prosecute soldiers for crimes against civilians.<sup>562</sup> The

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<sup>558</sup> Major General Suganda, "TNI commits to reform...", *Jakarta Post*. See also TNI Headquarters, "Langkah Agenda Reformasi TNI 1998 (Progress of the 1998 TNI Reform Agenda)." This document was provided by TNI representatives to Human Rights Watch on April 13, 2006.

<sup>559</sup> As one indication, many officers remain on active duty even after being indicted for war crimes in East Timor by a United Nations-organized court. See also, for example, Human Rights Watch, "Indonesia: Acquittals Show Continuing Military Impunity," Human Rights Watch press release, July 12, 2005, [online] [http://hrw.org/english/docs/2005/07/12/indone11309\\_txt.htm](http://hrw.org/english/docs/2005/07/12/indone11309_txt.htm). It describes the flawed legal process that failed to provide justice for a 1984 massacre of at least thirty-three civilians. In addition to the soldiers who were acquitted in the case, a number of military suspects (several of them senior officials at the time) were never put on trial. *Ibid*.

<sup>560</sup> This document itself showed the number of cases for the different service branches but did not specify the nature of the crimes, the rank of the individuals who were prosecuted, nor the sentences received by those who were found guilty. "Data Perkara Yang Diputus/Diselesaikan Dalam Tahun 1995 S.D. Tahun 2005 Dari DILMIL/DILMILTI (Data on Completed Military Court Cases, 1995-2005)," March 2006. This document was provided by TNI representatives to Human Rights Watch on April 13, 2006, copy on file with Human Rights Watch. The document was not clearly labeled but appeared to indicate that at least one thousand cases had been opened each year, with the army showing the highest incidence of cases. Human Rights Watch sought an explanation of the data presented, but had not received one as of the time of writing.

<sup>561</sup> This additional information was provided to Human Rights Watch in April 2006 by a person who received a briefing on the matter but did not want to be identified.

<sup>562</sup> According to Minister of Defense Juwono Sudarsono, the problem has been that reforms passed in the TNI law (No. 34/2004) mandating that civil crimes be tried in civilian courts had not yet been implemented and, in any case, contradicted the military criminal code. "Military Criminal Code 'needs amending,'" *Jakarta Post*, February 18, 2006.

TNI has strongly opposed proposals to make soldiers subject to civilian courts for such offenses.<sup>563</sup>

Similarly, TNI representatives have pledged that they will crack down on corruption, unauthorized business activity, and associated abuses, but when given the opportunity to do so—in relation to the South Kalimantan coal brokering and abuses example included in this report, for instance—they have declined to act and have offered excuses instead. Elsewhere, they have attributed misbehavior to rogue elements acting in isolation.<sup>564</sup> The TNI leadership has been willing to act in selected cases, but it has not fully recognized its responsibility for these problems or committed to the structural reforms needed to ensure proper accountability.<sup>565</sup> The same must be said of their civilian counterparts, who have failed to make accountability a centerpiece of military reform efforts, including in connection with military finance.

### ***Unwillingness to Tackle the Full Scope of Military Economic Activity***

Military fundraising, as shown in this report, spans four different categories of economic activity. In contemplating reform of military finance, civil and military officials have only been willing to consider steps to deal with one category—the established enterprises in which the military has a documented ownership share. Moreover, they have focused their attention on a sub-set of those businesses, the six or so most valuable companies, and suggested that they might leave the remainder in military hands.<sup>566</sup> Upon first hearing such proposals, parliamentarians protested that the government's intended approach fell short of the requirements of the law they had passed.<sup>567</sup> That law, as noted, mandated that the military be divested of *all* its business interests within five years and prohibited military personnel from taking part in *any* business activities.

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<sup>563</sup> Human Rights Watch interview with Brig. Gen. Bibit Santoso and other TNI representatives. See also Tiarna Siboro, "Military sticks to guns on tribunals for soldiers," *Jakarta Post*, April 8, 2006. Some cases (such as those in which both military and civilian personnel are implicated) are referred to joint military-civilian tribunals.

<sup>564</sup> Human Rights Watch interview with Brig. Gen. Bibit Santoso and other TNI representatives. The Ministry of Defense Secretary-General, like the TNI, argued that military involvement in illegal activity should only be attributed to soldiers, not the TNI as an institution. Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>565</sup> TNI representatives provided Human Rights Watch with a list of fourteen steps the TNI says it has taken as part of a gradual internal reform process. None related to accountability, whether for human rights crimes or for military finances. Approximately half the items listed were professions of new attitudes on topics such as maintaining a politically neutral stance. The others were concrete actions it said the TNI had taken, ranging from eliminating certain posts to the separation of the police and military and the withdrawal from parliamentary representation. TNI Headquarters, "Progress of the 1998 TNI Reform Agenda."

<sup>566</sup> See, for example, "TNI may give up 6 businesses by year end," *Bloomberg News*, May 10, 2006.

<sup>567</sup> "Government muscles in on military businesses," *Jakarta Post*, January 26, 2005; Achmad Sukarsono, "Indonesia military to lose its big companies," *Reuters*, December 9, 2005.

The inter-ministerial team formed to supervise the restructuring of military businesses for the government, the TSTB, has taken a very selective approach. It has largely focused on the goal of nationalizing the most lucrative military enterprises rather than prioritizing the task of ending TNI business activity.<sup>568</sup> The limited focus on major military enterprises and openness to permitting the military to remain in business seemingly has been influenced by the lobbying efforts of senior military leaders. The TNI leadership has said it will comply with requirements, but from an early stage it has stressed how it thought the law should be applied. General Sutarto made clear that the TNI would readily relinquish companies that were unprofitable or served only to benefit its private partners and sully the TNI's image, but he argued that the TNI should be permitted to retain those businesses, notably those established under cooperatives and foundations, that purportedly bring tangible benefits to the soldiers.<sup>569</sup> The new TNI chief appointed in early 2006 to replace General Sutarto upon his retirement, Air Marshal Djoko Suyanto, also took up this cause. He acknowledged that involvement in business is antithetical to military professionalism,<sup>570</sup> but he nevertheless argued:

We must carefully separate individual businesses from institutional businesses....I believe that the [inter-ministerial TSTB] team will be very wise in correcting and selecting the military businesses. I mean that businesses that serve the interests of TNI members and their families must be retained.<sup>571</sup>

True to the TNI chief's wish, government planners developed a blueprint for the transformation of military businesses that would allow the military to retain significant investments through purportedly independent entities.<sup>572</sup> Under this plan, the government was due to create a new agency (BTPB, as mentioned above) that would evaluate and "clean up" selected military businesses and prepare them to be transformed into state-owned enterprises, sold off, or liquidated, depending on their business prospects.<sup>573</sup> The plan, however, would not cover military foundations, military

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<sup>568</sup> See, for example, Asmarani, "Jakarta to take over only 10 military businesses," *Straits Times*;

<sup>569</sup> Supriyanto, "Chief: Reorganization of TNI Businesses....," *Koran Tempo*; Tony Hotland, "TNI wants to retain rich foundations," *Jakarta Post*, September 10, 2005.

<sup>570</sup> "Indonesia's future military chief vows respect for human rights," AFP, February 1, 2006, citing Antara. Suyanto defended the TNI's territorial structure, however, thereby undercutting his reformist credentials. *Ibid.*

<sup>571</sup> Soeryo Winoto, "Military must have a presence in the region," interview of Air Marshal Djoko Suyanto, *Jakarta Post*, February 3, 2006.

<sup>572</sup> See, for example, Tiarna Siboro, "Military may retain many businesses," *Jakarta Post*, October 20, 2005.

<sup>573</sup> The larger, more profitable military businesses would be transformed into individual state-owned enterprises; some of the less successful military businesses would be grouped together to make them profitable (while also turning them into state-owned enterprises); shares of military businesses that show poor prospects would be sold off, with the proceeds going to the government; and those military businesses that present legal, financial,

cooperatives, and those individual businesses that, in its estimation, did not make use of government assets.<sup>574</sup>

The logic for exempting these entities was deeply flawed. Foundations and cooperatives were to be left in place on the understanding that they would limit themselves to engagement in “social business” of a “noncommercial” nature and that they would comply with prevailing regulations.<sup>575</sup> In essence, that plan affirmed the status quo, since foundations and cooperatives have long been subject to (and successfully flouted) those dictates. TSTB members, however, defended their choice by arguing that TNI personnel, in their capacity as individuals, were entitled to form foundations and cooperatives.<sup>576</sup> By their logic, the TNI law’s ban on military business did not apply if the foundations and cooperatives run by and for military personnel were nominally independent of the military hierarchy.<sup>577</sup>

The TSTB’s decision to disregard certain individual military businesses also was based on a dubious rationale. Operating on the principle—nowhere reflected in the TNI law—that the government should not lay claim to businesses that military personnel and their private partners built “with their own effort, without government infrastructure,”<sup>578</sup> the TSTB said it planned to exclude all military businesses that purportedly did not use state assets.<sup>579</sup> In offering this exclusion, the TSTB declined to weigh the many ways in which

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or operational problems would be liquidated. Ministry of Defense briefing document for Human Rights Watch; Human Rights Watch interview with Said Didu.

<sup>574</sup> Ministry of Defense briefing document for Human Rights Watch; Human Rights Watch interview with Said Didu. It remained unclear how the government would count businesses in which ownership of company shares was unclear between military foundations and individuals (presumably military officers) under them or those businesses run by soldiers and their families in a private capacity. Ministry of Defense letter to Human Rights Watch; Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>575</sup> Ministry of Defense briefing document for Human Rights Watch. For foundations, that means that they should operate as independent entities serving a charitable purpose and limit their business investments to no more than 25 percent of their wealth. Cooperatives also would be expected to operate independently of the military command structure and, in their case, to conduct commerce only insofar as it benefits the members. Human Rights Watch interview with Said Didu. Another TSTB member described the plan differently. He said foundations and cooperatives would be prevented from engaging in “external business” with the public or having joint ventures with private partners. Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>576</sup> The head of the TSTB, Said Didu, said this was the provisional decision of the group (as stated separately by his deputy, Lt. Gen. Sjafrie Sjamsoeddin) but that he was awaiting a legal opinion to validate it. Human Rights Watch interview with Said Didu.

<sup>577</sup> Human Rights Watch interviews with Lt. Gen. Sjafrie Sjamsoeddin and Said Didu. The Ministry of Defense had earlier identified the apparent conflict between Law No. 16/2001 on foundations and Law No. 16/2001 on cooperatives, on the one hand, and the mandate of the TNI law (Law 34/2004), as a main challenge to the effective implementation of the ban on military business. Ministry of Defense letter to Human Rights Watch.

<sup>578</sup> Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

<sup>579</sup> The businesses that did not employ state assets would be “returned” to their owners (normally military foundations and cooperatives) or possibly sold off, with these entities allowed to keep the proceeds. Human

military businesses materially benefited from the authority of the government and its considerable resources.<sup>580</sup> As a result, the TSTB did not object when the Kostrad foundation sold Mandala Airlines because it said there was no evidence that the airline had used state assets.<sup>581</sup> This conclusion not only relied on a very limited view of the government resources utilized by military companies and on the misguided notion that the businesses of the TNI (a government entity) could be considered independent of the government; it also contradicted publicly available information, including reports that Mandala benefited years earlier from the transfer free-of-charge of six aircraft owned by a subsidiary of Pertamina, the state oil company.<sup>582</sup> Consistent with the TSTB's overall plan, however, the Kostrad foundation was allowed to independently sell the airline and keep its share of the proceeds rather than enter them into state coffers.<sup>583</sup>

### *Conclusion*

Government planners and the TNI have continued to emphasize that they are firmly committed to ending military business activity,<sup>584</sup> but the plans they have prepared are not designed to meet that goal. From the beginning, it was clear they had no intention to act against the military's informal and illegal business practices, which they viewed as outside the scope of the TNI law.<sup>585</sup> Over time, they have further narrowed their approach to also exclude from consideration precisely those businesses that the military itself wanted to keep. The result was that the TNI law's ban on military business was being gutted before regulations to implement it were even adopted.

As a further indication of this trend, TNI headquarters prepared a "general" list of nearly fifty entities—foundations, cooperatives, and individual commands engaged in business

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Rights Watch interview with Said Didu. See also Ministry of Defense briefing document for Human Rights Watch.

<sup>580</sup> The TSTB applied a definition of state assets that referred only to physical assets, such as land and equipment, that the Ministry of Finance had recorded as having been assigned for a particular purpose. Human Rights Watch argued that doing so ignored the financial, personnel, and other government resources employed by these companies, and also falsely assumed that accurate records on the use of physical assets would be available. According to the TSTB head, the government had no legal basis to count "intangible assets" and retained the right, in any case, to carry out audits if at a later point if it came to suspect that some companies had improperly failed to disclose to the government that they had used (physical) state assets. Human Rights Watch interview with Said Didu.

<sup>581</sup> Human Rights Watch interview with TNI representatives, April 13, 2006; Human Rights Watch interview with Said Didu.

<sup>582</sup> The transfer allegedly resulted in a loss to the state of Rp. 40.2 billion (\$14.5 million) in 1997. Widoyoko, "Questioning the Military Business Restructuring," p. 122.

<sup>583</sup> Human Rights Watch interview with TNI representatives; Human Rights Watch interview with Said Didu.

<sup>584</sup> Human Rights Watch interviews with TNI representatives and members of the TSTB, April 2006.

<sup>585</sup> They argued that because most such activities were already illegal under other laws, it was not necessary for the TSTB to take them into account in formulating plans to implement the TNI law. Human Rights Watch interview with members of the TSTB, April 2006.

as umbrella entities, as well as twenty individual businesses—that it claimed served welfare purposes.<sup>586</sup> According to TNI representatives, they secured the commitment of the Ministry of Defense that the government would leave these entities untouched.<sup>587</sup> Such moves, together with the failure to address the essential issue of accountability, seriously threatened the government’s ability to put an end to military economic adventurism. Considering how much is at stake and how little progress has been made, there is a very real risk that the TNI law will represent a squandered opportunity for reform unless the government alters its approach.

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<sup>586</sup> TNI Headquarters, “List of TNI Corporate and Enterprise Units.”

<sup>587</sup> Human Rights Watch interview with TNI representatives.

## IV. Recommendations

Indonesia has paid a high price for allowing military businesses, with their far-reaching corrosive effects, to develop. It can ill afford to allow off-budget military financing to continue. A starting point for real and lasting reform must be acknowledgement of the seriousness of the problem. Policymakers have to face up to the many costs of military self-financing. As argued in this report, independent fundraising activities create conflicts of interest that threaten human rights. Self-financing also fundamentally challenges the authority of the government over the military and, in that way, weakens governance and reinforces military impunity.

Reform of military finance also should recognize the true scope of the military's economic entanglements and include plans to address the entire, sometimes diffuse network of military business activity. Moreover, the government needs to formulate a comprehensive strategy to withdraw military involvement in business, which will require it to grapple with budgetary and financial management issues. Responsibility for change lies with the government but it cannot hope to succeed if it acts alone. It will also be important to engage the military, the public, and international partners in the effort to finally bring military finance under full and accountable civilian control.

### ***Ensure Accountability***

The absence of effective civilian control in Indonesia has long permitted members of the armed forces to avoid accountability for human rights violations. This report has argued that the government must improve the financial accountability of the military if it is to check the TNI's power and combat impunity for human rights abuses. The Indonesian government must move to ensure that the military becomes a focus of efforts to improve public financial management practices. Areas needing particular attention include the development and implementation of budgets, including the further strengthening of auditing and parliamentary oversight functions.

Accountability also requires action outside the fiscal realm. A major weakness of past efforts to address military business has been a failure to enforce legal and regulatory controls barring involvement in business activity, to investigate allegations of abuse linked to military self-financing, and to bring those responsible to account before the law. Additional measures to increase the accountability of the military to civilian rule would support reform of military financing. Several needed measures to advance human rights accountability, if adopted, would also have a positive effect on the government's

ability to exercise control over military finances. Notably, efforts to place the armed forces under the Ministry of Defense, a key element of the military reform agenda, would increase the prospect of holding soldiers accountable for economic and other crimes. The same is true of steps to improve the justice system in Indonesia. If civilian courts were granted authority to try military personnel for violations of the civil criminal code, this would help combat the persistent impunity of higher-ranking officers. Appropriate justice mechanisms are also needed to address abuses connected to military economic activity, including violence, extortion, and property seizures.

Forceful anticorruption efforts must also be part of the solution. The government should work to root out corruption within the military as part of a wider anticorruption agenda. In particular, the government should require military personnel at the more senior ranks to declare their wealth and any business holdings. Only a handful of military officers are required to submit wealth declarations to the Corruption Eradication Commission or KPK. Moreover, the KPK must be granted authority to audit these reports, and it should not hesitate to investigate prominent cases of military corruption. Military personnel found to have business interests in violation of the 2004 TNI law or to have falsely declared their assets should be subject to serious penalties.

### ***Ban All Military Economic Activity and Enforce the Ban***

The military generates considerable independent revenue from irregular and illegal activity that, as shown in this report, facilitates many abuses, undermines accountability, and impedes good governance. Top military leaders have declared that formally-established businesses are barely making money or even are net losers. In many cases, they will be glad to get rid of them. As military-owned businesses shrink in value, the share of off-budget revenue the military derives from other economic activity—alliances with business, criminal businesses, and corruption—is believed to be on the upswing.

Against this backdrop, the government's exclusive focus to date on restructuring only selected formally-established military businesses seriously weakens the military finance reform effort. The Indonesian government should take steps to clearly and effectively outlaw military self-financing in all its guises. It can do so by issuing regulations or a presidential decree to accompany the TNI law (Law 34/2004) that define "military business" broadly to include the full range of military economic activity and clearly declare these to be illegal. The government also needs to establish—and enforce—strict penalties for violations. As a short-term measure, the TNI leadership can issue unequivocal internal orders barring military business activity and begin cracking down. This would also usefully show that the military intends to cooperate fully with civil authorities to implement the ban on military business activity.



### ***Divest the Military of Existing Military Business Interests***

The TNI law's requirement that the military give up its businesses could mark a major step forward in eliminating military conflicts of interest that endanger civilians. Much depends, however, on whether, when, and how it is implemented. The inter-ministerial TSTB working group is finalizing its plan of how to transfer certain military-owned or -controlled businesses to the government and what to do with them. As described above, there is a danger that the TSTB's sluggish planning process and the many compromises it has already made will result in a *fait accompli* that will not advance the cause of reform.

Before it commits to these flawed plans, the government should consult thoroughly with relevant experts. Such experts include not only committed reformers in the military but also independent experts, members of civil society, and parliamentarians. The Ministry of Defense has indicated that the draft regulations or decree will be open to public comment.<sup>588</sup> It also said that it intends to seek input from independent experts, although it was unclear whether it would consult directly with critics of military business.<sup>589</sup>

There also is a role for Indonesia's international partners to provide input. They can share experiences from other countries that have reduced military economic activity and successfully fought military corruption. They also are in a position to offer relevant technical assistance and associated financing. For example, Indonesia's development partners could provide financial or business expertise, including experience with the transfer or privatization of military assets in other countries.

The divestment of the military will be a long-term process that will take several years, particularly as it has gotten off to such a late start. To help inform the deliberations of Indonesian decision-makers, we have highlighted below some of the challenges to be considered. Different issues can be expected to arise at different stages of the process.

### ***Prepare for Military Divestment***

The first stage, which had not been completed at this writing, was the preparatory period during which the government was meant to inventory existing military businesses and develop a plan to assert control over them. The initial TNI inventory submitted in 2005 identified 219 military entities (foundations, cooperatives, and individual companies owned by foundations) engaged in business. By March 2006, the TNI had handed over information on 1,520 individual business units. Government plans to undertake

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<sup>588</sup> Ministry of Defense letter to Human Rights Watch.

<sup>589</sup> The consultations were designed for "practical NGOs" with specific technical expertise. Human Rights Watch interview with Lt. Gen. Sjafrie Sjamsoeddin.

considerable further verification and review before acting to assert government control over the inventoried companies would only lead to additional delays.

The interim period before plans to transfer military businesses have been approved creates a policy vacuum in which the control of military businesses remains in military hands and, as has already been seen, some holdings may be sold without adequate review or accountability. To counter this problem, the authorities should immediately place all known military businesses under scrutiny, require advance approval for sales, and initiate an independent auditing process. They also should arrange for full forensic audits in cases where wrongdoing, such as corruption and the misuse of state assets, is suspected, as government officials have said they intend to do.<sup>590</sup> As a further deterrent, the government should make clear from the outset that unscrupulous behavior—such as raiding valuable assets from military businesses or transferring ownership interests without government oversight and approval—will not be tolerated and will be subject to serious penalty. The rules should apply equally to everyone involved in business restructuring, whether they are military or civilian, officials or private citizens.

In planning for divestment of military businesses, the government and those advising it should be guided by Indonesian laws and best practices governing the handling of state assets and the divestiture of state-owned enterprises. Alongside efforts to address known military businesses, they should work to identify additional military businesses. The reform effort should address the full scope of military businesses covered in the TNI law—those that are owned or controlled to some degree by the military. A full inventory would catalog all businesses in which the military has an economic stake, irrespective of their legal status and ownership structure (i.e., whether through foundations, cooperatives, associated holding companies, hidden partnerships, or another arrangement).<sup>591</sup>

### ***Remove Military Control over Existing Military Businesses***

The control of military businesses has been marred by secrecy, which has created opportunities for mismanagement and corruption and undermined public trust. A central challenge for the government, as it moves to fulfill the requirement that it assume control over these businesses, will be to break this pattern. It must develop and implement a transparent, accountable process by which to transfer control over the military's business holdings. In September 2005, civil society groups encouraged the

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<sup>590</sup> Human Rights Watch interview with Said Didu.

<sup>591</sup> The question of the private economic interests of military personnel is addressed above, in relation to accountability.

government to name an impartial body to monitor the transfer of military business.<sup>592</sup> They proposed that this body temporarily oversee the management of these companies while they were thoroughly audited in anticipation of being dismantled or sold off in a transparent manner, or perhaps retained and held in a trust. Much time has been lost, but such a body is still needed. It should be given the authority to review and approve bids and should act to ensure that all proceeds are fully accounted for in the state treasury.

The government also needs to address the question of how it will handle businesses in which the military has only a partial share or that are not legally registered as companies. The government should explore ways to identify and sell off or otherwise dispose of such military holdings. It also must ensure that companies that have benefited from an association with the military, whether formalized or not, give up any facilities to which they have had privileged access (e.g. use of state assets) and compensate the government for their prior use.

Some groups have endorsed the TNI's proposal that it retain its cooperatives and use them to sell basic goods at a discount to military personnel. That has long been the ostensible purpose of military cooperatives but, as this report has shown, military cooperatives extended their reach and became involved in business activity of different types—from investments in forestry and palm oil interests to the brokering of sales of illegally mined coal—that have been associated with human rights abuses and other problems. On this basis, Human Rights Watch remains concerned that an exception to allow cooperatives to take part in small business enterprises would provide an opening for continued military engagement in the economy beyond simple provisioning of soldiers and their families. The same is true of suggestions that military foundations be permitted to engage in limited business ventures.

### ***Account Fully for the Resulting Revenue***

The TNI law that mandates the elimination of military businesses, as well as earlier legislation, states that the military should be funded from the national budget. To achieve that end and secure much-needed financial accountability, it is essential that revenues from military-linked companies be properly accounted for. As these businesses are wound down, sold off, transferred, or held in trust and operated for profit, the

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<sup>592</sup> Lembaga Studi Pertahanan dan Studi Strategis Indonesia (Lesperssi, Institute for Defense and Strategic Studies), "Rekomendasi Kebijakan Terhadap Penyusunan Peraturan Presiden Tentang Penataan Bisnis TNI (Policy Recommendations on the Issuing of Presidential Regulations on Structuring of TNI Businesses)," September 2005. Another suggestion forwarded by a civil society group (the Indonesian Institute, Center for Public Policy Research) is to give the Ministry of Finance authority over the divestment process. Awan Wibowo Laksono Poesoro, "A look at...", *Jakarta Post*.

question arises as to how to dispose of the resulting proceeds. The proceeds may well be less than anticipated, given that in many cases the value of military businesses has been severely compromised by a combination of poor management, high debt exposure, and deliberate asset-stripping. Even if the sums are modest, they must be properly managed. At a minimum, the management of these revenues must conform to the rules established in regard to proceeds from the disposal of state assets and privatization of state-owned enterprises. Funds entered into the state coffers should be used in accordance with a transparent and accountable budgetary process. (A section further below provides recommendations about improvements to the defense budgeting process.)

It has been suggested that the funds should be designated for spending on the military. Many observers see this as a bargain to secure the cooperation of the military establishment. Others view it as a means to ensure that the revenue, once properly accounted for, is allocated to troop welfare to address difficult conditions. Should this approach be adopted—perhaps as an interim measure until the transfer of businesses out of military hands is complete—it needs to be carefully set up to prevent a recurrence of the serious problems that have marred military business to date. One idea would be for the military to transfer its business interests held through foundations and cooperatives to civilian-managed funds that help finance military pensions. In this way, the proceeds from selling these businesses and the revenue from any that were retained would go to a government account, allowing them to be properly counted as government revenue, and be spent on welfare needs rather than other purposes.

### ***Commit to Full Transparency***

Top government officials acknowledge that they do not have a full grasp of the extent, nature, or value of all of the military's economic interests. As part of the military divestment process, the government should make public the TNI's inventory of military businesses, associated financial data as verified by the government, and the results of prior financial reviews. These steps would be a good start toward greater openness on military financing issues that, as argued in this report, are an essential component of the sound financial management practices that underpin public accountability.

Other measures are needed to improve transparency, several of which have already been mentioned. For example, the government should make public all resources allocated to the defense function in the budget, including items currently assigned to other budget lines, and disclose actual military spending. Current reporting on spending is incomplete and lacks detail. The government also should continue efforts to improve data gathering and published statistics, with particular attention to military finance. It should ensure that pending legislation on secrecy and on freedom of information leads to maximum transparency, including in relation to military matters.

Steps are also necessary to bolster the ability of the Supreme Audit Agency (BPK) to review military finances in full, including operational spending and off-budget finances until the latter are phased out. Parliament should act to amend the foundations law of 2001 to remove any doubt about BPK's authority to audit military foundations, or the government could accomplish that aim through an executive order. The government should facilitate prompt and full public dissemination of BPK's audit findings, including past audits on military finances, consistent with international best practice and the principle of maximum transparency.

### ***Address Financing Concerns***

An important finding of our research is that military self-financing has far-reaching corrosive effects that harm the public and also the military itself. The difficulty, as we also have noted, is that military fundraising activities have their origins in a response to acute financial pressures. For reform to be effective, the Indonesian government must work to remove the incentives and opportunities for the military to retain a hold on the economy. This will entail several steps and should involve a range of actors. Efforts to address the financial pressures faced by the military must be well planned so that they promote financial accountability and achieve an appropriate balance that recognizes other spending priorities.

### ***Undertake Strategic Defense Planning***

The starting point for military budgeting, like all budgeting, should be strategic planning. To determine the appropriate level of budgetary funding for the military, the government of Indonesia must confront a prior question: what role should the military fill and how? A full defense review would provide such an assessment. Many military experts have commented that such a review is overdue. It would also be welcomed by some in the military. As one indication, Major-General (ret.) Sudrajat, a former director general for defense strategy in the Ministry of Defense, publicly called for a new defense doctrine in September 2005.<sup>593</sup>

In 2006 an official defense review, led by the Ministry of Defense, was underway with external support from donors.<sup>594</sup> For this review to serve as a useful basis for future planning, it would need to evaluate the security needs for which a military response is appropriate (a threat assessment) and then define the role of the military in responding

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<sup>593</sup> Ridwan Max Sijabat, "General calls for defense doctrine," *Jakarta Post*, September 30, 2005.

<sup>594</sup> Human Rights Watch interview with U.K. Ministry of Defense officials, London, July 11, 2005; Human Rights Watch email communication with U.K. officials, March and April 2006. The defense ministry review was supported by expertise provided by a security sector development advisory team from Cranfield University in the U.K.

to those needs. A thoroughgoing review would not take for granted existing realities, such as present levels of staffing and the existence of the territorial defense structure that independent experts have declared outmoded and ill-suited for a maritime state and that civil society groups have challenged on human rights grounds. The results of such a review, together with efforts to promote a national dialogue on defense issues, would provide the basis for the government to make decisions on defense spending that are consistent with democratic principles, actual needs, and budget realities.<sup>595</sup>

### ***Establish a Proper Defense Budgeting Process***

Simultaneous with efforts to develop an appropriate and affordable military strategy, the government should address weaknesses in its budgetary processes. The Indonesian government should establish effective expenditure management systems for military finance. In doing so, it should build on existing efforts with respect to other areas of government spending. It should prioritize in particular efficiency and oversight. This recommendation is in keeping with a major theme of this report, namely the importance of financial accountability as an element of broader public accountability and a means to help bring an end to military impunity.

The donor community and international financial institutions should make themselves available to help Indonesia improve its management of defense expenditures, and Indonesian officials should seek out this assistance. Indonesia's partners are well positioned to share international experience on defense budgeting and other matters. Donors, for example, could support defense efficiency studies to help identify ways on-budget resources can be used more efficiently and effectively. They could begin with pilot projects focused, for example, on the budgeting process and use of funds in the Ministry of Defense or one of the TNI service branches. Donor governments, moreover, can provide assistance to improve the military finance skills of the civilians responsible for military oversight.<sup>596</sup> Initiatives to provide specialized coursework in

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<sup>595</sup> Human Rights Watch interview with Abdillah Toha. Military reform experts have noted that a full-fledged strategic defense review would usefully set the framework to formulate a national defense policy, as called for in the 2002 Defense Law. That law stipulates that a National Defense Council be formed and assist in formulating a Grand Policy on State Defense that outlines the government's vision of state defense management. Neither the council nor the policy existed as of early 2006. Human Rights Watch interview with an Indonesian military reform expert, January 2006.

<sup>596</sup> Some donor governments, notably Germany and the Netherlands, have discussed the inclusion of the security sector in public expenditure work. See, for example, "Incorporating the Defense Sector into Public Expenditure Work," (report of an international policy workshop hosted by the Federal Ministry for Economic Cooperation and Development (BMZ) of Germany, Bonn, Germany, February 9-10, 2004), report dated June 3, 2004.

defense management can support this goal.<sup>597</sup> Donors also can support independent assessments to understand weaknesses in Indonesia's military financial management system.<sup>598</sup>

A number of bilateral donor governments have already supported defense budgeting-related efforts in Indonesia, but there is scope to expand and better coordinate their efforts. The Consultative Group on Indonesia provides an important forum. It formed a working group on security and development that could provide a focal point for enhanced efforts to address security sector reform issues.<sup>599</sup> The Partnership for Governance Reform also could facilitate the pooling of donor resources and help promote work on military reform, if it could engage the TNI as it has the police. The Partnership reportedly pursued this idea in 2003 without success, as the TNI was uninterested.<sup>600</sup>

The Ministry of Finance could take the lead in establishing appropriate cooperation with multilateral and international financial institutions. For example, the government of Indonesia and the World Bank have agreed to conduct a series of public expenditure reviews (PER). One PER, addressing sectoral spending, was due to be finalized in 2006. The Ministry of Finance should request a follow-up review that explicitly addresses security sector financing issues. An example is provided by Afghanistan, where a World Bank-led review that included an in-depth study of the security sector was carried out in 2005.<sup>601</sup>

Additional specialized reviews are available that would help Indonesia improve its budget processes and outcomes. The World Bank has several instruments to analyze expenditures and build capacity to manage them effectively, one of which is the Country

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<sup>597</sup> The U.K. government supports a specialized course of study in defense management offered at Institut Teknologi Bandung (Bandung Institute of Technology) that draws on teaching staff from Cranfield University. Email communication from a U.K. official to Human Rights Watch, October 24, 2005.

<sup>598</sup> An assessment tool is available to help guide such efforts. Nicole Ball, Tsjearld Bouta, and Luc van de Goor, *Enhancing Democratic Governance of the Security Sector: An Institutional Assessment Framework* (The Hague: The Netherlands Ministry of Foreign Affairs and the Clingendael Institute, 2003), pp. 74-80.

<sup>599</sup> Email communication from a CGI member to Human Rights Watch, January 2005. Action to form the group had been pending since 2004, and even once formed the group was slow to approve terms of reference. Draft terms of reference shared with Human Rights Watch explicitly identified security sector financing as a topic of interest.

<sup>600</sup> Eduardo Lachica, "Examining the Role of Foreign Assistance in Security Sector Reforms: The Indonesian Case," *Institute of Defense and Strategic Studies (Singapore) Working Paper*, no. 47, June 2003.

<sup>601</sup> The study was included at the request of the Minister of Finance of Afghanistan and supported by technical assistance supplied by the U.K. government. "Improving Public Finance Management in the Security Sector," vol. 5 in World Bank, *Afghanistan: Managing Public Finances for Development*, no. 34582-AF, (Washington, D.C.: World Bank, 2005).

Financial Accountability Assessment.<sup>602</sup> Likewise, the IMF is positioned to offer technical expertise. For example, an IMF Report on Standards and Observance of Code (ROSC) stands as a useful tool to evaluate actual financial practices against international standards, identify areas in need of improvement, and set in motion a process to address and monitor those issues. A fiscal transparency ROSC for Indonesia was carried out in March 2006, and the IMF anticipated completing its report by mid-year. Human Rights Watch encouraged the IMF to consider the question of off-budget military financing in Indonesia in its review and resulting report.<sup>603</sup> The Indonesian government also should engage actively with the Asian Development Bank. It has expertise on governance issues, including in connection with public financing.

### ***Fund the Military at Appropriate Levels***

Considering that budget constraints have provided the impetus and ongoing public rationale for military self-financing, as discussed in this report, adequate on-budget funding must be a centerpiece of the drive to reform the military. As part of wider budgetary improvements addressed above, the government should provide public funding for the military at the level determined to be adequate and consistent with national priorities. For this process to have legitimacy, it should include appropriate measures for consultation and transparency within and outside of government structures.

The donor community could be of assistance in this regard. Bilateral or multilateral donors and institutions can help the Indonesian government identify resources to help make up for budget shortfalls. For example, they could study to what extent the elimination of military business activity, and the dampening effects on the economy caused by this activity, might lead to greater corporate tax revenue. They also could analyze the fiscal impact of the government's plans to progressively increase defense budgets, as an input into government decision-making. At the same time, donors might be able to advise the government on ways to finance the military while protecting spending on pro-poor government activities. They might consider relieving some of Indonesia's burdensome debt to free up resources that the government itself can spend on priority areas, once sufficient accountability measures are in place.

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<sup>602</sup> See Dylan Hendrickson and Nicole Ball, "Off-Budget Military Expenditures and Revenue: Issues and Policy Perspectives for Donors," Conflict, Security, and Development Group Occasional Paper #1, U.K. DFID and King's College London, January 2002.

<sup>603</sup> Past fiscal transparency ROSCs on a number of countries have addressed military financing issues. See, for example, the ROSCs on Chile (2001, 2003, 2005), Cyprus (2005), Greece (2005, 2006), Jordan (2006), and Russia (2004), available at: [online] <http://www.imf.org/external/np/rosc/rosc.asp?sort=date>.



Donors also can support civilian authorities responsible for ensuring proper budgeting and oversight, including of military finances. Such support could include trainings and technical assistance for the parliament and civilian-led Ministry of Defense.<sup>604</sup> The Organization for Economic Cooperation and Development (OECD), which includes several donors to Indonesia, allows the use of development cooperation funds for some security-related programs, provided they are directed to civilian structures, not to the armed forces of recipient countries.<sup>605</sup> Eligible programs include “technical cooperation and civilian support” related to “management of security expenditures through improved civilian oversight and democratic control of budgeting, management, accountability and auditing of security expenditure.”<sup>606</sup>

### ***Address the Welfare Needs of the Troops***

Contrary to those who argue that military businesses are needed to support troops, our research has found that low-ranking soldiers derive little benefit from military self-financing activities, since funds are commonly diverted to other purposes (including lining the pockets of more senior personnel). The troops would be better served by targeted measures funded from government revenue. The government of Indonesia should proceed with plans to increase military salaries (along with those of the police and civil servants) to enhance their ability to earn a decent living and thereby reduce the incentives for corruption and illicit business activity. More broadly, the government should actively explore how to improve soldier welfare through improvements to their conditions of work and compensation, including pensions. It is ultimately the responsibility of the government, not the TNI on its own, to ensure a decent living standard for its troops.

### ***Remove Conflicts of Interest***

Efforts to divest the military of its business holdings and improve control over military finances must be complemented by proactive measures to eliminate entrenched military activity of a more informal nature. As documented in this report, the military’s engagement in the economy, particularly its interactions with the private sector, create

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<sup>604</sup> Some programs are in place. For example, the government of the Netherlands supports trainings for MPs by security sector reform experts. Human Rights Watch interview with an NGO worker, Jakarta, April 2006.

<sup>605</sup> Human Rights Watch, which agrees that donors may provide assistance funds to civilian oversight bodies but that it should not provide funds to the TNI itself. Human Rights Watch objects to international assistance to the TNI in light of its human rights record. In our view, Indonesia’s partners should insist on accountability for human rights abuses as the minimum condition for reinstating or maintaining military ties.

<sup>606</sup> In March 2005, the OECD Development Assistance Committee (DAC) approved a decision to make such programs, among others, eligible for funding from development cooperation funds known as Official Development Assistance or ODA. OECD, “Conflict Prevention and Peace Building: What Counts as ODA?” March 3, 2005.

conflicts of interest and incentives for extortion. Close attention must be paid to how the deployment of government security forces at company sites is financed.

One company, ExxonMobil, has said it routes its security payments to the military through an Indonesian government institution, the oil and natural gas authority BPMIGAS.<sup>607</sup> Juwono Sudarsono has said that when he first served as defense minister (1999-2000), ExxonMobil paid for security through state oil and gas firm Pertamina: “Usually, Pertamina plays the role as the funding channel from these mining [sic] companies for the country’s security officers.”<sup>608</sup> At least one company, the U.K.-U.S. oil company BP, has pledged to publicly report any payments it makes for security provided by public forces.<sup>609</sup> BP sought to develop alternative security arrangements that do not rely as heavily on state security forces, but these have not yet been tested.<sup>610</sup>

Human Rights Watch maintains that security costs associated with any deployment of public security forces to protect company sites should ideally be covered through appropriate taxation, on the principle that public security forces should be paid with

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<sup>607</sup> ExxonMobil spokesperson Deva Rachman was reported to have admitted that the company made payments for security but to have said that the funds were paid to and fully managed by BPMIGAS. Tiarna Siboro and Tony Hotland, “General confirms Freeport payments,” *Jakarta Post*, December 29, 2005. Prior company statements indicated that security was provided by the Indonesian government under arrangements (without mentioning payments) coordinated by Pertamina, the state oil company, and later BPMIGAS. ExxonMobil Media Statement, “Statement Regarding NGO Human Rights Lawsuit – Aceh, Indonesia,” August 13, 2002; ExxonMobil Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, “Aceh Security Report,” under Shareholder Proposals, Item 6, April 13, 2005.

<sup>608</sup> Sudarsono, who at the time was serving as ambassador to the U.K., said an Exxon executive earlier had told him the company provided support funding to the TNI via Pertamina. It is unclear why Sudarsono referred to mining companies, which presumably would not have the ability to fund payments through an entity working in the oil and gas sector. Unidjaja, “TNI nothing...,” *Jakarta Post*. The TNI spokesperson in 2003, Maj. Gen. Sjafrie Sjamsoeddin, also said that ExxonMobil paid the military for security but did not specify the funding mechanism. “Freeport confirms allowances...,” *Jakarta Post*; “The same old story – Military in security business,” *Jakarta Post*, July 26, 2003.

<sup>609</sup> BP (formerly known as British Petroleum) announced that it was preparing to disclose data on payments made under its Security Field Guidelines from 2003 to mid-2005. BP Response to the Tangguh Independent Advisory Panel’s (TIAP) Fourth Report on Tangguh LNG Project, March 2006, pp. 24-25.

<sup>610</sup> BP has said it plans to use a community-based security strategy for the Tangguh liquid natural gas facility that is scheduled to open in Papua in 2008, and that it will call on the police if needed and the TNI as a last resort. BP was reassured by the TNI leadership that the military would only provide security for the project if a serious threat arose that the police were unable to address. Tony Ling and Gare A. Smith, “Human Rights and Security Monitoring Assessment and Peer Review of the Tangguh LNG Project,” assessment commissioned by BP, August 5, 2005. As of April 2006, the company had set up a community policing structure, hired and trained company security guards, signed a joint security agreement with the regional police chief in Papua that incorporated the Voluntary Principles on Security and Human Rights, and planned for joint security trainings with the police, and developed procedures to investigate and report any alleged human rights abuses. BP, “Tangguh Project: Security and Human Rights, Handling Community Grievances,” (presentation to TIAP and NGO meeting, London, April 2006). See also “Letter of Joint Decree between the Chief of the Regional Police of Papua and Executive VP Tangguh LNG, concerning Field Guidelines for Joint Security Measures within the Work Area of the Tangguh LNG Project,” April 16, 2004.

public funds, to ensure that they are held accountable to the Indonesian public and that the flow of funds does not provide incentives for these forces to put the interest of companies ahead of the national interest. That is especially true in Indonesia, where company security arrangements have often been associated with serious allegations of human rights abuses and corruption. Under any system of financing for public security at company sites, certain minimum conditions must be met. The cost of security should be paid from government coffers, the funds directed to this purpose should be independently audited, and they should be publicly disclosed in detail. The Indonesian government also should take firm steps to appropriately train and monitor troops, and to punish those responsible for human rights abuses, including in connection with company security arrangements.

Companies, in turn, should minimize their interaction with the Indonesian military. As a general matter, they should adopt and implement policies on human rights, consistent with the U.N. Norms on Business and Human Rights and international best practice.<sup>611</sup> Consistent with the 2004 decree on security for vital national assets and related government announcements, companies should transition public security arrangements to the police at the earliest feasible opportunity. They also should fully adhere to the provisions of the Voluntary Principles on Security and Human Rights and provide for maximum transparency, including by disclosing publicly and fully current and past payments to security forces and taking steps to avoid and appropriately respond to human rights abuses by security personnel.

Companies, whether foreign or domestic, private or state-owned, also must do their part to respect the ban on military business activity, as contained in the 2004 TNI law. Companies that already have a previously established business relationship with the military should disclose it fully, coordinate with the authorities to arrange for the transfer or disposal of military interests in such companies, and take steps to remove active-duty military personnel from corporate positions. Informal partnerships or arrangements with the TNI likewise must end. Companies and other economic actors should cease hiring the TNI to provide services, recognize that payments for “facilitation” services constitute bribes and halt them immediately, and perform due diligence checks to ensure that they do not perpetuate military economic activity in their operations.

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<sup>611</sup> The U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights were adopted by the U.N. Sub-Commission for the Promotion and Protection of Human Rights in 2003. See also United Nations, *Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights*, E/CN.4/2005/91, February 15, 2005.

## Acknowledgments

This report is dedicated to the memory of Munir Said Thalib (1965-2004), known as Munir. Widely recognized as one of Indonesia's foremost human rights defenders, Munir was an outspoken critic of abuses by Indonesia's security forces and a strong advocate of reform. Munir was poisoned on a September 2004 flight to the Netherlands. There is little doubt that Munir was murdered in retaliation for his exemplary human rights work. His memory continues to inspire new generations of activists, in Indonesia and beyond.

The report was researched and written by Lisa Misol, researcher in the Business and Human Rights Program of Human Rights Watch. It was edited by Brad Adams, Director of the Asia Division of Human Rights Watch; Arvind Ganesan, Director of the Business and Human Rights Program; Charmain Mohamed, researcher in the Asia Division; and Joseph Saunders, Deputy Program Director. Ian Gorvin, consultant to the Program office, conducted the program review, and James Ross, Senior Legal Advisor, conducted the legal review. Outside counsel Usman Hamid, Todung Mulya Lubis, Elizabeth Wang, and others provided additional legal review. Edmund Bon also assisted with legal matters.

Charmain Mohamed and Agus (last name withheld for security reasons) assisted with the research for this report. Joseph Saunders and Human Rights Watch board member David M. Brown helped research certain portions of the report. Additional research support was provided by Lawrence Boyd, Ronald Lengkong, Brihannala Morgan, and Michael Roston. Human Rights Watch associate Carly Tubbs and former associate Manu Krishnan also provided background research.

Human Rights Watch would like to thank the numerous organizations and individuals that contributed to this report, including the government officials who agreed to be interviewed or otherwise provided information. We regret that space and security considerations prevent us from naming everyone who helped us. We extend a special thanks to the organizations that assisted with the field research reflected in the report, namely LBH Medan, Komunitas Sumpit, PADI Indonesia, and Walhi-South Kalimantan. We also are grateful to the outside readers who agreed to comment on a draft of the report. These include Nicole Ball, Col. (ret.) Don McFetridge, Mufti Makarim al-Ahlaq, Danang Widoyoko, and a reader who preferred to remain anonymous. Numerous interpreters and translators also facilitated our work. Human Rights Watch bears sole responsibility for the contents of the report.

Layout and production of this report were coordinated by Carly Tubbs; Veronica Matushaj, photo editor and associate director in the Development and Outreach division; Andrea Holley, manager of outreach and public education; and Fitroy Hepkins, mail manager in the Publications division. The map accompanying the report was prepared by Apperceptive (<http://apperceptive.com>).

Finally, we wish to acknowledge with appreciation the generous financial support of David M. Brown.