PRESENTATION: INDONESIA

HONOURABLE SAYED MUHAMMAD MULIADY,

MEMBER OF PARLIAMENT, INDONESIA

21st July 2012

Good afternoon to all gathered here today. My name is SayedMuhammad Muliady, and I am a parliamentarian from anopposition party in Indonesia, the Indonesian DemocraticStruggle Party. There are 560 members of parliament in Indonesia, 94 of which arefrom my party. Today I wish to give a brief overview of the situation of human rights inIndonesia, and I hope we will have a good discussion afterward to assess the challenges weare facing.

Indonesia has a population of over 240 million, and our territory lies in the Indian Oceanand Pacific Ocean. If all our territories are totalled, our geographical size is 1.9 millionsquare miles. Indonesia is composed of 33 provinces, 540 cities and regions scattered infive major islands: Kalimantan, Papua, Sulawesi in the East, Sumatra, which is the largest,in the West, and Java, where Jakarta, our capital, is located. The large number of tribesand languages make Indonesia a very multicultural country. Indonesia has also seen itsfair share of ups and downs in terms of protection of citizens and human rights.

After 33 years under a military regime, in 1998 began a reform era, a democratic andopen era. The police force, which used to be a part of the military, is now separated bylegislature. These reforms also limited the military's political influence. Indonesia's newregime banned violence and torture, protecting particularly civilians against abuse by thestate.

In the past, before 1998, the military in Indonesia exercised draconian powers,including the power to investigate the police. Torture and abduction were very commonoccurrences. However, after the reform era and the establishment of new "human rightsbasedlaw", the number of violations in Indonesia was reduced significantly. Therecame into existence legal mechanisms in a special court to assist those who have beenwrongfully confined or ill-treated.

Yet even in this period of reform, human rights violations were still taking place.Loopholes exist within the Indonesian Criminal Procedure Code. Human rightsviolations still take place because few perpetrators are brought to justice and acts ofviolence are not routinely investigated. Most investigative or feedback processes areinternal in nature. The practice of internal investigations has led to cover-ups, impunityand an ineffective campaign against systematic practices of torture. Indonesia is supposedto be a state founded on rule of law and the supremacy of a Constitution that upholdshuman rights and rights of citizens to equality before the law. Our government is obligedto this principle without exemption.

As a state based on law, Indonesia places serious emphasis on the prohibition againsttorture, under article 28I of the Constitution. Article 28 concerns the protection offundamental human rights: 28A specifies the right to life, 28D to equality before thelaw, 28E to freedom of religion and against servitude, 28I to remain free from torture,to freedom of thought and conscience, to adhere to a religion, to not be enslaved, to betreated as an individual before the law, to not be prosecuted on the basis of retroactivelegislation and to be protected under all circumstances against the curtailment offundamental human rights.

In fact, the Indonesian government has to be against torture against anyone – a just andcivilised humanity is one of five major principles upon which the country was founded(Pancasila). Indonesia was also one of 41 countries that first ratified the Conventionagainst Torture in 1985. This shows the serious failure of the Indonesian governmentto take effective steps to eliminate torture from its territory since then. I have to explainhere that before 1981, Indonesia had inherited their laws from the Dutch. This was alegal system wherein confessions were considered primary evidence in prosecuting crime.Police therefore used all means possible to extract confessions, employing methods thatwe would categorically classify as discomfort- or pain-inducing treatment (torture),practices that violate human rights. This legal framework so conducive to the use ofviolence by those in authority was repealed by Law 8 in 1981. This was a significantdevelopment that discouraged the use of torture and guaranteed better protection ofhuman rights. The Criminal Procedure Code is also legislation made and endorsed bygovernment and parliament, a fact that minimises the possibility of the arbitrary exerciseof power by law enforcement officials. I would like to point out several noteworthy thingsin Indonesian law that have helped discourage practices of torture and other forms of illtreatment:

1. Individuals cannot be detained for over 24 hours without seeing a magistrate

2. Detention by police cannot be for any longer than 120 days

3. The existence of a pre-trial clause (habeas corpus)

4. Search and seizure requires authority of district court

5. The existence of "civil servant investigators" separate and independent from thepolice

6. Suspects must be accompanied by legal counsel

7. Confessions are no longer treated as primary or damning evidence under thecriminal justice system. The implication of this is that there is less incentive touse torture to extract one

However, the current Criminal Procedure Code has been used for over 30 years. Thismeans it is also time for the law to be revised. Police still use very subjective reasons todetain someone. They appeal to the possibility of the destruction of evidence, the possiblerepetition of offences or the possibility of the suspect's escape as justification to detainsomeone indefinitely. The death penalty is still permitted under our current CriminalProcedure Code – this opens up the individual to a most severe and permanent abuse of his rights: the denial of the right to life. The local law that permits this sentence is therefore inherently incompatible with the country's expression of support for human rights and other international norms.

Another reason for the immediate revision of Indonesian law is the fact that there hasbeen no clear penalty laid down for the misconduct of law enforcement officials duringcriminal investigations. Many police officers choose to exploit this loophole in orderto carry out farcical investigations, investigations which deviate from established laws,procedures and protocol.

The Criminal Procedure Code is at the moment being revised, but, in Indonesia, consentfrom the parliament is still required. To this day, a proper revision of Criminal ProcedureCode has not happened because changes to the Code are still being discussed. Thisrevision should be prioritised. The creation and revision of laws is the prerogative andresponsibility of the government. Our parliament has expedited the process by urging theMinister of Law and Human Rights to submit a revision of the Criminal Procedure Codeby 2012 (this year). If this deadline is not met, parliament has promised to assume thetask and pass the law on its own initiative.

My conclusion is that the government should hasten the revision of the CriminalProcedure Code and create a separate law punishing the use of torture in order to meet itsinternational and moral commitments. This is only a suitable response to the problem oftorture in Indonesia. Relevant institutions – the military, police and Ministry of Law andHuman Rights, for instance – have to enforce punishment upon perpetrators of tortureand implement effective internal mechanisms to check such abuses of torture. Theseinternal mechanisms include independent and thorough investigations, possibly by anexternal agency, into allegations of torture and ill-treatment. Independent commissionssuch as the ombudsman or representatives from the National Human Rights Commission(NHRC) should be given the mandate to investigate such cases as well as to promoteawareness among the public and among civil servants who may be in a position torectify such wrongs. The Indonesian government should also demonstrate its sincerecommitment to eradicate torture and other human rights abuses by ratifying the OptionalProtocol o the Convention against Torture as well as the Convention against EnforcedDisappearances. The government needs to review policies and guiding principles that mayencourage torture or other cruel, inhuman and degrading treatment or punishment.

Today, I would like to personally declare my support for the Asian Alliance AgainstTorture and Ill-Treatment, a new initiative proposed by the Asian Human RightsCommission (AHRC) and the Rehabilitation and Research Centre for Torture Victims(RCT). I hope that such meetings continue to be hosted because they represent a peopleunited in their aspirations toward a torture-free world through the gradual but necessaryrevision of legislation currently in force in the countries represented here today.

Honourable Sayed Muhammad Muliady,

Member of Parliament, Indonesia