

OPENING OF THE LEGAL YEAR 2024

ADDRESS BY GURVIR SINGH SANDHU

PRESIDENT OF THE ADVOCATES ASSOCIATION OF SARAWAK

19th JANUARY 2024 @ KOTA KINABALU

Salutations:

1. The Right Honourable Tun Tengku Maimun Binti Tuan Mat, Chief Justice of Malaysia, and spouse, Yang Amat Berbahagia Dato' Haji Zamani bin Haji Ibrahim;
2. Yang Amat Berbahagia Tun Raus bin Sharif, former Chief Justice of Malaysia and member of the Judicial Appointments Commission (JAC);
3. The Right Honourable Tan Sri Datuk Amar Abang Iskandar Bin Abang Hashim, President of the Court of Appeal Malaysia;
4. The Right Honourable Tan Sri Dato' Abdul Rahman bin Sebli, Chief Judge of Sabah and Sarawak;
5. The Right Honourable Tan Sri Dato' Mohamad Zabidin Bin Mohd Diah, Chief Judge of Malaya;
6. The Honourable Datuk Almalena Sharmila Binti Dato' Dr Johan, Solicitor General of Malaysia, appearing on behalf of the Attorney General of Malaysia;
7. Yang Berhormat Tuan M. Kulasegaran V. Murugeson, Deputy Minister in the Prime Minister's Department (Law and Institutional Reform);
8. Honourable Judges of the Federal Court;
9. Honourable Judges of the Court of Appeal;

10. Honourable members of the Judicial Appointments Commission;
11. Honourable Judges and Judicial Commissioners of the High Court of Sabah and Sarawak and High Court of Malaya;
12. The Honourable Dato' Sri Dr. Haji Sabin Samitah, Mayor of Dewan Bandaraya Kota Kinabalu;
13. The Honourable Tuan Zamri Bin Bakar, Chief Registrar of the Federal Court of Malaysia;
14. The Honourable Datuk Nor Asiah Binti Mohd Yusof, State Attorney General of Sabah;
15. The Honourable Datu Saferi Bin Ali, State Attorney General of Sarawak;
16. The Honourable Mr Mohamed Nazim Bin Maduarin, President of the Sabah Law Society;
17. The Honourable Ms Karen Cheah Yee Lynn, President of the Malaysian Bar;
18. Presidents and Delegates from foreign Bar Associations;
19. Heads and Representatives of the Federal and State Departments and Agencies;
20. Judicial and Legal Officers;
21. Members of the Bar;
22. Distinguished Guests;
23. Ladies and Gentlemen;

INTRODUCTION

1. A warm welcome I extend to all whom have taken valuable time to be with us here in Kota Kinabalu, Sabah on occasion of the Opening of the Legal Year (OLY) of the High Court of Sabah and Sarawak for the year 2024. Allow me to also especially extend our warmest welcome and commendations to our foreign guests whom are present here with us today.
2. Having myself been involved in the previous two OLYs in Sarawak, I can appreciate the hard work that goes into such an event, and I would like to take this opportunity to express my congratulations to the working committees for their efforts in organizing this year's program.
3. In the past year, I have had the pleasure of attending to a number of Opening of Legal Year organized by other commonwealth jurisdictions, and from such experience, I am pleased to report to YAA Tan Sri CJSS that no other OLY reaches the pomp and splendor of that in Sabah & Sarawak. Of course this may be considered my biased view but I argue that this can be seen from the number of activities organized in conjunction with OLY, including the more than a mile-long procession, this exceptional ceremony, followed by a grand gala dinner which is attended by all attendees and where we are all able to unwind and reconnect with friends from the bar and the bench after a day of formalities. Another feature of our OLY in Sabah & Sarawak that does not occur in other jurisdiction, is the special performance by the Court judicial officers during the Gala Dinner – performances which I am sure will delight our guests later this evening.

It is our sincere hope that our guests will bring back fond memories from their time in the OLY of Sabah & Sarawak and promote our beautiful states to their respective countries.

My Ladies and My Lords,

A REFLECTION OF 2023

4. Welcome to 2024 – while we direct our attention towards the future of the world that lies ahead of us, I am standing here today to share our reflections of the difficult past that we had endured, a past mired with wars, famine, crippling pandemic, new strains of viruses, existential threat of climate change and even the ever rising costs of living. There is no doubt that humanity has had a tough time these few years, and it is projected, that the worst is yet to come. One has to ponder, how did we survive these few years? Being faced with a challenge - is often the time when people are most inventive and when ingenuity and creativity thrives. The same principle applies to the judiciary, the bar and the government – we adapt, we improvise, and we overcome.¹

Thriving during adversities – of how we survive - shall be the central theme of my address to my Ladies and Lords this morning.

My Ladies and My Lords,

THE STATE GOVERNMENT OF SARAWAK

5. No discussion concerning the State Government of Sarawak can be had without first highlighting the Malaysia Agreement 1963 (“MA63”)². We note with trust and much pleasure that the Sarawak State Government is actively pursuing to recover the lost rights of Sarawak made under MA63 – the latest

¹ “Adapt, Improvise and Overcome”, Clint Eastwood – Heartbreak Ridge 1986

² For a comprehensive copy of the MA63 – see

<https://treaties.un.org/doc/publication/unts/volume%20750/volume-750-i-10760-english.pdf>

being the government attempts in obtaining the State's autonomy in healthcare³.

We also record with applause the recent efforts made by the State Government in submitting a paper to the Federal Government for the purposes of increasing the combined number of its representatives in Parliament by up to 35 per cent in line with the MA 63.⁴ – where this issue was raised by myself in past year's OLY.

Credit has to be given to the leadership of the government of Sarawak and especially the hard working YB Datuk Sharifah Hasidah Sayeed Aman Ghazali who is Sarawak State Deputy Minister of Law, Malaysia Agreement 1963 (MA63) and State-Federal Relations for all the efforts made to recover what has been lost by Sarawak.

We acknowledge that there have been positive steps taken by the government, and note that we can do more to remedy the fissures of the terms of the Malaysia Agreement 1963, which include amendments which ought to be made to the Federal Constitution or relevant Acts in order to rectify as follows:-

- a). Amendments to the Court of Judicature Act 1964 to reflect the position that there should be a Judge with Borneo judicial experience sitting on the appellate panel hearing appeals which originate from Sabah and Sarawak – as a reflection of Chapter 3 of the Inter-Governmental

³ <https://www.malaymail.com/news/malaysia/2024/01/12/health-ministry-to-look-into-sarawaks-request-for-health-autonomy-says-dzulkefly/112104>

⁴ <https://www.malaymail.com/news/malaysia/2023/11/23/sarawak-deputy-minister-says-state-has-submitted-its-proposal-to-increase-borneo-representation-in-parliament-no-time-limit-to-claim-back-all-rights-under-ma63/103669>

Committee (IGC) Report 1962 read together with Article 8 of the Malaysia Agreement 1963; and

- b). Amendments to Article 122AB of the Federal Constitution to restore the powers of the Head of State (TYT) of Sabah and Sarawak to appoint Judicial Commissioners – which is to correct the position reflected under Section 16(3) of the Malaysia Act 1963.
6. We must also acknowledge the forward-thinking leadership of the State Government of Sarawak in pushing its Green Economy Agenda in line with the United Nations' Sustainable Development Goals (SDG) initiatives. It has been reported that Sarawak is now Malaysia's largest renewable energy provider, with 70% of the total generation mix from hydropower resources, being well ahead of other states in Malaysia and other countries in South-east Asia in dealing with global climate.⁵ It is noteworthy that upon the Land Code (Amendment) Bill, 2022 and Forest (Forest Carbon Activity) Rules, 2022, Sarawak has entered into the carbon capture storage (CCS) industry, wherein exhausted offshore oil fields are being converted into CCS storage facilities.⁶

This shows that the State Government understands the dangers in over reliance on fossil fuels industry, the harm it brings to the environment – and have now found an alternative, potentially Billion Ringgit industry to convert old disused oil fields to their new lives as carbon storage facilities.

⁵ <https://www.malaymail.com/news/malaysia/2023/10/03/abang-johari-sarawak-to-keep-up-green-economy-agenda/94210>

⁶ <https://www.theborneopost.com/2023/06/13/sarawak-undertakes-first-carbon-capture-sequestration-project-in-kasawari-fields-off-states-coast/>

7. I am also proud to share here that Sarawak is the first in Malaysia to establish an Ombudsman Law, where the by product would be an elevation in standards of accountability in public administration and to provide measures against mal-administration by the public service agencies.

The examples presented are by no means exhaustive – however, in the interest of time, I shall move on to the next topic.

My Ladies and My Lords,

THE JUDICIARY

8. By design of the Federal Constitution, there is little doubt that the Judiciary is separate from the Executive and the Legislature. An individual's right to be afforded procedural fairness and to face trial before an **open, independent and impartial** court is a hallmark of our justice system in Malaysia – in line with article 4(1) of the Federal Constitution. In fact, judicial independence ranks high in our constellation of democratic values - and this should be the case as all other rights would be diminished, perhaps even forfeited, in the absence of judges capable of resisting the will of government or the pressure of popular sentiment. It is the independent judge, loyal only to the rule of law, who protects our constitutional liberties, who ensures fairness, and who stands guard against the excesses of those in power.⁷

YAA Tun CJ in her address during the OLY in Putrajaya highlighted that recently, the Judiciary has been unjustifiably painted as the villain for certain

⁷ Lubet, Steven (1997) "Judicial Independence and Independent Judges," Hofstra Law Review: Vol. 25 : Iss. 3 , Article 3.

decisions which were not within the purview of the powers of the Judiciary.⁸ It would be remiss of me if I did not share the resounding words of a Founding Father of the United States of America, Alexander Hamilton, which resonates directly on point with what is currently happening here in Malaysia:-

“... The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely **judgment**; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.”⁹

9. While I do not intend to reopen old wounds, I must say that it takes courage for the Judiciary to acknowledge that it has not been smooth sailing in view of the dark times endured in 1998 and in 2002. I do wish to highlight that we have learnt from the past lapses in the system and some positive changes in the Judiciary were introduced to enhance the independence of the Judiciary and I speak of the Judicial Appointments Commission. Of course even today, there are other amendments that are necessary to maintain clear separation of powers between the Legislative, the Judiciary and the Executive thus ensuring the survival or longevity of the institution of the Judiciary – amendments which all relate to the removal of the powers and

⁸ <https://www.freemalaysiatoday.com/category/nation/2024/01/15/judiciary-unjustifiably-painted-as-villain-over-agcs-decisions-says-cj/>

⁹ https://avalon.law.yale.edu/18th_century/fed78.asp

privileges of the Prime Minister enjoyed in the Judicial Appointments Commission Act 2009.

10. On an issue that we have raised for a number of years in running - We are of the view that our Judges and Judicial officers should be remunerated at par with other commonwealth jurisdiction and we hope the government will heed our repeated suggestions for the same.
11. The Association notes with much invigoration that the Federal Court has, in the past years made a number of decisions to declare certain laws to be unconstitutional. Such progressive decisions speak volumes and has further strengthened public confidence in the system, and shows that the Judiciary is actively playing its role as the custodian of the fundamental liberties under the Federal Constitution.
12. If I may, let us heed of the words of the YAA Tun CJ shared during numerous occasions for Judges and if I may add, Judicial Officers – and that is to confine their decisions based on the facts of the case and the law – without any external or internal considerations. YAA Tun CJ also stated in a speech in Goa that “top judges are only the first among the equals and that judges are not expected to display their loyalty to these ‘bosses’, but only to the law”. I hope such words resonate with judicial officers and judges alike - for how you decide cases, may have an everlasting impact on the public who seek redress from the Court.
13. In the course of 2023, we have had the pleasure of numerous engagements with the Judiciary for programs and addressing concerns of our members – programs which include the recent Young Lawyers & Pupils Workshop held in Kuching, where no less than 5 High Court Judges had graciously

contributed their time to speak during the said workshop. Allow me to convey the Associations appreciation to YAA Tan Sri CJSS and his officers for always having an open door policy with us in Sarawak, and always participating in our programs and especially during the workshop.

My Ladies and My Lords

THE ADVOCATE

14. As advocates, we need to take steps to advance ourselves in legal practice. The landscape of legal services is ever changing upon the advent of new authorities, laws and technologies. Thus we need to keep up with the new laws, legal skills and finesse, and even aid ourselves in the available technology to support us in our work. This will also assist to stop reliance on lawyers from the west and other parts of the country making inroads to Sarawak run our cases for us. In this day and age, there are but very few cases that can be considered novel. Therefore, considering the age of legal practice Sarawak, there should little to no reason for us to rely upon foreign advocates be that from Malaysia or otherwise. On the part of the association, we shall be continually be organizing courses in relevant fields of law to arm our members with the ability to sustain practice of law internally.

It is only from our combined effort that we will be able to ensure that the exclusive right of audience for Sarawak Advocates be well preserved in tandem with Section 8 of the Advocates Ordinance (Sarawak Cap. 110) and Article 161B of the Federal Constitution – and this is something that we should jealously guard.

15. On the advent of technology, I am sure the court and the advocates alike has been following the development of Artificial Intelligence in the sphere of legal practice. In such connection, we were fortunate to hear from other

jurisdiction in the recent Roundtable Bar Leaders discussion in Singapore over certain fusion of practice with the use of AI applications to vet agreements, and where there has been suggestions that such application could do the work of LA at a fraction of time required. While we acknowledge that the technology is advancing rapidly, we should be alarmed at whether the system is as reliable as it appears to be. Issues have arisen in the United States where it was found that owing to the use of artificial intelligence, advocates was found to have submitted non-existent cases in filings in court – which then lead to the advocate being sanctioned by the court.¹⁰ In fact, the 5th US Circuit Court in New Orleans have since required advocates to certify that the advocates have either **not** relied on AI programs to draft their briefs **or** that humans have reviewed the accuracy of any briefs generated by AI.¹¹ What this shows is that the AI system is not foolproof, and should be used with great caution.

16. While we are on the topic of authorities submitted to court, allow me to take this opportunity to remind advocates in Sarawak to take heed of the concerns raised by YAA Tun CJ during her address in OLY Putrajaya - and that is to ensure candor and honesty when submitting in Court, especially concerning the authorities submitted as there appears to be advocates whom were submitting cases to the Court which had been overruled (without informing the court of the same). Let us be reminded of our Practice and Etiquette Rules on how we are to deal with the court, the public and our learned friends from the bar. I do wish to highlight that we have a robust Inquiry Committee lead by its chairman, Datuk Stephen Chung Hian Guan,

¹⁰ <https://www.reuters.com/legal/ex-trump-fixer-michael-cohen-says-ai-created-fake-cases-court-filing-2023-12-29/> and <https://arstechnica.com/tech-policy/2023/06/lawyers-have-real-bad-day-in-court-after-citing-fake-cases-made-up-by-chatgpt/>

¹¹ <https://www.reuters.com/legal/us-supreme-courts-roberts-urges-caution-ai-reshapes-legal-field-2023-12-31/>

a retired Court of Appeal Judge, so as much as possible, we hope our members would not be needlessly be referred to the inquiry committee over such incidents.

17. Further on the topic of Artificial Intelligence, let us then discuss the use of AI in our courts in Sabah and Sarawak where a system known as AI-COS was introduced to assist judicial officers in determining sentences for certain offences of the Penal Code. Before I go further, I will say that the Association have always embraced improvement and introduction to new technology when it comes to legal practice in Sarawak, and this is shown by the fact that we have embraced and participated in the development of the CMS system which has been placed in Sabah and Sarawak years before such a system was introduced in West Malaysia due to the Covid-19 pandemic. However, upon spending some time in understanding and reviewing the Ai-COS system and upon feedback from advocates, we are constrained to highlight that there are issues which bring about concerns over the use of this system – and this is borne out, among others, by the fact that the system appears to be unable to apply well known sentencing principle such as rampancy of crime that occurs in big cities like in Kuching as distinguished to small interior town like Belaga as the system appears to make no adjustments to the sentence suggested upon the parameters being placed into the system. Another significant issue is that we found that the system appears to indicate a much harsher sentence to foreigners. There are number of other issues concerning AICOS system that needs immediate attention and we hereby renew our request to be included in the AICOS committee in order for us to review the system in a wholesome manner from within.

18. On this point, I am also pleased to inform the that the Law Society of Hong Kong had recently invited the Association to sign a Manifesto titled **“The Legal Ethical Code of Conduct Regarding the Deployment of AI”**. This manifesto emphasizes the importance of responsible and ethical AI practices in the legal profession and outlines guiding principles for the development and deployment of AI technologies in this field. I would like to share the four (4) principles of ethical use of AI of this manifesto which are as follows:-

- (1). the use of legal AI technologies should be lawful, transparent, traceable and interpretable;
- (2). the legal AI systems should be reliable, robust, secure and fair;
- (3). an appropriate degree of human involvement should be maintained in AI-augmented decision-making process; and
- (4). applicable laws, legislations and regulations should always be complied with.

As such, we hope YAA Tan Sri CJSS would consider our request favourably to enable us to give meaningful input to improve the Ai-COS system and ensure that it is actually intelligent, and not an imitation of intelligence.

19. On the topic of Alternative Dispute Resolution - Advocates should realize by now that there is a big shift from litigation to ADR as a means to solve dispute and such shift is also coming even to the Rules of Court 2012. The Association is fully aware of this and has taken steps to ensure that our members are ready and equipped with the ability to resolve dispute within the realm of ADR. On the part of the association, we have been communicating with a number of ADR Centers to consider the most

appropriate training to be provided to our members to enable them to be accredited mediators, arbitrators and adjudicators.

In line with our beliefs that no man or woman is to be left behind, we shall make such sessions available to Judges and Judicial officers to allow them to be accredited mediators as well. At this juncture, I also wish to highlight that the Court Assigned Mediation Services has been in use in Sarawak for a number of years, where there are more than 350 cases registered in each year, and where the success rate of such services exceeds 50%.

On the front of setting up an ADR Center in Sarawak, we are pleased to record that the State Government is in talks with an internationally recognized center to set up a regional center in Sarawak, and we look forward to the formal announcement for the direction to be taken and the terms of reference in due course. Nonetheless, let there be no doubt that whatever may be, the Association shall insist that this Centre would cater for the practice and advancement of ADR in Sarawak for Sarawakians lead by a Sarawakian with a regional and international market in mind.

20. On another note, I am pleased to record that practice in Sarawak is well spread out from the north in Lawas, to the South in Kuching, thus members of public would not face difficulty in finding suitable lawyers to provide them legal representation. Our members have also been playing an active role in fulfilling their social responsibility in providing access to legal representation to the sectors of the society which requires assistance. In this regard, I note as follows:

- a). **YBGK**

Our members have been actively taking up cases when called upon under YBGK – where there were 1922 cases taken up, which includes remand and bail hearings, trials and mitigation before the Magistrate and Sessions Courts in Sarawak.

b). **Assigned Counsel**

The AAS under each of its four branches have been working together with the Sarawak Judiciary to set up a list of advocates whom are qualified to take up assign counsel cases in the High Court. At present there are 65 lawyers on his list who fulfil the requirements put forth by the judiciary to take up capital punishment cases.

I am pleased to note that our members have taken up all requests for assigned counsel and there are no accused persons being unrepresented

c). **Community Outreach Program**

The Association had undertaken a number of CSR programs in Sarawak made possible through the hard work of the 4 branches that make up the Association. For the purposes of this address, I wish to rekindle the fond memories from the Community Outreach Program in SK Batu Bungan Mulu jointly organized by the Association and the Sarawak Courts Working Group on Environment (SWGE) together with participants from other local organizations in Miri. This was a program to reaching out to the indigenous community and especially student from SK Batu Bungan, SK Baya Malang and SK Long Panai whom all live within the vicinity of Mulu. I am also pleased to share that during this program we had conducting a Sexual Awareness Talk (CRIB (Child Rights Innovation and Betterment)), an Environment Talk (by Justice For Wildlife) and we had even undertaken a medical mission (eye, dental, general check-up and de-worming) of the indigenous community.

Sadly, I share that during such examinations, our doctors have found two patients whom are suspected to be suffering from late stage cancer – and the Association together with SWGE are making arrangement to take these patients for urgent treatment in Kuching. Allow me to record the Association's appreciation to Yang Arif Dean Wayne Daly and the Chairperson of SWGE Puan Zuraini Ali Musa for your tremendous efforts for the program.

The Association, through its branches shall continue its efforts on this front and have scheduled more programs in the near future. We look forward to having My Ladies and My Lords to join us once again in the next program.

21. Allow me now to take a moment to address the members of the Association. The most valuable asset of any organization to ensure the survival and longevity of it- is the young members whom are ready to come in to take up leadership positions from senior members of such organization. Therefore, the younger generation draws inspiration and interest from our senior members and not only that, we also inherit this organization from our seniors. Inheritance in the sense of the Association is the constitution of the Association - which is the very basis of the existence of our Association. We are at the juncture of our organization where we have to work harder together to ensure that we remain relevant in the sphere of legal practice and services in Sarawak. This brings to mind the age-old saying "Bersatu Teguh bercerai roboh". Let us stay united behind the Association and direct all our energy to advance ourselves as Advocates so that the legal practice of Sarawak can continue to thrive.

My Ladies and My Lords,

22. The Association records its appreciation to Ms Karen Cheah Yee Lynn the President of the Malaysian Bar for delivering the address on behalf of the Association during the Opening of Legal Year 2024 ceremony held at the Putrajaya International Convention Centre.

My Ladies and My Lords,

Conclusion

23. On behalf of the Advocates Association of Sarawak, we extend to Your Ladyships and Your Lordships, and all present here today warm wishes and prayers for good health, continuing wisdom, strength and fortitude for the year ahead.

My Ladies and My Lords, I am much obliged.

Gurvir Singh Sandhu

President of the Advocates Association of Sarawak

19th January 2024