

Speech by Abdul Fareed Abdul Gafoor, President, Malaysian Bar, at the Opening of the Legal Year 2020 (Putrajaya International Convention Centre, Putrajaya, 10 Jan 2020)

The Right Honourable Tan Sri Tengku Maimun Tuan Mat,
The Chief Justice of Malaysia;

The Honourable Dr. Anwar Usman,
Chief Justice of the Constitutional Court of the Republic of Indonesia;

The Honourable Mr. Justice Sundaresh Menon,
The Chief Justice of the Republic of Singapore;

The Honourable Dr. Sunarto,
Deputy Chief Justice of Non Judicial Affairs of the Supreme Court of The Republic of Indonesia representing the Chief Justice of the Supreme Court of Indonesia;

The Honourable Tan Sri Dato' Mohamad Ariff Md Yusof,
The Speaker of the Dewan Rakyat;

Right Honourable and Honourable Judges of the Federal Court, Court of Appeal and High Court, and Judicial Commissioners;

The Honourable Tan Sri Tommy Thomas,
The Attorney General of Malaysia;

The Honourable Tuan Mohamed Hanipa bin Maidin,
Deputy Minister in the Prime Minister's Department;

Retired Chief Justices and Judges;

Your Excellencies: Ambassadors and High Commissioners;

The State Attorneys-General of Sabah and Sarawak;

Presidents of the Sabah Law Society and
Advocates Association of Sarawak;

Presidents and Representatives of Foreign Bars and Law Societies;

Distinguished guests, ladies and gentlemen.

Assalamualaikum and a very good morning.

My Lady Chief Justice,

1. I am honoured and privileged to address Your Ladyship and this esteemed gathering, at the dawn of a new decade, on the occasion of the Opening of the Legal Year 2020, themed MOVING FORWARD. It is with pleasure that I do so on behalf of the Malaysian Bar, the Sabah Law Society, and the Advocates Association of Sarawak.
2. The past decade was one of the most eventful decades for legal developments in Malaysia. Notwithstanding the results of the 14th General Elections and the peaceful handing over of the political reigns; we also witnessed the unfurling of the various cases linked to the 1Malaysia Development Berhad (“1MDB”) sovereign wealth fund and SRC International, which were both subject of significant international attention.
3. We also saw:
 - a. the repeal of the Internal Security Act 1960 (“ISA”), but also the introduction of the Security Offences (Special Measures) Act 2012 (“SOSMA”);
 - b. the entry into force of the provisions for the liberalisation of the legal profession;
 - c. the introduction of legal regimes for anti-money laundering and also personal data protection;
 - d. the unprecedented actions mounted by the Malaysian Bar in filing a judicial review against the decision of the former Attorney General;

- e. and the filing of a constitutional reference with regard to the appointments of the former Chief Justice and President of the Court of Appeal; to mention a few.
4. My Lady, allow me to delve into some of these events that were particularly noteworthy.

I. Judiciary

5. 2nd May 2019 was a momentous occasion in the nation's history with the appointment of Your Ladyship as the first female Chief Justice.
6. The Malaysian Bar wishes to record our heartiest congratulations not only to your Ladyship, but also the President of the Court of Appeal, YAA Dato' Rohana binti Yusuf and Chief Judge of Malaya YAA Tan Sri Dato' Sri Azahar bin Mohamed on your appointments in the preceding year.
7. We also note that with the recent appointments of YA Dato' Zaleha Yusof, YA Dato' Zabariah Mohd Yusof, and YA Datuk Hasnah Dato' Mohammed Hashim to the Federal Court. Women now make up 4 out of 9 Federal Court judges. Achieving this level of gender diversity at the highest level of the Judiciary is a positive move to be commended and it is Malaysia's showcase to the world. We hope that this era signals progress also for us at the Bar in seeing more women, who make up 54% of the membership in the Bar, move through the pipeline to high levels of legal practice.
8. We also wish to welcome and congratulate the 15 recently appointed judicial commissioners, including 10 lawyers, of which 7 were from the Malaysian Bar and 3 from Sarawak. While the Malaysian Bar gave up 7 prominent Members, including my predecessor YA Tuan George Varughese, the Malaysian Bar believes that they are all the Judiciary's gain and will contribute their utmost to serve the Judiciary and justice.
9. The Malaysian Bar also wishes to place on record our thanks to Tan Sri Datuk Seri Panglima Richard Malanjum who retired as the Chief Justice of the Federal Court of Malaysia in April last year. Although his tenure of service was relatively short, he left an indelible mark with the implementation of significant reforms in respect of the administration of justice in Malaysia. We note also the retirement of Tan Sri Dato' Sri Ahmad bin Haji Maarop, former President of the Court of Appeal, and Tan Sri Zaharah Ibrahim, former Chief Judge of Malaya. We wish you all the best for a very happy and fulfilling retirement.
10. Through the decade, we saw the development of case law emanating from the Federal Court that seeks to adopt and reaffirm the application of the basic structure doctrine. This was initiated in the case of ***Sivarasa Rasiah***

in 2010,¹ which paved the way for the watershed decision in **Semenyih Jaya** in 2017.² This case then made clear the path for the 2018 case of **Indira Gandhi**.³ The consequence of the implementation of this doctrine was well received in the case of **Alma Nudo Atenza**,⁴ where we saw the Federal Court striking down the double presumption for drug trafficking under the Dangerous Drugs Act 1952. We also recently saw the principles expounded in the case of **Semenyih Jaya** taken further by the High Court, in the case brought by two detainees to challenge the constitutionality of the provision in SOSMA which denies bail, holding that it was *ultra vires* to Articles 8 and 121 of the Federal Constitution.

11. The recent decision of the Federal Court in the case of **Tony Pua Kiam Wee v Government of Malaysia**⁵ was also highly anticipated as it concerned the question of whether or not the Prime Minister of Malaysia was a “public officer” or “person holding public office” for the purpose of establishing liability against him under common law for the tort of misfeasance in public office. In finding that the former Premier was a public officer, the Judge relied on the leading cases of **Three Rivers**⁶ and **Jones v Swansea City Council**.⁷ Decisions that uphold the common law and are in keeping with global norms truly reinforce the role of the Judiciary in a society like ours.
12. The Malaysian Bar has always stood by and stood up for the Judiciary’s independence. It began during the 1988 Judicial Crisis and carried on to what we termed the 2017 Judicial Crisis. We respect and will always protect as sacrosanct the role of the Judiciary, as one of the three branches of government. The revelations made by a Judge of the Court of Appeal in 2018 of allegations of judicial interference, led to the Bar calling for a Royal Commission of Inquiry (“RCI”). However, no RCI has been constituted to date. The Bar reiterates the call for the RCI as promised by the Government; to investigate the veracity of the allegations and following from that, to do the needful in order to maintain and preserve the nation’s confidence in our Judiciary.
13. I must also put on record the Bar’s appreciation of the Judiciary’s willingness to engage and consult with the Bar on matters of mutual concerns and for that, we wish to thank all the Office Bearers of the Judiciary, and the Chief Registrar’s Office.
14. The Bar will take all effort to strengthen and maintain this good working relationship as equal partners in the administration of justice, and will accord the needed assistance and support to the Judiciary on its proposed reform in the following three areas:
 - a. improving capacity-building or human resource;
 - b. embracing and improving information technology; and
 - c. embarking on the development of better infrastructure towards providing higher quality legal services.

15. In Verse 58 Surah An-Nisa of the Holy Quran, Allah swt commands:

“Indeed, Allah commands you to render trusts to whom they are due; and when you judge between people, you judge with justice”

16. Indeed, in the upholding of justice, it should not solely be the role of the Judiciary, but also of all stakeholders in the administration of justice. To this end, the Bar commits to doing its utmost in the pursuit of truth and justice.

II. Executive Branch

17. In the dawn of this new decade, the Malaysian Bar urges to Government to bring closure to several cases caught in the twilight zone. These include the deaths of Teoh Beng Hock, Altantuya Shariibuu, Ahmad Sarbani Mohamed, as well as the disappearances of Pastor Raymond Koh and activist Amri Che Mat. Proactive measures with strong political will must be taken to do the needful so that the questions lingering in the minds of their families and the general public are answered. There are no limitations for criminal investigations and the truth in these cases must emerge.

18. Further, the Malaysian public also deserves to know the outcome of several high-profile investigations based on police reports which are yet to be made public. For instance, the alleged sexual misconduct of a high-profile politician; and reports lodged against persons accused of inciting religious and racial hatred, and exacerbating such tensions, as well as those who spew and spread false and malicious news over social media. Such conduct must not be allowed to go unchecked. The Malaysian Bar holds the freedom of speech as fundamental, but this can only be upheld if we speak the truth.

19. The Executive also, over the past decade, has both promised and reneged on a variety of pledges. The present Government has come up with various proposals, including:

- a. the setting up of a Law Commission and Ombudsman Malaysia;
- b. establishing a special court for corruption cases;
- c. repealing the Official Secrets Act 1972 and moving certain provisions to the new Freedom of Information Act;
- d. the development of a National Action Plan on Business and Human Rights for Malaysia;
- e. the repeal of the mandatory death penalty;

as well as delivering on opening up the democratic space by amending the Peaceful Assembly Act 2012 to allow for various forms of peaceful demonstrations; a repeal of the Anti-Fake News Act 2018; and a less severe attitude towards censorship.

20. Nevertheless, draconian and oppressive laws continue to be a blight on our legislative landscape. These include the Sedition Act 1948, the Prevention of Crime Act 1959, the Security Offences (Special Measures) Act 2012, the Prevention of Terrorism Act 2015, and the National Security Council Act 2016.
21. The Government promised to abolish or amend these laws in their election manifesto. While there have been inklings by the Government to, at the very least, amend these laws, they still remain on our statute books and are open to abuse — which is where our perennial struggle lies.
22. The Malaysian Bar is cognisant of the Government's need to maintain national security. However, this must always be done in harmony and recognition of constitutional guarantees and the rule of law.

III. Attorney General's Chambers

23. It is for the championing of these reforms that we look to the Attorney General, and Chambers, being the chief legal adviser to the Government.
24. Chambers should push for these reforms, whether it be by repeal or amendments. However, pending the repeal and/or amendments of these laws, the Malaysian Bar looks forward to reformist efforts by Chambers to remedy the stripping of the doctrines, duties and rights contained in the Federal Constitution. A more nuanced approach in deciding whether or not to pursue legal action or file appeals is called for. One such giant leap was seen in the recent decision of the Attorney General, in his capacity as Public Prosecutor, to not pursue an appeal of the case concerning the availability of bail for unbailable offences.
25. The past year alone has seen several areas of reform introduced by Chambers, including a restructuring of the manner in which letters of representation are considered by the Public Prosecutor, for which the Bar still hopes to review; as well as the unprecedented initiation of legal action against the Kelantan State Government on behalf of the Malaysian Government over the land rights of the Temiar Orang Asli.
26. We wish to make special mention and thank the Attorney General for his proactive measures in sorting out the overdue National Legal Aid Foundation payments. Steps have been put in place and it is hoped that the long outstanding issues would be brought to nought in the coming months.
27. The past year has also seen the Bar working closely with Chambers to push through for the complete revamp of the Legal Profession Act 1976. We have had the pleasure to sit alongside the talented team at Chambers in

executing the vision of the Bar Council to take the legal profession into the future. We hope now to be able to table our Bill at the next sitting of Parliament, presumably in March this year. We embarked on this herculean task to overhaul our Act in recognition of the internationally-accepted principle that an independent and robust Bar is key to a democratic society. We again thank the Attorney General for all his assistance to get things going.

IV. Legislative Branch

My Lady,

28. In Malaysia, where both the Executive and the Legislative branches of government are intimately linked, there needs to be better systems of accountability set up to help with curtailing the Executive's might from being incorporated into law — especially when done in haste.
29. As mentioned, the move to establish a Law Commission, it is hoped, will help to curtail the issues surrounding the introduction and passing of legislation going forward.
30. In the meantime, the referral of the Independent Police Complaints and Misconduct Commission (“IPCMC”) Bill to a Special Select Committee in Parliament for further deliberation after being tabled in the Dewan Rakyat on 18 July 2019, was historic. It was the first time that a Bill was referred to a Select Committee for consideration. We look forward to a more comprehensive IPCMC Bill, taking into consideration the proposed recommendations given by the Select Committee based on its nationwide consultation. Any recommendations for the IPCMC Bill should not overlook the welfare and the working conditions of our police personnel.
31. It is hoped that the introduction of more independent, and objective, or at the very least, bipartisan systems, to study and test the veracity of the proposed legislation, will be welcomed. Considerations such as the interests of the *rakyat*, as enshrined in the Federal Constitution, as well as the needs of the Government in trying to execute its functions, should be taken into account.
32. We look to the legislature to capture and express the will of the *rakyat*, and not to descend into a political theatre. The Malaysian Bar calls on politicians and non-governmental organisations (“NGOs”) to do away with their selfish and toxic rhetoric, and instead come together and focus on getting the nation back on track, with an emphasis on serving and uniting the *rakyat*.
33. In this connection, we also call on the media to be more responsible when it comes to the dissemination of “newsworthy” events. It is hoped that the

media will further its role as the fourth estate with a sense of duty and a code of ethics. It is unacceptable for news to be spread merely because it is sensational or on the basis that it will generate readership traffic.

V. The Malaysian Bar

34. Where the Malaysian Bar has in the past decade had to play a reactionary role, whether it is to the hasty passing of legislation, or to attacks on our independence, we are now in a more proactive stance.
35. It is hoped therefore, that we will now be able to direct more of our attention to our core business of service. Of service to — the general public, our Members, the Government, and the administration of justice, pursuant to our statutory mandate as provided in section 42 of the Legal Profession Act 1976.
36. The Bar has always taken its public interest role as one of the guardians of the rule of law in our nation, and as partner in the administration of justice, very seriously; that is to ensure that the scales of power are always balanced. In conformance with our statutory duty, we have never shied away from stepping in and stepping up to the challenges we faced.
37. However, in executing our public interest role, and also our duties as advocates and solicitors, our Members have been subject to harassment and threats over the years. It is the fundamental role of a lawyer to act fearlessly in upholding the interests of his client, justice and the dignity of the profession, without regard to any unpleasant consequence either to himself, or to any other person.
38. In serving our Members, the Bar has for the first time introduced several initiatives such as:
 - a. broadening the scope of the LawCare Fund to introduce enhanced welfare support for Members;
 - b. providing professional counselling services for Members;
 - c. forming a specialised pool of mediators to assist with partnership disputes; and
 - d. providing support for Members facing Disciplinary Proceedings.

It is hoped that these measures will help our Members with their daily concerns.

39. With our Members better taken care of, we hope, moving forward, that we will continue pursuing our constitutional and rule of law objectives. We recognise at the Bar that we live in a multicultural and plural society. We truly are a unique nation, with a lot to offer the region and internationally.

40. We hope that this next decade will see a strong push to strengthen the legal services sector. We are currently in engagement with the Judiciary, the Attorney General's Chambers, the Minister's Office, and other legal sector stakeholders, in coming up with a *Blueprint for the Legal Services Sector*.
41. Going forward, we also hope to develop closer ties with the Ministry of International Trade and Industry ("MITI") and the Malaysian Productivity Council ("MPC") in further building and strengthening our sector — to be better contributors to the national economy, and also to prepare us on the technological front. The past decade has seen the advent of blockchain technology and artificial intelligence which the Bar believes should not be a source of concern but a heralding of a new age in the way in which legal services are provided.
42. In keeping with the theme, allow me also to invite all of you to lend support to the Bar's biennial flagship event — the International Malaysia Law Conference ("IMLC"), themed "Navigating the Present, Exploring the Future", which will be held from 12 to 14 August 2020, in Kuala Lumpur. The last IMLC held in 2018 received enormous support from the Judiciary, Government officials, NGOs and Members of Parliament. We hope that through this Conference, legal professionals can be inspired and empowered and be at the ready to embrace the future.

VI. Conclusion

My Lady Chief Justice,

43. At the cusp of this decade, I wish to remember all those who have come before and who have stood where I am now standing, some of whom are present here today. I wish to thank all Past Presidents, Office Bearers, Council Members and the general membership for their immense contribution to the Bar.
44. I also wish to express the appreciation of the Malaysian Bar to Minister in the Prime Minister's Office in charge of law and parliamentary affairs, YB Datuk Liew Vui Keong, for continuing to engage with the Malaysian Bar in matters pertaining to law.
45. My Lady Chief Justice, I wish to end my speech with a traditional pantun:

SEGAK BERTHIAS DATANG BERTANDANG
TAHUN PERUNDANGAN KITA SERIKAN
KELUHURAN PERLEMBAGAAN KEDAULATAN UNDANG-UNDANG
MARI BERSAMA SETIA PERTAHANKAN

BADAN KEHAKIMAN DAN PARA PEGUAM
SEIRING BERSAMA BERARAK BERJALAN
BERGANDING BAHU BERSAMA SERAGAM
TEGAKKAN HUKUM SERTA KEADILAN

46. On behalf of the Malaysian Bar, the Sabah Law Society, and the Advocates Association of Sarawak, I wish everyone present here today a clear “vision 2020” to achieve all things good.

47. My Lady Chief Justice, I am much obliged.

¹ *Sivarasa Rasiah v Badan Peguam Malaysia* [2010] 2 MLJ 333.

² *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* [2017] 1 LNS 496, dated 20 April 2017.

³ *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545.

⁴ *Alma Nudo Atenza v PP & Another Appeal* [2019] 3 MLRA 1.

⁵ *Tony Pua Kiam Wee v Government of Malaysia and another appeal* [2019] 12 MLJ 1.

⁶ *Three Rivers District Council and Others v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1.

⁷ *Jones v Swansea City Council* [1989] 3 All ER 162.