

**OPENING SPEECH BY**  
**THE RIGHT HONOURABLE THE CHIEF JUSTICE OF MALAYSIA,**  
**TUN TENGKU MAIMUN BINTI TUAN MAT**

**ON THE OCCASION OF**  
**JUDICIAL COLLOQUIUM 2023**

***“BREAKING BARRIERS: EMPOWERING WOMEN AND GIRLS  
THROUGH HUMAN RIGHTS AND SDGS”***

**DELIVERED AT**  
**SHANGRI-LA HOTEL, KUALA LUMPUR**

**ON**

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**SALUTATIONS**

- (1) Professor Dato’ Dr. Rahmat bin Mohamad,  
Chairman of SUHAKAM;
- (2) Professor Dr. Enny Nurbaningsih,  
Judge, at the Constitutional Court, Republic of Indonesia,
- (3) Honourable Judges;

Distinguished guests, ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuh and a very good morning.

## INTRODUCTION

[1] Allow me to begin by expressing my sincerest gratitude to Professor Dato' Dr. Rahmat bin Mohamad, Chairman of SUHAKAM for according me the distinct honour and privilege of delivering this opening speech. Allow me to also congratulate SUHAKAM for successfully convening this annual Judicial Colloquium which is a testament to the joint and continuous efforts between SUHAKAM and the Malaysian Judiciary towards promoting and protecting human rights in Malaysia.

[2] The theme for this year's Colloquium is "*Breaking Barriers: Empowering Women and Girls through Human Rights and Sustainable Development Goals (SDGs)*". It is a theme which covers a subject that has plagued humanity for centuries. While the world has made significant strides in this realm, I think everyone here will agree that much remains to be desired. If I may quote from Mr António Guterres, the Secretary-General of the United Nations, "*[a]chieving gender equality and empowering women and girls is the unfinished business of our time, and the greatest human rights challenge in our world*".<sup>1</sup>

### (1) THE CONCEPT OF GENDER EQUALITY

[3] Gender equality is a fundamental aspect of the discussion on human rights. Historically, it meant challenging the marginalisation of women and tipping the scales in favour of equal and fair treatment. Gender equality

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<sup>1</sup> António Guterres, 'The UN Secretary-General's Message on International Women's Day' (*UN Women*, 1 March 2018) <<https://www.unwomen.org/en/news/stories/2018/3/statement-un-sg-iwd>>.

does not mean favouring women over men or emphasising superiority of women over men. In other words, and in my view, gender equality entails the ability of an individual, whether man or woman, to exercise their rights, access resources or opportunities, or enjoy rewards irrespective of their gender.

[4] For instance, in the United States, the law did not allow women to vote. In the old common law, women were regarded as their husband's property. This is also evident from section 4 of the Married Women's Act 1957 which had to restate the legal rights of a married women as a *feme sole* against the common law.

[5] The idea that women are not allowed to do certain things like driving, voting or even leaving their house without the permission of an adult male are ideas that completely disregard the rights of a woman as an individual or a human being. And so, in my humble view, there is technically not a special concept of women's rights. Rather, a woman should be allowed to exercise her fundamental human right without the fear that she will not be able to do so because she is a woman.

[6] This necessarily entails shattering norms that seek to pigeonhole men and women into gender-specific roles. The expectation that women are allowed rights only to a certain extent, that they should be paid lesser than their male counterparts for the same job; these are antiquated thoughts.

[7] Women and girls comprise half of the world's populace and thus, inherently hold an equal share of the world's potential.<sup>2</sup> In this sense, empowering women, and thereby uplifting their lives, sends ripples of positive transformation throughout the fabric of society. The eradication of gender disparities is not merely a necessity for the healthy and holistic development of families and communities, but also aligns with macroeconomic and financial stability.<sup>3</sup>

[8] In my view, gender equality also entails not over-emphasising someone's achievements because they are women. For instance, when I was appointed the Chief Justice, comments on my appointment as the first female Chief Justice were aplenty. While I take them as very well-intentioned, I would like to think that I was appointed Chief Justice based purely on my qualifications and not because of my gender.

[9] And thus, while it is important to have regard to gender equality, I think it is equally important that we must prioritise merit over gender. As I see it, gender inequality rears its ugly head when women are sidestepped or bypassed for a particular role or promotion because of their gender in favour of a male counterpart. Gender inequality is not, in my view, addressed by calling for more women appointees when the only goal is to achieve a balanced gender-ratio without regard to merit or talent.

[10] In rebalancing the scale, I do not think that we should over assert the need to appoint women for the sake of having women appointees. The focus must be that everyone has an equal chance based on qualifications and not solely on their gender.

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<sup>2</sup> SDG Area: Gender Equality (Sustainable Development Goals: 17 Goals to Transform Our World) <[https://www.canneslionsjapan.com/cannes22/pdf/young\\_brief/2016/CYBERbrief\\_final%202016.pdf](https://www.canneslionsjapan.com/cannes22/pdf/young_brief/2016/CYBERbrief_final%202016.pdf)>

<sup>3</sup> Gita Gopinath, 'Gender Equality Boosts Economic Growth and Stability' (Remarks delivered at the Korea Gender Equality Forum, September 27 - 28, 2022).

[11] On this point, I am proud to cite the Malaysian Judiciary as an example. Gender equality in the Judiciary is especially important in the context of judicial appointments and in this regard, I can comfortably say that the Malaysian Judiciary is well-balanced in terms of its gender ratio on merit. For example, in the Federal Court alone, six of the presently thirteen Judges are qualified women.

[12] As a whole, the primary focus in the appointment of judicial candidates is merit and capability. But, in the process of appointments, we have a fair balance on male and female Judges all of whom were appointed on merit. When merit is considered, without any particular bias for certain traits like gender, the numbers would eventually reflect that equality. In the truest sense, this achievement is not just a numerical representation, but a robust affirmation of our unwavering commitment to fairness, justice and societal equality.

[13] The existence of a gender-balanced Judiciary can serve as a beacon of inspiration for future generations, unequivocally asserting that the pathway to the pinnacles of justice is accessible to all, irrespective of gender. After all for an institution that is charged with the duty to interpret the Federal Constitution and to uphold constitutional rights such as gender equality, the Judiciary must itself practise what it preaches.

[14] From the Islamic perspective, the Constitution of Madinah, a seminal historical document crafted during the era of Prophet Muhammad SAW in the 7<sup>th</sup> century CE, serves as a testament to this. Recognised as one of the earliest documented constitutions, it lays down a legal framework for justice and equality. It emphasises the concept of equal

protection for all, transcending divisions of faith, ethnicity, societal standing, and by extension, gender.

[15] Islamic teachings also emphasise the equal worth of men and women in the eyes of God Almighty.<sup>4</sup> If we refer to the Qur’anic Scripture, Surah Al-Ahzab, verse 35, every part of this verse expressly refers to both men and women. It follows that anyone who devotes themselves to the Islamic faith, regardless of gender, will receive the same level of Divine guidance and Rewards.<sup>5</sup> There are further Qur’anic verses and sayings of the Prophet that incontrovertibly affirm women’s rights to education,<sup>6</sup> and employment.<sup>7</sup>

[16] International conventions have also consistently highlighted the significance of gender equality as a foundational pillar of human rights. In fact, the substratum of this recognition can be traced back to the Universal Declaration of Human Rights (UDHR). The UDHR was pioneering in its affirmation of gender equality as an integral component of international human rights law. It expressly prohibits any form of discrimination grounded on gender.

[17] The UDHR framework eventually culminated in the adoption of the Convention on the Elimination of All Forms of Discrimination against

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<sup>4</sup> Al-Qur’an (Surah Al-Ahzab: 33:35) *“Surely those who submit [to God], men and women, those who believe, men and women, those who obey, men and women, those who are truthful, men and women, those who are patient, men and women, those who are modest, men and women, those who are charitable, men and women, those who fast, men and women, those who guard their modesty, men and women, and those who remember their Creator, men and women - God has prepared for them forgiveness and great reward.”*

<sup>5</sup> Raihanah Abdullah, Asadullah Ali and Siti Aminah Hamid, ‘Gender Equality, Islam and Law’ (2015) 25 Journal of Oriental Studies 20, at page 21.

<sup>6</sup> Ibn Majah #224 al-Baihaqi.

<sup>7</sup> Al-Qur’an (3:195) and (4:32).

Women (CEDAW) by the UN in 1979. CEDAW not only identifies the challenges women face, but also prescribes actionable measures that nations should undertake to eliminate biases against women, across various fields. Building on this commitment, the 1980s witnessed another significant milestone with the UN's introduction of the Convention on the Rights of the Child (CRC). This pivotal convention delineates the fundamental rights that every child, irrespective of gender, is inherently entitled to.

[18] Fast forward to 2015, gender equality and the empowerment of women found pronounced emphasis in the broader context of sustainable development. As part of the 2030 Global Agenda for Sustainable Development, the UN Member States unanimously adopted 17 Sustainable Development Goals (SDGs). Among these, the fifth (5th) SDG emerges as a clarion call to achieve gender equality and empower all women and girls by the year 2030. This goal envisions a world where discrimination against women and girls is relegated to the annals of history.

## **(2) GENDER EQUALITY UNDER THE FEDERAL CONSTITUTION**

[19] The Judiciary plays an indispensable role in defining and safeguarding gender equality through constitutional interpretation. The principle of equality before the law represents one of the quintessential elements of the fundamental liberties enshrined within our Constitution.

[20] The notion of gender equality finds its place under Article 8(1) of the Federal Constitution which provides that "[a]ll persons are equal before the law and entitled to the equal protection of the law", and Article 8(2)

which states that "[e]xcept as expressly authorized by this Constitution, there shall be no discrimination against citizens on the grounds only of religion, race, descent, place of birth or gender...". It is crucial to note that the word 'gender' did not originally exist in Article 8(2) of the Federal Constitution. Its addition was precipitated by Malaysia's signing of and accession to CEDAW in 1995, in furtherance of which Parliament amended Article 8(2) in 2001.<sup>8</sup>

[21] In addition to its interpretive role in constitutional adjudication, the Judiciary also plays a vital role in enhancing access to justice, particularly for those on the margins of society. As the bedrock of justice, the Judiciary remains instrumental in moving towards SDG 16's aspiration, which underscores the necessity for equitable access to justice. The Courts not only provide a platform for marginalised individuals to voice their concerns, but also to empower and enable them to actively claim their rights.

[22] Central to this mission is the Judiciary's commitment to ensuring that its decisions are not only accessible, but are also tailored to be responsive to the unique challenges faced by women and girls. By consistently ensuring that its rulings are fair, the Judiciary actively contributes to the broader societal goal of engendering a more equal and just nation, where every individual, irrespective of gender, can expect fair treatment and justice.

### **(3) THE APPROACH OF THE MALAYSIAN COURTS TO CEDAW AND CRC**

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<sup>8</sup> Dewan Rakyat Hansard (Third Session of the Tenth Parliament of Malaysia, 1 August 2001) at page 76 per Datuk Seri Utama Dr Rais bin Yatim.



[23] It is worth bearing in mind that Malaysia's accession to CEDAW in 1995 was made subject to reservations pertaining to the provisions of CEDAW which grant women equal rights with men in respect of the nationality of their children and matters relating to marriage and family relations.<sup>9</sup> Malaysia's accession to CRC in 1995, was also made with reservations to five Articles of CRC which outline the following rights of children: first, the right to non-discrimination; second, the right to be registered immediately after birth and the right to a name and nationality; third, the right to freedom of thought, conscience and religion; fourth, the right to compulsory and free primary education; and fifth, the right to be protected from torture and arbitrary deprivation of liberty.<sup>10</sup>

[24] While the Judiciary no doubt plays a crucial role in promoting gender equality and facilitating the elimination of discrimination against women and girls, I wish to emphasise that we are but one of the three branches of Government. Any legal precedents established by the Courts must be based on law and principle and decisions once made, must necessarily be followed up by legislation and Executive policy.

[25] Underlying the importance of legislation and sound executive policy is the fact that in Malaysia, unless a treaty is domesticated, it cannot be enforced. And so, the mere ratification or accession of international conventions such as CEDAW and CRC without domestication by an Act

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<sup>9</sup> Ministry of Women, Family and Community Development, 'Sixth periodic report submitted by Malaysia under article 18 of the Convention, due in 2022' (*Penerbitan Instrumen Antarabangsa KPWKM*, 9 May 2022).

<sup>10</sup> United Nations Treaty Collection (*Status of Treaties, Chapter IV: Human Rights, Convention on the Rights of the Child*, status as at 06-08-2023).

of Parliament, have neither binding force nor enforceable effect domestically.<sup>11</sup>

[26] Yet, hope persists. Our Courts have interpreted Article 8(2) of the Federal Constitution in a way so as to achieve the avowed purpose of complying with Malaysia's international obligations and also ensuring that the constitutional outlawing of unfair gender discrimination does not become a mere pious platitude.<sup>12</sup> Where the law is ambiguous, the Courts' duty is to interpret local statutes in a manner such that their language will be in accord and not in conflict with, international law.<sup>13</sup>

[27] In *Noorfadilla Ahmad Saikin v Chayed Basirun & Ors*,<sup>14</sup> for instance, the High Court interpreted the word 'discrimination' in Article 8(2) of the Federal Constitution by reference to CEDAW. The main issue before the High Court was whether the Government's refusal to allow a pregnant woman to be employed as an untrained relief teacher was tantamount to gender discrimination in violation of Article 8(2) of the Federal Constitution. Applying provisions of CEDAW, the High Court held that discrimination on the basis of pregnancy is a form of gender discrimination as it is a basic biological fact that only women have the capacity to become pregnant.

[28] Another apt example of the broad and purposive approach taken by our Courts in upholding the right of women to equal protection as

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<sup>11</sup> *Bato Bagi & Ors v Kerajaan Negeri Sarawak & Another Appeal* [2011] 8 CLJ 766 (FC) at paragraph [180].

<sup>12</sup> *Mahisha Sulaiha Abdul Majeed v Ketua Pengarah Pendaftaran & Ors and another appeal* [2022] 5 MLJ 194 (CA).

<sup>13</sup> *Lai Meng v Toh Chew Lian* [2012] 8 MLJ 180 (HC).

<sup>14</sup> [2012] 1 CLJ 769 (HC).

guaranteed under the Federal Constitution is the judgment of the Federal Court in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals*.<sup>15</sup> There, the Federal Court interpreted Article 12(4) of the Federal Constitution, which provides for the right of a “parent” to determine a child’s religious upbringing, to mean that both parents, in a pluralistic sense, have an equal say in deciding a child’s conversion. In so holding, the Federal Court expressly recognised that the mother has equal parental rights as the father over their children.

[29] Similarly, provisions of CRC have been referred to and taken into consideration by our Courts in a wide range of cases concerning child custody,<sup>16</sup> issues of paternity,<sup>17</sup> and rights of access to an illegitimate child.<sup>18</sup>

[30] The judgments that I have adverted to illustrate the progressive approach adopted by our Judges, showcasing their commitment to fostering and safeguarding the rights of women and girls. Despite the lack of any specific enabling statute which incorporates CEDAW and CRC in full terms due to Malaysia’s reservations, the Malaysian Courts have shown remarkable adaptability, embracing the spirit and intent of CEDAW and CRC, as and where applicable. This has been achieved through the interpretation and application of Article 8(2) of the Federal Constitution as well as other relevant domestic laws.

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<sup>15</sup> [2018] 1 MLJ 545 (FC).

<sup>16</sup> *Indira Gandhi a/p Mutho v Ketua Polis Negara* [2015] 9 MLJ 301 (HC); *Kevin Goldman v Geraldine Audrey Herrera* [2013] 3 CLJ 1049 (HC); and *Dr Aparna Sehgal v Dr Jasmeet Singh Sucha Singh* [2011] 1 LNS 719 (HC).

<sup>17</sup> *CAS v MPPL & Anor* [2019] 4 MLJ 243 (CA).

<sup>18</sup> *Lai Meng v Toh Chew Lian* [2012] 8 MLJ 180 (HC); and *George Pathmanathan Michael Gandhi Nathan v Ong Eu May* [2011] 1 LNS 419 (HC).

## **CONCLUSION**

[31] To summarise, the principle of gender equality, enshrined in Article 8 of the Federal Constitution, is a pivotal constitutional assurance that Malaysia is duty-bound to uphold. As for the Judiciary, in resonating with global conventions like CEDAW and CRC, the adaptive stance taken is a testament to its broad, purposive and proactive approach. It reaffirms the Judiciary's persistent dedication to fortifying the rights of women and girls, staying true both to the provisions and the essence of our Federal Constitution.

[32] I would conclude by expressing my ardent wish that today's Judicial Colloquium serves not just as a catalyst for profound dialogues on the theme, but also becomes an invigorating and memorable journey for everyone present. Let our collective thoughts and insights today illuminate the path towards an even more promising future for women and girls.

[33] Thank you.