

OPENING of LEGAL YEAR 2023

SPEECH BY THE STATE ATTORNEY – GENERAL, SARAWAK

Friday, 13 January 2023

May it please your Ladyship and Lordships,

- THE RIGHT HONOURABLE TUN TENGKU MAIMUN BINTI TUAN MAT,
CHIEF JUSTICE OF MALAYSIA
 - THE RIGHT HONOURABLE TAN SRI DATUK AMAR ABG ISKANDAR BIN
ABG HASHIM, ACTING PRESIDENT OF THE COURT OF APPEAL & CHIEF
JUDGE OF SABAH & SARAWAK
 - THE RIGHT HONOURABLE DATO' MOHAMAD ZABIDIN MOHD DIAH,
ACTING CHIEF JUDGE OF MALAYA
 - THE HONOURABLE TAN SRI IDRUS BIN HARUN, ATTORNEY GENERAL OF
MALAYSIA
 - THE HONOURABLE DATUK NOR ASIAH BINTI MOHD YUSOF STATE
ATTORNEY – GENERAL OF SABAH
 - MISS KAREN CHEAH YEE LYNN, PRESIDENT OF THE MALAYSIAN BAR
 - MR GURVIR SINGH SANDHU, PRESIDENT OF THE ADVOCATES'
ASSOCIATION OF SARAWAK
 - MR ROGER CHIN, PRESIDENT OF THE SABAH LAW SOCIETY
 - DISTINGUISHED GUESTS,
 - LADIES AND GENTLEMEN.
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INTRODUCTION

Another year, another opportunity.

First and foremost, I would like to extend our Yang Arif Dato' Sri Talat Mahmood Abdul Rashid, the State Attorney General of Sarawak's apologies for not being able to attend the Opening of this Legal Year due to prior commitments.

I also wish to convey our sincere appreciation to YAA Tan Sri Datuk Amar Chief Judge Sabah & Sarawak and the Judiciary for inviting our Chambers to participate and be given the opportunity to say a few words at the Opening of the Legal Year Sabah and Sarawak 2023.

It is an honour for us from the State Attorney-General's Chambers to be given an opportunity to attend this time-honoured tradition to reflect on the progress and contributions we have made as participants in the legal system of the country. It is a great experience to be here once again alongside our brothers and sisters of the legal fraternity to celebrate this Opening of the Legal Year.

[For me personally, it is an even greater honour to represent the Sarawak Attorney-General and to deliver his speech on his behalf.]

[This is the text of his speech]:

1. Two years have passed since our last physical gathering to celebrate the legal year in Sabah and Sarawak. Therefore, I am very grateful and pleased that for this year 2023, we are able to physically gather and celebrate our annual tradition of Opening Legal Year Sabah and Sarawak. I hope and pray that 2023 [the year of the rabbit] is filled with endless possibilities and prosperity for the judiciary, the legal fraternity and the *rakyat* of Sabah and Sarawak.

2. I am happy to share a few of our Chambers' accomplishments for the year 2022, particularly regarding new legislations drafted by our Chambers. During the year 2022, a total of 11 Bills were tabled and passed [without any amendments] after debate by the *Sarawak Dewan Undangan Negeri* during its sittings in February, May, and November 2022. All these Bills were the result of a lot of hard work and research by the Drafting Unit of our Chambers as well as input from all relevant stakeholders. I would like to however highlight some of those Bills which we found to have attracted the most public interest.

NATIVE STATUS AND THE ISSUE OF MIXED BLOOD: INTERPRETATION (AMENDMENT) BILL, 2022

3. In December 2021, Parliament passed the Federal Constitution (Amendment) Bill 2021, which, inter alia, amended Article 161A Clauses (6) and (7) of the Federal Constitution. The effect of the amendment is to confer on Sarawak the legislative power to determine races indigenous to Sarawak. This is rightly so as the determination of native status is a state matter. The Federal Constitution (Amendment) Act 2 021 [Act A1642] came into force on 11 February 2022.

4. Subsequently, on 15 February 2022, the *Sarawak Dewan Undangan Negeri* passed amendments to the Interpretation Ordinance 2005 substituting the Schedule thereof with a new Schedule listing 31 races indigenous to Sarawak. [The previous Schedule only listed 20 racial groups.] The amendment also appears to resolve the thorny issue of children born to parents, one of whom is a non-native. Prior to the amendment, if one parent is a non-native,

the children of that marriage were not considered a native of Sarawak under the law. A person is only a native if both his parents are also native as listed in the Schedule. However, the amendment also requires *Majlis Mesyuarat Kerajaan Negeri* to determine the procedures for recognition of such a person as a native of Sarawak. I am pleased to report that the procedures (and conditions and requirements to be imposed) is now completed and will be tabled for consideration by *Majlis Mesyuarat Kerajaan Negeri* in the very near future.

**“FEDERATION” – PROVIDING CLARITY BASED ON HISTORICAL REALITY:
CONSTITUTION OF THE STATE OF SARAWAK (AMENDMENT) BILL 2022**

5. The Federal Constitution (Amendment) Act 2021 [Act A1642] also amended Article 160 Clause (2) of the Federal Constitution providing for a new interpretation of “Federation” which now also makes reference to MA63, i.e. the Agreement concluded on the 9th July 1963 between the United Kingdom of Great Britain and Northern Ireland, The Federation of Malaya, North Borneo (now known as Sabah), Sarawak and Singapore in accordance with the constitutional instruments annexed thereto.

6. Prior to the 2021 constitutional amendment, ““Federation” means the Federation established under the Federation of Malaya Agreement 1957””.

7. In line with the new interpretation, the interpretation of “Federation” in Article 44 of the Constitution of the State Sarawak was also amended to be consistent with and reflect the new interpretation in Article 160 Clause (2) of the Federal Constitution.

8. In this regard, we would like to record our gratitude and appreciation to the Attorney General of Malaysia and his officers for their efforts which made these amendments possible through the Federal Constitution (Amendment) Act 2021 [Act A1642].

DIGITALISATION FOR A NEW ECONOMY: ELECTRONIC SARAWAK GOVERNMENT ACTIVITIES BILL, 2022 (ESGA)

9. It has always been the Government of Sarawak's top priority to give its best service to the people of Sarawak. This is in line with the aspiration of the Premier of Sarawak, YAB Datuk Patinggi Tan Sri Abang Haji Zohari Bin Tun Abang Haji Openg, that Sarawak becomes a modern and leading digital economy and society by the year 2030. As one of the means to fulfil this aspiration, the Electronic Sarawak Government Activities Bill, 2022 [or ESGA for brevity] was passed by the State Legislative Assembly (DUN) during its sitting in November last year.

10. The Electronic Sarawak Government Activities Ordinance, 2022 provide the necessary legal framework for the Sarawak government, local authorities, and statutory bodies to become “e-enabled” without the need for further amendments to other State laws. The Ordinance also provides legal recognition of electronic communication in dealings between the Sarawak government, local authorities, statutory bodies, and the public for the use of electronic communication, and facilitating the usage of digital signatures, electronic forms, electronic registrations, and authorisations to be issued electronically.

11. The enactment of this Ordinance will realize the vision of the Government of Sarawak for the State to embrace digitalisation as a tool to accelerate its service delivery to the people of Sarawak and empower Sarawak economic sectors to increase its efficiencies and productivity.

FIGHTING CLIMATE CHANGE & CARBON TRADING IN SARAWAK: FORESTS (AMENDMENT) BILL, 2022 & LAND CODE (AMENDMENT) BILL 2022

12. Climate change has become a global concern over the last few decades. Climate change has affected life on this planet in multifarious ways. It has negatively impacted ecosystems and ecologies; no one is exempted. We have already seen a crescendo of deadly and costly extreme weather – from heat waves (e.g., in Europe) and drought (e.g., in Africa) to flooding (e.g., Australia and China, and in Pakistan where 1/3 of the country was submerged which would require at least US\$16.3 billion to rehabilitate and reconstruct,) and tropical storms made more destructive by rising seas. In fact, scientists during COP 27 UN climate summit in Egypt held at the end of last year (2022) have already warned that Carbon Dioxide (CO₂) emissions from fossil fuels – the main driver of climate change are on track to rise to an all-time high at 1 degree in 2022 putting the Paris goal of capping global warming at 1.5 degrees Celsius above pre-industrial level at risk. It was highlighted that carbon emission reduction is key towards climate change.

13. In this regard, I am happy to share with you that the Government of Sarawak is serious and committed to playing a role in combating climate change and promoting environmental sustainability. A clear indication of this

commitment was through the passing of the Forests (Amendment) Bill, 2022 and the Land Code (Amendment) Bill, 2022. These amendments amongst others allows and empowers the Sarawak Government to regulate forest carbon activities by issuance of forest carbon licences as well as regulate the usage of land for the purposes of storage of carbon dioxide or other greenhouse gases (GHG) through the issuance of licence for carbon storage. The procedures and requirements needed to apply for such licences are provided for under subsidiary legislation, namely the Land (Carbon Storage) Rules, 2022, and Forest (Forest Carbon Activity) Rules, 2022, both of which have recently been approved by Majlis Mesyuarat Kerajaan Negeri on 8th December 2022.

14. I am proud to inform that Sarawak is the first state in Malaysia to enact legislation permitting nature-based solutions in the form of forests carbon activities and carbon projects, (to protect, conserve, restore, sustainably use and manage natural or modified terrestrial, freshwater, coastal and marine ecosystems) and utilization of abandoned and decommissioned oil wells as storage sites, for the purpose of generating carbon credits for carbon trading in accordance with the relevant Carbon Standards. This clearly demonstrates the State's efforts to be at the forefront of climate change mitigation. Through this legal framework, Sarawakians will not only be able to enjoy good clean unpolluted air by keeping the forests intact through GHG emissions reductions, but the Government of Sarawak will also be able to have an additional source of income through the generation of carbon credits and the imposition of taxation by way of royalties, licence fees, levies, etc.

15. The Forests (Amendment) Bill, 2022 and the Land Code (Amendment) Bill, 2022 are the legislative actions taken by the State to save and protect mother nature (in Sarawak that is) and at the same time create an additional source of revenue for Sarawak.

16. Indeed, climate action is also part of Sarawak's environmental sustainability management which will be further enhanced through the development of Sarawak Sustainable Environment Blueprint as specified in Sarawak's Post Covid Development Strategy 2030.

ANTI-HOPPING LAW: CONSTITUTION OF THE STATE OF SARAWAK (AMENDMENT) (NO. 2) BILL, 2022

17. The Constitution of the State of Sarawak previously already had provisions on Anti-Hopping. However, with the new Anti-Hopping measures passed recently by Parliament, it was necessary for the Government of Sarawak to also amend its Constitution through the introduction of a new Article 16(B) to incorporate the same provisions on Anti-Hopping in line with the requirements of Article 71 and the Eighth Schedule of the Federal Constitution.

18. This (it is hope) should prevent any member of a political party who has been elected as a member of the State Legislative Assembly to subsequently change his/her political allegiances "and jump ship". It is to ensure political stability in the state.

BUILDING SUSTAINABLE WEALTH FOR FUTURE GENERATIONS: SARAWAK SOVEREIGN WEALTH FUTURE FUND BOARD BILL, 2022

19. And finally, in order not to over rely on commodity-based revenue, such as oil and gas, which is a depletable and a non-renewable resource, the Government of Sarawak is looking for other sources of revenue to grow and sustain Sarawak's wealth especially for future generations of Sarawakians.

20. In this regard, I am pleased to report that the Sarawak Dewan Undangan Negeri, had on 22nd November 2022, passed the Sarawak Sovereign Wealth Future Fund Board Bill 2022 to establish a body corporate to be the custodian of a State Fund to be known as the Sarawak Sovereign Wealth Future Fund [for the purpose of converting the State non-renewable assets to financial assets,] to safeguard and invest monies in the Fund and for the sustainable growth thereof in the interests of Sarawak and the future generations of the peoples of Sarawak. In this way, the wealth of the State is secured for the benefit of our future generations.

21. This Ordinance is benchmarked on best international practices to ensure proper governance and internationally accepted level of integrity and transparency when dealing with public funds. In addition, the guardians of the board will be appointed based on merits and experience and no politically connected persons will be involved.

THE WAY FORWARD FOR A MORE EFFECTIVE SERVICE DELIVERY - CADRE SYSTEM

22. With more and more responsibilities coming our way, in particular the drafting of new legislations and the prosecution of offences under State laws, our Chambers has begun to strengthen its resources, particularly its human capital. I wish to take this opportunity to thank the Federal Attorney-General's Chambers for giving us the trust and power to handle prosecution of offences under our own State laws.

23. Currently, one of the initiatives being carried out by the Chambers is the cadre system. Under the cadre system our officers are deployed to the relevant ministries and departments for a couple of years to assist these ministries and departments in the handling and resolution of legal matters at an early stage, thus nipping the problems in the bud before they grow to become bigger thorny issues, so to speak.

24. The system also gives an opportunity to our cadres to gain experience and knowledge and understand the inner workings and culture of the ministries and departments to which they are deployed in a way they would not otherwise know and understand. This would be very useful for their career progression in Chambers and in the State Civil Service (SCS).

CLOSE COOPERATION WITH THE JUDICIARY

25. The State Attorney-General's Chambers is always keen to maintain close working relationship with the Judiciary. I am proud that our Chambers had

participated and contributed together with the Judiciary in finalising the Sentencing Guidelines for Wildlife Crimes which was launched on the 16th of June 2022. It is our hope that more future initiatives and projects can be done through cooperation of all parties.

26. I wish to also say thank you to YAA Tun Tengku Maimun Binti Tuan Mat, the Chief Justice of Malaysia for previously facilitating the discussions and settlement of matters under Majlis Khas MA63 (MKMA63) which relate to Sarawak and the Judiciary.

CONGRATULATIONS AND BEST WISHES

27. I would like to take this opportunity to thank the former President of the Court of Appeal, YBhg Tan Sri Rohana Binti Yusuf, for her contributions to the Malaysian legal landscape, and to also congratulate YBhg Tan Sri on her past achievements. We wish her happy retirement. On that note, I hope that it is not too late for me to officially congratulate the Chief Judge of Sabah and Sarawak, YAA Tan Sri Datuk Amar Abang Iskandar bin Abang Hashim on YAA's appointment as acting President of the Court of Appeal Malaysia as well as YAA Dato Mohamad Zabidin Mohd Diah on his appointment as acting Chief Judge of Malaya.

CONCLUSION

28. I wish to assure the people of Sarawak, that the State Attorney-General Chambers are committed and relentless in our due and fair administration of

the law and will continue to work diligently and assiduously in meeting the expectations of the rakyat of Sarawak.

29. Finally, on behalf of my esteemed colleagues in the State Attorney – General’s Chambers, I extend our best wishes to the Chief Justice, Acting President of the Court of Appeal & Chief Judge of Sabah and Sarawak, Acting Chief Judge of Malaya, Honourable Judges, and members of the legal fraternity. We wish them and your Lordships Happy New Year, good health, and every success in the year 2023. And to our Chinese brothers and sisters in the legal fraternity. ***Kong Hee Fatt Choy!***

Much obliged.

[DATU JOHN WAYNE CHAMBERLIN SIRAU]

Ag Deputy State Attorney-General,

for and on behalf of the

STATE ATTORNEY-GENERAL SARAWAK.