

OPENING ADDRESS BY
DULI YANG TERAMAT MULIA
RAJA MUDA PERAK DARUL RIDZUAN
RAJA NAZRIN SHAH
AT THE
JUDICIAL COLLOQUIUM ON HUMAN RIGHTS
DATE: 24 OCTOBER 2009; TIME: 10:00AM
VENUE: SHERATON IMPERIAL, KUALA LUMPUR

Assalamualaikum Warahmatullahi Wabarakatuh

Salam Sejahtera

Beta bersyukur ke hadrat Illahi kerana dengan izin dari Nya jugs, Beta dapat berangkat untuk menzahirkan titah dan menyempurnakan upacara perasmian *Judicial Colloquium on Human Rights* pada pagi ini. Usaha yang dirintis oleh SUHAKAM menganjurkan forum ini amatlah Beta hargai.

2. I am delighted to be here at this *Judicial Colloquium on Human Rights*. In this room are Malaysia's most senior jurists and judicial administrators and my father, His Royal Highness Sultan Azlan Shah, and your former colleague, would be very pleased that his son is keeping such illustrious company. This initiative by SUHAKAM to enhance human rights awareness and understanding among the judicial fraternity is also an extremely important one. But I am sure you already know this. Your readiness to take time out of your busy schedules is testimony of how seriously you take this issue.

3. I do not propose to lecture you this morning on the intricacies of human rights law and practice. I am not a jurist, a lawyer, nor a member of a non-governmental organization. Instead, I would like to share with you perspectives and observations from my vantage point, that is, someone who is a passionate student of development, who is not a member of the administration, but who is very much involved in public life. Like you in this room, I too have to grapple not only with the theory but the actual practice of human rights. These rights apply to all Malaysians, regardless of who we are. But some of us, by virtue of our public office, have a greater responsibility in advancing and defending them.

4. Without further ado, let me go straight into the subject matter. For over 60 years, the issue of human rights has been a transnational one. The 1948 Universal Declaration of Human Rights enshrined the principle of equality before the law, the presumption of innocence, and the right to a fair and public hearing. This Declaration is internationally recognised as a source of international law, and has an influence on the interpretation and realisation of human rights at the domestic level.

5. The Declaration, however, is not the only one. The International Covenant on Civil and Political Rights guarantees the exercise of those rights, including the right to be tried without undue delay by a competent, independent and impartial tribunal established by law. There is also the International Covenant on Economic, Social and Cultural Rights and also the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. There are many others as well, including against forced disappearance, treatment of ethnic minorities and protection of refugees and migrant workers.

6. I am fully aware that Malaysia has not ratified all these covenants. I mention them only to illustrate what exists. There are others that we have ratified. We have subscribed to the Convention on the Elimination of All Forms of Discrimination Against Women and, with reservations, the Convention of the Rights of the Child.

7. So much of what goes on in the world today, and which are broadcast by CNN and on the front pages of our newspapers, have to do with human rights. Would any conflict arise without infringement of human rights? I do not

think so. So much of what makes us angry and sad, from the ongoing human tragedies in the Middle East, Africa and, closer to home, in East Asia, have, as their basis, the denial of fundamental human rights and dignity. We clearly cannot disassociate ourselves from the subject.

8. For 52 of the past 60 years, that is, since our Independence, human rights have been a foundational issue. As you would know, our fundamental liberties are enshrined in Chapter II of the Federal Constitution. These include prohibition of the deprivation of life and liberty, except where lawful. It guarantees against slavery and forced labour. It provides for equality before the law and the entitlement to protection of the law. It prohibits the discrimination on the basis of religion, race, descent, gender or place of birth, unless "expressly authorised by the Constitution". It guarantees, albeit with qualifications, freedom of speech, assembly, association, religion, rights to education and ownership of property.

9. Malaysia's Federal Constitution clearly enshrines a high standard of human rights. When you remember that it was drafted in the midst of the Communist Insurgency — hence the need for various provisos and qualifications — we can see that it was a very bold and farsighted document. This is why I have been at pains to argue that this document must remain the cornerstone of our nation. It is the only basis that we have to call this country Malaysia and to call ourselves Malaysians. We must cherish and defend it with our very lives.

10. As important as it is to have good written law, which we undoubtedly have, is the application of the law. For the provisions of the Federal Constitution to leap off the pages and take root in society, they have to be respected by all the pillars of government. This includes the executive, legislature and judiciary, but not forgetting also the Rulers, civil service and enforcement officials. Indeed, human rights cannot be a reality until all Malaysians respect and observe them. When one person tramples the rights of another, whether in the area of politics, religion or culture, it creates a human rights problem. When many persons do the same, and do so repeatedly, it can trigger a human rights calamity.

11. When it comes to upholding human rights, the buck stops squarely on the steps of the Palace of Justice. There is no more important body than the judiciary which, by virtue of its role and functions, upholds the Constitution and the rights accorded to its citizens therein. This is one of the central components of a functioning democracy. To quote, His Royal Highness Sultan Azlan Shah:

"In countries which practice a democratic form of government, the judiciary has been looked upon as the defender of any encroachment to the rule of law."

The courts are, and must always be, the final words that determine the delivery of justice.

12. This is both an enviable and unenviable position to be in. On the positive side, the courts have the power to shape society by elevating social standards of behavior and practice. In my view, there is no more important body than the judiciary. Its role and function as the upholder of justice means that it can render new and continually relevant meanings to the fundamental liberties embodied in the constitution. On the negative side, the courts are quite often criticised for either not enforcing human rights or only doing so superficially.

13. Human rights issues provoke diverse responses and reactions. Issues of justice can only be resolved with a fair hearing and impartial and consistent application of the law. But fair hearings and impartial and consistent applications of the law require great boldness. People will not always take kindly to decisions; and there will be opposing views, based, I suppose, on where one's interests lie. As a result, we have today quite a number of social and political issues that, for one reason or another, become deadlocked and rendered virtually intractable.

Sultan Azlan Shah, "Creativity of Judges" in Prof. Dato' Seri Visu Sinnadurai (ed.), *Constitutional Monarchy, Rule of Law and Good Governance: Selected Essays and Speeches of H. R. H. Sultan Azlan Shah* (Professional Law Books Publishers: Kuala Lumpur, 2004), pg 295.

14. Of course, with a powerful executive and a clamoring public, there are enormous pressures to contend with. Few outside this room can truly understand the stresses and strains that are brought to bear from all and sundry when contested questions are brought before the bench. Whether the issue is the Internal Security Act, religious liberty, freedom of assembly and speech, policing and custodial deaths, customary native rights or any one of the many other issues that make the headlines, there are opposing views and interests.

15. The judiciary cannot decline to administer justice, or delay in administering it, simply because the decisions arrived at are not going to be universally popular. As my father once said,

just as politicians ought not to be judges, so too judges ought not to be politicians.'

When the interests of the two are confused and co-mingled, that is when perverse and patently bad decisions arise

16. I am well aware that I am in danger of treading on sensitive ground. I really do not think, however, that we can get anywhere until we begin to confront the realities of upholding human rights in a frank and straightforward manner. To be sure, we may not be able to achieve everything at once. But we must always seek steady and sustainable progress.

17. In this regard, we should remember that SUHAKAM itself is a catalyst for change. Let me take a moment here to laud Tan Sri Abu Talib and his fellow commissioners for taking on a mammoth, and I would say, thankless, task. Tan Sri, you have been at a helm a long time and have received many brickbats and few bouquets. I have no advice for you and your fellow public servants except to say 'stay strong, and stay the course'.

Honourable Judges
Ladies and Gentlemen

18. There is a new wind blowing across Asia. This new wind is powered by never-before levels of global interconnectedness, by more educated and empowered citizens, and by governments seeking to be more responsive to their electorate. This new wind favours leaders of capability and integrity. In Malaysia, the present administration has made it clear that the standards of yesterday are not going to be those of tomorrow. It has spoken of the need to be more inclusive — the 1 Malaysia concept — more open, and more ethical. This is the type of worldview we need for the future and I certainly hope that we will see real tangible follow-through in the days ahead.

19. To be sure, there are many areas for improvement. We will have to set aside our cynical and negative attitudes and work assiduously and with great dedication. I am cautiously optimistic that we will learn from our mistakes, sense the new environment and move boldly forward. Certainly, we have a sound foundation to work from. For all the criticisms we receive, and for all the weaknesses we most certainly have, I believe we have the capacity to be a people of reason, responsiveness and responsibility.

20. In this new environment, there should be new forms of human rights engagement — engagement within government, such as between the executive and judiciary; between the government and the public; and between the country and the international community. I believe this to be more than a dream; I believe it to be a definite possibility. In all this, SUHAKAM, as the national human rights institution, should be co-opted with much more vitality and constructiveness. It can be the glue that coheres the various efforts into one integrated whole.

21. Let me spell out some things we can do to ensure they become an irresistible force. First, those in government need to be made to understand and internalize fundamental human rights principles. Until human rights principles are internalized, that is, until they become part and parcel of core values and beliefs, and until they shape attitudes and behavior, human rights will forever remain a distant dream.

² Sultan Azlan Shah, "The 11th Tunku Abdul Rahman Lecture", November 1984.

22. Second, there is a growing list of human rights matters that require attention and SUHAKAM can play a proactive role in engaging with parliamentarians and government agencies in the formulation or review of laws and procedures.

23. Third, when it comes to human rights, there arises the question of how the law is to be interpreted. Again rely on the guidance of my father, Sultan Azlan Shah, who once wrote,

'...a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way - with less rigidity and more generosity than other Acts.'

This passage was also quoted by Cherie Booth QC when she delivered the 19th Sultan Azlan Shah Law Lecture in 2005 on the topic *The Role of the Judge in a Human Rights World*. It is critical for the courts, in interpreting the constitution, to try and uncover the original intent behind its articles. Oftentimes, interpretation would entail a value-judgment and judges must consider the law's underlying moral and ethical principals in arriving at their decision.

24. Fourth, the judiciary should look beyond our borders and adopt more international human rights thinking and standards in arriving at legal decisions. This is now normal practice in most advanced countries and I see no reason why Malaysia should not do so as well. I should stress that this is not about imitating others. It is about seeking solutions to local problems by consulting universally accepted standards. It is about drawing on the experience of others who have faced similar problems. In this regard, human rights commissions in other countries have undertaken the role of *amicus curie* or friends of the courts and offer expert opinions on human rights issues.

25. Fifth, the integrity, independence and impartiality of the courts are an absolute must if they are to discharge their duties faithfully. Any and every hint of malpractice must be eked out of the system for even one drop can poison the whole well. In the wake of past incidents that threatened to derail the judiciary, it is encouraging to see serious efforts to restore the public's confidence in our system of justice to levels it once enjoyed. Part and parcel of this rejuvenation process must be the renewed emphasis on fundamental human rights as a vital ingredient of a well-functioning democracy. And in a well-functioning democracy, the power to uphold those rights must be vested in the Judiciary. SZ:ate

26. SUHAKAM should be co-opted in a much more vitiation onstr[uctive-ma. The Nairobi Declaration — - on the Role of National Human Rights Institutions (NHRIs) in the Administration of Justice clearly spells out the need for NHRIs like SUHAKAM to work collaboratively with the judiciary and enforcement agencies like the police force and prison.

27. Initiatives like this judicial colloquium are also a very good start. I hope SUHAKAM continues to engage the members of the judiciary in programmes and events such as this. With consistent efforts, we will have a world class judiciary that upholds justice and freedom without fear or favour, and pave the way for a shining human rights culture in Malaysia.

On this note, I hereby declare *The Judicial Colloquium* officially open.

³ Dato Menteri Othman Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1MLJ 29, FC.