

SPEECH BY THE HONOURABLE ATTORNEY GENERAL OF
MALAYSIA AT THE OPENING OF THE LEGAL YEAR 2020 ON
FRIDAY 10TH JANUARY 2020

1. The opening of the New Legal Year as the world enters into the 3rd decade of the 21st century gives us an opportunity of taking stock, and counting our blessings. Despite the wailings of all those who proclaim doomsday, it is my opinion that the legal ship of state is being navigated in measured tones amidst the waves and winds of the high seas. Nothing is absolute: everything is relative. Thus, relative to our past, few periods in our post-Merdeka history have seen such close cooperation between the major actors in the administration of justice. Differences there are; but they are resolved in a civilized and friendly manner, behind closed doors.

2. Relative to the globe, when public international law is broken on a regular basis by the most powerful nations in the world and mature democracies are buffeted by existential crisis, Malaysia is an oasis of peace and freedom. When the drumbeats of war are widely beating across the globe, we remain a peaceful, law-abiding nation subscribing and adhering to the Rule of Law.

3. In these circumstances, the audit of the legal year 2019 is in very positive terms. The administration of justice has substantially improved in 2019, with collaboration between Bench, Bar and the Attorney General's Chambers at its best in decades. That is indeed a blessing. The consumer of justice is the first beneficiary.

4. No instance better encapsulates the cooperation between the different players in the justice business than the amount of work jointly carried out by AGC and the Bar with regard to the new Legal Profession Bill, slated to be presented to the Dewan Rakyat in the March 2020 parliamentary session. The Bar was given a free hand to draft their own law: after all, if members of the Bar cannot draft a law to govern them, which stakeholders can? They modelled it on the existing Legal Profession Act 1976 which has well served the nation and the Bar for over 40 years. Thereafter, they had numerous sessions with Parliamentary Draftsmen in AGC: a classic illustration of the private and public sectors working together. Finally, the Bar worked with the Judiciary to iron out outstanding issues.

5. The cry for the real exercise by our people of their freedoms and liberties enshrined in the Federal Constitution, and which are inherent in any true democracy, have substantially been answered by the Government in the year under review. Despite much criticism in the media, particularly, the social media – itself a manifestation of such freedoms – against the performance of the Government in many aspects of governance, one can objectively state that the Pakatan Harapan Government has, in the main, fulfilled its promises to free Malaysians from the shackles of authoritarian state control. Although, the Prime Minister and Cabinet have been under constant criticism (and neither have I been spared) no one has been threatened, sued or charged for their outbursts, however extreme, untruthful or hateful they have been. Hence, not only does freedom of speech exist: freedom after speech also exists.

6. That democratic space has opened up, as never before, was commented upon by Syahredzan Johan, a well known lawyer and acute observer of national affairs, in the 6th January 2020 issue of the Edge:

*“We have come a long way in the span of just a few years. We saw the birth of a “New Malaysia” in 2018 and, with it, **we are seeing greater freedoms enjoyed not only by the media, but the people as a whole.**”*

But if 2018 was the year of hope and euphoria, 2019 was the year when expectations of this New Malaysia came crashing down for many. To them, New Malaysia has turned out to be a disappointment. Some even wonder whether anything has changed since we elected a new government.

*But sometimes, we need to take a step back and take stock of where we were and how far we have come. **In this New Malaysia, citizens are free to criticise and condemn the government, with little fear of the authorities knocking on their doors in the middle of the night.***

Today, arrests of journalists and suspension of publishing permits are not only unheard of, but would never be tolerated by the people. No one has been charged under the Sedition Act ever since the current attorney general came to office.”

7. I would like to thank Tan Sri Richard Malanjum for his magnificent leadership and management of the Judiciary as the ninth Chief Justice from July 2018 to April 2019. Although it was a short stint of 9 months as

the head of our Judiciary, (and the first from East Malaysia), His Lordship had served a total of 27 years in the Judiciary, leaving a rich legacy of important decisions, marking him as a fearless and staunch defender of the integrity of the Federal Constitution. Most importantly, Chief Justice Richard Malanjum will be remembered for the mobile courts which brought justice to the poor, underprivileged and weak in the interiors of Sabah and Sarawak.

8. In May 2019, history was created when Tan Sri Tengku Maimun Tuan Mat was appointed the first woman Chief Justice. We have no doubt that under her leadership, our Judiciary will regain the glory it once enjoyed.

9. History was created for the second time 7 months later when Datuk Rohana Yusuf was elevated as President of the Court of Appeal in December 2019. Malaysia is probably the only country that has lady judges holding the two most senior positions in the judiciary. Congratulations to Chief Justice and President.

10. I accept the decisions of the Federal Court in **Indira Gandhi** and **Semenyih Jaya** as restoring the balance originally envisaged in the Merdeka Constitution between the three branches of government which underpin any democratic society. If separation of powers is to have practical application (rather than being a pious platitude), all judicial power must belong to the judicial branch. Just as **Teh Cheng Poh** and **Nordin Salleh** represent milestones in the development of our constitutional law, so too, **Indira Gandhi** and **Semenyih Jaya**. On behalf of the AGC, I recognise the principles laid down in the latter 2 cases as being part and parcel of our constitutional architecture. I invite the Bar to do the same. Needless to say, applying the doctrine of *stare decisis*, all the Courts below the apex court will likewise be bound by them, and should consistently and regularly apply them. More importantly, the Bench, Bar and AGC must resist the temptation, for any perceived short term “advantage”, of diluting the laudatory principles established by these 4 cases so that the supreme law of the land is given its rightful and proper place in our jurisprudence.

11. As to 1MDB matters, I would like to highlight one accomplishment which brings credit to the Admiralty Court and the Shipping Bar. The Admiralty Court granted leave to sell the yacht “Equanimity” to the Genting

Group in April 2019 for US\$ 126 million. The full purchase price was paid within time, and Genting became the new owner. In December 2019, the sale proceeds in excess of RM ½ billion were credited into the specially opened 1MDB account. The entire episode, from the time the yacht sailed into Malaysian waters in August 2018, was arrested pursuant to an order of the Admiralty Court to its ultimate sale by private treaty, was implemented according to the highest standards of maritime law, on par with every reputable legal system. Everything was done in an open, transparent and accountable manner. Everyone involved in the administration of justice should be proud of the law's contribution in acquiring a national asset for the public good. I wish to thank the specialist lawyers from the Bar who worked together with our officers to achieve this feat.

12. Chief Justice may be interested to learn that the Sherriff's commission for the private treaty sale of the "Equanimity" was in excess of RM 6.4 million (or US\$ 1.5 million) which was paid in December 2019. Certainly a record in our legal history.

13. Turning to legislative reform, the Federal Constitution was amended to reduce the age of a voter and a citizen qualified to be a member of the Dewan Rakyat from 21 years to 18 years. Automatic registration was also introduced, thereby diminishing electoral abuse. These amendments should significantly enhance free and fair elections in the future. They represent the Government's commitment to improve the much criticised electoral process.

14. A Bill was presented to the Dewan Rakyat in December 2019 to amend the Federal Constitution to limit the term of office of the Prime Minister to two terms. This amendment, if passed in March 2020, will constitute a significant political reform to curb the concentration of power in a single leader for too long a period, thereby promoting good and transparent governance. Parliamentary Draftsman had earlier assisted the Penang State Government to draft a similar law to amend the State Constitution of Penang to limit the term of office of the Chief Minister to two terms, which was passed by the Penang State Legislative Assembly on 16 November 2018.

15. We now have a Syarie Legal Profession Qualifying Board, *Badan Peguam Syarie* and *Majlis Peguam Syarie* with the passing by Parliament of the Syarie Legal Profession (Federal Territories) Act 2019. These bodies will regulate the practice of the syarie legal profession in the Federal Territories. It is our hope that this Act will be used as a model for other states so as ultimately realise a uniform legal regime for syarie lawyers throughout the country. The Syarie legal profession should, over time, (like their brothers and sisters in the common law bar) have a national bar association.

16. I would like to mention in passing two laws that industry and the Commercial Law Bar will appreciate. First, the Trade Marks Act 2019 was enacted to replace the Trade Marks Act 1976, which was based on the United Kingdom Trade Marks Act 1938, long abolished in its home. Given the development of trade mark law internationally and Malaysia's obligations under various International Conventions, a revamp of the trade mark system and law in Malaysia was long overdue. The 2019 Act creates a new and efficient regime which ensures that Malaysian trade mark law is in line with the development of trade mark law internationally and which fulfills Malaysia's obligations under international conventions. It also facilitates Malaysia's accession to the Madrid Protocol. The new Act also

recognizes non-traditional trade marks such as scents, sounds and shapes.

17. Secondly, the 2019 amendment to the Carriage of Goods by Sea Act 1950 makes the 1968 International Shipping Convention (popularly known as the Hague-Visby Rules) part of Malaysian law. The maritime industry and Bar tried unsuccessfully for half a century to seek its implementation in Malaysia. We finally made it. This amendment aligns us to carriage of goods by sea laws in most shipping nations. It affords certainty surrounding sea carriage liability, and eliminates unnecessary litigation.

18. AGC is evaluating how best to safeguard the welfare and interest of children. These include proposals to increase the minimum age of marriage for child brides from 16 to 18 years old, and the introduction of more stringent procedures for a Syariah Court Judge to take into account before allowing a child below the age of eighteen to enter into a marriage. Our officers are actively involved in the consultation processes between the Federal and the States for purposes of uniformity in the law and the drafting of amendments to the Islamic Family Law (Federal Territories) Act 1984.

19. We have taken the lead in introducing restorative justice into our legal system. The diversion programme aims to divert children under the age of 18 years who have committed criminal offences away from the existing criminal justice system and to promote children's rehabilitation. In December 2019 it rolled out in selected locations in Malaysia, namely, Sepang in Selangor and Seremban and Port Dickson in Negeri Sembilan. Diversion results in a child offender being given a police warning, a stern warning or being referred to the Department of Social Welfare. The latter would undertake counselling, mentoring, education/training and community work, depending on the nature of the offence. This is in line with the country's commitments under Article 40 of the UN Convention on the Rights of the Child. Sending them to prisons, which may have the effect of turning a good hearted but misguided juvenile to a hardened criminal, must be avoided.

20. Since July 2018, criminal charges have been instituted against many high-profile individuals, in what has come to be known as the "kleptocracy cases". Most are related to the 1MDB scandal, but there are others. Currently, there are 27 such cases pending before the High Courts and Sessions Courts in Kuala Lumpur and Shah Alam. These "white-

collar” cases involve serious, complex and difficult legal issues and voluminous documentation.

21. In order to ensure that the prosecution of these cases are conducted in the most professional and competent manner on behalf of the State (and thus our people), we have formed numerous teams led by the most senior and experienced Deputy Public Prosecutors (“DPPS”) available in our Prosecution Division to handle each of these cases. This has, inevitably, caused serious strain on our resources and manpower. The DPPs assigned to prosecute the 27 cases not only handle these high-profile cases, but also continue to manage the other criminal cases in their respective units. Seldom in the nation’s history have our DPPs been stretched as they are now.

22. Hence, we seek the kind indulgence of the courts to understand our predicament and to grant some allowance and leeway in the conduct of these 27 trials. The matter is compounded in cases involving the same accused or the same defence counsel, typically when trial dates overlap between one case and another. Accommodation and a give and take approach must take place so that no party is prejudiced or injustice

occurs. The Courts should be assured that prosecution will not willy nilly seek adjournments.

Thank you.

Tan Sri Tommy Thomas