



**OPENING ADDRESS BY
THE RIGHT HONOURABLE TAN SRI DATO'
ABDUL RAHMAN BIN SEBLI
THE CHIEF JUDGE OF SABAH AND SARAWAK
BORNEO RAINFOREST LAW CONFERENCE
26 FEBRUARY 2024**

[SALUTATION]

1. The Right Honourable Ambeng Kandakasi; Deputy Chief Justice of Papua New Guinea;
2. The Right Honourable Justice Brian J Preston, Chief Judge of the Land and Environmental Court in New South Wales;
3. The Right Honourable President Fleur Kingham, president of the Land Court of Queensland;
4. The Right Honourable Lord Robert Carnwath of Notting Hill CVO, Justice of the Supreme Court of United Kingdom, retired;
5. Honourable Judges;
6. Professor Luis G. Franceschi, Assistant Secretary-General of the Commonwealth;

7. Yang Berusaha Puan Norsham binti Abdul Latip, Secretary General, Biodiversity and Forestry Management Division, Ministry of Natural Resources, Environment and Climate Change Malaysia;
8. Mr. Peter D Maynard KC, the president of the Commonwealth Lawyers Association;
9. Mr. Mohamed Nazim Bin Maduarin, the President of the Sabah Law Society;
10. Mr. Steven Thiru, co-convener of Borneo Rainforest Law Conference and the vice president of the LAWASIA;
11. The Honourable Datuk. Roger Chin, co-convener of Borneo Rainforest Law Conference;
12. Presidents and Delegates from the foreign Bar Associations and Law Societies;
13. Members of the Bar;
14. Distinguished speakers and guests;
15. Ladies and gentlemen.

Bismillahirrahminirrahim Assalamualaikum warahmatullahi wabarakatuh

Salam Sejahtera and a very good morning.

(Welcoming Remarks)

[1] First and foremost, on behalf of the Malaysian Judiciary in Sabah and Sarawak, I would like to extend a warm and heartfelt welcome to each and every one of you. It is with immense pleasure that I extend my greetings to those who have travelled great distances to attend this conference. Welcome to Kota Kinabalu, Sabah, also known as “*the land below the wind*”. Today, I am especially delighted to be given the honour to deliver the opening address at this Borneo Rainforest Law Conference.

(Environmental Issues – Sabah Perspectives)

[2] Sabah’s lush rainforests are home to an incredible diversity of plant and animal species, some of which are endemic to this region. The towering dipterocarp trees, vibrant orchids - known as the “*Gold of Kinabalu*”, and unique pitcher plants create an intricate tapestry that is unparalleled. The majestic Mount Kinabalu, a UNESCO World Heritage Site, stands as a testament to Sabah's natural beauty, harbouring a multitude of endemic species in its diverse ecosystems.

[3] Today, as we delve into the intricate legal landscape concerning environmental issues in Malaysia and the Commonwealth Countries, I humbly invite you to cast your gaze towards the Malaysian state of Sabah and its unique geographical features, including the famed Salt Trail within the depths of the Crocker Range. It has been said that Sabah's history can be traced along the Salt

Trail of the Crocker Range. This century-old 34km passage between Inobong and Kampung Tikolod links some of the most traditional Dusunic hamlets between Penampang and the interior Tambunan, cutting across the primeval mountain range and highland tropical rainforests of Sabah. The trail was once used as a route by villagers to easily access town markets with their fresh produce and return with salt and other goods.

[4] To this day, the salt trail remains the route to remote villages, especially in the upper Papar river and Tambunan area. Natural wonders like the Crocker Range contribute significantly to the rich biodiversity and cultural heritage of Sabah. Nestled on the island of Borneo, Sabah boasts a breath-taking array of flora and fauna, making it a global biodiversity hotspot.

[5] I had the opportunity to embark on the Tambunan Salt Trail adventure last year. Ladies and gentlemen, if you have not yet experienced it, I encourage you to give it a try if you have the time. Although I did not complete the entire length of the trail, but having walked 8 hours to and fro and going up and down steep hills, it was an unforgettable personal experience for me and I thoroughly enjoyed the lush tropical rainforest and the rich and diverse cultures of the indigenous people in the interior of Sabah, never mind the friendly 17 leeches that attached themselves to my body, not all at the same time though. It is a challenging trail no doubt, but I can assure you that it will not disappoint those who seek a unique experience in the jungles of Borneo in their natural state. Do not worry about the leeches as they do not pose any health problems to you. It was my own doing that I did not wear the right attire which would have attracted less of them.

[6] Even in this ecological haven, we are witnessing the impacts of environmental challenges that require our focused legal attention. Take the Crocker Range, for example. According to the report on the ‘Sabah Biodiversity

Conservation Project: *Identification of Potential Protected Areas – Crocker Range Foothill,*’ the Ministry of Culture, Environment, and Tourism in Malaysia has identified various threats to biodiversity conservation in the Crocker Range. Among other things, commercial logging in State, alienated land outside the Crocker Range Park, illegal logging within the Crocker Range Park, and fires—whether deliberately set or accidental—are major threats to conservation efforts.

[7] Against this backdrop, we must address the gaps in legislation that allow for unsustainable practices and advocate for policies that ensure environmental conservation. It is vital for us to recognise the importance of preserving this beautiful landscape for generations to come.

[8] Sabah's fauna is equally captivating, with endangered species such as the Bornean orangutan, pygmy elephant, and the Sumatran rhinoceros calling the state home. However, poaching, habitat loss, and human-wildlife conflict pose significant threats to these iconic species. To safeguard their future, stringent legal measures are imperative. Legal frameworks must be enhanced to deter illegal wildlife trade and ensure the preservation of Sabah's charismatic fauna for future generations.

[9] In addition, Sabah's marine biodiversity, characterised by vibrant coral reefs and diverse marine life, faces threats from overfishing, habitat destruction, and climate change. Legal practitioners and marine experts are encouraged to advocate for robust legislation to safeguard marine ecosystems, promoting sustainable fishing practices and marine conservation efforts.

(Malaysia Commitment in Addressing Environmental Issues)

[10] Environmental protection is paramount and must not be neglected in any context. As mentioned by The Honourable Malaysian Solicitor General, Datuk Almalena Sharmila binti Dato' Dr. Johan during the Opening of the Legal Year of Sabah and Sarawak last month, Malaysia has made significant commitments to environmental protection on the international stage. In 1994, Malaysia ratified the three sister conventions known as the "Rio Conventions", namely the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD), followed by the United Nations Convention to Combat Desertification (UNCCD) in 1997.

[11] Malaysia ratified the Kyoto Protocol in 2002. The protocol aimed to reduce carbon emissions by placing the burden on developed countries to monitor greenhouse gas emissions and to assist developing countries in combating climate change. However, some critics argue that it was insufficient because developing countries were not required to monitor their carbon emissions.

[12] In 2016, Malaysia participated in ratifying the Paris Agreement with the goal of enhancing existing commitments to address global climate change issues. This Agreement aims to take a holistic approach to combat climate change by setting new goals. One of the binding commitments established by the Paris Agreement is for parties to prepare, communicate, and maintain their Nationally Determined Contributions (NDCs) and to pursue domestic measures to achieve them.

[13] According to the Office of the Malaysian Attorney General, Malaysia submitted its intended NDC and updated NDC to the UNFCCC in January 2016 and July 2021, respectively. Through the updated NDC, Malaysia has committed

to reducing the intensity of greenhouse gas (GHG) emissions across the economy by 45% by 2030 compared to emission levels in 2005.

[14] The passing of The Environment (Reduction of Greenhouse Emission) Bill 2023 by the Sarawak Legislative Assembly is a testament to that commitment. I am pleased to learn that Sarawak was the first state to take initiative to pass this law, aiming to promote carbon capture and storage and mitigate the effects of climate change, while providing opportunities for Sarawakians to participate in global warming mitigation projects and to earn carbon credits for their efforts.

[15] The Conference of the Parties to the UNFCCC, commonly known as “COP,” is the supreme decision-making body of the UNFCCC, held annually with participation from all Parties. Malaysia participated in the UNFCCC COP 28, hosted by the United Arab Emirates in Dubai from 30 November to 13 December 2023.

[16] Climate change presents a global crisis that demands a unified response, and Malaysia is not exempt from its impacts. It is imperative for our legal framework to adapt and evolve to confront the challenges posed by climate change. This entails promoting renewable energy sources, incentivising energy efficiency measures, and integrating climate resilience into urban planning and development regulations.

(Environmental Issues Within the Commonwealth Countries)

[17] Within Commonwealth countries, historical environmental injustices have disproportionately impacted vulnerable communities. In addressing the impact of environmental justice on constitutional law within the Commonwealth, we have to find common ground in the pursuit of equitable and inclusive legal

frameworks. The constitutional commitment to equal protection under the law, prevalent in many Commonwealth constitutions, compels us to address environmental injustices that disproportionately affect marginalised communities. It is a shared acknowledgment that justice must prevail irrespective of one's geographic location within the Commonwealth.

[18] As we confront the challenges posed by climate change, Commonwealth nations must unite in our commitment to protect the environment. The ancient principles of the Public Trust Doctrine (PTD), deeply ingrained in the constitutional fabric of many Commonwealth countries, underscore the obligation to safeguard natural resources for the benefit of all citizens. The PTD has been recognised by English Courts since at least 1299, establishing that the state has a fiduciary duty to safeguard vital natural resources and hold them in trust for the benefit of both current and future generations. It enshrines the right for people to fish, gather food, and navigate our shared tidal waters.

[19] Ladies and Gentlemen, collaboration between the legal community, government bodies, and non-governmental organisations is paramount in addressing these issues. We must work together to streamline and strengthen existing environmental laws, ensuring that they are comprehensive, up-to-date, and effectively enforced. This collaboration should extend to educating the public about environmental rights and fostering a sense of responsibility towards our planet.

[20] We have a duty to champion the cause of environmental conservation both in Malaysia and within the Commonwealth Countries. Our legal system must serve as a bulwark against environmental degradation, providing a solid foundation for sustainable development. Let us come together, raise our voices, and actively contribute to a legal landscape that safeguards our environment for

future generations. The time to act is now, and our commitment to this cause will shape the environmental legacy within the Commonwealth Countries for years to come.

(Constitutional Human Rights and Environmental Protection)

[21] Nevertheless, addressing environmental issues involves high costs and requires proper funding. These concerns were discussed during the Africa Summit in September 2023. As a result, the Nairobi Declaration was proposed to advocate for a global carbon taxation regime on fossil fuel trade, maritime transport, and aviation, aiming to generate accessible finance for climate action in developing countries. This issue was further deliberated during COP 28 in Dubai.

[22] One of the key highlights from COP 28 was the agreement that signals the "*beginning of the end*" of the fossil fuel era by laying the groundwork for a swift, just, and equitable transition, supported by significant emissions cuts and increased financial support. Dr. Sultan Al Jaber, the President of COP 28, emphasised that, "*We have language on fossil fuel in the final agreement for the first time ever.*" According to the United Nations Climate Change Executive Secretary, Simon Stiell, the next step forward is for all governments and businesses to translate this pledge into real-world outcomes without delay.

[23] On the issue of funding, COP 28 reached a historic agreement on the operationalisation of funding mechanisms for addressing loss and damage, including the establishment of a fund to support vulnerable countries and communities adversely impacted by climate change.

[24] Further, the Escazú Agreement serves as an excellent example of the connection between human rights and environmental protections. It grants rights

to access information, public participation, and justice in environmental matters. While I won't delve into the details of this agreement, I believe Dr. Srirak Plipat, the World Justice Project (WJP) Regional Director for Asia Pacific, may offer valuable insights into the extensive work and data collection carried out by the WJP in conjunction with the Escazú Agreement.

(Concluding Remarks and The Way Forward)

[25] While significant efforts have been made to address environmental issues, it's crucial to recognise that they will only yield results through proper and strategic implementation. Otherwise, they risk being sidelined due to setbacks in policy implementation. An example of this is the ASEAN Agreement on Transboundary Haze Pollution 2002, which introduced the "*ASEAN way*" of dealing with transboundary haze problems using diplomatic conduct reflecting principles such as non-interference, consultation, consensus, quiet diplomacy, symbolism, and organisational minimalism.

[26] Despite Malaysia's plans in 2019 to introduce a domestic transboundary haze bill aimed at penalising Malaysian companies contributing to the annual haze through their operations abroad, it was put on hold due to challenges faced by Singapore in implementing its own Transboundary Haze Pollution Act, attributed to the decentralised land governance policy in Indonesia.

[27] In the Opening of the Legal Year for Sabah and Sarawak on 19 January 2023, I emphasised in my speech that while the judiciary plays a crucial role in enforcing environmental laws, its power has limitations. The State Courts of Sabah and Sarawak have made efforts to produce the sentencing guidelines for both wildlife and forest crimes. However, sustainable and long-term solutions are more effectively achieved through legislation and executive measures.

[28] By convening members of the bar and experts from various fields in this present conference, I am confident that we can formulate resolutions that will enhance cooperation among all stakeholders in protecting the environment and human rights.

[29] In order to achieve a sustainable future, we must not overlook the importance of proper environmental education. This component is often neglected in the fight for environmental justice. While policy changes and global commitments are necessary to address environmental issues, proper education serves as the first step toward achieving our goals. As Malcolm Stevenson Forbes, the prominent publisher of Forbes Magazine, once said, "*Education's purpose is to replace an empty mind with an open one*".

[30] In my humble opinion, education can indeed make a significant difference in the fight against climate change. Research conducted in 2018 by the Pew Research Center Survey supports this notion, indicating that people with higher levels of education tend to be more concerned about climate change. As the motivational speaker Leo Buscaglia aptly put it, "*Change is the end result of all true learning*".

[31] Before I conclude, I must congratulate the Organising and Papers Committees of the Commonwealth Lawyers Association and Sabah Law Society, who have worked together under the mandates of their respective Presidents, Mr. Peter D. Maynard KC and Mr. Mohamed Nazim Bin Maduarin. I am aware that both Datuk Roger Chin and Mr Steven Thiru have put in a tremendous effort in conception and organising to make this event a success. From the bottom of my

heart, thank you for a work well done. I wish all of you have a meaningful and fruitful conference.

[32] On that note, I officially declare the Borneo Rainforest Law Conference 2024 open. Thank you.