FORUM ON THE RIGHTS OF WOMEN AND CHILDREN:
A NATIONAL CONCERN

INTRODUCTORY REMARKS

BY

YBHG. TAN SRI ABDUL GANI PATAIL
ATTORNEY GENERAL OF MALAYSIA

Yang Berhormat Datuk Rohani Abd Karim,
Minister of Women, Family and Community Development Malaysia,

Dr. Hamidin Abd Hamid,
Chief Executive Officer, Razak School of Government,

Distinguished speakers, panelists and participants.

Ladies and Gentlemen,

On behalf of the Attorney General’s Chambers, allow me to begin by recording my deepest appreciation to Yang Berhormat Datuk Rohani Abd Karim, Minister of Women, Family and Community Development Malaysia, for supporting this Forum on the “Rights of Women and Children: A National Concern”. My appreciation also goes to Dr. Hamidin Abd Hamid and the Razak School of Government, the co-organizer of this event, for all the arrangements made for this Forum. Last but not least, a warm welcome to all the Forum participants, especially the members of civil society organizations who continue to strive tirelessly in the interests of women and children in Malaysia.
Ladies and gentlemen,

INTRODUCTION

The proliferation of seminars and workshops on women and children’s issues is a manifestation of attempts to tackle the manifold and complex challenges that confront women and children. Everyone, with the best of intentions, seems to be trying to help. Admittedly more can always be done. Nevertheless, this is not a competitive arena. All the parties have one common goal – the better protection of women and children through effective implementation of the law. Therefore we should be seeking to harness the noble intentions, pool available resources and channel it collectively to that end.

With this in mind, the Attorney General’s Chambers has initiated this Forum. It is intended as an avenue to hear the views of all the relevant parties on the expectations for Government action to enhance the law to protect women and children’s rights, address lacunae and close identified gaps.

As a reflection of the commitment of my Chambers, with effect from 1 July 2013, the dedicated Unit relating to All Forms of Discrimination and Abuse against Women and Children has been established within the Prosecution Division.
Ladies and gentlemen,

A LITANY OF ISSUES

As reflected in the Forum programme, a litany of issues is to be explored in the course of this Forum. These encompass, firstly, gender mainstreaming as a public policy to achieve the goal of gender equality in the sharing of power and decision-making at all levels. This concept will be further elucidated by the Honourable Minister in her Special Address, “Introduction to the Critical Aspect of Gender Mainstreaming and Why Women Issues Matter”.

Secondly, the issue of gender roles and stereotyping. Juxtaposed against Malaysian cultural and religious values, this can impose undesirable, unnecessary and limiting barriers to the activities considered “appropriate” for women and girls, or for that matter even men and boys. This form of discrimination may ultimately impact on the right to equal employment opportunities, as well as the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service, as well as the right to equal remuneration for equal work.

Next, the trend of increasing domestic violence against women and children – be it physical, emotional or sexual as well as sexual harassment. There are also increasing cases of abandoned, missing and kidnapped children, many arising from dysfunctional families and socio-economic pressures. Child marriages also raise their own moral and legal issues.
Healthcare issues of women and children gain urgency as more women are encouraged to return to the work force, especially in part-time jobs. Among the rights that require further attention is the right to protection of health and safety in working conditions, which includes safeguarding the function of reproduction.

On the equality of women and children in the law and policies, the issues that have arisen in personal, family and inheritance matters from the application of secular and Syariah laws has been particularly contentious. The complications in the cases of Lina Joy, M. Indira Gandhi and Shamala Sathiyaseelan, to name a few, are well-documented. These cases also reveal the tremendous impact that religious conversions have on the rights of the non-converting spouse and minor children. This includes child custody issues and the rights of inheritance of non-Muslim family members.

In relation to the issue of legitimacy of children, in November 2011 the National Registration Department explained its renewed implementation of a 1981 decision of the National Fatwa Council which directs that a child born within six months of a marriage is an illegitimate child. The child is thus denied the right to have his or her father’s name on the birth certificate. It is noted that the lobby to reverse this decision continues.

Last but not least, it is trite that the rights and protections under any Charter or Convention are only as effective as their actual implementation, even if they have been given force of law in Malaysia. Hence the challenge is how
to improve the transposition of those international obligations into law and reality without compromising fundamental principles, laws and policies.

Ladies and gentlemen,

RIGHTS OF WOMEN AND CHILDREN: THE LEGAL PICTURE

The Honourable Minister of Women, Family and Community Development Malaysia stated in her interview published in the STAR on 22 August 2013 that, “Various laws have been enacted to protect the rights, welfare and interests of women, but from time to time these must be reviewed and improvements made so that they remain relevant. … We must enforce the laws that we have, while working to fine tune these so that they provide even greater protection.” (Emphasis added)

Lest we take this as an invitation to embark on a wholesale reformist agenda, allow me to briefly outline what has already been accomplished by law.

Foremost among the available legal protections for the rights of women and children are the equality and non-discrimination protections enshrined in Article 8(1) and 8(2) of the Federal Constitution, the supreme law of our land. Be that as it may, Malaysia’s legal framework and policies pertaining to personal rights, family and inheritance continue to pose unique challenges as they are premised on two parallel legal systems based on the English common law and Syariah law respectively. There are also
allegations on gender discrimination due to prejudiced and discriminatory interpretations of the law in local Syariah courts. Another factor is the dichotomy between the federal and State powers in relation to personal and religious matters for Muslims.

On a positive note, the increasing awareness of Malaysia’s international obligations has seen judicial recognition and application of the rights and duties accorded under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as having force of law in Malaysia. In the landmark decision of *Noorfadilla Ahmad Saikin v Chayed bin Basirun & 5 Others*¹, the prohibition against the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave, and discrimination in dismissals on the basis of marital status under Article 11(2)(a) of CEDAW was upheld.

Aside from the constitutional protections under the Federal Constitution, the fundamental principle of best interests of the child under the Convention on the Rights of the Child (CRC) has been translated into the Child Act 2001 while other laws are implemented with due regard to that principle. In this regard, the right to education has also been judicially recognized in *Jakob Renner & others v Scott King, Chairman of Board of Directors of the International School of Kuala Lumpur & Ors*². Problems with the quality of childcare centres however are an increasing concern. This is not only for health and safety reasons but also because of their impact on the expectation that childcare centres are supposed to provide the best early

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¹ [2012] 1 CLJ 769, applying the decision of the Federal Court in the case of *Beatrice Fernandez v. Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713.
² [2000] 5 MLJ 254.
childhood education.

Sexual harassment has attained statutory footing in the Employment Act 1955. There is now a legal definition of “sexual harassment” as well as a specific Chapter XVA which prescribes the procedure for dealing with complaints of sexual harassment. Judicial recognition of the seriousness of the sexual harassment issue is also reflected in the High Court decision in *Mohd Ridzwan bin Abdul Razak v. Asmah binti Hj. Mohd Nor*³ where the Court awarded the Defendant general damages as well as aggravated and exemplary damages in dismissing the claim for declaratory relief that the Plaintiff was not guilty of committing sexual harassment against the Defendant.

³ Civil Litigation No. 23NCVC-102-12/2011], Kuala Lumpur High Court.
Measures have also been taken to address all forms of gender-based violence. For example, the broadening of the definition of “domestic violence” under the Domestic Violence Act 1994, the increase of the penalties for rape and incest under the Penal Code, and clear body search procedures in the Criminal Procedure Code. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 deals with the exploitation (as defined in that Act) of women and children. The Act also provides for enhanced penalties where violence is used, either in recruitment or to coerce compliance or cooperation of victims. However the non-criminalization of marital rape as a stand-alone offence continues to be a point of debate. Enhanced measures to deal with the punishment for statutory rape cases under the Penal Code and the Criminal Procedure Code are also still under consideration.

CONCLUSION

Ladies and gentlemen,

In conclusion, the Government acknowledges that more can be done to uphold and protect the rights of women and children in Malaysia. Therefore, I strongly encourage the participants to identify what laws are not working, the reasons why and how those laws can be improved. Also what new laws and measures would enhance the existing legal framework to better enshrine and uphold the rights of women and children. The feedback received at this Forum, if constructively delivered, would be invaluable to this task.

Thank you.