

**OPENING ADDRESS BY**

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**AT THE**

**REGIONAL DIALOGUE ON MALAYSIA'S ACCESSION TO THE UNITED  
NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN  
OR DEGRADING TREATMENT OR PUNISHMENT  
(UNCAT)**

**RENAISSANCE HOTEL, KUALA LUMPUR**

***ON***

**8 JULY 2019**

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**Assalamualaikum Warahmatullahi Wabarakatuh.**

**Good morning and a very warm welcome.**

Distinguished guests;

Members of the media;

Ladies and Gentlemen.

1. It is with great pleasure for me to be here today to officiate the Regional Dialogue on Malaysia's Accession to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – or better known by its acronym "UNCAT". At the onset, let me congratulate and thank the Human Rights Commission of Malaysia (SUHAKAM) for organising, and the European Union (EU) for funding this initiative. This regional dialogue is indeed a very significant programme and I am exceptionally delighted to be here with you today.
2. I learn that the main objectives of this Dialogue are among others, to provide a platform for the exchange of best practices among relevant ASEAN and OIC countries, to learn of the UNCAT's implication on state parties, to discuss on contemporary concerns, as well as to promote better understanding of the convention among stakeholders.
3. I am very pleased to know that SUHAKAM has invited Mr. Abdelwahab Hani, an expert member from the UN Committee Against Torture (CAT Committee) and Board Member of the Association for the Prevention of Torture (APT) – a Geneva-based organisation, to become a resource person for a series of programmes following this Dialogue. This shall be Mr. Hani's third follow-up visit to Malaysia in relation to its accession to the convention as he has been invited in 2017 and

2018 for a series of dialogues and inter-agency meetings on the same subject matter.

**Ladies and Gentlemen,**

4. Any civilised nation cannot , as a matter of principle, condone any form of torture or any cruel, inhuman and degrading treatment or punishment.
5. We may then ask, how on earth, there are still many countries in the world which have been consistently practising or justifying torture. The basic principle of evidentiary law that all evidence must be elicited voluntarily, for instance, has been unduly amended or even revoked thus legitimising torture.
6. Any genre of torture, cruel, inhuman and degrading treatment of any human being is either unlawful or unethical. In fact , in my view, we dont even need any law to outlaw such barbaric treatment or punishment. They are inherently wrong and immoral. In fact , they are evil. They miserably fail to respect this sacred notion that any God's creatures especially the human beings ought to be duly ennobled. In the holy Quran, God says "We have certainly ennobled the children of Adam"  
[ 17: 70 ]
7. When the Muslim second caliph, Umar r. a. learnt that the son of his appointed governor in Egypt had unlawfully beaten an ordinary citizen, he immediately summoned the governor and his son to his court of justice. Having heard both sides, he was convinced that the governor's son was guilty. He then meted out the punishment against the governor's son. He also reprimanded his own governor and in turn proclaimed this cardinal rule of human rights. " since when

have you been licensed to enslave or torture anybody when his mother has given birth to him as a free man. "

8. If they are in fact inherently unlawful or immoral, why would we still need a specific law to deal with this issue? My answer would be, this is highly unfortunate . Truth be told, some people unfortunately need to be duly "educated" by a force of law. They have difficulty to comprehend the language of morality. They merely understand the language of penal sanctions.
9. As we are currently living in a global village, it is inevitable for us to have a law which exercises a global jurisdiction against any alleged perpetrator of these heinous crimes. He or she must be subject to global jurisdiction. The arms of international law should be long enough to reach any offender irrespective of his or her stature . The rule of law ought to be upheld, come what may.
10. Fortunately, even in the realm of domestic law , we now have a law which possesses this important feature-extra territorial application. It shows that a state has now realised that a crime can now even be committed outside its territorial jurisdiction.
11. As some of you might be familiar, in the international law there is a legal rule popularly known as *jus cogens* or peremptory norm. It is derived from the customary international law. This rule is so significant and fundamental in international law in that it binds all states and it does not permit any exception. It can only be modified by a subsequent norm of general international law having the same character. The rules of *jus cogens* seem to suggest the need of any

global community to understand this basic notion, that is, nobody is above the law . This notion is not a myth. It is real.

12. In my view, the most fascinating of *jus cogens* rule is this. It has this important and required element i.e. it can be applied retrospectively as duly enshrined in Article 64 of the Vienna Convention on the law of treaties ( VCLT ) 1996. Be that as it may, this provision may invalidate any existing treaty which is in conflict with this very provision.

12A. In the case of the **Prosecutor v. Anto Furundzija**, the International Criminal Tribunal for the former Yugoslavia (ICTY) suggested obiter dictum that the violation of a *jus cogens* norm, such as the prohibition against torture, had direct legal consequences for the legal character of all official domestic actions relating to the violation.

*" The fact that torture is prohibited by a peremptory norm of international law has effects at the inter-State and individual levels. At the inter-State level, it serves to internationally delegitimise any legislative, administrative or judicial act authorizing torture. It would be senseless to argue, on the one hand that on account of the jus cogens value of the prohibition against torture, treaties or customary rules providing for torture would be null and void abinitio, and then be unmindful of a State say, taking national measures authorizing or condoning torture or absolving its perpetrators through an amnesty law... Proceedings could be initiated by potential victims if they had locus standi before a competent international or national body with a view to asking it to hold the national measures to be internationally unlawful; or the victim could bring a civil suit for damages in a foreign court, which would therefore be asked inter alia to disregard*

*the legal value of the national authorizing act. What is even more important is that perpetrators of torture who act upon or benefit from those national measures may nevertheless be held criminally responsible for torture, whether in a foreign State, or in their own State under a subsequent regime...*

*Furthermore, at the individual level, that is, that of criminal liability, it would seem that one of the consequences of the jus cogens character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction. Indeed, it would be inconsistent on the one hand to prohibit torture to such an extent as to restrict the normally unfettered treaty making powers of sovereign States, and on the other hand bar statusnya from prosecuting and punishing those torturers who have engaged in this odious practice abroad ... It would seem that other consequences include the fact that torture may not be covered by a statute of limitations and must not be excluded from extradition under any political offence exemption."*

13. As all of you may be fully aware that after September 11, the law which duly promoted and safeguarded the human rights have been subject to various threats. The crimes of terrorism have been frequently invoked to jettison the principles of human rights not only from the legal textbooks but also from the legal statutes. Human rights laws have unfortunately become the sacrificial lambs. Any despotic regimes in this world unjustifiably used or rather misused the excuse of terrorism in order to flex their muscle by tightening up the draconian laws which have been repugnant to human rights.

14. The act of torture and other cruel, inhuman or degrading treatment or punishment clearly runs counter to the doctrine of human rights. Nevertheless we need to be honest. There are so many challenges ahead even in defining any particular act or offence as cruel or inhuman , for instance. I sincerely hope we should never fall into a trap of offering " one size fits all " formula to every problem. As human rights idea is normally viewed as a western product, any human rights advocate should be very cautious in simply jumping into a conclusion that a particular punishment or treatment as draconian or repugnant to the principles of human rights especially in multicultural or multi religious society like Malaysia. Like it or not, we have to meticulously consider some eastern or religious values pervading in our multi religious society. Having said that, we are also made aware that there are indeed some persisting issues concerning Malaysia's accession to the convention, which I hope this dialogue today may help ease.
  
15. It calls for a two-pronged effort as firstly, there is a need for a comprehensive study to be conducted in order to convince all policy makers on the benefits for Malaysia to become a State Party to the Convention as well as to ensure that any proposed changes to our laws or policies are done in accordance with the domestic context including the social, political, racial and religious norms in Malaysia. Secondly, dialogues of this nature must be strongly encouraged in order to raise awareness among the general public hence convincing them that instruments such as the UNCAT are essentially to protect their fundamental and basic human rights.
  
16. We recognise that our country is in need of a gradual improvement towards joining the other 172 State Parties and signatories to the UNCAT which aims to uphold the dignity of all individuals and their fundamental right to life and liberty,

as also enshrined in both Article 3 of the 1948 Universal Declaration of Human Rights (UDHR) and Article 5 of the Federal Constitution of Malaysia. Malaysia should no longer be among the 25 minority that has yet to make progress on combating torture and other cruel inhuman or degrading treatment or punishment.

17. Whilst Malaysia has yet to become a State Party to the UNCAT, the country is nevertheless committed to supporting global fight against torture and is taking a firm stand that it does not condone acts of torture or any forms of ill-treatment and culture of impunity. Effective monitoring mechanism, safeguards and accountability for the prevention of torture are very much needed in Malaysia.
  
18. Government agencies are encouraged to engage with SUHAKAM as well as other local and international bodies to seek their technical expertise on the accession to and implementation of the UNCAT. They include the CAT Committee, the Convention Against Torture Initiative (CTI), a global initiative spearheaded by the governments of Chile, Denmark, Ghana, Indonesia and Morocco which aims to assist States on matters pertaining to accession and implementation of the UNCAT and its Optional Protocol, as well as the Association for the Prevention of Torture (APT), a Geneva-based international organisation that works on torture prevention.

**Ladies and gentlemen,**

19. Lastly, I would like to wish all of you a fruitful event. Having taken into consideration the presence of such high esteemed resource persons for this Dialogue, I am certain that today's discussion would enable us all to have greater understanding on the underlying aspirations of the UNCAT.

20. Without further ado, it is my pleasure to officiate the Regional Dialogue on Malaysia's Accession to the UNCAT.

**Thank you.**