

**Speech by The Honourable Chief Justice Geoffrey Ma
at the Opening Ceremony of the
32nd LAWASIA Conference
6 November 2019, Hong Kong**

1. The 32nd LAWASIA Conference takes place in the middle of a challenging time in Hong Kong. It is challenging from political, economic and social points of view, but I am more concerned with the challenges faced as far as the law is concerned.

2. Every jurisdiction represented today places the rule of law as its priority as far as the legal system is concerned. This is one of the core values of LAWASIA. Christopher Leong spoke about when he took office two years ago in Tokyo. I cannot recall any LAWASIA Conference in which this topic has not been the focus of discussions. The Plenary Session this morning discusses the topic “Upholding of or

Pursuit for the Rule of Law in Challenging Times”. One month ago, there took place in Petaling Jaya the LAWASIA Constitutional and Rule of Law Conference.

3. A constant theme of that Conference was that people in a community feel secure when that community has the rule of law. It is this theme that I wish to dwell on a little this morning. Whenever changes take place and times are challenging, members of a community wish to be assured that they and their loved ones will be adequately protected from the winds that may blow; put another way, as it was put in the Conference in Petaling Jaya, people want to feel secure.

4. Where does the law come in and how does it provide this security? This is where the rule of law comes in. One of the key indicators of the rule of law is the existence of laws which recognise the value of what we call fundamental

rights and freedoms. These rights and freedoms are frequently set out in constitutional documents or a bill of rights, and Hong Kong has both:-

- (1) The Basic Law ¹ devotes a whole chapter – Chapter III headed Fundamental Rights and Duties of the Residents – enumerating such rights and freedoms. There, we see set out the fundamental principle of equality before the law, the freedom of speech, the freedom of conscience and of religion, the right to confidential legal advice and access to the courts and the right to institute legal proceedings against the Government, and the recognition that the provisions of the International Covenant on Civil

¹ The constitutional document that governs Hong Kong. The Preamble to this document states that the Basic Law ensures the implementation of the basic policies of the People's Republic of China regarding Hong Kong.

and Political Rights (the ICCPR) apply to Hong Kong.²

- (2) The ICCPR is made applicable in Hong Kong by statute³ which contains a Bill of Rights setting out the rights and freedoms found in the Covenant. The Bill complements those provisions in the Basic Law setting out rights and freedoms. The specific reference to the ICCPR in the Basic Law and the incorporation into Hong Kong law of its provisions almost word for word by the Bill of Rights suggests that internationally accepted standards regarding fundamental rights and freedoms ought to be borne in mind.

² The ICCPR is a multilateral treaty adopted by the UN General Assembly in 1966.

³ The Hong Kong Bill of Rights Ordinance, Cap 383.

5. Time does not permit me to discuss the way courts, and in particular the Hong Kong courts, recognise and enforce rights and freedoms. However, there are two facets to which I would like to draw attention in relation to criminal proceedings. They exemplify the security all members of a community wish to have. It is important to remind ourselves of these facets in the context of any rational discussion about the law these days. The first is the importance of a fair trial and this is guaranteed under Article 10 of the Hong Kong Bill of Rights, which reflects Article 14 of the ICCPR. I doubt there is anyone who would dispute this to be perhaps the most fundamental feature of the administration of justice. A fair trial means fairness to all sides; in a criminal trial, there must be fairness to both the prosecution (allowing it reasonable time to prepare its case) as well as to the defence (allowing it also adequate time and facilities to prepare its case).⁴ I

⁴ This is stipulated under Article 11(2)(b) of the Bill of Rights.

remind everyone of this facet of a fair trial because there has recently surfaced at times a lack of understanding as to the process needed and the time it may take to bring a case to trial. While of course it must be in the public interest that trials take place as expeditiously as possible, the course of justice must also be fair to all concerned. The Judiciary must strive to have cases, particularly criminal cases, tried as quickly as possible and also as fairly as justice demands.

6. The second facet is the presumption of innocence, again constitutionally guaranteed in Hong Kong by Article 11 of the Bill of Rights. Criticisms are sometimes made against the courts for granting bail to persons accused of crimes and we have also heard this in relation to recent events. The response to this is straightforward. Not only is the granting of bail entirely consistent with the presumption of innocence, it

is expressly stated in the Bill of Rights⁵ that it is not the general rule that persons awaiting trial should be detained in custody. Statute in Hong Kong⁶ reflects this constitutional premise, setting out the general principle as well as detailing those situations when bail should be refused.

7. When times and situations are challenging, when emotions can sometimes run high and positions become extreme and polarised, one can lose sight of fundamental principles. It is our duty as lawyers – all of us without exception – to remind ourselves and others of these fundamental principles. The rule of law, if you are going to adhere to it, demands nothing less. And society and those within it, if they are to feel secure, are entitled to be protected by the rule of law.

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⁵ Under Article 5(3).

⁶ See Part IA of the Criminal Procedure Ordinance, Cap 221.