

**Speech by the Hon Rimsky Yuen, SC, JP,
Secretary for Justice
at the Ceremonial Opening of the Legal Year 2015
on 12 January 2015**

Chief Justice, Members of the Judiciary, Chairman of the Bar Association, President of the Law Society, Distinguished Guests, Ladies and Gentlemen,

1. On behalf of the Department of Justice, may I start off by extending our warmest welcome to all of you here, especially to our guests who travelled from other jurisdictions to attend this event.
2. This occasion, though known as “Ceremonial Opening of the Legal Year”, is not just a ceremony. It provides an opportunity for the legal, and indeed the entire, community to reflect on matters concerning our legal system, administration of justice and the rule of law.

The Rule of Law & Universal Suffrage

3. The importance of the rule of law is universally accepted in modern civilized societies. It is a treasure of our community which each of us, irrespective of our position and role, should make every effort to protect and defend. In highlighting this point, I have no intention whatsoever to diminish the importance of other concepts such as democracy, universal suffrage or social justice. However, the pursuit of democracy, universal suffrage, social justice or any other noble causes cannot and should not be used as a justification to act in any way which would erode the rule of law.
4. Unfortunately, the rule of law in Hong Kong is facing significant challenges. The recent “Occupy Movement”, which involved large scale as well as sporadic unlawful activities, brings about blatant challenges to the rule of law.
5. Some people put forward civil disobedience or the pursuit of universal suffrage as justification for their unlawful conduct. Whilst I believe the overwhelming majority of our community would not dispute the importance of universal suffrage, one should reflect on this fundamental question: Can there be universal suffrage without

the rule of law? I would, without doubt, say “Not Possible!”. The reason is obvious. The rule of law is the bedrock of democracy and universal suffrage.

6. Any constitutional development, including development towards universal suffrage, has to be built on the relevant legal and constitutional basis. The constitution and documents of constitutional nature represent the supreme law of the jurisdiction concerned, and provide the ultimate legal anchor for any constitutional development. The rule of law dictates that all constitutional development must be consistent with, and not contrary to, the relevant constitutional regime. Once the model of universal suffrage and the relevant details are devised, they would have to be translated into clear law (which usually takes the form of electoral legislation). Every step in the electoral process should be conducted in accordance with the law, so that members of the community can have their electoral rights protected. Should there be any electoral disputes, there should be proper channels to facilitate the fair and effective adjudication by an independent judiciary.
7. All these would not be possible unless the rule of law is well and alive. Constitutional development or universal suffrage without the rule of law is no different to a house without foundation. It is accordingly difficult to see how there can be any valid reason for resorting to unlawful means for the purpose of pursuing universal suffrage, especially when such unlawful means would prejudice other people’s rights and disrupt social order. Any contrary contention would in effect allow people to disregard the law as and when they see fit, which is the antithesis of the rule of law.
8. Some people in the community suggest that the concept of the rule of law has different levels, and that obeying the law is only the lowest level. As a matter of legal philosophy, such a view may provide an interesting topic for discussion. But the law remains the law, and is there to be obeyed. One also wonders how can one escalate oneself to the higher levels of the rule of law without even respecting the fundamentals.
9. Although the “Occupy Movement” has in a sense come to an end (at least for the time being), my worries concerning challenges to the rule of law have not altogether disappeared. I note, with regret, that

there remain people in the community advocating, or are considering to advocate, further unlawful activities in the near future. May I make use of this opportunity to appeal to those people to come back to the realm of the rule of law and rationality, and abandon any thought for instigating any unlawful conduct. Any further unlawful activities, especially massive ones, would only do further harm to our community both domestically and at the international level.

Criminal Prosecution

10. Another challenge concerns the question of how to appropriately deal with the people who were involved in the unlawful activities that took place during the “Occupy Movement”.
11. This question, I fully appreciate, is likely to attract huge differences of opinions. As far as the Department of Justice is concerned, our stance is clear and firm. We would, as always, adhere to the two-stage approach set out in the Prosecution Code. This means that no prosecution will be made unless: firstly, there is sufficient admissible evidence to demonstrate a reasonable prospect of conviction; and secondly, commencing prosecution will be in the public interest.
12. By applying this approach, we can ensure that any prosecutorial decision is only made on the basis of the applicable law, the admissible evidence and the public interest. The corollary is that other considerations such as the suspects’ social status, their political affiliations or political views would not be taken into account. The exclusion of these irrelevant considerations is of utmost importance, especially for the purpose of discharging our duty under Article 63 of the Basic Law, as well as maintaining public confidence in the criminal justice system and the rule of law generally.
13. From time to time, persons charged with criminal offences (especially offences relating to public order events) asserted that they are victims of political retribution. By reason of the prosecution policy we adopt, such allegations are completely groundless, and are often made with a view to gaining political mileage. The Department of Justice would never allow prosecution to be used as a political instrument, still less as a means to achieve political revenge.

14. In future, when persons charged with criminal offence repeat this kind of allegations, I would invite you to consider two questions: Have these people been convicted by the court after due process? Can it be sensibly suggested that our independent Judiciary is not discharging their duty properly by confining to law and evidence when making judicial decisions? A rational analysis of these two questions will dispel any contention of political persecution. Further, if a person can escape prosecution simply because his or her political stance is upheld by certain sectors in the community as a noble cause, that would in effect mean that our prosecutors are being subject to the influence of political thoughts, and that such a situation would be wholly contrary to the rule of law.
15. A proper understanding of how the criminal justice system operates is essential to maintaining public confidence in our rule of law. To guard against unnecessary misunderstandings, it is important that the community appreciates the difference between the approach adopted by the Department of Justice to decide whether prosecution should be made, the test adopted by the police when effecting arrest, and also the test adopted by the court when deciding whether to convict a defendant after trial.
16. Police officers are entitled to effect an arrest provided they have a genuine and reasonable suspicion that the person in question has committed a relevant offence. They are not required to consider matters, such as public interest, which would have to be considered by the Department of Justice. Due to such differences, the mere fact that an arrested person is not subsequently charged with any criminal offence does not necessarily mean that the police has made a wrongful arrest; nor does it necessarily follow that the prosecutors have failed in their duty to commence prosecution.
17. Judges, on the other hand, will only deliver a guilty verdict if the offence is proved beyond reasonable doubt, which is a threshold higher than that adopted by prosecutors. Accordingly, the mere acquittal of a defendant does not necessarily mean that the defendant should not have been arrested or charged in the first place.

Arbitration and Mediation

18. Moving on, if I may, to the Government's policy to promote Hong

Kong as a centre for international legal and dispute resolution services in the Asia Pacific region. This policy brings benefits not just to the legal profession, but to Hong Kong as a whole as it enhances Hong Kong's competitiveness and international image as an international financial and commercial centre. I am happy to report that considerable progress has been made during the past legal year.

19. In the context of arbitration, we have set up the Advisory Committee on Promotion of Arbitration. This Advisory Committee, comprising representatives of the key stakeholders and eminent members of the arbitration community, will be responsible for overall co-ordination and strategic planning for the future development and promotion of Hong Kong's arbitration services. We are confident that this Advisory Committee will take the promotion of Hong Kong's arbitration services to a new height.
20. In November last year, the China Maritime Arbitration Commission ("CMAC"), a leading maritime arbitration institution in the Mainland, set up an arbitration centre in Hong Kong, which is its first arbitration centre outside the Mainland. The presence of CMAC in Hong Kong will further strengthen our status as an arbitration centre, and consolidate Hong Kong's status as a shipping and logistic hub.
21. Last week, the Central People's Government and the Permanent Court of Arbitration ("PCA"), an internationally renowned arbitration institution based in The Hague with a history of over a century, signed a Host Country Agreement on the conduct of dispute settlement proceedings in Hong Kong, whilst Hong Kong signed the related Memorandum of Administrative Arrangements with PCA. The arrangement set out in these two documents will facilitate PCA-administered dispute settlement proceedings to be conducted in Hong Kong. Not only will this arrangement enable us to attract more international investment arbitrations to be conducted in Hong Kong, it represents a vote of confidence on the legal system, legal infrastructure and the rule of law in Hong Kong.
22. In the context of mediation, the Steering Committee on Mediation is making good progress in its works. Amongst others, the study on the need to introduce an apology legislation to facilitate settlement of disputes is entering its final stage. We anticipate we shall be in a

position to issue a consultation document within this year.

23. Looking ahead, we will continue with our efforts to promote the use of mediation as a means of dispute resolution, as well as to promote Hong Kong's mediation services to local and overseas end-users. General mediation aside, we will be moving towards the promotion of sector-specific mediation. In addition to medical and building management disputes, one of the key focuses in the coming years will be the use of mediation as a means to resolve intellectual property disputes and we will explore the use of evaluative mediation on top of facilitative mediation. With our expertise and experience in intellectual property, we believe this new direction will further enhance Hong Kong's status both as a regional dispute resolution centre and as an intellectual property trading hub in the region.

Concluding Remarks

24. Ladies and gentlemen, Hong Kong is admittedly facing formidable challenges. However, we owe it to Hong Kong and to our future generations to resolutely maintain the rule of law, so as to provide a solid foundation for the pursuit of constitutional development, democracy, social justice and other worthy causes. With our strong fundamentals, our top quality judicial and legal personnel, and the joint efforts by all the relevant stakeholders, I have every confidence that our rule of law will remain robust and sustainable.
25. On this note, may I wish all of you a happy and rewarding 2015.

Thank you.