

Speech by SJ at the International Youth Legal Exchange Conference 2021 (English only)

Mr Justice Patrick Chan, Mr CM Chan, Prof Zhang Yuejiao, all the delegates, ladies and gentlemen,

1. Good morning. On behalf of the Department of Justice of the Hong Kong Special Administrative Region, it is my great pleasure to welcome you all to the International Youth Legal Exchange Conference 2021.

Vision 2030 for Rule of Law

2. During the Hong Kong Legal Week in November 2020, the Department of Justice launched a visionary 10-year project, the “Vision 2030 for Rule of Law” (Vision 2030). Vision 2030 was inspired by the United Nations 2030 Agenda for Sustainable Development and its 17 goals to address global challenges of our times so as to achieve a better and more sustainable future for all, and in doing so, emphasizing that no one should be left behind.

3. Goal 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Goal 16 aligns with the objectives of Vision 2030 to build and maintain a fair and rule-based society underpinned by the rule of law through collaboration with stakeholders for sustainable development for all.

4. In the past year since the launch of Vision 2030, the Department of Justice has launched a number of projects to promote the proper understanding and recognition of the rule of law at various levels in the society under the umbrella of “3Es”, namely, ‘Engagement’, ‘Empowerment’ and ‘Enrichment’ for the general public, young generation and legal community. This Conference today is one of the ‘Enrichment’ projects, designed to provide the legal community, including law students, the opportunities to engage with regional counterparts, to share and exchange knowledge towards a more inclusive and sustainable future for the development of the rule of law.

Theme of the Conference

5. One of the core principle of the rule of law is that justice must be accessible to all. The theme of the Conference is “Access to Justice: The Key to Inclusive Society and Sustainable Development” in alignment with Goal 16. This Conference provides an excellent platform for youths of different legal and culture backgrounds in the Asia-Pacific region to share their views on their respective legal system and access to justice mechanism. Through the better understanding of each jurisdictions’ uniqueness and exchanges of good practice, we hope that the Conference could inspire aspiring lawyers and young legal practitioners in contributing to maintaining and enhancing the development of rule of law within your jurisdiction as well as for the betterment of the practice of rule of law in the region.

The Rule of Law Database and the Role of Culture in Rule of Law Development

6. There is no one single definition to the “rule of law”, and how it is defined and interpreted may vary. Although, there are some fundamental principles that may be generally agreed. I believe you may have heard of various international ranking reports or indices on the rule of law, for example, the World Economic Forum’s Global Competitiveness Report, the World Bank’s Worldwide Governance Indicators, the World Justice Project’s Rule of Law Index, to name a few. Commonly, the way these reports are compiled often relied on sample size surveys and selective expert polls, which are generally perception-based. The same set of survey given to a different person may generate a totally different outcome materially affected by personal views and factors, such as personal experience (be it good or bad), educational background, religious belief, political stance, etc. The data collected via such perception-based approach may not accurately reflect a fair observation of the actual situation of the rule of law in the jurisdiction, save for systematic variation which may be picked up by the institution and numerically accounted for in its findings. In the long run, such approach may hinder the study and the improvement of the practice of the rule of law for the respective jurisdictions.

7. Against this background, the Department of Justice embarked on a project under Vision 2030 to conduct an in-depth research on the practice of the rule of law and to explore the feasibility of setting up

a dedicated database through the collection of objective rule of law data. It is hoped that the database may become a useful tool, with the trends of the database providing a factual and objective overview of the effectiveness of certain rule of law related policies or initiatives implemented over a period of time. The performances in specific areas in the practice of the rule of law can therefore be identified to facilitate research for advancement in the rule of law for one's jurisdiction as well as in this region and beyond.

8. Apart from the collection and collation of objective data, we have to consider how to fairly interpret these data as well. We cannot ignore a simple fact that the rich, diverse culture in the region (including legal traditions) and socio-economic conditions may also to a certain extent influence on the development of legal system and the practice of rule of law in different jurisdictions.

9. Take for example the Confucian traditions of harmony, commonly in Chinese “以和為貴”. Its principles as vested in the Chinese culture where people would prefer to resolve their disputes amicably with assistance of their neighbours or respected elders in their clan through conciliation to uphold a harmonious community instead of escalating the disputes to the authority. On the other hand, it has been suggested that the western societies generally tend to be more litigious with the western culture emphasizing on confrontation and to determine a winning party in a dispute. In both cultures, the rule of law is not at all compromised and either way, through alternative dispute resolution or by bringing the matter to the court would allow

the parties to resolve their disputes. Using this example, one cannot draw a conclusion that a high or low number of litigation cases alone in a jurisdiction would therefore indicate the effectiveness of the judicial system as such practice may be influenced by the culture of the society.

10. Let me share with you one of my personal experiences in my practice as an arbitrator. Some of you may know that in the Mainland China, with the consent of the parties, the arbitrator can also act as mediator during an arbitral proceeding. Similarly in Hong Kong, the Arbitration Ordinance (Cap. 609) also provides for the Arb-Med-Arb process to be conducted by the same arbitration panel with the consent of the parties. If the mediation is successful, the agreement is written up as a consent award, bearing the same legal effect as an ordinary arbitral award. Some parties find that the Arb-Med-Arb process provides flexibility while parties' autonomy are protected. Hong Kong, with its common law system, is often said to be a cosmopolitan city where the East meets West. However, some common law practitioners I met criticised the process as undermining confidentiality and impartiality of the arbitrators. Could these differing views be attributed to the different concepts of rule of law or factors such as different societal cultures or legal traditions in the civil law and common law systems? We pay heed to these factors and studying and understanding in the rule of law is, in our view, important.

11. From the examples I mentioned, you can tell that it is no easy task to understand the rule of law practice and even with objective

data it may give rise to different interpretations. If I may boldly suggest, what we need is to conduct a more comprehensive study to understand and appreciate how to integrate cultural and other elements including socio-economic condition and legal tradition with objective data so as to provide a more reliable and realistic reference to assist in self-monitoring of the progress and the practice of the rule of law.

12. With this objective in mind, and with the guidance of the Task Force on Vision 2030, this Conference today is a start to understanding how the cultural, socio-economic factors and legal traditions may interplay with the rule of law in different jurisdictions in areas as selected by the youths of our generation from the region. Through the delegations' sharing, we hope to identify areas which require more in-depth study for the formulation of the methodology. The ideal methodology, in my view, should be based on fundamental or core elements of the rule of law that is applicable to all jurisdictions reflecting the uniqueness of its cultural background, and over the years, each jurisdiction will be able to map out a trend and to identify the areas of rule of law for vertical improvement.

Diversified Topics to be covered by the Delegations

13. The 11 delegations presenting today are nominated by academic institutions, legal professional body, and arbitration institutions in the Asia Pacific Region, covering nearly all major legal systems in the world, including the common law, the civil law, the Shariah law, and

being influenced by diverse cultures and religions, e.g. Confucianism, Islam and Buddhism, etc. I understand that the Conference papers submitted by the delegations comprise of very high quality research conducted and the wide range of interesting topics are being covered. For example, I understand that Shariah family law; the legal position of Panglima Laot (which is a customary institution that deals with fisheries disputes by enforcing and supervising customary laws); coordination between administrative and civil law in consumer protection; the impact of the constitutional development in the practice of the rule of law; protection of migrant workers; the utility of blockchain in arbitration and the legal aid systems in different jurisdictions.

14. I believe the discussion in the Conference will be very inspiring and of high referential value for our future study on the rule of law.

Signature Engagement Event

15. As our annual flagship event, the Hong Kong Legal Week will be held in the first week of November every year. For the Hong Kong Legal Week in this November, the Department of Justice will be organizing the “Signature Engagement Event” (“SEE”) as an alternate event to the Rule of Law Congress organized every other year. The SEE, complements the Vision 2030 initiative, in that we hope to draw participants’ focus on specific areas or topics of law for more in depth engaging discussion and to “see” (pun intended) how we, as global citizens could contribute towards a more inclusive and sustainable

future for the development of rule of law.

16. I am delighted to announce that the delegations awarded the “Best Paper” and “Best Presentation” will be invited to attend a sharing session at the upcoming Signature Engagement Event to be held on 5 November. It will be an invaluable opportunity to have a direct dialogue and discussion with the representatives of our adjudicating panel members and our invited distinguished legal experts and practitioners on matters related to culture and rule of law.

Conclusion

17. Finally, let me extend my sincere gratitude to our adjudicating panel members, Mr Justice Patrick Chan, Mr CM Chan and Mrs Perenami Momodu, to our Vision 2030 Task Force member Prof. Zhang Yuejiao who will deliver the closing remarks at the end of the Conference, and for their time and dedication in advancing the rule of law. And of course also to our organiser, the International Youth Legal Exchange Federation, thank you for the devotion in organising this Conference.

18. I am sure that all delegates will have a wonderful time today and I look forward to hearing your insightful sharing. Without further ado, it is my great pleasure to open the International Youth Legal Exchange Conference 2021. May I wish the event every success. Thank you very much.