

Speech by SJ at opening ceremony of 7th ICAC Symposium
(English only)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the 7th ICAC Symposium today (May 22):

Chief Justice (Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li), Commissioner (Commissioner of the Independent Commission Against Corruption, Mr Simon Peh), Ms Andersen (Executive Director of the World Justice Project, Ms Elizabeth Andersen), distinguished guests, ladies and gentlemen,

It is an honour and privilege to deliver one of the keynote speeches at the 7th ICAC Symposium.

The ICAC was set up in 1974 against a turbulent social background, the days of rampant corruption. But where are we now? Hong Kong is now widely recognised as one of the cleanest economies in the world.

In the Heritage Foundation's 2019 Index of Economic Freedom, the report said this of Hong Kong, "There is little tolerance for corruption, and a high degree of transparency enhances government integrity." In describing our anti-corruption efforts, the Index praises Hong Kong as having "an excellent record of combating corruption."

This year, the ICAC celebrates its 45th anniversary. It is not an exaggeration to say the establishment of the ICAC had a transformative effect on the whole of Hong Kong society and brought about a sea change in our anti-corruption culture. The ICAC is a truly independent law enforcement agency committed to fighting corruption. It is accountable only to the Chief Executive. Its independence is guaranteed under the Basic Law, the constitutional document of the Hong Kong Special Administrative Region.

The Organisation for Economic Co-operation and Development (OECD) commented that the ICAC is one of the world's "best-known specialised anti-corruption institutions".

Yet one must never be complacent about the status quo. With the increase in cross-border activities and the advent of technologies that significantly enhance the flows of people, goods, information and funds, we all are facing ever-changing challenges in combating corruption in this age of globalisation.

I therefore propose to put forward a new perspective: "Inclusive Coalition Against Corruption". At the global level, different countries and bodies must come and act together. Hence, I speak of a "coalition" which denotes a concerted effort with different parties joining together for a common purpose of fighting corruption. But why "inclusive"? I will tell you shortly.

Common ground for "inclusive coalition"

In order for the "inclusive coalition" to be effective in the international sphere, there must be a common ground for all parties to the coalition. In this regard, international conventions are relevant.

The United Nation Convention against Corruption (UNCAC) which was adopted in 2003 is now the "gold standard" for the international combat against corruption. The Convention is comprehensive and truly universal. As of now, it has 186 parties.

One may be reminded of the preamble of the UNCAC, which states that the States Parties are "convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies,

making international co-operation to prevent and control it essential."

Guiding Principles for the "Inclusive Coalition Against Corruption"

From the UNCAC and other regional anti-corruption conventions, the following principles can be distilled:

- (a) solid rule of law infrastructure;
- (b) comprehensive anti-corruption law;
- (c) cooperative international juridical assistance;
- (d) proactive prevention and education.

They may suitably serve as the guiding principles for our "Inclusive Coalition Against Corruption".

(a) Solid rule of law infrastructure

An "inclusive coalition" must be one based on the rule of law, with which the combat against corruption is closely linked. In the World Justice Project's 2019 Rule of Law Index report, it is stated that: "Effective rule of law reduces corruption, combats poverty and disease, and protects people from injustices large and small. It is the foundation for communities of justice, opportunity, and peace - underpinning development, accountable government, and respect for fundamental rights."

"Absence of corruption" is an ingredient of the rule of law. Yet, it is also closely related to other well-recognised elements of the rule of law. Some of the factors comprising the World Justice Project's Rule of Law Index are self-evidently linked to our combat against corruption, for instance, "open government", "fundamental rights", "regulatory enforcement" and "criminal justice".

Combat against corruption is symbiotic with the rule of

law infrastructure. Hong Kong is a case in point, where our strong adherence and respect for the rule of law provides us with a favourable environment for fighting corruption.

Article 11 of the UNCAC recognises the importance of the independence and integrity of the judiciary and prosecution services, which no doubt are crucial facets of the rule of law. Judicial and prosecutorial authorities have unique and indispensable roles in preventing and fighting corruption.

In Hong Kong, judicial independence is guaranteed under the Basic Law and is fully respected and practised. The Basic Law ensures that judges are chosen based solely on their judicial and professional qualities. They are appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission, which is an independent body chaired by the Chief Justice and is composed of local judges, legal professionals and eminent persons from non-legal sectors.

Hong Kong judges enjoy security of tenure. Under the Basic Law, they may only be removed for inability to discharge their duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal consisting of local judges. I am glad to add that we have never found ourselves in need of invoking such removal mechanism since the Basic Law came into force in 1997.

In the Global Competitiveness Report of the World Economic Forum 2018, Hong Kong is ranked first in Asia in terms of judicial independence, and has been so ranked from 2013.

As to prosecutorial function, the Department of Justice is vested with the power under the Basic Law to control criminal prosecutions, free from any interference. All prosecutorial decisions are made in accordance with the

laws and evidence and in accordance with the published Prosecution Code. Prosecutors are mandated to act independently, free from any interference, in making prosecutorial decisions.

Overall, Hong Kong performs strongly in upholding the rule of law. In the Worldwide Governance Indicators project of the World Bank, since 2003, the aggregate indicator in respect of the rule of law achieved by Hong Kong has been consistently above 90 (out of 100), and Hong Kong scored 93.75 in the year 2017, marking a significant improvement from 69.9 in 1996.

It is not a mere coincidence that while Hong Kong's rule of law infrastructure continues to strengthen, we maintain our status as one of the most corruption-free places in the world.

(b) Comprehensive anti-corruption law

Jurisdictions must be equipped with legal regimes that effectively tackle corruption in a wide range of situations. The legal regimes must also be kept up-to-date and fit for purpose. There are two sources that are relevant to Hong Kong – statutory and common law offences.

Hong Kong has an extensive statutory anti-corruption framework, with the Prevention of Bribery Ordinance (Cap. 201) as our flagship anti-corruption legislation. It creates various bribery and corruption offences against solicitation or acceptance of advantages by public servants as inducement or reward relating to performance of their duties, or by agents in the private sector in conducting the affairs or business of their employers. The offerors of such advantages also commit an offence. In addition, officers in the Government, Judiciary and certain other public offices are subject to even more stringent controls.

Other than substantive bribery offences, a statutory framework for effective asset recovery is also essential. The confiscation of assets would not only provide an effective deterrent against the corrupted offenders, but also deprive the perpetrators of their ill-gotten gains. In Hong Kong, the court is fully empowered to make restraint orders and confiscation orders to freeze and confiscate proceeds of crimes.

Legislative amendments to our anti-money laundering regime have been made recently and they have updated and enhanced the regime that we have in Hong Kong.

In the context of common law, Hong Kong has also developed case law that also enhances the anti-corruption regime. Among them, the offence of misconduct in public office deserves special mentioning in the anti-corruption context. The common law requires those who are responsible for discharging public duties to fulfil such responsibilities with integrity. The essence of the offence is the abuse of public trust by the officer.

The decisions of the Hong Kong Court of Final Appeal in *Shum Kwok Sher v HKSAR* and *Sin Kam Wah v HKSAR* are landmark cases on the offence of misconduct in public office. They have actually been cited in other jurisdictions, thereby Hong Kong's development of case law has helped to contribute to the development of common law in other jurisdictions.

(c) Co-operative international juridical assistance

As corruption often transcends borders, local efforts are not enough. International co-operation is called for. Chapter IV of UNCAC is dedicated to international co-operation and covers a wide range of measures including extradition and mutual legal assistance. It is in these areas that an "inclusive coalition" formed by all states is most

crucial and can bring about the most tangible benefits.

Hong Kong has always been an active and responsible player in the area of international co-operation. Under the principle of "one country, two systems", the Basic Law allows Hong Kong to establish its own regime of reciprocal juridical assistance with foreign states, including extradition and mutual legal assistance in criminal matters.

The existence of a suitable legal framework for surrender of fugitive offenders and mutual legal assistance is a hallmark for the rule of law. Such a framework should be workable, provide the necessary safeguards for the fugitive offenders, and importantly be applicable to all the jurisdictions in the world.

Hong Kong's surrender of fugitive offenders and mutual legal assistance regimes contain prerequisites of co-operation which are in line with international standards. Grounds of refusal for co-operation include non-compliance with the dual criminality principle, double jeopardy, conviction in absentia, political offences and death penalty. These grounds of refusal are also contained in the UN Model Treaties on extradition and Mutual Legal Assistance, and they form the basis of Hong Kong's legal framework. Amendments to further enhance the legal framework have been put in place and under discussion at the moment.

(d) Proactive prevention and education

Prevention is better than cure. Enforcement, prevention and education together form the ICAC's three-pronged approach. Organisationally, it has three departments dedicated to each of them. The ICAC engages the business community and the general public in spreading anti-corruption messages.

Education is not confined to local efforts. Under the

UNCAC, the ICAC has been designated by the Central People's Government to assist States Parties, including those along the Belt and Road routes, in capacity building in the fight against corruption.

In 2018, the ICAC had made notable progress in international liaison work and has commenced dialogues with dozens of anti-corruption agencies of Belt and Road countries, including members of the ASEAN, to discuss capacity building programmes.

No doubt, organising capacity building events, including this symposium series, is another example of the ICAC's and the World Justice Project's laudable efforts. The ICAC has also partnered with the International Association of Anti-Corruption Authorities to provide training programme, which is to be held right after this Symposium.

The Department of Justice also plays its part. We have useful exchanges with our counterparts in other jurisdictions to share anti-corruption experience from prosecutors' perspectives. Experience sharing with the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) of Sri Lanka, and a delegation of senior Thai Prosecutors under the China-ASEAN Prosecutors Exchange and Training Programme, are examples of our efforts.

One must not overlook the important role played by the international civil society. The World Justice Project conducts capacity building programmes around the world for anti-corruption promotion, which forms part of its bigger vision to enhance the rule of law worldwide.

Practical ways to give effect to the principles for "Inclusive Coalition Against Corruption"

Having considered the guiding principles for our

"inclusive coalition", we may then look at the occasions in which those principles can be put into practice.

One concrete example of such an "inclusive coalition" in place is the anti-corruption efforts by the multilateral development banks (MDBs) in recent years. MDBs occupy strategically important positions in the fight against corruption.

Among the MDBs, the World Bank Group has been at the forefront in that fight. In 1996, then President of the World Bank Group James Wolfensohn famously described corruption as a cancer.

Since that landmark speech, the World Bank has taken significant steps to strengthen its anti-corruption capacity. It now has an established mechanism to sanction against firms or individuals that have engaged in fraud, corruption, coercion, collusion or obstruction in connection with World Bank-financed projects.

In short, after internal investigation, allegations of such sanctionable practices are considered by the Office of Suspension and Debarment, which is the first tier of the Bank's two-tier sanctions process. If the allegation is substantiated, the Office may be able to impose sanctions, including debarment of a particular firm or individual from participating in projects financed by the World Bank. The respondent can choose to contest the allegations or the sanction before the World Bank Group Sanctions Board, which is the second tier of the sanctions process. The Board is composed of members external to the World Bank Group and is tasked to review each contested case.

Other than the sanctions themselves, the fact that the World Bank openly publishes its list of sanctioned firms and individuals creates "collateral consequences", resulting in a strong incentive to avoid the stigma.

The World Bank also shares information obtained through its own investigations or through disclosure from parties under review with national authorities. Hence, the investigations have led to parallel or follow-on prosecutions in various countries.

The World Bank is not fighting alone. In a spirit of "coalition", the World Bank Group joined hands with other MDBs, namely the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development and Inter-American Development Bank, to set up a cross debarment mechanism through an agreement executed in 2010. In short, they agree to mutually enforce each other's debarment actions if the debarment concerned is imposed for at least one year and some other conditions are satisfied. The MDBs have also standardised their definitions of some sanctionable practices, including corruption.

While the Asian Infrastructure Investment Bank (AIIB) has not yet joined the cross debarment mechanism, it has, since 2017, unilaterally adopted the list of sanctioned entities put forward by the five other MDBs. In effect, it means the AIIB recognises and gives effect to close to 1,000 debarments imposed by them.

Belt and Road Initiative

In the speech delivered President Xi Jinping at the Opening Ceremony of the Second Belt and Road Forum for International Cooperation held in Beijing last month, he said, "In pursuing Belt and Road co-operation, everything should be done in a transparent way, and we should have zero tolerance for corruption." He also referred to the "Beijing Initiative for Clean Silk Road", which was launched at the Forum.

The Beijing Initiative emphasises the importance of "working together for a clean Silk Road through consultation, contribution and shared benefits, and safeguarding the development of the Belt and Road Initiative in the spirit of the United Nations Convention Against Corruption, in accordance with the existing international rules and legal frameworks."

An "inclusive coalition" can help achieve all these aims.

To conclude, any attempt to prevent and fight corruption in a parochial or isolated manner will prove to be futile. Concerted effort is the only way out. The coalition to be built up must not only be "international" in nature, it must be "inclusive". I use that word to underscore inclusiveness in two different dimensions.

First, the coalition must be inclusive of all states, big or small, developed or developing, in the international community. Only then can we ensure that there will be no safe havens for corruption offenders and hiding grounds for their ill-gotten gains. International co-operation is the order of the day. Within the inclusive coalition, it would be incumbent upon those jurisdictions that have already made considerable anti-corruption achievements to proactively share their experiences and success stories with others which are still in an earlier stage of building up anti-graft capacity. Hong Kong is ready to contribute by playing an active role in this regard.

Secondly, to the extent that "international" is usually taken to mean state-to-state or government-to-government relationships, "inclusiveness" is a broader idea. Apart from states and governments, peoples and businesses must also be involved. They are particularly relevant to our prevention and education efforts.

Through these efforts, such an "inclusive coalition" will

become an important platform for helping to achieve the Sustainable Development Goals in the UN 2030 Agenda, in particular, Goal 16 which is "promot[ing] peaceful and inclusive societies for sustainable development, provid[ing] access to justice for all and build[ing] effective, accountable and inclusive institutions at all levels."

Goal 16 covers some visionary and ambitious targets that are highly relevant to our anti-corruption agenda, including:

- By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime;
- Substantially reduce corruption and bribery in all their forms;
- Develop effective, accountable and transparent institutions at all levels;
- Strengthen relevant national institutions, including through international co-operation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime.

All these are the targets and ideals that we all, in the spirit of the "Inclusive Coalition Against Corruption", should firmly bear in mind and strive to achieve.

On this note, it remains for me to thank the organisers again for inviting me to this Symposium and to wish you all a very interesting and fruitful discussion. Thank you.

Ends/Wednesday, May 22, 2019