

Speech by Secretary for Justice at ICAC Symposium

Following is the keynote speech by the Secretary for Justice, Mr Wong Yan Lung, SC, entitled "The Combat of Corruption: Good Governance and Human Rights", at the 3rd ICAC Symposium today (May 10):

'The time to guard against corruption and tyranny is before they shall have gotten hold of us. It is better to keep the wolf out of the fold than to trust to drawing his teeth and talons after he shall have entered.'

- Thomas Jefferson

I am delighted to be invited to address this important symposium, hosted by the Independent Commission Against Corruption. This is the third such symposium to have been held in Hong Kong since 2000, and many jurisdictions are represented here today. May I extend to you a warm welcome. I have no doubt that all of you attending will benefit greatly from the sessions and the exchanges. Many of you who are here will already be familiar with the Hong Kong situation, but perhaps not all, and I should like to begin on a historical note.

Almost nine years have passed since the Hong Kong Special Administrative Region (HKSAR) was established on July 1, 1997. On that date, this dynamic region reverted from British to Chinese sovereignty under the 'One Country, Two Systems' principle. Hong Kong was assured a high degree of autonomy, with due emphasis being placed upon Hong Kong people running Hong Kong. The notion that two distinct systems could co-exist within the context of one country was certainly innovative, and those who have followed our affairs in recent times can testify that the experiment has succeeded. Indeed, it helped to set the scene for the establishment in 1999 of the Macao Special Administrative Region, when Macao reverted from Portuguese to Chinese sovereignty under the same arrangement.

The Hong Kong you see today is an international city, a major financial centre, a bridge between the West and Mainland China, and a place in which there is a role for everyone committed to its prosperity and success. The core values on which the governance of Hong Kong is based include the rule of law, an open and free society, an impartial administration, a level playing field, and the maintenance of international links. Hong Kong is fortunate also to possess a tried and tested legal system, which has its roots in the English common law, as this is crucial to the preservation of confidence in the way in which we conduct our affairs. That Hong Kong has achieved so much in recent times is due to various factors, one of which is undoubtedly its policy of zero tolerance towards corruption.

As law enforcers, you may already know that Hong Kong plays a vital role throughout the region as well as internationally in the combat of all forms of crime. An independent prosecution service controls criminal prosecutions, free from any interference. Our

prosecutors and investigators work closely with their counterparts in other jurisdictions. We recognise that transnational organised crime is more sophisticated than it has ever been, and that the need for co-ordinated responses by law enforcers in different places has never been greater. Much crime, of course, involves corruption, and the Basic Law, our mini-constitution, makes specific provision not only for the establishment of a Commission Against Corruption, but also for that body to function independently and to be accountable to the Chief Executive of HKSAR.

The ICAC was founded in 1974, at a time when corruption was rampant. Over the past 32 years, it has successfully discharged its mandate to keep corruption in check. That has been achieved by a three-pronged strategy of investigation, prevention and community education. Through its campaigns, the ICAC has helped to maintain the stability of Hong Kong, to inspire confidence in its financial arrangements and to maintain a way of life for people which is fair and decent. A clean civil service has been integral to good governance in recent times. As a result of our vigorous anti-corruption laws, private business has been assured of a level playing field. When detected, cases of corruption are vigorously investigated by the ICAC and resolutely prosecuted by teams of dedicated prosecutors. Transparency International has consistently rated Hong Kong as one of the least corrupt places in the world in its annual surveys of global corruption.

The powers possessed by the ICAC are, without doubt, draconian, just as the penalties for offenders are harsh. However, experience has taught us that in this area, strong laws are vital, and they have been held by the courts to represent a proportionate response to an insidious crime. It is, for example, an offence for a government official to be possessed of wealth he cannot explain, and challenges to the legitimacy of the law on the basis that it somehow infringes the presumption of innocence have failed. That is because the judiciary has recognised that it is not inappropriate to expect an official in possession of capital or income which is disproportionate to official earnings to explain its provenance, not least because this is something peculiarly within his own knowledge. The satisfactoriness of the explanation provided for the wealth only has to pass a test based on a balance of probabilities, and the explanation given might indeed be such as to reasonably account for what, on its face, is a standard of living incommensurate to earnings. The courts have accepted that if corruption is to be combated, a balancing exercise between individual rights and the wider needs of society is necessary. At the same time, those who investigate corruption must be cautious and sensitive as they exercise the wide powers at their disposal, since these empower the invasion of privacy, the restraint of liberty and the compulsory disclosure of information.

In an era when law and order and public safety face serious challenges, the issue of how our societies should respond assumes critical significance. While they must, of course, adjust to new threats, the need for basic rights to be upheld remains a constant theme. Respect for human rights is, after all, integral to the detection of crime, the administration of justice, and the trial of suspects. The suspect in a criminal case has fundamental rights. He must be treated with dignity during the investigation stage, and prior to trial. If tried, he is entitled to the principle of equality of arms as between the prosecution and the defence. The presumption of innocence must also be applied throughout the trial process.

The Hong Kong Bill of Rights Ordinance, which domesticates the human rights

guarantees enshrined in the International Covenant on Civil and Political Rights, provides that in the determination of any criminal charge 'everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'. According to international norms, the minimum rights of those suspected or accused in criminal cases include:

- * protection from unreasonable search and seizure
- * protection from arbitrary arrest or detention
- * protection from unfair interrogation
- * protection from irregular trial.

In any discussion about the combat of corruption, it is surely necessary to remember that the rule of law is not just about security and the prevention of crime. Its essential characteristics include due process, restraint by those in authority and the avoidance of arbitrariness. The task of ensuring a measured and realistic compatibility between what are in some ways competing interests is not an easy one. It is nonetheless a challenge which this symposium must rationally confront. As you decide how best to counter the impact of corruption in the years to come, you will wish to be alert to the risk of throwing the baby out with the bathwater. That said, you must be bold and resolute as you map out your strategies, always remembering that organised crime is now a multi-headed hydra, and that the formulation of effective counter-measures is in the interests of all of us and of those we serve.

At the global level, organised criminal networks now enjoy unprecedented power and influence. The proceeds of crime provide the means by which new stages of organised crime can be financed. Illicit assets are used in some places to bribe officials and to impede the control of money laundering. When organised crime applies its financial muscle, the proper functioning of national economies can be impaired. Legitimate businesses are denied free and fair competition. Illegal or unethical practices can take hold. The imprisonment in America in February, 2006, of a senior United States congressman for receiving massive bribes over many years in return for arranging lucrative contracts serves as a timely reminder of the capacity of the corrupt to penetrate the highest levels of even the most advanced societies. It also highlights the need for constant vigilance.

These days, it is through corruption that organised crime often seeks to further its objectives. Indeed, corruption is sometimes regarded by its perpetrators as a more successful way of ensuring that people co-operate with them than violence or intimidation, and it will often be more durable. Corruption is simply an outlet for illicit monies. It is most encouraging that the United Nations Convention Against Corruption, which came into force in China in February this year, and is applicable to the HKSAR, recognises the significance of the return of assets obtained through corruption as a fundamental international principle. Effective asset recovery provisions will clearly support the efforts of countries seeking to redress the impact of corruption, as well as putting corrupt officials on notice that they cannot simply hide away their assets with impunity. It is appropriate also that the Convention recognises that corruption does impoverish nations and deprive citizens of good governance. That is because of the nexus that inevitably exists, but is not always acknowledged, between corruption and the quality of life which people enjoy.

Experience has shown how in practice corruption erodes basic public functions. Places exist where the national wealth and the aid of donors have been embezzled by the corrupt, and the people in consequence have been left to fend for themselves in often appalling circumstances. People are clearly deprived of basic rights if corrupt acts diminish the quality of that which is provided to them, or if the pool of available resources is improperly diminished, or if one person enjoys an unfair advantage over another. In an ideal world, corruption prevention would halt the problem at an early stage. But we live in the real world, and if the sophistication of law enforcers does not at least match the wiliness of the corrupt, then the potential for harm will remain enormous. As those in the audience well know, efforts to contain corruption will not succeed if there is not the closest of co-operation at the international level. That co-operation must involve all of those who are stakeholders in civilised society, whether they be investigators, prosecutors, lawmakers, professionals, bankers, businessmen or simply concerned citizens.

In conclusion, I feel certain that most will agree that the campaign against corruption must be placed at the top of the agendas of our societies in the opening years of the 21st century. Unless it is checked, it will poison our ways of life and corrode standards. We in Hong Kong are proud of the ICAC, which enjoys the wholehearted support of our people. The work of the ICAC is as important today as ever it was, and the credentials it has established for itself at the international level are impeccable. As each of you apply your different perspectives to the issues raised by this symposium, you may be assured that Hong Kong is committed not only to battling corruption at home, but also to sharing its expertise with others, and to assisting law enforcers in other jurisdictions in whatever way possible.

I urge everyone to make the most of this symposium, to learn from the exchanges, and to recognise that if corruption can be contained then all of our societies will be the winners.

Thank you.

Ends/Wednesday, May 10, 2006

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