

# Norms and Fulfillment of Macao Residents' Social Rights

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The present article discusses, from four aspects, the status quo of and challenges for the social rights of Macao residents.

## I. Legal basis for Macao residents' social rights

The legal basis for Macao residents' social rights is three-fold:

### 1.1 The Macao Basic Law

Macao is one of China's special administrative regions under the policy of "One Country, Two Systems" and the *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as "the Macao Basic Law"), the constitutional law regulating social rights of Macao residents, makes a series of stipulations in this respect. For example, Article 35 stipulates that "Macao residents shall have freedom of choice of occupation and work"; Article 37, "Macao residents shall have freedom to engage in education, academic research, literary and artistic creation, and other cultural activities"; Article 38, "The minors, the aged and the disabled shall be taken care of and protected by the Macao Special Administrative Region" and Article 39, "Macao residents shall have the right to social welfare in accordance with law. The welfare benefits and retirement security of the labour force shall be protected by law".

The Macao Basic Law serves as a legal foundation for the Macao Special Administrative Region (SAR) and laws and regulations are valid only on the condition that they are consistent with it. On the contrary, any law or regulation counter to the Macao Basic Law has no legal teeth. That being the case, social rights of Macao residents, provided for by the Macao Basic Law, are absolute in nature and can not be infringed upon by any department or individual.

### 1.2 International covenant on human rights

Article 40 of the Macao Basic Law states that "the provisions of International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Macao shall remain in force". Macao residents are still entitled to the social rights provided for by these covenants and conventions. Therefore, scope and standard for Macao residents' social rights are in conformity with international covenant on

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human rights.

### **1.3 Laws of the Macao SAR**

Though not specified in the Macao Basic Law and international covenants, Macao residents still can enjoy the social rights stipulated by specific laws and regulations enacted in accordance with provisions in the Basic Law and international covenants. For instance, the Labour Relations Law concerning economic rights, Social Security System regarding social rights and Outline for Non-Tertiary Education System pertaining to cultural rights. They have expanded the scope of social rights.

The Macao Basic Law, in stipulating rights and freedom of the residents, explicitly points out that they shall be protected by the law. Related laws, if absent, shall be formulated and if deficient, improved and reinforced so as to strengthen the legal protection system. In the meantime, the Basic Law also stipulates that the rights and freedom enjoyed by Macao residents shall not be restricted unless as prescribed by law and anyone who illegally infringes upon or restricts rights and freedom of Macao residents shall be punished in accordance with the law.

That being the case, social rights of Macao residents are both regulated and protected by specific laws at different levels and the latter actually serves as a foundation for the fulfilment of the former.

## **II. The public policy of “Putting People First” serves as a necessary condition for the fulfilment of residents’ social rights**

Perceived from the perspective of constitutionalism, transformation of residents’ social rights in a legal sense into the de facto rights hinges upon an important question, among others, of how to keep the administration of the government consistent with the idea of “putting people first” and make sure that it generates policies conducive to the fulfilment of residents’ social rights. Macao has an executive-led political system in which the executive and legislative branches restrict yet support each other. For one thing, to give full play to the executive-led system, the government should be capable of taking the initiative to work out public policies helpful for the fulfilment of residents’ social rights, effectively promoting the policy and enhancing administrative efficiency so as to guarantee the fulfilment of residents’ social rights. For another, the legislative branch is supposed to exercise restriction and supervision over its executive counterpart. Behaviours hampering the fulfilment of residents’ social rights such as negligence of duty or abuse of authority conducted by the executive organ should be promptly redressed. In this connection, lessons can be learned from both positive and negative examples in Macao.

### **2.1 Proper public policies have a positive impact on residents’ social rights**

The Macao Basic Law provides that the government has the obligation to make policies and create conditions for the fulfilment of residents’ social rights. The below takes as examples two public policies made by the current Government of the Macao SAR and positive impact made by them on the fulfilment of residents’ social rights.

The first is a policy in the educational front. Article 121 of the Macao Basic Law stipulates that the Government of the Macao SAR shall, in accordance with law, institute a compulsory

education system to protect residents' right to education. To achieve this end, the Government has drawn up the Ten Year Plan for the Development of Non-Tertiary Education, implementing the "Textbook Assistance Scheme" after putting into practice the 15-year (from kindergarten to senior high school) compulsory education system. According to this policy, the government distributes a subsidy totalling MOP1,500 to each one of the eligible students in Macao per academic year. To encourage the residents not to stop learning, the government has carried out the "Continuing Education and Development Program", providing a 3-year financial assistance for Macao residents above the age of 15 with an upper limit of MOP5,000.

The other is a policy in the aspect of economic aid. Article 39 of the Macao Basic Law provides that "the Government of the Macao Special Administrative Region shall, on its own, formulate policies on the development and improvement of the social welfare system in the light of the economic conditions and social needs". In order to guarantee home ownership, Macao permanent residents purchasing residential properties for the first time can be exempted from real estate stamp duty on the first MOP3,000,000 of a home's value (only limited to residential units) and temporary housing subsidies will be distributed to eligible families on the waiting list for public housing. To ensure that residents can have their basic needs met, financial allowances will be provided to low-income, full-time employees; financial assistance will be delivered to families with difficulties; special subsidies and special living allowances will be given to three categories of disadvantaged families and an old-age allowance of MOP5,000 will be distributed to elderly Macao permanent residents. To concretely implement the two-tier social security system, MOP6,000 will be injected into each eligible Central Provident Fund account, a cash handout of MOP4,000 will be delivered to every permanent resident and MOP2,400, to every non-permanent resident. To enhance the physical fitness of the Macao residents, free medical service will be provided in public hospitals and a MOP500 worth of healthcare voucher will be distributed to every permanent resident for healthcare service at private medical institutions.

The above two policies protect residents' right to education and to social security in a concrete way.

## **2.2 Lack of proper public policies brings a negative impact on residents' social rights**

At the previous stage of development, government of the Macao SAR, while promoting economic growth, failed to make a public housing policy to meet the need for houses of low-income families. Because of the soaring price, residents that cannot afford the commercial housing believed that they didn't benefit from the economic development in Macao, thus resorting to social actions and stirring up social conflicts.

Therefore, economic development doesn't necessarily guarantee the fulfilment of residents' social rights. The point is, when promoting economic development, the government is supposed to grant the residents more social rights by way of making relevant policies and making use of economic growth. With this end in view, the government of the Macao SAR has made timely policy adjustments and drawn up a scheme, under the supervision and support of the Legislative Assembly, specifying the schedule and supply of materials for the mass construction of public housing. With the objective of "homes for all in a contented society", the government spares no efforts in pressing forward with the plan to build 19,000 public housing units in phases before the end of 2012<sup>1</sup> so as to meet the housing needs of low-income residents.

Therefore, whether Macao residents' social rights can be fulfilled, to a large extent, depends on the ability of the government to make public policies accordingly and execute them.

### **III. Economic development is the material basis for the fulfillment of Macao residents' social rights**

Economic growth and improvement of people's livelihood are necessary material bases for the fulfillment of residents' social rights.

Several material conditions are needed for the fulfillment of residents' social rights and freedom prescribed by law, in particular, economic rights and the right to education, to be involved in cultural, scientific, technological and academic researches as well as to social welfare. Without the economic base, the above rights would be greatly constrained. Though economic development doesn't necessarily bring about the fulfillment of economic, educational, cultural and social rights, the absence of it would definitely render the fulfillment of these rights impossible. This can be fully illustrated by conditions concerning residents' social rights before and after Macao's return to the People's Republic of China (PRC).

Laws and regulations of Macao before and after its return to the PRC do not differ much from each other, because according to the Macao Basic Law, the previous laws, decrees and regulations remain largely unchanged. However, the government has formulated public policies consistent with Macao's social development and with Macao residents' aspiration, thus greatly promoting economic development and fully safeguarding residents' social rights.

Just within the very first year after the establishment of the Macao SAR, its Government put economic development on the top of the agenda, completely putting the ailing economy of Macao, which had been on the decline for four years in a row, back on track and registering an increase rate of 4.6%. In 1999, the GDP per capita of Macao was MOP117,055 while in 2010, the amount had increased to MOP409,828. The total income per capita had increased from MOP 124,800 in 2002 to MOP276,280 in 2009. During the first decade after Macao returned to the PRC, the annual increase rate for Macao's GDP topped 12.7% and budget surplus in 2010 was more than 30 times as much as that in 2000. Foreign exchange reserve of the Macao SAR Government hit more than 200 billion Macao patacas in 2010. Thanks to economic development, conditions of social rights enjoyed by the Macao residents have been improved enormously. This can be proved by the following statistics.

#### **3.1 Education**

The government has made heavy investment in educational undertakings to sufficiently protect residents' right to education. It is stated in the "School Development Plan" and "Schoolhouse Renovation and Facility Renewal Plan" for 2007/2008 academic year that the government of the Macao SAR would allocate a financial support of approximately MOP272,000,000 to assist the development of schools. This assistance was appropriated from the newly-established Education Development Foundation, supporting 100 campuses of 68 schools.<sup>2</sup> The 15-year (from kindergarten to senior high school) compulsory education system has also been put into practice in Macao, ensuring that everyone has an equal access to education.

The government has increased the allowance for tuition fees and stationary; established the

“special scholarship”, expanded the quota on “higher education student grant” and launched the “loan with interest rebate scheme”; increased the direct allowance for teachers by a large margin and levelled up the scale for annual bonus; provided financial assistance for private schools of non-tertiary education and assisted public schools in purchasing laptops for teachers and in upgrading information-technological equipment; constantly provided resources and created conditions for the professional build-up of teaching personnel; initiated training programs for outstanding teachers and extended the scope of instructional design reward.

### **3.2 Cultural Undertakings**

In the cultural front, the Government has allocated ad hoc funds, encouraging local specialized associations to take part in the expo for the animation and cultural industries. In the past decade after Macao’s return to the PRC, the area of libraries has increased from 3,000 to 5,000 square meters and the collection, from 200,000 to 500,000 volumes. As for the service of the libraries, currently the number of valid readers is about 90,000, accounting for 16% of the resident population of Macao. The number of people reading inside libraries has increased from less than 400,000 to 1,000,000 per year and that of people borrowing books, from less than 100,000 to over 200,000 per year. This goes some way towards the improvement of the overall cultural muscle of Macao residents.<sup>3</sup>

### **3.3 Social Welfare**

In the aspect of social welfare, the Government has increased the minimum subsistence index twice and handed out financial assistance to families and individuals with economic difficulties for three extra months. Meanwhile, besides the special subsidies and twice-in-a-year living allowances for three types of disadvantaged families, the government has also distributed extra Old-Age Allowances, constantly reinforcing its efforts in supporting underprivileged families.

In September 2009, the Macao SAR Government issued an administrative regulation *Rules for Opening and Management of Individual Account in the Central Savings System* (Administrative Regulation No. 31/2009), laying the foundation for the establishment of non-mandatory Central Provident Fund system involving contributions from employers and employees; in August 2010, the Legislative Assembly passed the law of *Social Security Scheme* (Law No. 4/2010) and formally implemented it on 1<sup>st</sup> January 2011, starting to pave the way for a two-tier social security system.

As for medical care, figures related to medical care service have scored dramatic increase. The number of medical practitioners in specialist consultations has grown from less than 150,000 in 1999 to nearly 270,000 in 2007, marking an 8% increase; number of medical personnel in emergency and outpatient service has risen from 115,000 to 167,000; number of personnel for outpatient service at health centers has risen from 313,000 to approximately 449,000, registering a 4.5% increase within 9 years.<sup>4</sup>

### **3.4 Employment**

As regards employment, the unemployment rate for March, April and May of 2011 was 2.6%, hitting a record low since Macao’s return to the PRC and marking a 0.1% decrease compared with the previous period (February-April); the underemployment rate decreased by 0.1% to 1.3%.<sup>5</sup>

The above figures reflect the status quo of Macao residents’ social rights and show the scenario of a promising future in this aspect under the stimulation of further economic

development.

#### **IV. Establishment and improvement of legal system provide institutional guarantee for the fulfillment of residents' social rights**

The fulfillment of residents' social rights rests upon the socio-economic development. However, institutionalization, namely legalization, is necessary for the residents to enjoy these rights steadily and for quite a long period. The social rights enjoyed by Macao residents are prescribed by law and promulgated through formal announcement. Protected by a series of laws, these rights are practicable.

Laws and regulations protecting residents' freedom of choice of occupation and work include: *Law on Establishing Employment Policy and Labor Rights Outline* (Law No. 4/98/M), *Establishing Rules to be Observed in Labor Relations to Ensure Equal Opportunity and Treatment in Employment between Workers of both Genders- Several Repeals* (Executive Order No. 52/95/M), *Labor Relations Law* (Law No. 7/2008), *Code of Employment Litigation* (Law No. 9/2003), *Law on Occupational Accidents and Occupational Disease* (Law No. 12/2001) and *Regulation on the Prohibition of Illegal Employment* (Administrative Regulation No. 17/2004), etc.

Laws and regulations protecting residents' freedom to engage in education, academic research, literary and artistic creation include: *Law on Non-Tertiary Education Regulation Outline* (Law No. 9/2006), *Establishing an Outline on Science and Technology Policy of Macao Special Administrative Region* (Law No.9/2000), *Revisions on Free Education Allowance* (Administrative Regulation No.17/2007), *Establishing Regulations on Education Development Fund* (Law No.16/2007), *Establishing Regulations on Tuition Fee Subsidy* (Administrative Regulation No. 20/2006), *Establishing Free Education Allowance* (Administrative Regulation No.19/2006), *Regulations on Tuition Fee Subsidy for Primary Education* (Administrative Regulation No. 16/2005) and *Establishing the Fund for the Development of Science and Technology* (Administrative Regulation No.14/2004).

Laws and regulations protecting social welfare include: *Establishing Regulations on Providing Financial Assistance to Economically Underprivileged Individuals and Families* (Administrative Regulation No. 6/2007), *Regulations on Old-Age Allowance* (Administrative Regulation No. 12/2005), *Establishing Regulations on Wealth Partaking Scheme* (Administrative Regulation No.12/2008), *Expanding Social Security System to Self-Employed Workers* (Dispatch of the Chief Executive No.234/2004), *Rules for Opening and Management of Individual Account in the Central Savings System* (Administrative Regulation No. 31/2009) and *Social Security System* (Law No. 4/2010).

Through specific laws and regulations listed above, a relatively comprehensive system has been progressively established to protect residents' social rights.

#### **V. Challenges confronted by Macao residents in fulfilling their social rights**

Though remarkable achievements have been scored in safeguarding Macao residents' social rights, new challenges keep cropping up. This is mainly represented by the following two aspects:

### **5.1 How to strike a balance between the short-term and long-term interests of social rights?**

For instance, is the Wealth Partaking Scheme, having been implemented in Macao for three years in a row, supposed to be maintained or changed? From the perspective of individual interests, Macao residents hope that the money can be distributed in cash every year, so they can purchase things directly. While from the perspective of social interests, such a scheme is not an optimal practice for economic development and social security in the long run. Once economic turmoil hits, failure to maintain the scheme would cause social unrests. Therefore, it is necessary to progressively transfer the current wealth partaking scheme which is temporary in nature into the long-term central savings system and institutionalized welfare policy so as to further manifest that the benefits yielded by economic development in the Macao SAR are enjoyed by the residents. The Social Security Fund, Central Provident Fund and personal savings together will provide sufficiently for residents' life after retirement. Nevertheless, such a change would pose a formidable challenge for the government. Without reform, it is really hard to maintain the current system, while reform might lead to waning popular support. To solve such a dilemma, the government and residents need to make concerted efforts.

### **5.2 How should equality be embodied by prerequisites for the enjoyment of social rights?**

Residents' social rights hinge upon resources provided by the government and just because of this, everyone hopes to have a share of the benefits brought about by such rights. However, economic resources provided by the government are limited, so unlimited demand and limited resources will inevitably conflict with each other. Therefore, how to embody the principle of equality when distributing the government's resources? Are discriminating methods supposed to be taken? What makes such methods valid? They are all worth a probe.

For example, regulations on personal account under the central savings system stipulate that residents must be in Macao for at least 183 days. If the participant is absent from Macao for the following reasons, the period of absence can be seen as that of presence: a. the participant takes courses of higher education recognized by local authorities; b. the participant is hospitalized due to sickness; c. the participant is above the age of 65 and resides in the mainland; d. the participant is employed by employers registered in this Fund and has been sent to work at places other than Macao. Residents who cannot meet the above conditions are not entitled to the capital injected by the government into the central savings account. Such a restriction has been questioned. That being the case, how to draw a demarcation line between equality and egalitarianism is a question which the government and residents should consider seriously. Otherwise, the social security system would collapse under the heavy burden induced by absolute egalitarianism.

Therefore, for the large variety of difficulties confronted by the discussion of residents' social rights, we can, by no means, come up with an abstract solution or standard. But one thing is sure. From the constitutional perspective, residents' social rights should be confirmed and residents should be encouraged to handle them rationally and to adopt an appropriate outlook on rights and behave maturely.

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- <sup>1</sup> According to statistics released by the Statistics and Census Service of the Macao SAR in 2008, there were totally 167,187 households in Macao, among which 133,548 (79.9%) were private properties, 27,871 (16.7%) was economically affordable housing and 5,768 (3.5%) went to social housing.
- <sup>2</sup> Ho Hau Wah, Edmund (2008). *Policy Address for the Fiscal Year 2009 of the Macao Special Administrative Region*. 11<sup>th</sup> November 2008.
- <sup>3</sup> *Ibid.*
- <sup>4</sup> *Ibid.*
- <sup>5</sup> Macao Statistics and Census Service (2011). *Employment Survey (March-May, 2011)*, in the website: <http://www.dsec.gov.mo/Statistic/LabourAndEmployment/EmploymentSurvey/EmploymentSurvey2011M03.aspx>.