

Development of Macao’s Social Security System under the “One Country, Two Systems” Policy and Related Legal Issues

LI Yanping*

I. Introduction

The social security system, a positive yield of the socio-economic development of modern countries, is an important indicator of social equality and justice. Guided by the idea of welfare-state, the modern society regards social security one of the most critical ways to bring about social safety and equality, as well as to eliminate various social risks and inequalities. As regards the relationship between the individual and the government, people, according to their experience, are already keenly aware of the fact that their destiny is controlled by the systems of public economy and public service. Personal rights such as those related to the basic necessities of life and property rights, which are traditionally seen as the foundation for freedom, are now inextricably tied up with the government and its actions. It is fair to say that throughout the ages, people’s life has never been so strongly interfered with by the nation and the political order as it is today.¹ Therefore, a mentality of requesting the government to provide social security for their subsistence has developed among the people and countries all over the world have formulated laws to meet such a demand. Social security of Macao, progressing amid people’s constantly renewed views on the functions of the government, has grown into a basic social security system covering all Macao citizens. Under the policy of “One Country, Two Systems”, the social security system in Macao has acquired a highly autonomous and independent nature. The Government of the Macao Special Administrative Region (SAR), having played a crucial role in the construction of the social security system, is confronted with issues related to legalization and the adjustment of citizens’ views on social security, etc.

II. Major contents and features of Macao’s social security system

“Everyone has access to old-age care” is one of the pursuits of the human society. The old-age care system, in most countries across the world, was borne by the individuals in the first place and then transferred to the shoulders of the society. Macao is no exception. In the 1980s, Macao started to put in place a contributory social security system. Through related stipulations in Executive Order No. 84/89/M and No. 58/93/M, a relief and aid system for labours under the conditions of diseases, unemployment, old age and disabilities, etc. has gradually taken shape. After Macao’s

* Research Fellow of Associate Professor Grade, One Country Two Systems Research Center, Macao Polytechnic Institute

return the People’s Republic of China (PRC), with the improvement of socio-economic conditions, the Macao SAR Government adjusted the basic principles and objectives of social security, expanding its coverage from employees to all Macao citizens in accordance with the idea of comprehensive security and establishing a two-tier social security system. Specifically, Macao’s social security system mainly includes the following parts:

An ad hoc agency – the Social Security Fund – has been set up for social security management, mainly responsible for the implementation of policies in the domain of social security and for the management of relevant resources. The Fund is essentially an entity characterized by financial autonomy and a comparatively high degree of administrative autonomy. Established on 23rd March 1990, it was originally designated to provide social security for local employees and distribute financial assistance for local workers under the conditions of diseases, unemployment, old age and disabilities, etc. in accordance with Executive Order No. 84/89/M. Macao’s social security system, at its early stage, only allowed employees to make contribution. However, with Macao’s social development, the Fund has been expanding its coverage and reforming its services. Since 1993, voluntary contribution (to ensure that people who stop being employed can continue their contribution), self-employed workers contribution and quite a few new welfare programs have been added; in 2008, in response to the social complaints, the Fund lowered the pension eligibility age. In 2011, affiliation of the Fund was transferred from with the Secretariat for Economy and Finance to the Secretariat for Social Affairs and Culture, indicating that the Fund came to the stage of providing social security for all Macao residents.

Sources of social security revenue and its coverage. The social security revenue mainly comes from the defined contribution of beneficiaries (employers, employees and voluntary contributors) of the system, 1% of the recurring income of the government’s total budget and allocation from the revenue of the gaming industry. The latter two constitute the mainstay of the social security revenue. Taking the year 2009 as an example, table 1 shows the sources of social security fund:

Table 1: Sources of Social Security Fund in Macao

Sources of Social Security Revenue	Sum (million MOP)	%
Fee, Fine and Other Monetary Punishment	4.06	0.05
Financial Income	9.53	0.50
Allocation from Government’s Total Budget	366.52	19.22
Allocation from the Revenue of the Gaming Industry	1365.49	71.30
Contributions	172.16	8.97
Total	1917.76	100.00

Source: Social Security Fund of Macao: 2009 Annual Report

According to the statistics, 90.52% of Macao’s social security revenue in 2009 comes from the government and gaming industry. Such a social security system completely undertaken by public finance has already aroused interest and reflections among scholars.²

The social security systems is composed of the following items: the old-age pension, the pension for people with disabilities, unemployment benefits, sickness allowance, funeral and burial benefits, marriage allowance, birth allowance and other items within specific assistance programs which have been approved by the Chief Executive such as the compensation for pneumoconiosis and claims emerging out of labour relations. Among them, the old-age pension takes the largest proportion. Table 2 shows the social security package of 2009:

Table 2: Social Security Package of Macao

Item	Sum (million MOP)	%
Old-Age Pension	55.94	83.78
Pension for People with Disabilities	2.20	3.29
Extra Subsidies	4.51	6.75
Unemployment Benefits	2.71	4.06
Sickness Allowance	0.27	0.41
Funeral and Burial Benefits	0.92	0.14
Birth Allowance	0.39	0.59
Marriage Allowance	0.24	0.36
Compensation for Pneumoconiosis	0.21	0.31
Claims Emerging out of Labor Relations	0.21	0.31
Total	67.60	100.00

Source: Social Security Fund of Macao: 2009 Annual Report

Obviously, the old-age pension accounts for as much as 83.78% of the total sum. With the ageing of the population, the old-age pension will be increased by a large margin.³

The basic social security system. Established mainly in line with Law No. 4/2010 *Regime da Segurança Social* (Social Security System), it is operated in accordance with the principles of social insurance and in a pay-as-you-go form. It secures the life of retirees and helps employees to guard against job risks through distribution of various allowances to eligible beneficiaries. The basic social security system consists of the compulsory contribution system and the voluntary contribution system. Employers and their employees shall make contributions via the former, while other eligible residents can do so via the latter. The old social security system (the one implemented in accordance with Executive Order No. 84/89/M and No. 58/93/M) stipulated that only employees (including self-employed people) are covered by the system, while the new one (Law No. 4/2010) expands its coverage to people who were previously ineligible for the system. Meanwhile, it enables part of the eligible beneficiaries to receive real-time pension through the transitional measure of collecting overdue contributions.⁴ With the above measures, the social security system has already covered all Macao citizens, providing for their life after retirement.

The special social security system. This is a recently-launched program based on Administrative Regulation No. 31/2009 *Regras Gerais de Abertura e Gestão de Contas Individuais do Regime de Poupança Central* (Rules for Opening and Management of Individual Account in the Central Savings System). All permanent residents of Macao above the age of 22 will automatically become participants of the system and the Fund opens an account for every one of them. Eligible participants do not have to go through any procedure and each can get money of the same amount. The central savings system aims at guaranteeing a better life for the residents after their retirement and laying a foundation for the establishment of a non-compulsory central provident fund system involving contributions from employers as well as employees.

Besides, Macao has a well-established benevolent culture and in the meantime, a stable behavioural pattern and values system have also taken shape among the residents. To meet the basic demand for social welfare through non-governmental endeavours is an important part of Macao's social security. For example, in the *Policy Address for the Fiscal Year 2004 of the Macao Special Administrative Region*, the Chief Executive pointed out that the relief policy of "Yes to jobs, no to charity" would be, under the instruction of the Social Welfare Bureau, implemented within neighbourhoods. The four non-governmental social welfare organizations responsible for such implementation include the Women's General Association of Macao, Federation of Trade Unions of

Macao, General Union of Macao Residents Associations and Caritas Macau. Non-governmental associations actively participating in extensive social relief efforts include the Kiang Wu Hospital Charitable Association established in 1871, Macao Tung Sin Tong Charitable Society established in 1892, the Macao Holy House of Mercy hosted by the Macao Catholic Church and the Caritas Centre. Social assistance provided by them and social security provided by the government complement and enhance each other, advancing and improving the multi-level and diversified social security system of Macao.

Therefore, Macao's social security system takes on the following characteristics:

(1) The system expands its reach to different levels to fully meet residents' demand for old-age care. Having residents' life secured paves the way for social harmony and development and a relatively well-developed old-age pension system is nothing less than the cornerstone. As an aging trend of the society picks up its momentum, residents' expectation for a security system that can be accessed by all grows. In November, 2008, the Reform Proposals for Social Security and Old-Age Pension System, with the construction of a two-tier social security system at its core, was issued by the government of the Macao SAR. According to the Proposals, the first tier of the social security system provides for the old age for all Macao residents' and helps them guard against employment-related risks, while the second tier – the non-compulsory central provident fund system – guarantees a relatively comfortable life for the residents after their retirement.

(2) Under the policy of "One Country, Two Systems", Macao's social security system develops independently. The traditional benevolent idea of "Care for the old and young like they were your family" advocated by the Chinese community and the modern legal system coexist, jointly promoting the development of Macao's social security system and charities. After the establishment of the Macao SAR, the most drastic changes brought to the Macao society include the implementation of "Macao People Ruling Macao" and a high degree of autonomy, as well as the protection offered by the *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as "the Macao Basic Law"). In the realm of social security, a multi-level system supported by a comparatively integrated legal system involving the Macao Basic Law, international covenants and local legislations of Macao, etc. have been forged. Article 40 of the Macao Basic Law stipulates 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 and shall be implemented through the laws of the Macao Special Administrative Region." That is to say, contents of international covenants should be reflected by Macao's local legislations so as to provide legal protection for residents' rights.

(3) The Macao SAR Government plays an important part in the development of the social security system.

After Macao's return to the PRC, its political system has undergone tremendous changes. The executive-led system is regarded a distinctive political feature of Macao, emphasizing the top authority and decisive role of the Chief Executive and the government in the management of public affairs. In such a political system, the Chief Executive enjoys high legal status, possesses extensive and great authority and has the decision-making power in the political system.⁵ The Chief Executive commands the dominant position in the political structure of the Macao SAR, holding significant powers on the political, economic, personnel and legal fronts. As regards the relationship between the executive and the legislative branches, the Chief Executive is entitled to

even higher restrictive power, possessing exclusive policy-initiation power for legislative proposals, the power to return legislative bills passed by the Legislative Assembly and under particular circumstances, the power to dissolve the Legislative Assembly. In the executive-led political system, the development of social security is directly influenced by government policies. Reasons for this are two-fold: for one thing, in the modern society, the government plays the role of “the provider of public goods”. It maintains a relatively favourable management environment, supports the disadvantaged classes and upholds social equality. In fact, the fulfilment of any social right relies on the resource held by the government and its distribution. If the distributable resource is insufficient, then it is beyond the government’s strength to provide more social security even if it had the intension to do so. Therefore, compared with free rights, social rights bear more distinctive “local” features. For another, in the executive-led political system, the Chief Executive and the government led by him/her can fully wield their policy-making and decision-making powers in the realms of the development of commerce and industry, labour, education, science and technology, as well as culture, thus, to a great extent, determining the direction and path for the development of Macao’s social security. Moreover, the legislative proposals concerning public expenditure are put forward by the government, having a direct impact on the depth and width of the social security system. In the meantime, the social welfare which depends heavily on social resources hinges upon government support. Therefore, in the executive-led system, the development of Macao’s social security system is primarily decided by government policies.

How to give expression to the protective role of the executive-led system over social rights has become an inescapable question as Macao’s social security system develops into greater depth. A possible solution might be: promoting administrative democracy, giving a bigger role to democracy in the government’s policy-making process and making the administrative management more democratic through strengthened administrative transparency and residents’ participation so as to meet the social demand for increasingly diversified development. The Macao Basic Law stipulates that the Chief Executive shall consult the Executive Council before making important decisions. This is actually a specific requirement for the democratization of Macao’s public administration. Besides, the supervisory function of the Legislative Assembly should be given a full play so as to safeguard residents’ social rights. In the executive-led political system, conducting proper and close supervision is an important function of the Legislative Assembly. The Macao Basic Law vests the Legislative Assembly with the power to examine and approve budgets introduced by the government, to decide on taxation according to government motions and approve debts to be undertaken by the government, to examine the report on audit introduced by the government, to debate the policy addresses of the Chief Executive and any issue concerning public interests, etc. (Article 71). During the process, the Legislative Assembly can fully examine whether the government can well protect residents’ social rights and, according to the results, raise questions and make suggestions.

III. Legal issues concerning Macao’s social security system under the policy of “One Country, Two Systems”

(1) Perceived from a legal perspective, policies and regulations alone are not enough for social administration, the practice of them should also be considered. In particular, whether effective

judiciary helps are accessible is one of the most important criteria for a constitutional government and the rule of law. For quite a long period of time in the past, because social security was related to several issues such as the direction of public policies, controversy over whether social rights could be left to judicial decisions existed among theorists in different countries. Nevertheless, in recent years, the constitutional protection of social rights has already shifted its focus from restrictions on legislative bodies to judicial guarantees. That is to say, social rights, as a category of residents' basic rights defined by the constitution, have already borne the characters of the right of claim.⁶ In practice, judicial organs in different countries and regions carefully develop their functions of providing judiciary helps to protect residents' social rights.⁷

After the establishment of the Macao SAR, the Macao Basic Law formulated by the National People's Congress (NPC) serves as the constitutional law for Macao⁸, constituting the supreme legal norms in the Macao SAR together with the *Constitution of the People's Republic of China* (hereinafter as "the Constitution"). In the meantime, the NPC authorized the Macao SAR to enjoy the executive, legislative and independent judicial powers and the power of final adjudication in accordance with the Macao Basic Law. Article 39 of the Macao Basic Law provides that "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." But the problem is how to interpret "in accordance with law". Does that mean Macao residents' rights to enjoy social welfare are explicitly and directly stated by the Basic Law, or they should be specified by local legislations at first? Some scholars hold that the social welfare, as a service and guarantee granted by the society to individuals, can be enjoyed only in accordance with law. Without legal provisions, the society is not obliged to provide such service or guarantee.⁹ In other words, the Macao residents cannot claim welfare-related rights on the courts directly in accordance with Article 39. Instead, such rights can be enjoyed for real only on the basis of specific stipulations. Theoretically speaking, Article 39 is considered a constitutional guiding principle which lays out the guidelines for future conducts of the public power (especially the law-makers) but possesses no legal teeth. Such articles have greater moral relevance than legal relevance.¹⁰

That said, the implications of Article 39 in practice, to a large extent, are decided by the courts' interpretation of it. Then can the courts of the Macao SAR effectively protect residents' rights to enjoy social welfare through interpreting Article 39? This is related to how we understand the courts' power, stipulated by the Basic Law, to interpret laws. Theoretically, scholars hold two kinds of opinions. Some think that the courts' power to interpret laws doesn't equal to the power to examine them. The Macao Basic Law only vests the courts with the power to interpret laws but not the power of judicial review.¹¹ Others hold that to some extent, the interpreting power can be seen as the examining power. If the courts believe that certain legislations of the Macao SAR are inconsistent with specific provisions of the Basic Law, they can make the decision not to apply such legislations.¹² In practice, the courts of the Macao SAR regard their power to interpret laws, to some extent, as an examining power based on the Macao Basic Law but in the meantime, prudently exercise such power. The examinations are targeted at and possess legal teeth only for the "unconstitutional" legal norms concerning specific cases.¹³

(2) Legal issues regarding the relations between Macao's social security system and that in the mainland under the policy of "One Country, Two Systems".

Since Macao's return to the PRC, its socio-economic development has made great strides. Statistics show that from 1999 to 2010, Macao's GDP has grown from 47.287 billion MOP to

223.741 billion MOP, marking a 4.7-time increase. Per capita GDP has jumped from MOP 26,000 in 1982 to MOP 408,000 in 2010, which is not possible without the contribution of nonlocal employees. According to statistics, by the end of April 2011, the overall employed population was 325,000. The number of nonlocal employees was 82,000, accounting for 1/4 of the total.¹⁴ Among all the nonlocal employees, as many as 47,000 hold identification documents issued by Chinese mainland, accounting for more than half of the total.¹⁵ That being the case, nonlocal employees, especially those from the mainland play a significant role in Macao's economic growth. Accordingly, issues concerning the social security of cross-border employees grow increasingly salient. Such cross-border employees include Macao residents who work outside Macao and those who are not Macao residents but work in Macao. As for the former, Macao's social security system has made the following stipulations according to specific situations: (1) Macao residents employed by branches or agencies located outside Macao of enterprises registered in the Macao SAR are entitled to social security provided by the compulsory contribution system, enjoying the same rights as those working in Macao; (2) Macao residents who are eligible for the voluntary contribution system should present documents, proving that he/she works outside Macao to provide living expenses for his/her spouse or immediate relatives. Only in so doing can he/she register in the Social Security Fund, enjoy related rights and discharge corresponding obligations.¹⁶

As for people who are not Macao residents but work in Macao, this article mainly focuses on issues concerning the social security of employees from Chinese mainland during their work in Macao. According to present laws and regulations, these people are not covered by Macao's social security system. They may get relevant security through the social security system of the mainland. However, they don't have any job in the mainland and are thus regarded the unemployed. So they have to participate in mainland's social security system in a private capacity and pay all the fees totally by themselves.¹⁷ The major disadvantage of such a policy is that employees working in Macao who hold identification documents issued by Chinese mainland cannot have a share of the fruits yielded by Macao's economic development, nor can they enjoy the benefits brought about by the economic growth in the mainland. Macao is an SAR of China. That being the case, though some mainland people go to Macao for a job, that should be regarded just a change of place within the same country. So these people are supposed to get access to relevant social security. Additionally, according to the Law on Employment of Non-Resident Workers, the employer shall be required to pay an employment fee for each non-resident worker effectively hired.¹⁸ But because nonlocal employees are not covered by the Social Security Fund of the Macao SAR, such fee is not accessible to non-resident employees in practice. Such a phenomenon definitely runs counter to the fundamental principle of safeguarding workers' basic rights more sufficiently. Therefore, it is necessary to further improve related laws and regulations as well as to strengthen the connection between them in the future development of the legal system.

IV. Conclusions

Under the policy of "One Country, Two Systems", the Macao SAR, according to its socio-economic conditions, has been constantly advancing and improving its social security system and has progressively given rise to a system that bears distinctive Macao features. Nationally speaking, how to dovetail the social security laws and regulations in Macao and in the mainland

more effectively and thus create a social security system covering all the Chinese featured by equality and rationality is a problem worth further reflection. In any case, to give a full play to the institutional advantages of the policy of "One Country, Two Systems" and to create an institutional pattern in the realm of social security which is more compatible with the social development are the historical missions and duties of the Macao SAR.

Notes:

- ¹ Quoted from Chen Xinmin (2007). *Principles and Practice of Rule of Law in Countries of Public Law*. Beijing: China University of Political Science and Law Press. 359.
- ² Ng Wai Keong (2009). The Rights and Obligations of Society Security. In Tang Yuk Wa and Chan Kin Sun (Eds.), *Social Security Reform: On the 10th Anniversary of the Macau Social Security Society*. Macao: Macau Social Security Society. 90.
- ³ Tang Yuk Wa (2009). A Review on the Aging Problem of Macao and the Related Social Welfare Policy. In Tang Yuk Wa and Chan Kin Sun (Eds.), *Social Security Reform: On the 10th Anniversary of the Macau Social Security Society*. Macao: Macau Social Security Society. 102.
- ⁴ Article 69, Law No. 4/2010 *Regime da Segurança Social* (Social Security System).
- ⁵ Xiao Weiyun (2004). On the Major Experiences of the Implementation of the Basic Law of the Macao Special Administrative Region. In Xiao Weiyuan, Ieong Wan Chong and Rao Geping (Eds.), *Rule of Law and the Development of the Special Administrative Region*. Macao: Associação de Divulgação da Lei Básica de Macau. 18.
- ⁶ Mo Jihong (2011). *On the Constitutional Protection of Social Rights*. In the website: http://www.calaw.cn/Pages_Front/Article/ArticleDetail.aspx?articleId=4384 , Dec. 30, 2011.
- ⁷ Zheng Xianjun (2003). Social Rights of Judicial Relief. *Law and Social Development*. Volume 3. 42-47.
- ⁸ Ieong Wan Chong (2004). *The Interpretation of the Macao Basic Law*. Macao: Legal Affairs Bureau. 12.
- ⁹ Lok Wai Kin (2000). *An Introduction to the Basic Law of the Macao Special Administrative Region*. Macao: Macao Foundation. 136.
- ¹⁰ Chen Xinmin (2007). *Principles and Practice of Rule of Law in Countries of Public Law (Volume 2)*. Beijing: China University of Political Science and Law Press. 84.
- ¹¹ Xiao Weiyun (2003). *On the Macao Basic Law*. Beijing: Peking University Press. 209.
- ¹² Lok Wai Kin (2007). On Judicial Review in the Legal System of Macao. In *The Legal Development Across the Strait*. Taipei: Institutum Iurisprudentiae, Academia Sinica. 194.
- ¹³ See Judgment No.9/2006 and No. 28/2006 issued by the Court of Final Appeal of the Macao SAR.
- ¹⁴ Source of statistics: the website of the Macao Statistics and Census Service: <http://www.dsec.gov.mo>. 30th December 2011.
- ¹⁵ Source of statistics: the website of the Macao Human Resources Office: <http://www.grh.gov.mo>. 30th December 2011.
- ¹⁶ Article 13, Law No. 4/2010 *Regime da Segurança Social* (Social Security System).
- ¹⁷ The information is obtained from the Zhuhai Municipality Human Resources and Social Security Bureau through the author's consultation by phone.
- ¹⁸ Article 17, Law No.21/2009, *Lei da Contratação de Trabalhadores Não Residentes* (Law on Employment of Non-Resident Workers).