

# **To Improve the Quality of Civil Servants through In-depth Study and Discussions of the Basic Law: Talk on the Closing Ceremony of the “Advanced Course on the Basic Law of the Macao SAR”**

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The requirements for the civil servants to study the Basic Law are different from those for others. As a civil servant, I have been studying the Basic Law as many of you have, and according to my experience, the Basic Law has very rich contents which can be understood from different perspectives. And for civil servants it is very important to avoid the problem of failing to see the picture forming due to being too close to the puzzle. In order to see the whole picture forming by staying not too close to the puzzle, we need not only be familiar with the provisions of the Basic Law, but also study why there are such provisions, what the legal philosophy behind them is. We must understand the essence of the Basic Law from a higher perspective. Therefore, I would like to share with all of you three pieces of my advice on the study of the Basic Law from the perspective of a civil servant.

## **I. To have an in-depth understanding of the historic change of Macao through studying of the Basic Law**

On hearing this title, many of us would wonder: why are we talking about change today since we have been talking about “remaining unchanged” while referring to the Basic Law and the “One Country, Two Systems”? It is true that the policy of “One Country, Two Systems” and the Basic Law both provide a lot of “remaining unchanged”. For example, the capitalist system in Macao remains unchanged, the social economic system remains unchanged, the life style and the laws all remain unchanged. There’s nothing wrong about talking about “remaining unchanged”, we did that in the past, and we will keep talking about it today. Nevertheless, we must realize that the resumption of sovereignty in Macao by the Chinese Government is the prerequisite for all those “remaining unchanged” – whether they are stipulated in the Basic Law or frequently discussed by people. In fact, Macao’s return to the motherland is a significant historic change.

Broadly speaking, this historic change is fundamental in the following three aspects: Firstly, with Macao’s return to the motherland, the colonization by foreign colonizers for over 400 years was ended, and Macao became a Special Administrative Region (SAR), and there’s a fundamental change in Macao’s legal status. Secondly, by practicing the policy of “One Country, Two Systems” in Macao the Central People’s Government grants the SAR with a high degree of autonomy. Macao

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people are not only the masters of our country, but also shoulder the great responsibility of administrating Macao well according to the Basic Law. The identity and status of Macao people were fundamentally changed. Thirdly, with the formal implementation of the Basic Law of the Macao SAR in accordance with our Constitution, there was fundamental change in the constitutional foundation of the Macao SAR, the former constitutional documents for Portugal's governance of Macao are no longer effective. Following these three fundamental changes, the nature of the relationship between the Central People's Government and the SAR is also distinguished from that of the relationship between Portugal and Macao, the political system of the SAR is also fundamentally different from the former Macao political system under Portugal. With respect to the social economic system, the provisions of the Basic Law both keep and further develop the former system guided under the principle of keeping the capitalist system and life style in Macao unchanged. In another word, some "changes" did occur. For example, one important aspect of the policy of "One Country, Two Systems" and the Basic Law is to keep the life style of Macao people unchanged, which means protecting the basic rights and freedoms of Macao residents. There are complete and systematic provisions in this respect in Chapter 3 of the Basic Law. For the first time in history, complete provisions on protection of human rights were made, which is certainly a significant development. Another example is Article 118 of the Basic Law which provides "The Macao SAR shall, on its own, make policies on tourism and recreation in the light of its overall interests." According to this provision, Macao could develop gaming industry, which remains unchanged. Nevertheless, Macao's development of gaming industry must comply with its overall interests, which is the new change since there was no such requirement in the past.

The Central People's Government has been paying great attention and putting great emphasis on the historic change of Macao's return to motherland. We may still remember the inscription by President Jiang Zemin on Macao's return, which reads "to create Macao's new century". It is also his remark that Macao's return to motherland created a new century in Macao's history, and the Macao people became the genuine masters of their land and Macao's development had entered a brand-new era since then. The two words used by President Jiang are "new century" and "brand-new era". Do these words have any deeper meaning? One of President Jiang's talk in Hong Kong could be the answer to this question. He said that Hong Kong's return is a historic change in Hong Kong's history, we can only plan for Hong Kong's development and future as our own masters by following this historic change and genuinely realizing the responsibility of being the masters. This talk incisively illustrates the relationship between the change of time and developing vision of governance. As we all know, the change of our time brings change of our ideas and visions. For a government to have a time-leading governance leading our society to develop further, the civil servants as the components of our government are required to have acute insight into the change of time, to transform their ideas and visions voluntarily, to develop the consciousness of being a master and sense of historical responsibility, and to actually form a vision of governance in light of the policy of "One Country, Two Systems", "Macao People Ruling Macao" and a high degree of autonomy.

The Macao SAR Government has performed quite well in forming a vision of governance in line with the policy of "One Country, Two Systems" since its establishment, which can be seen from both the titles and the contents of the ten policy addresses of the Chief Executive Edmund Ho Hau-wah and the first policy address of the Chief Executive Fernando Chui Sai On. The SAR Government has been following this historic change well, and has formed a set of administrative

philosophy to follow such historic change. With the continuous social, economic and political development of Macao, Macao residents have higher demands on the administrative capability and standard of Macao Administration. In the past years, the Macao SAR Government has proposed legal reform and reform of public administration to respond to such requirements in order to establish and improve various systems to handle the issues within the scope of a high degree of autonomy of the Macao SAR. All these tasks are very challenging since any reform involves problems of changing and remaining unchanged and various interests. In my opinion, we cannot achieve these reforms unless a social atmosphere in favor of reform is formed by realizing deeply and illustrating to the whole society the historic changes which have occurred in Macao and by analyzing deeply how the former laws and systems cannot keep up with such historic changes.

## **II. To improve the understanding of the Macao SAR system through studying of the Basic Law**

Why do I propose the issue of improving the understanding of the Macao SAR system? We can find the answer to this question in the third paragraph of Preamble of the Basic Law of the Macao SAR, which reads: “In accordance with the Constitution of the People’s Republic of China, the National People’s Congress hereby enacts the Basic Law of the Macao Special Administrative Region of the People’s Republic of China, prescribing the systems to be practiced in the Macao Special Administrative Region, in order to ensure the implementation of the basic policies of the People’s Republic of China regarding Macao.” This provision clearly indicates that the core of the Basic Law made in accordance with the Constitution is to prescribe the system to be practiced in the Macao SAR, and the purpose of prescribing such system is to ensure the implementation of the basic national policies regarding Macao. We must improve our understanding of the Macao SAR system to such level.

What are the basic state policies regarding Macao? Practicing the policy of “One Country, Two Systems”, “Macao People Ruling Macao” and a high degree of autonomy are definitely the basic policies, and I believe we are all familiar with them. Still, I would like to repeat the relationship between such policies and the national governance system. We should deeply realize that practicing “One Country, Two Systems”, “Macao People Ruling Macao” and a high degree of autonomy is in essence a way of administering Macao by the Central People’s Government. The fact that our nation practices socialist system while Macao keeps its former capitalist system and life style unchanged actually reflects the relationship between the whole and the part, that between the general and the special within the national administration. To improve the understanding of the Macao SAR system means to understand that the Macao SAR system is a component of the national governance system, having its own uniqueness while complying with the general principles of the national governance system.

As is known to all, our national governance system is prescribed by the Constitution, establishing SARs and implementing special system when necessary is also prescribed by the Constitution. Then, how is the SAR system prescribed in accordance with the Constitution? The following three aspects are summarized with reference to the contents of the Basic Law: firstly, the SAR system must be in compliance with the unitary system which is the general principle of our national governance system. The decision of the People’s Congress to establish the Macao SAR and

the enactment of the Basic Law to prescribe the system to be practiced in the SAR actually reflect the principle of unitary system. The provisions of the Basic Law reflect the principle of unitary system in full. For example, Article 1 of the Basic Law of the Macao SAR provides that the Macao Special Administrative Region is an inalienable part of the People's Republic of China. Article 2 prescribes that a high degree of autonomy enjoyed by the Macao SAR is authorized by the National People's Congress. Article 12 provides that the Macao SAR shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government. Article 45 stipulates that the Chief Executive of the Macao SAR shall be accountable to the Central People's Government. The legal philosophy underlying such provisions is the principle of unitary system. Secondly, Article 31 of our Constitution provides that the capitalist system to be instituted in SARs is prescribed by law enacted by the National People's Congress, which is a particularity permitted by our national governance system. The Basic Law contains complete provisions regarding the capitalist social, economic and cultural systems to be instituted in the Macao SAR. Article 11 thereof provides in accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practiced in the Macao SAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of the Basic Law. Thirdly, with regard to the administrative system of the SAR, the relevant provisions of the Basic Law reflect both the generality and the particularity of the national governance. To put it simple, the national governance system in Macao means that the National People's Congress and its Standing Committee and the Central People's Government reserve certain powers necessary for the sovereignty while granting a high degree of autonomy to the Macao SAR to govern its internal affairs to realize administration of Macao by Macao people after Macao's return to the motherland. Under the policy of "One Country, Two Systems", the system of the central authority's power over the SAR is the national political system stipulated by the Constitution and the national law, which is the generality of national governance; the Basic Law specially designed a set of SAR political system for the Macao SAR to exercise a high degree of autonomy, which is the particularity. It needs to be specially pointed out that the national political system and the SAR political structure are not clearly distinguished, instead they are internally connected with each other. Such relationship is reflected from not only the fact that the establishment of the SAR and its system are decided by the National People's Congress and the Central People's Government is responsible to govern the national defense and foreign affairs related to the SAR, but also the power relationship between the National People's Congress and its Standing Committee, between the Central People's Government and the SAR Government as prescribed in the Basic Law. For example, laws enacted by the legislature of the Macao SAR must be reported to the Standing Committee of the National People's Congress for the record, cases heard by the courts of the Macao SAR relating to provisions of the Basic Law on the affairs to be governed by the Central People's Government or relationship between the Central People's Government and the SAR, the Court of the Final Appeal in Macao must submit them to the National People's Congress for interpretation; the Chief Executive is responsible to the Central People's Government and should execute the orders issued by the Central People's Government according to the Basic Law. Even the judicial organs of other parts of the country may, through consultations and in accordance with law, maintain judicial relations with the judicial organs of the Macao SAR. Therefore, when we talk about the

administration of the SAR, we must talk about not only the a high degree of autonomy of the SAR but also the power of the Central People's Government; about not only the political system of the Macao SAR, but also the national political system, which are integrated with each other. Various provisions of the Basic Law cannot be implemented in practice unless the respective political institutions of both Central People's Government and of the Macao SAR perform their respective duties under the framework of the provisions of the Constitution and the Basic Law, and only in that way can Macao be well administered and can the long-term prosperity, stability and development be realized.

In general, the basic national policies on the Macao SAR are embodied in the Macao SAR system as provided in the Basic Law, and the development of Macao and that of our country as a whole are integrated even though the administration of the Macao SAR is carried out in a special way. Bearing the above in mind, we will have a broader vision in both policy making and implementation of policies, and we could come up with more ideas in planning the development and future for Macao.

### **III. To improve the understanding of the executive-led political structure in the Macao SAR through studying the Basic Law**

The political structure of the Macao SAR is the important component of the Macao SAR system. One significant aspect of administration according to law is to administer under the regulation of this system. Regarding this system, I believe it has been already introduced in details during the courses. But, why do we still discuss about it? It is because this issue is especially important for civil servants, and it requires reiteration. Even there might be some repetitions during my talk, they just help to make deeper impression on you. Here, I would like to discuss only three issues for your reference without going into details.

Firstly, the concept of "executive-led" is a name given to the political structure of the Macao SAR, just as the name of presidential system is given to the American political system, parliamentary cabinet system to the British political system and semi-presidential system to the French political system. The reason why the political structure in the Macao SAR is called the executive-led political structure is that the greatest feature of that structure is being led by the Chief Executive who is predominant in establishment and operation of the administration structure of the SAR, or as Xiao Weiyun, the major draftsman of the Chapter of Political Structure in the Basic Law put it, executive-led is the original legislative purpose of the political structure of the Basic Law. The Basic Law establishes an executive-led political structure based on the legal status and actual situation of the Macao SAR, the most important feature of which is the power tilting toward the Chief Executive. Administration-orientation represents the features of the political structure of the Macao SAR. Xiao Weiyun even referred to this political structure as "Chief Executive structure". Therefore, we can refer to the political structure in the Macao SAR as executive-led political structure.

Secondly, the practice of executive-led political structure in the Macao SAR is determined by the legal status of and actual situation in the Macao SAR. The legal status of the Macao SAR is a local administrative region with a high degree of autonomy under direct administration of the Central People's Government, it involves an issue of relationship between the Macao SAR and the

Central People's Government. Since the a high degree of autonomy is granted by the Central People's Government, there must be an institution under the political structure of the Macao SAR which is able to be accountable to the Central People's Government with respect to the implementation of the Basic Law and exercise of the a high degree of autonomy. The judicial organs exercise judicial power independently, which makes them unable to be accountable to the Central People's Government; the legislature is also unable to be accountable to the Central People's Government since it is composed of legislators from all walks of life representing different interests. Therefore, it is the Chief Executive that is the only organ which can be accountable to the Central People's Government. The Chief Executive must be granted with actual power in order to be accountable to the Central People's Government, which can be reflected in the provisions of the Basic Law on the powers and functions of the Chief Executive. The practice of the executive-led political structure in the Macao SAR is not only due to the legal status of the region, but also the consensus of Macao people from all walks of life. During the course of drafting the Basic Law, Macao people from all walks of life all expected to reserve the part of original political structure which is effective since it is familiar to them all. What is the feature of the original political structure in Macao? It is that the governor enjoyed relatively greater power. And such feature is kept in the executive-led political structure, which complies with the actual situation in Macao.

Thirdly, to correctly deal with the relationship between the executive authorities, legislature and judiciary under the executive-led structure requires acting in accordance with the Basic Law. Section 1 of Chapter IV of the Basic Law is the Chief Executive, Section 3 is the Legislature and Section 4 is Judiciary; and the executive, legislative and judicial powers are exercised respectively by these authorities. Therefore, the executive-led political structure involves separation of powers. With the separation of powers, there is the problem of how to deal with the relationship between each branches of government. As pointed out by Ji Pengfei, the chairman of the drafting committee of the Macao Basic Law in the comments of the draft, the Chief Executive, executive authorities, legislature and judiciary shall follow the principle of mutual collaboration and checks and balances. And on the basis of such principle, the Basic Law provides the respective powers and functions for the Chief Executive, the executive authorities, the legislature and the judiciary. Therefore, the relationship among the executive, the legislature and the judiciary is mutual collaboration and mutual checks and balances, which reflects the principle of separation of powers and checks and balances. One point of view holds that the political structure of the Macao SAR is separation of powers and the provisions of the Basic Law should be understood based on the concept of separation of powers. Such point of view is not correct. The correct way is to understand the relationship among the executive, the legislature and the judiciary based on the provisions of the Basic Law, instead of understanding such relationship simply from the concept of separation of powers.

Since the return of Macao to the motherland, both the collaboration and checks and balances among the executive, legislature and judiciary have been handled relatively well, which is an important reason for the good development of Macao in recent years. One lesson we can learn from this experience is that the mutual collaboration and checks and balances among various branches of government is a significant factor attributable to the realization of good government in Macao. And only in this way will the high degree of autonomy granted by the Basic Law to the Macao SAR be applied for the development of Macao and common wealth of its residents. What needs to be clarified here is that emphasis on collaboration does not deny the judicial independence. Judicial

independence is a significant sign of the rule of law. According to the Basic Law, the courts of the the Macao SAR shall exercise judicial power independently, they shall be subordinated to nothing but law and shall not be subject to any interference, and the procuratorates of the Macao SAR shall exercise procuratorial functions as vested by law, independently and free from any interference. These principles must be followed, but it does not mean that there is no collaboration. While we emphasize collaboration we must also pay attention to checks and balances which is practiced in accordance with the Basic Law. To collaborate is to implement the Basic Law, and to check and balance is to implement the Basic Law as well, both aspects are of the same importance. For example, after the return of Macao to the motherland, the executive authorities have been enjoying relatively greater power to make administrative regulations due to the historical inertia, and in the last year, the legislative council of The Macao SAR enacted the Regime Jurídico de Enquadramento das Fontes Normativas Internas (Regulation on the Formulation of Internal Norms), which deals with these problems quite well. Another example is that the executive was held to be the losing party by the Court of Final Appeal in several recent cases, which is normal and also reflects the check on the executive authorities by the legislature and judiciary. In summary, under the executive-led political structure, the executive authorities enjoy greater power, and correspondingly they also shoulder greater responsibility.

At the conference celebrating the 10th anniversary of Macao's return President Hu Jintao called for further improvement of various laws and regulations of the Macao SAR, strengthening of the system construction, and especially improvement of the administrative regulation system in accordance with the requirement of people-oriented, diligent, clean and efficient governance in order to promote the continuous improvement of the administration level of the Macao SAR Government. Whether the administration can dominate or not, whether the administration level can be improved or not depends to a great extent on the quality development of our civil servants. After the establishment of the Macao SAR, Macao has, for the first time in history, a team of civil servants completely composed of Macao permanent residents. This team is young and full of energy and proved to be qualified as a whole through practice after 11 years of administration experience. At the sight of so many civil servants taking part in this seminar and studying and discussing deeply the Basic Law, exchanging working experience, I sincerely believe that our civil servants can certainly strengthen our quality development and continuously improve our administration level in response to the calling of President Hu to courageous confront with various hardship and challenges on the way of Macao's development to build a better Macao.