

On the Necessity of Maintaining the Working Structure of the Legislative Assembly of the Macao SAR

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Fernando Chui Sai On, the Chief Executive of the Macao Special Administrative Region (SAR), when delivering the Policy Address for the Fiscal Year 2012, noted that importance should be, in 2012, attached to the amendment to Annex I and II of the *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as “the Macao Basic Law”) respectively stipulating the Method for the Selection of the Chief Executive of the Macao SAR and Method for the Formation of the Legislative Assembly of the Macao SAR. Since then, the public has been involved in extensive discussions over the development of Macao’s political system. This is highly relevant for the government of the Macao SAR to seek opinions from different social sectors and promote political development. Related discussions should, instead of straying from the basic principles and directions stipulated by the Macao Basic Law, be held within the framework of it. While the discussion is under way, an opinion has emerged holding that Macao is supposed to refer to the practice of the Hong Kong SAR, in which members of the Legislative Council are selected by general election, i.e. the one-man-one-vote direct election. People of such an opinion have only given exclusive consideration to provisions of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereinafter as “the Hong Kong Basic Law”), but ignored stipulations related to political development in the Macao Basic Law and the reality of the Macao SAR. The evolvement of Macao’s political system has been following a path different from that of Hong Kong. Therefore, instead of indiscriminately copying the practice of Hong Kong, Macao should forge a specific path for political development which is consistent with its reality in accordance with the Macao Basic Law. Among related endeavours, maintaining the working structure of the Legislative Assembly composed of directly-elected, indirectly-elected and nominated members is a principle must be adhered to when amendment to Method for the Formation of the Legislative Assembly of the Macao SAR is discussed.

I. Maintaining the working structure of the Legislative Assembly of the Macao SAR is a principle of the Macao Basic Law

As regards the method for the formation of the Legislative Assembly, Annex II of the Macao Basic Law gives systematic and comprehensive stipulations. Besides, related articles can also be found accordingly in Section 3 and 1, Chapter IV of the Macao Basic Law. These interrelated and

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interdependent provisions should be considered an organic whole. When studying the method for the formation of the Legislative Assembly, we should not pay exclusive attention to Annex II, but ought to connect it with other related articles in the Macao Basic Law instead of separating them.

The second paragraph of Article 68 explicitly states: "The majority of its members shall be elected." It shows, unequivocally, that in the Macao SAR, not all members of the Legislative Assembly are elected. This is the general principle of the Macao Basic Law for the formation of the Legislative Assembly. To give it a full display, Article 50, stipulating powers and functions of the Chief Executive, grants him/her the power to appoint part of the members of the Legislative Assembly. This serves as a complement to the above-mentioned general principle. When conducting discussions over the amendment to the Method for the Formation of the Legislative Assembly of the Macao SAR, if we combine the general principle stated by paragraph 2 of Article 68, supplementary provisions concerning the appointment of part of the members of the Legislative Assembly in Article 50 and Annex II and try to understand them systematically, then the above opinion holding that all members of the Legislative Assembly should be selected by general election will never get a footing. Such an opinion has actually touched upon the issue of amending the entire Macao Basic Law but not only Annex II.

As a matter of fact, Annex II fully embodies the essence of paragraph 2, Article 68 and of the stipulations in Article 50 pertaining to the appointment of part of the members of the Legislative Assembly by the Chief Executive. The Legislative Assembly, no matter during which term of office, is made up of directly-elected, indirectly-elected and nominated members. Among them, the first two, both belonging to the category of elected members, constitute the majority. Members selected by the above three ways differ from each other in the number. Compared with the Legislative Assembly in its first term of office, the second and third saw a progressive increase in the number of directly-elected members and during the second term of office, the Legislative Assembly had more indirectly-elected members than in the first. However, in spite of the increase, formation of the Legislative Assembly has been consistent with the general principle throughout. Nominated members are always one of the components. Its number never dwindles just because of the increase of selected members and what declines is only the proportion of it in the Legislative Assembly. That being the case, the existence of nominated members is the best embodiment of the general principle. Even if the number of directly-elected members is supposed to be increased to some extent, as is demanded by socio-economic development and by the progress of democratic politics on Macao, a proper number of nominated members should be guaranteed so as to fully represent the essence of the general principle. Otherwise, the general principle is out of the question.

The understanding of paragraph 2, Article 68 in the Macao Basic Law should not be simply built upon Article 68 of the Hong Kong Basic Law. The two differ from each other in the selection of members of the Legislative Assembly. Paragraph 1 of the latter stipulates that "the Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election", while paragraph 2, "The method for forming the Legislative Council shall be specified in the light of actual situation in the Hong Kong SAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." This article shows that in Hong Kong, selection of members of the Legislative Council is supposed to be in conformity with two principles: (1) actual situation of the Hong Kong SAR should be taken into consideration and (2) the principle of gradual and orderly progress should be abided by. Therefore, some methods effective in the past have been adopted in the

formation of the Legislative Council, e.g. functional constituencies and a system combining direct and indirect election. In the meantime, the number of indirectly-elected members has been gradually reduced and that of directly-elected members, increased.¹ Moreover, paragraph 2 also sets an objective – “the election of all the members of the Legislative Council by universal suffrage.” This indicates that in Hong Kong, selection of the members of the Legislative Council, following the two principles, would ultimately meet the goal of “universal suffrage”.

As for the selection of members of the Legislative Council, different from Article 68 of the Hong Kong Basic Law which provides for principles and the ultimate goal, Article 68 of the Macao Basic Law, except paragraph 2 which states “the majority of its member shall be elected”, has no further stipulations in this respect. In particular, sentences similar to “the ultimate aim is the election of all the members of the Legislative Council by universal suffrage” cannot be found in the Macao Basic Law. It is commonly known that the Macao Basic Law was formulated later than its Hong Kong counterpart and the two are highly identical in the general structure and major policies related to the formulation of the Law. Therefore, the former has drawn on the contents of the latter in so many respects that when reading through the two, we always have the feeling of *déjà vu*. Nevertheless, the Macao Basic Law is still considered an embodiment of Macao’s distinctive characters and the policy of “One Country, Two Systems”. Also, it is believed to be consistent with the actual situation of Macao and fully represents the will of the Macao people. Some scholars describe the unique Macao flavour exuded by the Macao Basic Law as conscientious realism, rigorous scientificity, full openness, great inclusiveness, profound far-sightedness and sufficient protection.² It is impossible that makers of the Macao Basic Law paid no attention to related stipulations in the Hong Kong Basic Law when it came to the grand issue of political development or they made, at will, stipulations inconsistent with those in the Hong Kong Basic Law. A reasonable explanation is that as for the political development in Macao including the selection of the Chief Executive and of members of the Legislative Assembly, the absence of the ultimate goal of “universal suffrage” must have profound implications. Former deputy chairman of the Drafting Committee for the Macao Basic Law Ho Hau Wah, during his term as the Chief Executive of the Macao SAR, remarked in 2008 that as regards provisions relating the two Methods, the Macao Basic Law differed from its Hong Kong counterpart in one way or another. But this didn’t represent slip of memory or neglect. Instead, it was based on strategic decisions concerning political development in Macao made by the Central Government of the People’s Republic of China (PRC) in accordance with the history and reality of Macao. What the former Chief Executive said shed some light on the profound implications in the absence of the ultimate aim. Some may ask: why the Hong Kong Basic Law sets the objective for the future development of Hong Kong’s political system while the Macao Basic Law does not? Actually, this difference between the two Laws is prescribed. The main point is that given the fact that Macao and Hong Kong differ from each other in the actual situation and in the specific scheme for development, Macao should blaze its own trail of political development instead of indiscriminately copying the practice of Hong Kong. Only when we have conducted in-depth studies on the original intentions behind the formulation of the Macao Basic Law and have fully understood its profound implications can we handle the issue of Macao’s political development appropriately.³ Absence of the “ultimate aim” and “universal suffrage” from Article 68 of the Macao Basic Law doesn’t mean that those words have been missed by the law-makers or that it doesn’t matter much whether they have been included. Quite the contrary, this is an institutional arrangement made by the central government of the PRC in accordance with

Macao's actual situation. Macao differs from Hong Kong in the formation and evolvement of the political system, so instead of blindly imitating Hong Kong's practice, it should forge a path for political development congruous with its reality and in line with the Basic Law.

II. Maintaining the working structure of the Legislative Assembly of the Macao SAR is objectively needed for the retainment of the previous system in Macao

Article 5 of the Macao Basic Law provides that "the socialist system and principles shall not be practiced in the Macao Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years." As a principle of great importance in the Macao Basic Law, it directly represents the basic policy of "One Country, Two Systems" implemented by the central government of the PRC in Macao. According to this principle, after Macao's return to the PRC, no other system shall be adopted except for the previous capitalist one so as to ensure social stability and economic growth. That is to say, on the premise of national unity and territorial integrity, the capitalist system previously practiced in Macao shall be kept unchanged in every respect including the socio-economic, cultural and political system. Besides, for quite a long period of time in the future, no radical or essential changes are supposed to be easily made to them. This is what the retainment of the previous capitalist system implies and intrinsically requires.

This principle is fully embodied by the provisions of the Macao Basic Law, for instance, those pertaining to the maintenance of original laws and decrees except for those incompatible with the basic law and those having been revised through legal procedures; to the protection of the rights and freedom of citizens; to the continuing validity of the article stipulating that the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and International Labour Conventions remain in force; to the development of Macao's political system and to economic, cultural and social affairs. In particular, stipulations concerning the method for the formation of the Legislative Assembly represent the principle all the better. As is provided for in Annex II of the Macao Basic Law, the structure of the Legislative Assembly remains unchanged. Namely, it still consists of directly-elected, indirectly-elected and nominated members. These three ways for the selection of members have been applied from the first term of office of the Legislative Assembly all the way through to the present. To further manifest the above-mentioned principle, a "through-train" arrangement was even adopted after Macao returned to the PRC. It means that according to the Decision of the National People's Congress on the Method for the Formation of the First Government, the First Legislative Council and the first Judiciary of the Macao Special Administrative Region and the Macao Basic Law, the elected members of the last Legislative Assembly before Macao's return to the PRC can become members of the first Legislative Assembly of the Macao SAR. The prerequisite is, they are ready to give allegiance to the Macao SAR, consistent with stipulations of the Macao Basic Law, and have been affirmed by the Preparatory Committee for the Macao Special Administrative Region. This, in a sense, shows that the Macao Basic Law reflects a high resolve to keep Macao's capitalist system unchanged.

Provisions concerning the maintenance of the previous structure of the Legislative Assembly in Annex II are, admittedly, made out of an intention to retain the capitalist system in Macao. But

also, it is closely related to the fact that such an institutional arrangement sat well with the actual situation of Macao and worked well before Macao's return to the PRC. Macao, under the rule of the Portuguese, didn't have the local Legislative Assembly until the promulgation of *Estatuto Orgânico de Macau* (Organic Statute of Macao) in 1976 and the Legislative Assembly, together with the governor of Macao, became the administrative organ for local affairs since. Before this, as an overseas territory of Portugal, Macao did not have Legislative Assembly and the legislative power largely lay with the Portuguese. The governor of Macao and the Political Council led by him could only draw up low-level laws, decrees and regulation.⁴ As for the newly-established Legislative Assembly, the *Estatuto Orgânico de Macau* explicitly provided that it should be made up of 17 members selected in three ways: 5 would be nominated by the governor of Macao from people of high prestige in the local society; 6 would be directly elected and the other 6, indirectly elected. That being the case, the three ways for the selection of members of the Legislative Assembly is not a new institutional arrangement abruptly set up by the Macao Basic Law but has been in force since the establishment of the Legislative Assembly and has never been altered although the number of members has increased along the way. This shows that the Portuguese, foreign rulers as they were, didn't simply take direct election as the only way to select members of the Legislative Assembly but adopted the three-way method – direct election, indirect election and appointment – in accordance with Macao's reality.

As regards the indirect election, the *Estatuto Orgânico de Macau* interpreted its objective from the legislative angle. Section 4 of Article 21 stipulated that indirect election was adopted to ensure that the moral code, culture, relief and economic interests could be fully represented. This indicates that during the rule of the Portuguese, the Macao government had already realized that the Legislative Assembly should be representative and that at least, people in the fields of ethics, culture, relief and economic interests should be involved in the work of the Legislative Assembly. Direct election alone would not guarantee seats for people, especially Chinese, from these sectors. This is because in the mid-1970s, diplomatic ties hadn't been formally established between the PRC and Portugal. Additionally, Chinese mainland, during that period of time, was at the later stage of the Great Cultural Revolution and due to the resistance to the rule of the Portuguese and the long-established ideology, the Chinese among Macao residents were generally indifferent to politics and always held aloof from political activities. This, together with various restrictions foisted upon their suffrage, made direct election favourable to the Portuguese in Macao and the Macanese, but not to the Chinese. Therefore, chances were the Legislative Assembly would be dominated by the Macanese who constituted the minority of Macao's population while the Chinese, as the majority, were underrepresented or unrepresented. Such a situation was obviously uncondusive to the administration of the Macao government, because it was not in line with the demographic structure of Macao, nor was it favourable to social stability in Macao, let alone development. Moreover, even after the 1976 *Estatuto Orgânico de Macau* imparted restricted autonomy to Macao, discord still existed between Portuguese living in Macao and the Macanese. It was later epitomized by escalating clashes between the governor or government of Macao and the Legislative Assembly, resulting in the dissolution of the Legislative Assembly in 1984 – the only one of its kind in Macao's history. The then governor of Macao Garcia Leandro, when drawing up the *Estatuto Orgânico de Macau*, foresaw that the Macanese might probably check the administrative power of the government through the Legislative Assembly. Therefore, he realized the necessity to curb the influence of the Macanese so as to guarantee the effective governance of

Macao by the governor. To achieve this end, drawing support from Chinese in Macao was a desirable choice. Additionally, enabling the Chinese in Macao to enter the Legislative Assembly through proper institutional arrangement could help the Macao government exercise loose and indirect control over the Chinese so as to uphold a low-level social and political integration.⁵ Such a mindset, together with the fact that the Chinese residing in Macao had a tradition of bonding since the ancient age, gave birth to a unique character of Macao – multiple associations. This undoubtedly created conditions for the final establishment of indirect election as a way to select members for the Legislative Assembly. Apart from the indirect election, the *Estatuto Orgânico de Macau* also stipulated methods for the selection of the governor of Macao. Though this is made mainly to consolidate the administrative power of the governor, we can not say that imposing restrictions on the power of the Legislative Assembly and on the highly influential Macanese were never considered. Besides, as an organ with legislation as its mainstay, the Legislative Assembly needs a proportionate number of professionals in related fields. While direct or indirect election alone cannot guarantee this, the appointment can.

Therefore, the stipulation concerning the three ways to select members of the Legislative Assembly in the 1976 *Estatuto Orgânico de Macau* was not made whimsically but in line with the actual situation of Macao. Huntington held that if all members of a society belonged to the same “social force”, then conflicts could be brought under control and resolved through the organization of the social force. Hence it would be unnecessary to establish a new and specially designed political institution.⁶ During the Portuguese rule, Macao was a multi-national and multicultural society with various social forces interactive on each other. Meanwhile, an age-old tradition of partition existed among different ethnic groups. Such a situation of Macao featured by different social forces determined that a “specially designed political institution” needed to be set up. That being the case, the three ways for the selection of members of the Legislative Assembly – direct election, indirect election and nomination – served as one of the embodiments of such an institution. Though it was put to use by the then Macao government for the sake of its own interests including its governance of Macao, undeniably it was in conformity with Macao’s actual situation and was proved to be conducive to the effective administration of the government. As an organic part of Macao’s previous political system, the institutional arrangement pertaining to the selection of the members of the Legislative Assembly should definitely remain unchanged after Macao’s return to the PRC as long as it does not have negative impact on national sovereignty. This is also objectively needed for the retainment of the previous social system in Macao.

III. Maintaining the working structure of the Legislative Assembly of the Macao SAR is necessarily required for the maintenance of the Executive-Led System in the Macao SAR

The Macao Basic Law, proceeding from China’s national conditions and the history and reality of Macao, has designated for Macao a distinctive and executive-led political system with an independent judiciary and interworking and interactive executive and legislative branch. The most distinctive feature of the system is that the Chief Executive plays a pivotal role in the arrangement and operation of government institutions. Not only is he/she the head of the Macao government, but also, he/she is the head and representation of the entire Macao SAR. Such a legal status gives the

Chief Executive a supreme power towering over the executive, legislative and judicial branch. He/She, at the core of powers and administration⁷, plays a leading part in Macao's political system.

The executive-led system, provided for in the Macao Basic Law, shall be necessarily represented by the functions and powers of the Chief Executive. Otherwise, it will be merely in name but not in deed. Besides, authorities of the Chief Executive must have executive, legislative and judicial implications and must be substantial instead of formal, or the pivotal role played by him/her in the arrangement and operation of government institutions can not be highlighted.

It is not difficult to understand why authorities of the Chief Executive should have executive implications and it is relatively easy to write specific stipulations into law. The Chief Executive is the head of the government of the Region, therefore, he/she, undoubtedly, has extensive and substantial power over the arrangement and operation of government institutions. For example, the Macao Basic Law provides that the Chief Executive has the power to lead the government of the Region; to decide on government policies and to issue executive orders; to formulate the administrative regulations and promulgate them for implementation; to appoint or remove holders of public office in accordance with legal procedures; to approve the introduction of motions regarding revenues or expenditures to the Legislative Council, etc.. All of this has the attributes of executive power and is a typical embodiment of the Chief Executive's functions and powers in the executive domain.

It is not difficult to understand why authorities of the Chief Executive should have judicial implications, either. Judicial independence plays an important part in the executive-led system of the Region. Therefore, authorities of the Chief Executive won't touch upon specific operations of the judicial organs. Instead, his/her power in the judicial domain is mainly manifested by the appointment and removal of related officials. Moreover, as the head of the Region, he/she also holds the judicial power to pardon persons convicted of criminal offenses or commute their penalties in accordance with law. The Macao Basic Law stipulates that the Chief Executive has the power to appoint or remove presidents and judges of the courts at all levels and procurators in accordance with legal procedures; to nominate and report to the Central People's Government for appointment of the Procurator-General and recommend to the Central People's Government the removal of the Procurator-General in accordance with legal procedures; to pardon persons convicted of criminal offenses or commute their penalties in accordance with law. All of this manifests the Chief Executive's power in the judicial domain. Besides, it is also provided for in the Macao Basic Law that the courts of the Macao SAR shall have no jurisdiction over acts of state such as defense and foreign affairs and shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defense and foreign affairs whenever such questions arise in the adjudication of cases (the Chief Executive shall obtain a certificate from the Central People's Government). The above-mentioned powers held by the Chief Executive in the judicial domain, though not as extensive as those in the executive domain, are substantive in nature, embodying the unique status and functions of the Chief Executive in the judicial system of the Region.

To understand why authorities of the Chief Executive should have legislative implications is relatively complicated, compared with the previous two aspects. The executive-led system, both in its arrangement and in operation, focuses on striking a better balance between the executive and legislative branch and finally displaying the relatively superior and advantageous status of the former over the latter. Since the judicial power is independent, though functions and powers of the

Chief Executive are represented in the judicial domain, such representations, mainly confined to the appointment and removal of related officials and the pardon of persons convicted of criminal offenses or commutation of their penalties, are quite limited. But this is not the case with the relations between the executive and legislative branch. A comparatively balanced distribution of power can be made between the two so that they may hold each other in check, while imbalanced distribution of power gives rise to a political system dominated by one of them. Undoubtedly, in an executive-led or legislative-led system, the two can also hold each other in check, but mutual restriction under this condition is not as obvious as that under the condition of balanced distribution of power. The Macao Basic Law, in laying down the political system of the Macao SAR, gives stipulations pertaining to the interworking and interactive relationship between the executive and legislative branch. However, such stipulations are made on the premise that an executive-led system is practiced. Any discussion related to such a relationship between the executive and legislative branch made without taking into account the above premise is equal to a deviation from the Macao Basic Law and would eventually lead to an improper handling of them. In practice, opinions holding that the executive and legislative power in the Region should be placed on an equal footing or that the legislative branch is supposed to be granted a status superior to the executive branch are by no means in line with the intention of the Macao Basic Law in establishing an executive-led system. They may have an adverse impact on and debilitate the system and may even lead to its polar opposite – a legislative-led system. Actually, in the 1980s, the Legislative Assembly, in deliberating on amending the *Estatuto Orgânico de Macau*, made attempts to adopt a parliamentary system to consolidate and expand the power of the Legislative Assembly while restrain and supervise the power of the governor. Nuno Viriato Tavares de Melo Egidio, the then governor of Macao, believed that according to the draft amendment, the Legislative Assembly held powers extensive enough to place restrictions on the government, especially on the authorities of the governor and that the draft amendment was adopted only to establish an out-and-out parliamentary system incompatible with and irrelevant to the actual situation of Macao. The then director of the Municipal Council of Macao Rogério Santos had the same opinion, holding that the parliamentary system was not in line with Macao's reality and the draft amendment pursued such a system to hinge the rise and even fall of Macao's government on decisions made by the Legislative Assembly. Such a pattern of western democracy was completely out of tune with the unique features of Macao.⁸ Before Macao's return to the PRC, the Macao government spared no efforts in maintaining the executive-led system established by the *Estatuto Orgânico de Macau* and was fully aware of its importance. Therefore, after Macao's return to the PRC, we have no reasons not to steadfastly uphold this system provided for in the Macao Basic Law. To do this requires us to give a distinctive display to the dominant and superior status of the executive power over its legislative counterpart when handling the relationship between them. Specifically, the powers meant to be possessed by the Chief Executive in the arrangement and operation of the Legislative Assembly should be made clear to represent the significant role of the Chief Executive.

According to the Macao Basic Law, the Chief Executive is entitled to quite a few essential powers in the operation of the Legislative Assembly. For instance, the power to sign bills passed by the Legislative Assembly and to promulgate laws; to return the bill passed by the Legislative Assembly; to refuse to sign the bill passed again by the Legislative Assembly; to decide whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Assembly or its committees; to give written consent before bills

relating to government policies are introduced; to make request to give priority to government bills for inclusion in the agenda; to make request to call emergency sessions, etc. These powers held by the Chief Executive of the Region should be regarded as representations of restrictions placed by the executive branch on the legislative branch and more importantly, as the necessary requirement of the executive-led system. Apart from the essential powers of the Chief Executive in the operation of the Legislative Assembly, some powers concerning the institutional arrangements of the Legislative Assembly are also required to be held by the Chief Executive. Only in so doing can the executive-led system be thoroughly manifested in the legislative domain. According the Macao Basic Law, the Chief Executive is granted the power to nominate part of the members of the Legislative Assembly. This, as a substantive power held by the Chief Executive, serves as one of the direct representations of the pivotal role played by him/her in the political system of the Macao SAR and is an effective way to ensure the interworking and interactive relationship between the executive and legislative branch. Such a relationship is provided for in the Macao Basic Law to guarantee the successful implementation of the executive-led system and to make sure the Chief Executive administrates the Region according to law, thus safeguarding the overall interests of the Region. To achieve the above ends, the appointment of part of the members of the Legislative Assembly is a necessary institutional arrangement. It is conducive to the governance of the Chief Executive and of the government of the Region because it can guarantee that the nominated members make due contributions to the Legislative Assembly. In particular, when receiving and debating the policy addresses of the Chief Executive, nominated members can help the government to explain related policies and to arrive at a thorough and accurate understanding of the public opinion so as to create enabling conditions for scientific decisions and governance. Therefore, such an institutional arrangement can better meet the requirement of representing the executive-led system in the legislative domain.

IV. Maintaining the working structure of the Legislative Assembly of the Macao SAR is necessarily required by the principle of balanced participation

Balanced participation is one of the critical principles that should be followed by the establishment and development of the political system in the Macao SAR. This term means that people from different social sectors and strata all have the opportunity to get involved in political affairs of the Region and their interests will be given equal consideration. It has been a guiding principle for the drafting of the Macao Basic Law. On March 20th, 1998, the chairman of the Drafting Committee for the Macao Basic Law Ji Pengfei, when addressing the deputies on the Explanation on the “Basic Law of the Macao Special Administrative Region” (Draft), Related Documents and Drafting of the Law at the First Session of the Eighth National People’s Congress, explicitly pointed out that as regards the political system, principles relating the interworking and interactive relationship between the executive, legislative and judicial branch had been established by the Law to meet the goal of stable development of the Region, comprehensively accommodated interests of different social strata and a progressive evolvement of democracy and that the Law provided for the functions and powers of the Chief Executive as well as of executive, legislative and judicial organs. Among the principles mentioned by him, “comprehensively accommodated interests of different social strata” has always been regarded an equivalent to the principle of

“balanced participation”.

This principle is fairly embodied by the Macao Basic Law. Annex I concerning the Method for the Selection of the Chief Executive of the Macao SAR and Annex II concerning Method for the Formation of the Legislative Assembly of the Macao SAR are cases in point. As methods related to government organs at a local level, the two Annexes indicate that the Basic Law, while maintaining the competitive mechanism, guarantees an opportunity of balanced participation for people from different social sectors through a series of institutional stipulations. Annex I of the Macao Basic Law states that the Chief Executive shall be elected by a broadly representative Election Committee and the Committee shall be composed of members from industrial, commercial and financial sectors; cultural and educational sectors and other professions; labor, social service, religious and other sectors; representatives of members of the Legislative Council, representatives of members of municipal organs, Macao deputies to the National People’s Congress and representatives of Macao members of the National Committee of the Chinese People’s Political Consultative Conference (CPPCC). That is to say, members of the Election Committee come from different social sectors and strata of Macao and this is a manifestation of the principle of balanced participation. As for the composition of the Legislative Assembly, related provisions in Annex II also represent this principle. It is stipulated that the Legislative Assembly shall be composed of members directly returned, indirectly returned and appointed members. Stipulations pertaining to the specific number of seats for each component are also given by Annex II. One of the distinctive features of these institutional arrangements is that efforts have been made to provide balanced opportunities for people from different social sectors when it comes to the selection of political representatives. Even if some political forces, ethnic groups or organizations are highly influential, the proportion taken by them among the seats of the Election Committee and of the Legislative Assembly is limited. “Winner takes it all” is not allowed to be practiced. Such an institutional arrangement shows the reality of the Macao SAR as a region under the direct jurisdiction of Central Government and has given thorough consideration to the actual situation of Macao characterized by the inhabitation of multiple ethnic groups, thus providing an institutional guarantee for people from different social sectors and strata to acquire generally equal opportunities for political participation and expression of interests.⁹

Some say that as a public opinion institution, the Legislative Assembly should be solely composed of directly-elected members, while appointed and even indirectly-elected members are supposed be removed. Such an opinion is sheerly based on an idealized picture unilaterally painted by the holder while the reality of Macao is completely ignored. According to methods for the selection of parliament members in different countries all over the world, appointment of part of the members by the head of state is proved to be feasible. For example, in the Republic of Turkey, 15 of the parliament members are nominated by the president and in India, 12.¹⁰ As for Macao, even at the very beginning of the establishment of the Legislative Assembly, Portugal, a country practicing western-style democracy as it was, didn’t make direct election the only way for the selection of the members of the Legislative Assembly because such a method was not in line with Macao’s reality. The Portuguese, in order to effectively administrate Macao, adopted direct election, indirect election and appointment as ways to select the members of the Legislative Assembly. Though this indicated subjective and strategic intentions of the Portuguese to curb the influence of the Macanese so as to uphold its governance of Macao, objectively, it was indeed a reflection of the principle of balanced participation, enabling the Chinese that constituted an overwhelming majority

of the Macao population to get a due chance to be part of the Legislative Assembly. In the following years, even when the Legislative Assembly was reestablished after its dissolution, the structure of it was never changed.¹¹ In 1984, Vesco de Almeida e Costa, the then governor of Macao, held that the composition of the Legislative Assembly couldn't reflect Macao's social and political structure because a better part of the members just represented the interests of a handful of residents, but was not directly relevant to the overwhelming majority of the population. Therefore, he dissolved and reestablished the Legislative Assembly to bring changes to the situation and make it more representative. Even under such circumstances, the three ways were kept unchanged. In 1990, when the *Estatuto Orgânico de Macau* was amended to increase the total number of the members of the Legislative Assembly, the three ways were once again retained. The *Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao*, signed on 13th April 1987, pinned down the institutional arrangement that the majority of the members of the legislative branch shall be elected. This actually gave recognition to the validity of members appointed. Actually, the appointment of members is necessary for the work of the Legislative Assembly which serves as the prerequisite and foundation for the rule of law and involves the most essential and crucial issues. The members of the Legislative Assembly should possess both theoretical expertise and hands-on experience and as the one and only legislative organ in the Macao SAR, the Legislative Assembly is supposed to include a proportionate number of legal professionals as its members. However, this cannot be guaranteed if all the members are selected through election, especially the direct one, and the work of the Legislative Assembly would thus be impeded. Though the work of the Legislative Assembly is always assisted by professionals, things would be totally different if a proportionate number of legal professionals are included as members. According to the working structure of the Legislative Assembly, many of its members with a background of legal education are appointed and when a bill is discussed by the Legislative Assembly, they always play an irreplaceably positive role. As regards the indirect election, some believe that it doesn't embody equity and competitiveness as thoroughly as direct election does. Such a view is not in conformity with Macao's reality. Perceived from the perspective of unique historical development and social structure of Macao, indirect election, as a form of democracy, is exceptionally suitable to Macao, because Macao is a typical associational society and one of the features of indirect election is that the candidates should be affiliated to associations. That being the case, multiple associations and organizations in Macao have definitely created a favorable condition for indirect election. Judged by the practice of it since the very beginning of the Legislative Assembly, the employment of indirect election is more conducive to balanced participation of different social sectors in political affairs and a harmonious and stable society.

IV. Conclusion

For a political system, its existence is meant to maintain the social order and forge a stable social condition. Therefore, it should be gauged against the yardstick of political order. A genuinely good political system is premised on the effective maintenance of the political order and the latter, as a concept inherent in the former, also serves as a basic objective pursued by the former. If a society is turbulent under a certain political system, then such a system cannot, by any stretch of

imagination, be considered desirable. Instead, if a certain political system brings about stability and good order, then it is viable. Annex I of the Macao Basic Law stipulates that the Chief Executive shall be elected by a broadly representative Election Committee and Annex II provides that the Legislative Assembly shall be composed of members directly returned, indirectly returned and appointed members. Both of them are constitutional provisions made by the Macao Basic Law on Macao's political system. Practice of them in more than a decade after Macao's return to the PRC has irrefutably proved that such an institutional arrangement is in line with Macao's reality, serves as the foundation for Macao's stability and prosperity and provides a solid institutional guarantee for lasting political stability. Currently, when discussing how to handle problems emerging in Macao's political development, we should comprehensively and accurately understand provisions in the Macao Basic Law as well as their profound implications, pragmatically handle problems concerning Macao's political development within the framework of the Basic Law and pay special attention to amending the two Methods under the condition that the existing system be stably maintained. The working structure of the Legislative Assembly should be kept unchanged, i.e. its members shall be selected by direct election, indirect election and appointment.

Notes:

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- ² Lok Wai Kin and Wang Yu (Eds.) (2009). *The Selection of Studies in Humanities and Social Sciences of Macao: Volume of Basic Law*. Beijing: Social Sciences Academic Press. 200.
- ³ Yan Shouxian (2011). A Brief Analysis of the Methods for the Selection of the Chief Executive and that of the Formation of the Legislative Assembly of Macao. *Macao Daily News*. 30th November 2011.
- ⁴ Lei Peng Si (1994). The Macao Governor and the Legislative Council. Macao: Macao Foundation. 129-130.
- ⁵ Lou Shenghua (2004). *Macao Civil Associations in the Transitional Period: An Analysis of the Corporatism System in a Pluralistic Society*. Guangzhou: Guangdong People's Publishing House. 299.
- ⁶ Huntington, S. (1989) *Political Order in Changing Societies*. (Chinese version translated by Wang Guanhua and et al.). Beijing: SDX Joint Publishing Company. 9-10.
- ⁷ Zhang Xiaoming (2011). Why the Political System of the Macao SAR is not the One of the "Separation of Power". *Academic Journal of One Country Two Systems (Chinese Version)*. Volume 10. 1-5.
- ⁸ Lei Peng Si (1994). The Macao Governor and the Legislative Council. Macao: Macao Foundation. 63.
- ⁹ Yan Shouxian (2011). A Brief Analysis of the Methods for the Selection of the Chief Executive and that of the Formation of the Legislative Assembly of Macao. *Macao Daily*. 30th November 2011.
- ¹⁰ Yang Jinhui and Li Xiangqin (1996). *A Comparative Study of the Hong Kong and Macao Basic Laws*. Macao: Macao Foundation. 288-289.
- ¹¹ Lei Peng Si (1994). The Macao Governor and the Legislative Council. Macao: Macao Foundation. 85-86.