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Macao Special Administrative Region: National Security Law

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On 25 February, the Legislative Assembly of Macao Special Administrative Region passed national security legislation which can be misused to threaten the rights of the territory's residents. After signing off by Macao's Chief Executive Ho Hau Wah on 26 February, the law was published in government gazette on 2 March and became effective 3 March. Amnesty International has translated into English this national security legislation.

MACAO SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA
Law no. 2/2009
National Security Law

The Legislative Assembly enacts, within the terms of articles 71 (paragraph 1) and 23 of the Basic Law of the Macao Special Administrative Region, on the prohibition of crimes against national security, the following law:

Article 1 Treason

1. Any Chinese citizen,
 - 1) Who enlists in foreign armed forces and takes up arms against the state;
 - 2) Who colludes with the government of another state, a foreign organisation or group, or any of their agents, with the intention of promoting or causing war or armed action against the state; or
 - 3) Who cooperates directly or indirectly with another state during a war or armed action against the state or acts with a view to achieving the same objectives, with the intention of facilitating or assisting enemy military operations against the state or of damaging its military capacity,

shall be sentenced to a prison term of 10-25 years.

2. Any person who has undertaken preparatory acts for the crimes set out in the previous paragraph shall be punished by a prison term of a maximum of 3 years.

3. For the purposes of the provisions of this law, the “state” is the People’s Republic of China.

Article 2 Secession

1. Any person using violence or practising other grave illegal acts to try to separate territory from the state or subject it to the sovereignty of another state, shall be sentenced to a prison term of 10-25 years.

2. Any person who has undertaken preparatory acts for the crimes set out in the previous paragraph shall be punished by a prison term of a maximum of 3 years.

3. For the purposes of this law, the following conduct shall be considered “other grave illegal acts”:

1) Crimes against the life, physical integrity and personal freedom of another person;

2) Acts that damage or threaten the security of transport, communications or other public infrastructure facilities, including telegraph, telephone, radio, television and other electronic communications systems;

3) Arson, the release of radioactive substances or toxic or asphyxiating gases, contamination of food or water supply for human consumption or the spread of diseases; or

4) Crimes involving the use of nuclear energy, firearms, incendiary devices, biological or chemical weapons, explosive devices or substances, parcels or letters containing dangerous devices or substances.

Article 3 Subversion of the Central People’s Government

1. Any person using violence or practising other grave illegal acts to overthrow the People’s Central Government or prevent or restrict its functions shall be sentenced to a prison term of 10-25 years.

2. Any person who has undertaken preparatory acts for the crimes set out in the previous section shall be punished by a prison term of a maximum of 3 years.

Article 4 Sedition

1. Any person publicly and directly inciting the crimes described in articles 1, 2 and 3 of this law shall be sentenced to a prison term of 1-8 years.

2. Any person publicly and directly inciting members of the Macao garrison of the Chinese People’s Liberation Army to abandon their functions or inciting them to rebel shall be sentenced to a prison term of 1-8 years.

Article 5 Theft of state secrets

1. Any person stealing, gathering or procuring state secrets, endangering or harming national independence, the unity and integrity of the state or its internal or external security, shall be sentenced to a prison term of 2-8 years.

2. Any person receiving instructions, orders, money or valuables from governments, organisations or groups or from their agents outside the Macao Special Administrative Region, in order to steal, gather or procure state secrets, or knowingly recruit others to carry out these acts, or in any way, provide support for or facilitate these acts shall be sentenced to a prison term of 3-10 years.

3. Any person who makes use of duties specifically imposed by the statute of their function or service, or the mission conferred by a competent authority shall be punished:

1) For acts described in paragraph 1, with a prison term of 3-10 years.

2) For acts described in paragraph 2, with a prison term of 5-15 years.

4. Any person in possession of any state secrets by virtue of his or her position or duty, or any mission conferred by a competent authority shall be punished:

1) In the event of making state secrets public or accessible to unauthorised persons, with a prison term of 2-8 years.

2) In the event of receiving instructions, orders, money or valuables from governments, organisations or groups or from their agents outside the Macao Special Administrative Region to provide state secrets, with a prison term of 5-15 years.

3) With regard to clause 1), if the act is caused by negligence, with a maximum prison term of 3 years.

5. For the purposes of the provisions of this article, “state secrets” include documents, information or objects that must be kept secret and are classified as such, in the fields of national defence, foreign relations and other issues concerning the relationships between the Central Authorities and the Macao Special Administrative Region as set out in the Basic Law of the Macao Special Administrative Region of the People’s Republic of China. If necessary, the judiciary can obtain from the Chief Executive or through the Chief Executive obtain from the Central People’s Government a document certifying that the relevant documents, information or objects are classified as state secrets.

Article 6

Acts against national security committed by foreign political organisations or groups in Macao

Without prejudice to the corresponding criminal responsibility of agents, foreign political organisations and groups are responsible for acts, as described in articles 1, 2, 3, 4 and 5, in the Macao Special Administrative Region when committed in their name and in their collective interest by their organs or agents. The following main and supplementary penalties apply:

1) A fine as set out in paragraphs 3, 4, 5 and 6 of article 8;

2) Supplementary penalties as set out in paragraph 3 of article 9.

Article 7

Establishment of links by Macao political organisations or groups with foreign political organisations or groups for the conduct of acts against national security

1. Without prejudice to the corresponding criminal responsibility of agents, political organisations and groups in Macao are responsible for acts, as described in articles 1, 2, 3, 4 and 5, when committed in their name and in their collective interest by their organs or agents, when establishing links with foreign political organisations and groups. The following main and supplementary penalties apply:

- 1) A fine and court ordered dissolution as set out in paragraphs 3, 4, 5, 6 and 7 of article 8;
 - 2) Supplementary penalties as set out in paragraph 3 of article 9.
2. For the purposes of the provisions of this article, “links” are considered to be:
- 1) Reception of instructions, orders, money or valuables from foreign bodies or their agents, as set out in the previous paragraph; or
 - 2) Collaboration with foreign bodies or their agents, as set out in the previous paragraph, in activities that consist of:
 1. The collection, preparation or public dissemination of false or grossly distorted news;
 2. The recruitment of agents or facilitating such recruitment by providing venues for meetings, subsidising or publicising them;
 3. Promises or donations; or
 4. Threatening or defrauding other persons.

Article 8
Criminal responsibility of collective persons

1. Without prejudice to the provisions of articles 6 and 7, collective persons and bodies that are irregularly constituted or without legal personality shall be responsible for the crimes set out in articles 1, 2, 3, 4 and 5 when committed in their name and in their collective interest by their organs or representatives.
2. The responsibility of the relevant bodies described in the previous paragraph does not exclude the individual responsibility of their respective agents.
3. The following main penalties shall apply for the crimes referred to in paragraph 1.
 - 1) Fine;
 - 2) Court ordered dissolution
4. Fines shall be calculated on a daily basis, with a minimum of 100 days and a maximum of 1000 days.
5. The fine shall be between 100 and 20,000 patacas for each day.
6. If a body without legal personality is fined, its property shall be used to pay the fine. If it has no property or the value of the property is insufficient, the fine shall be paid by the property of each of its members in the form of joint liability.
7. The penalty of court ordered dissolution will apply to the bodies referred to in paragraph 1:
 - 1) If their founders had the predominant intention to use the bodies to carry out the crimes described in paragraph 1, or
 - 2) If the repeated practise of such crimes described in paragraph 1 shows that those bodies were being used to this effect, by either their members or administrators.
8. Termination of employment as a result of application of the penalty of court ordered dissolution or any other supplementary penalties provided for in paragraph 3, article 9 shall

be considered, for all effects and purposes, as dismissal without valid reasons by the employer.

Article 9 Supplementary penalties

1. Any person convicted of the crimes set out in articles 1, 2, 3, 4 and 5, depending on the seriousness of the fact and the social morality of the person, shall be subject to the following supplementary penalties:

- 1) Suspension of political rights for 3-10 years.
- 2) Ban on the exercise of public office for a period of 12-20 years.
- 3) Expulsion or ban from entering the Macao Special Administrative Region for a period of 5-15 years, but only limited to non-local residents;
- 4) Judicial injunction, including a ban on or restriction of activities in the Macao Special Administrative Region.

2. The time during which agents are deprived of their freedom as a result of the compulsory measures, penalties or security measures taken against them during the litigation procedure shall not be counted in the period referred to in clauses 1) and 2) in paragraph 1.

3. The bodies referred to in articles 6, 7 and 8 paragraph 1 can be subjected to the following supplementary penalties:

- 1) Ban on the exercise of activities for 2-10 years;
- 2) Loss of the right to be receive subsidies or allowance from public bodies;
- 3) Closure of establishment for a period of between 2 months and 1 year;
- 4) Definitive closure of the establishment;
- 5) Legal injunction;
- 6) Publicity of the sentence, at the expense of the guilty party, in the most widely read Chinese newspaper and the most widely read Portuguese newspaper in the Macao Special Administrative Region, and in an announcement, in the same two languages, for a period not less than 15 days, in the area where the guilty party's business is located, in a way that is very visible to the public.

4. The supplementary penalties can be imposed on a cumulative basis.

Article 10 Scope

1. This law shall be applied to acts that take place in the Macao Special Administrative Region or on board ships or aircraft registered in the Macao Special Administrative Region.

2. This law shall also be applied to the acts set out in article 1 by Chinese citizen residents of the Macao Special Administrative Region practised outside the Macao Special Administrative Region and to acts set out in articles 2, 3, 4 and 5 by residents of the Macao Special Administrative Region practised outside the Macao Special Administrative Region.

Article 11
Mitigation

When a crime set out in this law involves carrying out an act that is dangerous, the penalty may be mitigated or the act not penalised if the agent realises that the intended act will cause significant harm and voluntarily and significantly reduces or neutralises the danger.

Article 12
Public trial

The criminal procedure for the crimes set out in this law is public in accordance with the Code of Criminal Procedure, except for the crimes listed in article 5, in which case the judge may determine that some stages of the trial shall not be public because they will constitute a threat to national security if conducted in public.

Article 13
Change to the Code of Criminal Procedure

Article 1 of the Code of Criminal Procedure approved by Decree Law 48/96/M of 2 September, with the wording given by Decree Law 63/99/M of 25 October and Law 9/1999, shall now be worded as follows:

“Article 1
(...)”

1. (...)
2. (...)
- a) Include the crimes set out in article 288 of the Criminal Code, articles 4, 5 and 6 of Law 3/2006 and articles 1, 2 and 3 of Law no. 2/2009 National Security Law;
- b) (...)
- c) (...)”

Article 14
Supplementary application

In the absence of specific provisions, the Criminal Code and the Code of Criminal Procedure shall apply.

Article 15
Entry into force

This law shall come into force the next day after its promulgation.

Approved on 25 February 2009.

President of the Legislative Assembly, Susana Chou

Signed on 26 February 2009.

Ordered to promulgate.

Chief Executive, Ho Hau Wah

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