



## Convention on the Rights of the Child

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### COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 12 (1) OF THE OPTIONAL PROTOCOL TO THE  
CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF  
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**Initial reports of States parties due in 2005**

**MACAU SPECIAL ADMINISTRATIVE REGION\***

[3 June 2005]

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\* This report has not been edited before being submitted for translation.

## CONTENTS

	<i>Page</i>
I. INTRODUCTION .....	4
(a) Legal status of the Optional Protocol in the MSAR .....	4
(b) Competent governmental entities and their coordination with the society .....	5
(c) Dissemination of the Optional Protocol .....	6
II. PROHIBITION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY .....	6
1. General aspects .....	6
(a) Special constitutional protection .....	6
(b) Age limits used for definitions .....	7
2. Prohibition of the sale of children .....	7
(a) Human freedom and dignity .....	7
(b) Prohibition of slavery, forced labour and servitude .....	7
(c) Prohibition of transfer of organs for profit .....	9
(d) Rules on adoption .....	9
3. Prohibition of sexual exploitation of the child .....	10
(a) General aspects .....	10
(b) Child prostitution .....	11
(c) Child pornography .....	12
(d) Summarizing .....	13
4. Attempt, complicity and participation .....	17
(a) Attempt .....	17
(b) Complicity and participation .....	18
5. Liability of legal persons .....	18

**CONTENTS (*continued*)**

	<i>Page</i>
III. CRIMINAL LAW AND CRIMINAL PROCEDURE LAW .....	19
1. Jurisdiction .....	19
2. Extradition .....	19
3. International mutual legal assistance in criminal matters .....	20
4. Seizure and confiscation and other measures .....	21
IV. PROTECTION OF THE RIGHTS OF THE VICTIMS .....	22
V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY .....	23
Annex I. LEGISLATION MENTIONED IN THE REPORT .....	25
Annex II. MULTILATERAL TREATIES MENTIONED IN THE REPORT .....	26

## **I. INTRODUCTION**

1. The present Part II of this first report of the People's Republic of China contains detailed information on the measures taken to implement the provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereinafter referred to as Optional Protocol) in its Macao Special Administrative Region (hereinafter referred to as MSAR).

2. China deposited its instrument of ratification of the Optional Protocol on 3 December 2002. Therefore, in accordance with its article 14 (2), the Protocol entered into force for China on 3 January 2003.

3. Having in mind that, at the time of the deposit of its instrument of ratification, China also declared that the Protocol would be applicable to the MSAR, this part of the report covers its implementation in the MSAR in the period between 3 January 2003 and 3 January 2005.

4. It should be referred that in its elaboration, the *Guidelines regarding initial reports to be submitted by States Parties under article 12, paragraph 1, of the Optional Protocol*, adopted by the Committee on the Rights of the Child on 1 February 2002 (contained in document CRC/OP/SA/1 of 4 April 2002), were followed.

5. It must also be borne in mind that the present part of the report should be read together with Part III of the second revision of the Core Document of the People's Republic of China (HRI/CORE/1/Add.21/Rev.2), as well as with the part of the report submitted by China under article 44 of the Convention on the Rights of the Child related to the MSAR (CRC/C/83/Add.9 (Part II) of 27 September 2004), presented to the Secretary General of the United Nations.

### **(a) Legal status of the Optional Protocol in the MSAR**

6. General information on the MSAR land and population, the political structure and the framework in which human rights are protected in the MSAR legal system can be found in the above-mentioned Core Document of China.

7. Notwithstanding, it is particularly relevant to recall, in what regards the legal status of the Optional Protocol in domestic law, that its provisions apply directly due to the fact that the MSAR legal system is a civil law system, whereby international applicable law is directly integrated. Therefore, only the non-self-executing provisions require the adoption of internal legislation.

8. The Optional Protocol was published in the *MSAR Official Gazette*, No. 19, Series II, of 7 May 2003, in its authentic Chinese text, accompanied by its Portuguese translation, that is to say, in both of the official languages of the Region.

9. Specific information on the rights of the child as well as their concrete implementation in the MSAR was provided to the Committee very recently in the referred part of the report of China submitted under article 44 of the Convention on the Rights of the Child. That information

is still updated and, therefore, in this part of the report, the focus will be on the questions of how, at present and by virtue of the entry into force of the Optional Protocol, the rights of the child were - and still are - being reinforced.

**(b) Competent governmental entities and their coordination with the society**

10. Concerning the MSAR public departments and bodies that are competent for the implementation of the Optional Protocol and their coordination with the civil society, the business sector and the media, description of the roles of each of the main entities that deals with the issues of children can also be found in the mentioned report on the Convention on the Rights of the Child.

11. In addition, it should be mentioned that, in the first step of implementation, one of the main areas concerned is justice. The drafting of legislation is under the MSAR Secretary for Administration and Justice and, under its supervision, there are several entities involved, in particular, the Office of the Secretary and the Legal Affairs Department.

12. The Secretary for Social Affairs and Culture is responsible for the measures related to education, social protection and health. Under this Secretary, it is relevant to mention the Social Welfare Institute (hereinafter referred to as SWI), which plays one of the most important roles in the protection of children and juveniles in all its domains, in particular, child welfare, support to families with financial difficulties, support to courts in the administration of juvenile justice, prevention of juvenile delinquency, protection of victims and collaboration with and support to private institutions in those areas.

13. Police and migration affairs are under the Secretary for Security. On this subject, it is important to refer to the Judicial Police, Public Security Police and Customs Service. The first two are criminal police bodies with functions of crime prevention and investigation. The MSAR Sub-office of China National Central Bureau of INTERPOL is integrated in the Judicial Police. On top of that, they also assist in the promotion and divulgation of law by giving talks and distributing pamphlets and brochures in schools and other public places. The Customs Service is entrusted with police-like functions pertaining to customs control.

14. The courts of the MSAR exercise the judicial power independently and are subordinated to nothing but law and are not subject to any interference. It is also important in this respect to clarify that, in the MSAR legal system, procurators are also magistrates, independent and free from any interference. In fact, a procurator is attached to each court and, by law, exercises, *inter alia*, the functions of defending legality, representing incapable persons, in which category minors are included, in all actions necessary for the exercise of their rights and interests. That is to say that procurators also play a very important role in the administration of juvenile justice.

15. Finally, regarding the coordination between the Government and the private sector, comprising the media, in the MSAR, the spirit of partnership is very strong. For long, the relationship between the different sectors of the society and the organs of power, in particular the Legislative Assembly and the Government, has been closely tied together and a key factor of the dynamic of the social process.

**(c) Dissemination of the Optional Protocol**

16. The dissemination of law is under the Secretary for Administration and Justice, and there are specific entities and bodies in charge of that task, as for example, the Division for the Divulgation of Law and the Legal and Judicial Training Centre. Nevertheless, other entities and bodies are also engaged in the promotion and divulgation of law as well as in education and training in their own areas of work.

17. The MSAR is extremely committed to the protection of fundamental rights and guarantees of persons, as essential human and social values of its society, which is multi-ethnic and culturally-diverse, characterized by tolerance and equity. This commitment is reflected not only in the adoption of legislative measures but also through other concrete actions in the development and promotion of those rights.

18. In general terms, and as a matter of fact, the entry into force of the Optional Protocol has launched a debate on how to improve the protection of the child in all its different aspects.

19. By the same token, and aiming at the promotion and divulgation of fundamental rights, in particular, the rights of the child, within the various sectors of the community, the MSAR Government, through its competent entities and bodies, largely publicizes human rights. The media, the making of questionnaires, the use of interactive technology, the distribution of free pamphlets and brochures, etc, are the means usually employed for that purpose.

20. Fundamental rights are part of the school curriculum and of many training programs directed to professionals in more sensitive areas, as for example, the judicial, teachers, medical personnel and law enforcement agents.

21. Freedom of association is protected and promoted in the MSAR. As already pointed out, associations are a strong component of its society. The involvement of many associations in the field of caring for children and women is a tradition, and has always been encouraged and financially supported by the MSAR Government. These associations cooperate with the competent entities/bodies of the Administration and complement its work.

**II. PROHIBITION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**1. General aspects**

**(a) Special constitutional protection**

22. The MSAR Basic Law, in its Chapter III, guarantees the fundamental rights and duties of residents and other persons in the MSAR. Under its provisions, human freedom and dignity are inviolable.

23. Also within that same Chapter III, article 38 (3) expressly enshrines the principle of special protection of minors.

24. These principles, along with the principles of equality and legality, are fundamental principles of the whole of the MSAR legal system.

25. At the level of ordinary law, the protection of minors is concretized through both substantive and procedural civil and criminal law.

**(b) Age limits used for definitions**

26. According to article 1 of the Convention on the Rights of the Child, “*(...) a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.*”

27. The MSAR Civil Code enshrines the same concept. Its article 111 defines minor as a human being who is under 18 years old, being that also the age of majority.

28. Article 1479 of the said Code forbids marriage under 16 years old, and although article 1482 of the same Code stipulates that the marriage of a minor requires authorization from his parents (or the person who exercises parental power), when read together, the conclusion is that 16 years old is retained as the age of consent for marriage.

29. In a similar fashion, and as it will be more specifically detailed, the age of consent for marriage is also retained as the age of full sexual consent.

30. In what relates other specific legal concepts connected with the definition of the child (and their consequences), please refer to the mentioned part of China’s report on the Convention on Rights of the Child.

## **2. Prohibition of the sale of children**

**(a) Human freedom and dignity**

31. In what regards the sale of children, as defined by the Optional Protocol, it should be borne in mind that under the Basic Law provisions, human freedom and dignity are inviolable.

32. Articles 28 (1) and 30 (1) of the Basic Law expressly state, respectively, the inviolability of human freedom and of human dignity. Apart from their constitutional value, these principles are, as above-mentioned, cornerstones of the MSAR legal system, being reaffirmed as a constant in most of the ordinary laws.

**(b) Prohibition of slavery, forced labour and servitude**

33. Under the international law of peace, not only the main treaties on slavery, but also other general treaties, both universal and specific - which touch upon the issue of slavery and slavery-related practices and forced labour (or refer to it) - are applicable. Such are the cases, for example, of the:

- 1926 Slavery Convention;
- 1930 Convention concerning Forced or Compulsory Labour (ILO No. 29);
- 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;
- 1957 Convention on the Abolition of Forced Labour (ILO No. 105);
- 1966 International Covenant on Civil and Political Rights;
- 1966 International Covenant on Economic, Social and Cultural Rights;
- 1973 Convention concerning Minimum Age for Admission to Employment (ILO No. 138);
- 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182).

34. And of course, in what respects the law of armed conflicts, as China is a party to the main treaties in this field, they also apply to the MSAR.

35. The MSAR criminal law conceives the sale of persons in terms of slavery. In fact, article 153 of the Macao Criminal Code reads as follows: “*one who: (a) reduces another person to the status or condition of a slave; or (b) sells, disposes of or acquires a person, or takes possession of him with the intent to maintain him in the situation provided for in the previous paragraph, shall be punished with a penalty of 10 to 20 years of imprisonment*”.

36. Technically, this article emulates the relevant provisions of the 1926 Slavery Convention; thus, the expression “*status or condition of a slave*” is understood in exactly the same manner as the status or condition of a person “*over whom any or all the powers attaching to the right of ownership are exercised*”. This legal type covers all the situations in which a person is under the total physical control of another person.

37. On the issue of engagement of a child for the purpose of forced labour, the legal type of crime established in the quoted article 153 of the Macao Criminal Code covers that situation under certain circumstances.

38. Aside from that, article 146 of the same Code provides for the specific crime of ill-treatment or excessive loads on minors, incapable persons or spouse. The infliction of physical or mental ill-treatment or cruel treatment, the employment in dangerous, inhuman or

prohibited activities and the overloading on a minor of excessive work is, as a rule, punishable with a penalty of 1 to 5 years of imprisonment. If the act corresponds to an offence against physical integrity, or if death results there from, penalties range from 2 to 8 years, or 5 to 15 years of imprisonment, respectively.

**(c) Prohibition of transfer of organs for profit**

39. In what regards the transfer of organs (including those of children) for profit, Law 2/96/M, of 3 June, establishes the Rules to be Observed in Acts Involving Donation, Removal and Transplant of Human Organs and Tissues. Under this law, any kind of remuneration for the donation of organs as well as any transactions over it or any form of publicity regarding transactions of human organs or tissues are prohibited.

40. The free, duly informed and unequivocal consent of the donor, which, as a rule, should be given in writing, is mandatory. If the donor is a minor, the consent has to be given by his parents or the person who has parental power and requires non-opposition of the minor. Furthermore, explicit agreement is compulsory if the minor possesses the capacity to understand and to express his will. This consent may be revoked at any time until the act is performed.

41. This Law also provides for and punishes certain crimes connected with the violation of the rules and principles therein contained. More precisely, it criminalises autonomously the homicide for removal of human organs or tissues, and establishes commercial transactions on and advertisement of human organs or tissues, remuneration of donation, illicit removals and transplants, illicit removals from corpses as new criminal offences. The penalty of this sort of homicide is the same as for qualified homicide and the penalties of the remaining offences range between fines and effective imprisonment up to 3 years. Attempt is punishable in all cases and accessory penalties of compulsive demission from public function or of inhibition of professional activity for a period of 1 to 5 years may apply. In addition, the law also refers to the general norms on civil and disciplinary liability (arts. 15 to 21).

**(d) Rules on adoption**

42. At present, in the MSAR, intermediation for adoption is not allowed.

43. Adoption is governed by the provisions of the Macao Civil Code and by Decree-Law 65/99/M, of 25 October, which approves the Legal Framework on Educational and Social Protection on Juvenile Justice. This legislation, based on the principle of the best interest of the child, defines, *inter alia*, who may adopt and who may be adopted, the pre-requisites of adoption and its effects, and establishes the mechanism regarding the allocation of a minor habitually resident in Macao, outside Macao, with a view to adoption. It also governs the adoption of a minor who is habitually resident outside Macao, by a habitual resident of Macao.

44. In any case, it should be stressed that adoption always requires a judicial decision, which may only be rendered when there is a concrete and real benefit for the child, and it is reasonable to assume that a bond similar to a parent-child relationship will be established between the adopter and the adoptee.

45. Furthermore, in what concerns adoptions by interested adopters from outside Macao, the principle of subsidiarity is expressly enshrined. According to it, the court, before rendering its decision on placement of a minor outside Macao, has to ascertain that an adoption inside Macao is not viable. Therefore, whenever there is a request for judicial authorization regarding the provisional custody of a minor to be adopted outside Macao, the court, having in mind the best interests of the minor, should try, whenever possible, to keep him in Macao.

46. Within the MSAR, not only do all adoptions require a judicial order, but also all the administrative procedures regarding adoption must be conducted by a single entity, the SWI. The SWI must, *inter alia*, analyse the viability of the adoption, taking into account the suitability of the candidate and the particulars of the minor.

47. The purpose of this legal framework (and its stringent requirements) is to prevent illicit or improper gains arising from any activity related to, or connected with, adoption, and to prevent trafficking in children.

48. It is important to underline that the criminal offence of corruption is committed by a civil servant who demands or accepts, for himself or for another person, any undue gain, financial or not, while performing his duties.

49. China is undergoing its domestic legal procedure on the ratification of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, with a view to its future ratification. The MSAR was consulted on the eventual future application of this Convention and has given its favourable opinion. Therefore, if China ratifies the Convention, it will also be applicable to the MSAR.

50. In practical terms, it is worth mentioning that, until the present moment, there is no report and no knowledge of the existence of children being subject to the above-mentioned practices in the MSAR. There is also no record of complaints, by either residents or non-residents, regarding the disappearance of children in connection with their sale.

### **3. Prohibition of sexual exploitation of the child**

#### **(a) General aspects**

51. In what regards article 3 (a) of the Optional Protocol, that is to say, matters connected with sexual exploitation of the child, the Macao Criminal Code deals specifically with crimes against minors.

52. Indeed, Title I of its Book II, dealing with crimes against human beings, includes a whole chapter - Chapter V - specifically on sexual crimes. However, there are other provisions in the Criminal Code, which may be relevant to the protection of children in what concerns sexual abuse and exploitation.

53. Chapter V has three sections. The first section refers to crimes against sexual freedom; the second one to crimes against sexual self-determination; and the last one contains common provisions applicable to the previous two sections. The comparison between the crimes prescribed in the first two sections entails that the qualification of an offence as a crime against sexual freedom is anchored on the understanding that the victims of such offences enjoy full legal capacity of sexual consent. On the other hand, the *rationale* underpinning the classification of offences as crimes against sexual self-determination is an opposite one, that is to say, the victims do not fully enjoy such legal capacity.

54. Nevertheless, the penalties for some of the crimes provided for in Section I - for example, rape (art. 157), sexual coercion (art. 158) and non-consensual procreation (art. 162) - are aggravated by one third in its minimum and maximum limits, *inter alia*, whenever the victim is a minor under 14 years of age.

55. Specifically in what regards the crimes against sexual self-determination, not only the victim has to be a minor, but the age of the minor also has to be taken into consideration, as another important element of the criminal legal types.

56. The following crimes are established in this Section: sexual abuse of minors (art. 166), sexual abuse of pupils and dependent minors (art. 167), statutory rape (art. 168), sexual acts with minors (art. 169) and procurement of a minor (art. 170).

57. In other legal types of crimes against human beings, the fact of the victim of the crime being a minor constitutes an aggravating circumstance. For instance, abduction for the purpose of committing the crime against sexual freedom and self-determination is punishable by imprisonment of 3 to 10 years; however, if the victim is a minor under 16 years of age, the penalty shall be increased by one-third in its minimum and maximum limits (art. 154 (1) and (4)).

#### **(b) Child prostitution**

58. On the issue of child prostitution, the Macao Criminal Code establishes and punishes the criminal offence of procurement of a minor in article 170. This offence includes the acts of fostering, promoting and facilitating child prostitution or the practice, by a minor, of relevant sexual acts, and the resulting penalty is of 1 to 5 years of imprisonment. If the offender uses violence, serious threats, trickery or fraud, or engages in procurement as a way of life or for profit or takes advantage of the mental incapacity of the victim, or if the victim is a minor under 14 years of age, the penalty is of 2 to 10 years of imprisonment.

59. In any of the given situations, the penalty is increased by one third in its minimum and maximum limits if the victim is a descendent, adopted or a relative or has kinship with the offender up to the second degree, or if the victim is under his guardianship or curatorship.

60. In addition, Law 6/97/M, of 30 July, on Organized Crime, provides for and punishes, in its article 7, the criminal offence of international trafficking in human beings. According to it, *“anyone who, to satisfy the interests of a third person, procures, elicits, seduces or misguides a person for the practice of prostitution in another country or territory, even if the acts constituting the offence have occurred in different countries or territories, is punished with imprisonment of 2 to 8 years”*. The penalty is aggravated by one third in its minimum and maximum if the victim is a minor. The penalty is of 5 to 15 years of imprisonment if the minor is under 14 years of age.

61. Still according to Law 6/97/M, it is possible, in regard to the criminal offence of trafficking in human beings, to apply, in addition to the principle penalties provided for the criminal offence, accessory penalties, being worthwhile to stress that, in the case of trafficking in minors, the inhibition of parental power, guardianship and curatorship or of administration of property is for a period of 2 to 10 years.

**(c) Child pornography**

62. In what refers to child pornography, in the sense of article 2 (c) of the Optional Protocol, the use of a minor in pornographic photographs, films or recordings constitutes a criminal offence. Anyone who practises such an act, as well as anyone who acts upon a minor under 14 years of age by means of an obscene conversation, or pornographic writings, performances or objects, is punished with a penalty of imprisonment of up to 3 years. This penalty is increased to 1 to 5 years whenever the acts are committed with commercial intent. If the victim is a minor under 14 years of age, the penalty is increased, having in mind the parent-child relationship or the victim's dependence on the offender (arts. 166 and 171 of the Macao Criminal Code, respectively).

63. Continuing on this issue, Law 10/78/M, of 8 July, on Public Sale, Exposition and Exhibition of Pornographic or Obscene Materials, the revision of which is currently being studied in order to better adequate the legal system to the imperatives arising from international treaties, including this Optional Protocol, establishes, as a general rule, the prohibition of any kind of public dissemination of pornographic or obscene materials.

64. For the purpose of this law, pornography is defined, in its article 2 (1), in a broad manner, so as to cover any kind of materials and means, including mechanical reproduction and audio-visual form of communication, containing words, descriptions or images that constitute an outrage to public decency and morality. The second paragraph of the same article 2 gives a non-exhaustive list of examples.

65. The penalty for the violation of the provisions of Law 10/78/M is of up to 6 months of imprisonment or the corresponding fine. However, in cases of habitual offenders, the penalty of imprisonment may not be converted into a fine. It is also established that the sale of objects

and/or materials of a pornographic or obscene nature through a minor or to a minor under 18 years of age is an aggravating circumstance, the limits of the respective imprisonment or fine being increased to the double. Persons responsible over media organizations through which pornographic texts or images are disseminated are liable as co-offenders.

66. Furthermore, it should also be mentioned that Law 8/89/M, of 4 September, which establishes the Legal Framework on Radio and Television Broadcasting, prohibits the broadcast of any programme of a pornographic or obscene nature.

67. Moreover, a parent, guardian or curator of a minor, pursuant to conviction for any of the crimes established under articles 157 to 170 of the Criminal Code may be additionally sanctioned with the disqualification of parental power, guardianship or curatorship, whichever is the case, for a period from 2 to 5 years.

#### **(d) Summarizing**

68. For a better and easier understanding of the alluded provisions and of their insertion in the Criminal Code:

<b>SECTION I - CRIMES AGAINST SEXUAL FREEDOM</b>		
Crime	Penalty	Aggravation(s) connected with minors
Rape (art. 157)	3 to 12 years of imprisonment	⅓ of its minimum and maximum limits
Sexual coercion (art. 158)	2 to 8 years of imprisonment	
Sexual abuse of a person unable to resist (art. 159)	1 to 8 years of imprisonment; or 2 to 10 years of imprisonment if there is copulation or anal coitus	
Sexual abuse of a hospitalized person (art. 160)		
Sexual fraud (art. 161)	Up to 2 years of imprisonment; or up to 5 years of imprisonment if there is copulation or anal coitus	
Artificial procreation without consent (art. 162)	1 to 8 years of imprisonment	⅓ of its minimum and maximum limits
Procurement (art. 163)	1 to 5 years of imprisonment	
Aggravated procurement (art. 164)	2 to 8 years of imprisonment	
Indecent exposure (art. 165)	Up to 1 year of imprisonment or fine of up to 120 days	

SECTION II - CRIMES AGAINST SEXUAL SELF-DETERMINATION				
Crime	Penalty	Specific aggravations	Common aggravations	
Sexual abuse of children (art. 166)  this type pertains only to minors under 14 years of age and it includes:  (1) relevant sexual act with or on a child; and forcing a child to practise such an act with the offender or with another person;  (2) relevant sexual act in the presence of a child and directly related to him;  (3) sexual intercourse or anal coitus with a child;  (4) indecent exposure in the presence of a child;  (5) acting upon a child by means of obscene conversation or pornographic writings, performances or objects; or  use of a child in photographs, films or recordings of a pornographic nature.	1 to 8 years imprisonment		½ of its minimum and maximum limits if the victim is:  (a) the offender's descendent, adoptee, relative or kin up to second degree, or if he is under the offender's guardianship or curatorship  (b) in a submissive relationship of a hierarchical, economic or labour-related nature with the offender, provided that the criminal offence is committed by taken advantage of such a relationship	(a) ⅓ of its minimum and maximum limits if the offender is a carrier of sexual transmitted disease  (b) ½ of its minimum and maximum limits if pregnancy, serious offence to physical integrity, AIDS, suicide or death results from the commission of the criminal offence
	3 to 10 years of imprisonment			
	Up to 3 years of imprisonment	1 to 5 years of imprisonment if there is commercial intent		

<b>SECTION II - CRIMES AGAINST SEXUAL SELF-DETERMINATION</b>			
Crime	Penalty	Specific aggravations	Common aggravations
<p>Sexual abuse of pupils and dependents (art. 167)</p> <p>this type pertains to:</p> <p>(a) minors between 14 and 16 years of age who have been entrusted to the offender for education or assistance; and</p> <p>(b) minors between 16 and 18 years of age who have been entrusted to the offender for education or assistance, when the offender takes advantage of his function or position;</p> <p>and it includes:</p>			
(1) relevant sexual act with or on a minor; and forcing a minor to practise such an act with the offender or with another person;	1 to 8 years of imprisonment		
(2) relevant sexual act in the presence of a minor and directly related to him;			
(3) sexual intercourse or anal coitus with a minor;			
(4) indecent exposure in the presence of a minor;	Up to 1 year of imprisonment	Up to 3 years of imprisonment if there is commercial intent	
(5) acting upon a minor by means of obscene conversation or pornographic writings, performances or objects; use of a minor in photographs, films or recordings of a pornographic nature.			

SECTION II - CRIMES AGAINST SEXUAL SELF-DETERMINATION			
Crime	Penalty	Specific aggravations	Common aggravations
Statutory rape (art. 168) this type (covering both copulation and anal coitus and pertains to minors between 14 and 16 years of age; and it requires that the offender take advantage of the minor's inexperience)	Up to 4 years of imprisonment		
Sexual act with minors (art. 169) this type (covering all relevant sexual acts with the exception of copulation and anal coitus) pertains to minors between 14 and 16 years of age; and it requires that the offender take advantage of the minor's inexperience; it includes  Acts practised by the offender with the minor; and			
Acts practised by the minor with another person as a result of the offender's action	Up to 3 years of imprisonment		
Procurement of a minor (art.) 170	1 to 5 years of imprisonment	2 to 10 years of imprisonment if the minor is under 14 years of age, if there is use of violence, serious threat, trickery or fraud, if procurement is the offender's way of life, if there is commercial intent or if the offender takes advantage of the minor's mental incapacity.	

69. Children are specially protected and assisted. If the parents or other persons exercising parental power endanger the child's security, health, moral upbringing and education, special intervention mechanisms may be applied in order to effectively safeguard the child's best interests.

70. Those mechanisms range from restrictions to the exercise of parental power, to disqualification from such power. The judge may order the child to be placed under the care of other persons or institutions.

71. As is the case everywhere, there are other situations involving abuse of children, namely commercial exploitation of begging, domestic violence, etc. The following table illustrates cases of complaints lodged with the Police relative to crimes related to children:

Crime	2003	2004
Sexual abuse of children	9	2
Statutory rape	7	3
Procurement of a minor	1	
Ill-treatment of minors	26	31
Total	43	36

*Source:* Office for Security Co-ordination.

#### **4. Attempt, complicity and participation**

##### **(a) Attempt**

72. The Macao Criminal Code expressly stipulates, as one of the basis of punishability, that only intentional conduct is punishable, unless the law expressly provides punishment for negligent conduct (art. 12). On the other hand, as regards to the forms of commission of a crime, the Code sets out general rules on, *inter alia*, the definitions of attempt, perpetration, complicity and participation (arts. 20 et. seq.).

73. There is an attempt to commit a crime whenever a person engages in the execution of acts that constitute a criminal offence, which that person has decided to commit, although the offence is not completed. Except otherwise expressly provided for, an attempt to commit a crime is punishable only if, and when, the completion of such crime is punishable with a maximum penalty of over 3 years of imprisonment. The penalty is the same one established for the completed crime, but specially mitigated (arts. 21 (1) and 22 of the Criminal Code, respectively).

74. Most of the crimes previously referred to are punishable with penalties, which imply that the attempt to commit them is also punishable. Notwithstanding, and as mentioned, the revision of some aspects of the criminal law is underway, the punishability of the attempt with respect to the crimes in question being one of the major issues under consideration.

**(b) Complicity and participation**

75. Perpetration is defined, in a very broad manner, so as to cover whoever commits the criminal act himself, or through another, or directly takes part in its execution by agreement or jointly with another or others, and also when one intentionally directs another person to commit the act, provided that there is execution or beginning of execution of the act (art. 25 of the Macao Criminal Code).

76. The punishability of accessoryship depends on the existence of criminal intention. In effect, a person who, intentionally and by any means, renders material or moral assistance to another person's wilful commission of a crime, is considered as an accessory to such crime. (art. 26 of the Macao Criminal Code).

77. It is important to stress that the minimum criterion for the existence of accessoryship is the fact that the person acts wilfully. No distinction is made in terms of aiding or abetting, which are both covered by the referred article 26. The accessory is punished with the same penalty as the perpetrator, but specially mitigated.

78. Another form of complicity specifically provided for is participation. Every participant is punished according to his own guilt, irrespective of the punishability or of the degree of guilt of the other co-participants (art. 28 of the Macao Criminal Code). However, if the unlawfulness or the degree of the unlawfulness of the act depends on special personal characteristics or relationships of the perpetrator, the punishability of all the participants shall not be affected, so long as those characteristics and relationships exist in the person of any one of them, except if the *ratio legis* of the relevant criminal provisions points otherwise.

**5. Liability of legal persons**

79. On the subject matter of the liability of legal persons, article 3 (4) of the Optional Protocol determines that each party shall take the measures, where appropriate, to establish that liability, which may be criminal, civil or administrative.

80. Article 10 of the Macao Criminal Code determines that, except as otherwise provided, only natural persons are criminally liable.

81. However, article 11 of the said Code provides for the punishability of commission on behalf of another person. A person who voluntarily acts as an authorised representative of a body of a legal person, a society or a de facto association, or as a legal or voluntary representative of another natural person, is punishable, even when the type of crime committed requires: (a) specific personal attributes, and those attributes only exist in relation to the represented person; or (b) that the perpetrator performs the act in his own interest, and the representative acts in the interest of the represented. This provision is applicable even if the legal instrument on which such representation is grounded is null and void.

82. The Macao Civil Code contains the general legal framework on civil liability, including the liability of legal persons (arts. 150 to 477).

### III. CRIMINAL LAW AND CRIMINAL PROCEDURE LAW

#### 1. Jurisdiction

83. In terms of criminal jurisdiction, the main principle in the MSAR is that of territoriality. Thus, article 4 of the Macao Criminal Code expressly establishes that “*unless otherwise provided by an international convention applicable in Macao or in a mutual legal assistance agreement, Macao criminal law shall be applicable to acts committed: a) in Macao, irrespective of the offender’s nationality; or b) aboard a vessel or an aircraft registered in Macao*”.

84. Article 5 (1) of the said Code complements the rules on the scope of criminal jurisdiction, contemplating other situations whereby jurisdiction is extended in conformity with the principles of protection of the MSAR interests, universality, active personality and passive personality. Another ground for the exercise of criminal jurisdiction to acts practised outside the MSAR is established in article 5 (2), which provides that “*the Macao criminal law is also applicable to acts committed outside Macao whenever the obligation to bring such acts under trial arises from an international convention applicable to Macao or from a mutual legal assistance agreement*”.

85. However, other legal concepts that may restrict jurisdiction are also provided for, namely, double criminality (item 2 of article 5 (1) (c)) and double jeopardy (*ne bis in idem*) (art. 6).

86. More to the point, in accordance with the referred rules on jurisdiction, the Macao criminal law shall be applied whenever the act pertaining to the crime of slavery is committed, provided that the offender is found in Macao and cannot be surrendered to another territory or state (art. 5 (1) (b) of the Criminal Code).

87. The Macao criminal law will also be applicable to the mentioned crimes of sexual abuse of minors, sexual abuse of pupils and dependent minors, statutory rape, sexual acts with minors and procurement of a minor whenever they are committed outside the Region “*by a Macao resident against a non-resident, or by a non-resident against a resident, when: (1) the offender is found in Macao; (2) the acts are also punishable under the legislation in force where the act has been committed, unless the *jus puniendi* is not exercised there; and (3) the acts constitute a crime for which the surrender is admitted but cannot, in casu be granted*” or “*against a Macao resident, by a resident, whenever the offender is found in Macao*” (art. 5 (1) (c) and (d) of the Criminal Code).

#### 2. Extradition

88. Extradition, in its proper sense, is a matter that falls outside the scope of the autonomy of the MSAR.

89. Nevertheless, on the basis of an applicable international convention or agreement, and in accordance with the general provisions of the Macao Criminal Procedure Code, the surrender of fugitives or transfer of sentenced persons may take place, as it will be detailed in the following section.

### **3. International mutual legal assistance in criminal matters**

90. Article 94 of the Basic Law allows the MSAR to enter into agreements in the field of mutual legal assistance. More precisely, according to the referred article, “*with the assistance and authorization of the Central People’s Government, the Macao Special Administrative Region may make appropriate arrangements with foreign states for reciprocal judicial assistance*”.

91. In the past, an agreement on the transfer of sentenced persons was concluded with Portugal. Due to its object and to the entry into force of the Basic Law, there was the need to confirm its nature as an international treaty and the continuation of its application. This was done in 2000 by an Exchange of Notes between China and Portugal.

92. More recently, on 17 January 2001, an agreement on reciprocal legal assistance was concluded with Portugal.

93. Interregional mutual legal assistance agreements with the Mainland of China and the Hong Kong Special Administrative Region are also being negotiated.

94. A law establishing the general legal framework on mutual legal assistance in criminal matters is currently being drafted.

95. The Macao Criminal Procedure Code governs the relationship with the authorities outside the MSAR (overseas jurisdictions as well as the Mainland of China) for the purpose of the administration of criminal justice. The framework therein contained is essentially based on letters of request. However, some other forms of international co-operation will be possible in the near future with the enactment of the above-mentioned law on mutual legal assistance.

96. Article 213 of the said Code stipulates, as a general rule, that the letters of request, the surrender of fugitives, the execution or enforcement of a sentence of a foreign court and other matters related to criminal justice between the Macao courts and foreign authorities shall be regulated by applicable international conventions or agreements on mutual legal assistance, and that in the absence of such treaties, the provisions of the Criminal Procedure Code shall be applicable.

97. Article 213 does not preclude any action in the absence of applicable international law. Under the standard provisions of the Criminal Procedure Code, a judiciary authority outside Macao may make a request to a Macao court, by means of a letter of request (designated as ‘rogatory letter’), to perform a judicial act, as for example, the service of documents, taking of evidence for use in judicial proceedings, etc.. Letters of request may be transmitted by any means and through any channel.

98. Once a letter of request is received, the Procurator examines the letter in order to ascertain its compliance with the public interest. Afterwards the judge decides on its compliance in harmony with domestic law.

99. Article 216 (1) of the same Code establishes the grounds for refusal of execution of a letter of request. Indeed, the execution may be refused by the court only to the extent that: (a) it does not fall within the functions of the requested Macao judicial authority; (b) the request concerns an act that is prohibited under the Macao law or that Macao public order would be prejudiced thereby; (c) the execution of the letter contravenes the fundamental principles of the legal system or the security of Macao; and (d) the requested act involves the execution or the enforcement of an order or judgment from a foreign court, which has not been reviewed or confirmed in cases where such a review or confirmation is mandatory.

100. Paragraph 2 of the same article 216 specifies that in the case of subsection (a) of the previous paragraph 1, the requested authority shall forward the letter of request to the competent Macao judiciary authority.

101. In addition, and according to the law that establishes the notification procedure of requests under judicial cooperation, the MSAR competent authorities, before deciding to send a request to foreign authorities under the provisions of the law or of applicable bilateral agreements or multilateral treaties, or whenever they receive a request from foreign authorities, are to notify such requests to the Central People's Government through the Chief Executive. Whenever the Central People's Government, on the grounds of national defence, foreign affairs, sovereignty, public security, or public order of the State, emanates instructions on the submission or acceptance of a request under judicial cooperation, it shall transmit them by writing to the Chief Executive, and the Chief Executive shall issue an order in conformity with the referred instructions. The competent authorities of the MSAR shall be bound by that order.

102. The Procurator may always appeal against the judicial order granting execution of a letter of request. In case of such an appeal, such execution is suspended until the appellate decision is delivered.

103. Once a letter of request is executed, the documents concerning that execution shall be sent by the requested Macao authority through the same manner as the letter was received. If the letter is not executed in whole or in part, the requesting foreign authority shall be informed and advised of the reasons of non-execution also through the same manner.

104. All court decisions must be justified as to the reasons for their issuance.

#### **4. Seizure and confiscation and other measures**

105. Articles 163 to 171 of the Macao Criminal Procedure Code govern seizure. According to article 166, seizure of any kind of funds or other financial assets deposited in banks or credit institutions is legally possible whenever there are serious reasons to believe that the funds or assets are related to the commission of a crime or are important to its investigation or to produce material evidence. It can take place even if the funds or assets are not property of the perpetrator or are not deposited in his name. A seizure requires a judicial order.

106. In what relates crimes committed by persons who are part of an organized criminal group, special rules of the above-mentioned Law 6/97/M apply. Under article 31 of this Law,

seizure of goods and rights, in a broader manner is possible; financial institutions or equivalent entities as well as associations, civil or commercial partnerships or companies, departments of registry and taxes, and any other public or private entities may not refuse information requested by the judges on those assets.

107. The right of all and any persons (both natural and legal) to own property is a fundamental economic right fully guaranteed in the MSAR, namely by the Basic Law and the international multilateral treaties in force. Confiscation of assets violates that right.

108. Nevertheless, it is true that fundamental rights may be - and are - restrictable in certain cases and under certain conditions. After all, that is precisely the case with criminal penalties, but criminal penalties always presuppose an *ex ante facto* law and the compliance with due process of law. Therefore, and although confiscation, in the proper sense, is not possible, the Macao Criminal Code expressly sets forth the possibility of the permanent deprivation of property by order of a court. In this sense, objects or rights that derived from a crime - proceeds of a crime - may be declared lost in favour of the MSAR (arts. 101 to 104).

109. The previously referred provisions are drafted so as to include not only objects *per se* of any kind, but also goods, rights or benefits.

110. In the case of objects, it is established that these include all objects used to commit or intended to be used to commit a criminal offence, and those resulting from the commission of an offence that, by their nature, or due to the circumstances of the case, may endanger the security of persons or public morality or order, or if there is a serious risk that they may be used to commit new offences (art. 101).

111. In the case of goods, rights or benefits, the wording of the relevant provisions covers any kind of gains given by or promised to the perpetrator of the criminal offence, either directly for his benefit or for the benefit of a third person. These provisions also cover goods, rights or benefits that the perpetrator acquired directly for himself or for a third person. Even those obtained through a transaction or an exchange of things, or rights, directly obtained by means of the offence, are covered. If such gains, goods, rights or benefits are not susceptible of appropriation *in specie*, the deprivation of property may be substituted by a payment to the MSAR of an amount corresponding to their value.

#### **IV. PROTECTION OF THE RIGHTS OF THE VICTIMS**

112. Under the criminal procedure rules, children are specially protected in order to prevent disruption in their psychological and physical well-being.

113. For example, in case of children being victims of criminal offences of a sexual nature, the Criminal Procedure Code determines, *inter alia*, that the inquiry of a minor under 16 years of age is conducted without publicity, the divulgence of the identity of the minor is not allowed and, when the minor has to be present in the court audience, the offender is removed during the deposition of the minor, if there are reasons to believe that his presence could put the minor in risk.

114. Protection is granted to minors even in cases where they are not victims but have to be present in the court to testify. For instance, only the judge can address a minor under 16 years of age during his testimony. What has been said regarding non-confrontation in terms of presence of the offender with the minor is also valid for the case where the minor has to testify.

115. The SWI is the entity within the MSAR Government that is competent to assist children victims of criminal offences. For that purpose, it has a special division, the Division for Infants and Juveniles of the Department of Social Solidarity. This Division co-operates and conducts projects and programmes to support children and juveniles as well as their families in situations of risk. It also gives assistance to the courts within the Legal Framework on Educational and Social Protection on Juvenile Justice. Another aspect of its activities is to develop co-operation with private social solidarity entities dedicated to children and juvenile and to monitor them.

116. The staff of the SWI, in particular, those of the mentioned Division, perform their functions by means of interdisciplinary and qualified groups of experts.

## **V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

117. The divulgation of fundamental rights, in particular, those that are specially protected, as it is the case of the rights of the minors, as well as the prevention of all forms of conducts against human freedom and dignity constitute a policy of the MSAR Government that has been systematically and continuously implemented.

118. Several departments of the MSAR Government carry out divulgation and dissemination activities and work in close co-operation with local associations and public and private social solidarity entities.

119. As mentioned, the Legal Affairs Department has a special division solely for the divulgation of law. This divulgation is done through all means, in particular, through radio and television broadcasting programmes, newspaper articles and publication of brochures and pamphlets, distributed freely. Several recreational activities aiming at the divulgation of laws are constantly organized, being one of the underlined ideas to promote justice and to prevent crimes in a simple, direct and intelligible way.

120. It is important to stress that the Convention on the Rights of the Child and in general all issues connected with the protection of children are major concerns of the society and, thus, have also been the focus of the dissemination policy of the Government.

121. Indeed, the more popular Chinese language newspapers, like “*Va Kio*” and “*Ou Mun*”, have specific columns on ‘law information’ and special attention was paid to the Optional Protocol in those columns.

122. The Legal Affairs Department has also promoted the publication of specific brochures on ill-treatment of children and it is preparing a new publication on the Convention on the Rights of the Child, which will detail the Optional Protocol even further.

123. Public campaigns are also carried out in schools. And, at a higher level, legal training programs on these subject matters have been carried out, aiming at legal professionals and civil servants in general.

124. The Institute for Civic and Municipal Affairs regularly organizes information campaigns in public places directed to the general public for the purpose of divulgation, *inter alia*, of the rights and duties of the residents. These activities are very often incorporated into shows, performances in order to attract attention in an easy and enjoyable way. The public has shown a great receptivity to these activities.

125. The SWI has publicly announced that it is planning to open a centre specially dedicated to the protection and care of children. This centre will provide advice and counselling.

126. The MSAR is highly committed to enrich the knowledge of its population in what concerns the rights of the child and his protection.

## **Annex I**

### **LEGISLATION MENTIONED IN THE REPORT**

1. Basic Law of the Macao Special Administrative Region of the People's Republic of China
2. Macao Civil Code
3. Macao Criminal Code
4. Macao Criminal Procedure Code
5. Law 10/78/M, of 8 July, on Public Sale, Exposition and Exhibition of Pornographic or Obscene Materials
6. Law 8/89/M, of 4 September, which establishes the Legal Framework on Radio and Television Broadcasting
7. Law 2/96/M, of 3 June, establishes the Rules to be Observed in Acts Involving Donation, Collection and Transplantation of Human Organs and Tissues
8. Law 6/97/M, of 30 July, on Organized Crime
9. Decree-Law 65/99/M, of 25 October, which establishes the Legal Framework on Educational and Social Protection on Juvenile Justice

## **Annex II**

### **MULTILATERAL TREATIES MENTIONED IN THE REPORT**

1. Slavery Convention, signed at Geneva on 25 September 1926
2. Convention concerning Forced or Compulsory Labour, adopted at Geneva on 28 June 1930 (ILO No. 29)
3. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others adopted at Lake Success, New York on 2 December 1949
4. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at Geneva on 7 September 1956
5. Convention concerning the Abolition of Forced Labour, adopted at Geneva on 25 June 1957 (ILO No. 105)
6. International Covenant on Civil and Political Rights, adopted at New York on 16 December 1966
7. International Covenant on Economic, Social and Cultural Rights, adopted at New York on 16 December 1966
8. Convention concerning Minimum Age for Admission to Employment, adopted at Geneva on 26 June 1973 (ILO No. 138)
9. Convention on the Rights of the Child, adopted at New York on 20 November 1989
10. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993
11. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted at Geneva on 17 June 1999 (ILO No. 182)

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