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CONVENTION AGAINST TORTURE  
AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT  
OR PUNISHMENT

2 0 1 3

M A C A U  
L A W J O U R N A L

S P E C I A L I S S U E

CONVENTION AGAINST TORTURE  
AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT  
OR PUNISHMENT

2 0 1 3



EU-MACAO CO-OPERATION PROGRAMME IN THE LEGAL FIELD



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## PREFACE

Following the publication of several international legal instruments relating to human rights applicable in the Macao Special Administrative Region (Macao SAR), the Macao Government Law Reform and International Law Bureau, in compliance with the Government's policies on the dissemination of information on legislation, publishes the fifth volume of the special issue of the Macao Law Journal dedicated to the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

The purpose of this publication concerns the need to inform the community about the policies of the Government to implement and execute the international obligations under the said Convention in the Macao SAR, and to provide information on the process of monitoring the implementation of the Convention by its Committee of Experts of the United Nations.

Thus we believe to be able to contribute to raising people's awareness and accountability for upholding human rights in the Macao SAR, and to provide the law practitioners in Macao with a prospective and enlarged vision in the field of human rights, equipping them with a vast amount of material thought to be useful for the practical exercise of such rights.

The Executive Director

*Chu Lam Lam*



## **PART I**

# **THE CAT AND ITS APPLICATION TO MACAO**





## **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \* \*\***

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

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\* Adopted at New York, on 10 December 1984

\*\* Published in the Official Gazette of Macau, No. 11, Series I, 16 March 1998

Have agreed as follows:

## **PART I**

### **Article 1**

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

### **Article 2**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### **Article 3**

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

### **Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

### **Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State;
- (c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the

alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

### **Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

### **Article 7**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

### **Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

### **Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

### **Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

### **Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

### **Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.



### **Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

## **PART II**

### **Article 17**

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International

Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

### **Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

### **Article 19**

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State

Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

## **Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In

agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

## **Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

- (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the

receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
- (d) The Committee shall hold closed meetings when examining communications under this article;
- (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an *ad hoc* conciliation commission;
- (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being

considered by the Committee and to make submissions orally and/or in writing;

- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
  - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
  - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## **Article 22**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to

its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

- (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
- (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.



8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

### **Article 23**

The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

## **PART III**

### **Article 25**

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and

voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

### **Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

### **Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

### **Article 32**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

### **Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.



## **Notice of the Chief Executive n.º 10/2007 <sup>1</sup>**

Considering that the People's Republic of China by Note of 10 July 2002 deposited its instrument of acceptance to the Amendment to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at New York, on 8 September 1992, to the Secretary-General of the United Nations.

The Chief Executive orders the publication, in accordance with Article 6(1), of the Law 3/1999, 20 December, of the Macao Special Administrative Region, the referred Amendment to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in its Chinese authentic version, together with the respective Portuguese translation from several authentic texts.

The authentic versions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in Chinese and French, together with the respective Portuguese translation, are published in the Macau Official Gazette No. 11, Series I of 16 March 1998.

Enacted, 22 May 2007.

The Chief Executive, Ho Hau Wah.

### **Amendment to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

1. To erase paragraph 7 of Article 17 and paragraph 5 of Article 18.
2. To add a new paragraph as paragraph 4 to Article 18 with the following content: "The members of the Committee, as established

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<sup>1</sup> Published in the MSAR Official Gazette No. 22, Series II, 30 May 2007.

in accordance with the present Convention, shall receive emoluments from the financial resources of the United Nations under the terms and conditions decided by the General Assembly”

3. To enumerate paragraph 4 of Article18 as paragraph 5.

## **Portuguese Parliament Resolution 11/1988<sup>1</sup>**

The Portuguese Parliament decides, pursuant to Article 164(i) and Article 169(4) of the Constitution, the following:

1 — It is approved for ratification the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly, on 17 December 1984, where the authentic text in French together with the respective Portuguese translation constitute annexes to the present resolution.

2 — The Portuguese Government is hereby authorised to make a declaration in accordance with Article 21(1) of the Convention, where it recognises the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention.

3 — The Portuguese Government is hereby authorised to make a declaration in accordance with Article 22(1) of the Convention, where to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

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<sup>1</sup> Published in the Official Gazette of Macao, No. 11, Series I, 16 March 1998.





## **Governor's Decree 28/GM/98 <sup>1</sup>**

Considering that by mistake the Portuguese Parliament Resolution 11/1988, published in the Portuguese *Official Gazette* No. 118, Series I, of 21 May 1988, that approves the ratification the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, was not published in the *Macao Official Gazette*, notwithstanding its clear mention;

Using the power conferred by Article 16(1)(b) and (2) of the Organic Statute of Macao, the Governors orders:

The publication in the *Macao Official Gazette* of the Portuguese Parliament Resolution 11/1988, published in the Portuguese *Official Gazette* No. 118, Series I of 21 May 1988, that approves for ratification the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and its version in the Chinese language.

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<sup>1</sup> Published in the Macao Official Gazette No. 11, Series I, 16 March 1998.



## **Notice of the Chief Executive 9/2001<sup>1</sup>**

Considering that the People's Republic of China notified on 19 October 1999, the Secretary-General of the United Nations, in its capacity of depository entity of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at New York, on 10 December 1984, in respect to the continuation of the application of the referred Convention to the Macao Special Administrative Region.

The Chief Executive orders the publication, in accordance with Article 6(1), of the Law 3/1999, 20 December, of the Macao Special Administrative Region, of the notification of the People's Republic of China in Chinese and English, as sent to the depository, together with the respective Portuguese translation.

Enacted, 4 January 2001.

The Chief Executive, Ho Hau Wah.

### **Notification**

“(…) In accordance with 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 (hereinafter referred to as the Joint Declaration), the Government of the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999. Macao will, from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are

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<sup>1</sup> Published in the Macao SAR Official Gazette No. 2, Series II, 10 January 2001.

the responsibilities of the Central People's Government of the People's Republic of China.

In this connection, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to inform Your Excellency of the following:

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "Convention"), to which the Government of the People's Republic of China deposited the instrument of ratification on 4 October 1988, will apply to the Macao Special Administrative Region with effect from 20 December 1999. The Government of the People's Republic of China also wishes to make the following declaration: The reservation made by the Government of the People's Republic of China to Article 20 and paragraph 1 of Article 30 of the Convention will also apply to the Macao Special Administrative Region.

The Government of the People's Republic of China will assume the responsibility for the international rights and obligations arising from the application of the Convention to the Macao Special Administrative Region. (...)"

## **PART II**

### **REPORTS, WRITTEN QUESTIONS & ANSWERS**



**CORE DOCUMENT OF THE PEOPLE'S REPUBLIC OF CHINA  
PART THREE \***

**MACAO SPECIAL ADMINISTRATIVE REGION**

**I. GENERAL INFORMATION ABOUT THE MSAR**

**A. GEOGRAPHICAL, DEMOGRAPHIC, SOCIAL,  
ECONOMIC AND CULTURAL CHARACTERISTICS**

**1. Geographical indicators**

1. The MSAR, part of the territory of China, lies on the south-eastern coast of China, in the Pearl River Delta. It consists of the Macao Peninsula and the islands of Taipa and Coloane. Due to land reclamation along its coastline, the MSAR's total surface area has grown from around 23.8 km<sup>2</sup> in 2000 to 29.5 km<sup>2</sup> in the end of 2009.

**2. Demographic indicators**

***a. General information***

2. The MSAR's estimated resident population as at 31 December 2009 was 542,200. The By-census 2006 (in which the indicated total was

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\* The present document (HRI/CORE/CHN-MAC/2010) is an update in the form of an addendum to Part III of the Core Document of the People's Republic of China (HRI/CORE/1/Add.21/Rev.2.), submitted by China in relation to its Macao Special Administrative Region (MSAR) on 30 December 2000. It covers the period until December 2009. However, as censuses are taken every 10 years and by-censuses every 5 years (the most recent census and by-census took place in 2001 and 2006, respectively) and the annual statistics from 2009 are not yet fully available, some of the data herein provided refers to existing estimates.



502,113), in comparison with the Census 2001, showed the acceleration in population growth, with an average annual growth of 2.9%. More recent estimations indicate that the annual growth of the population was 4.6% in 2005, 5.8% in 2006, 4.7% in 2007, 2% in 2008 and -1.3% in 2009.

3. In fact, the rates of natural increase for 2005, 2006, 2007, 2008 and 2009 were 4.3‰, 5‰, 5.7‰, 5.4‰ and 5.7‰, respectively. However, data on migratory flow (including immigrants from mainland of China, persons authorized to reside, non-resident workers and emigrants), the other factor determining population growth, indicated a net migration of -10,100 in 2009, on account of a significant outflow of non-resident workers.

4. At the end of 2009, the estimated population density was 18,400 per km<sup>2</sup>.

#### ***b. Place of birth, ethnicity and usual language***

5. With respect to the place of birth, results of the By-census 2006 showed that 47% of the resident population were born in mainland of China, 42.5% in Macao, 3.7% in Hong Kong, 2% in the Philippines and 0.3% in Portugal. Compared with the Census 2001, the proportion of residents born in Macao declined whereas the proportion of those born in other places increased.

6. As to population distribution by ethnicity and spoken language, still according to the By-census 2006, the majority (94.3%) of the population was of only Chinese ethnicity, which decreased by 1.4 percentage points over 2001. Those of Portuguese ethnicity accounted for 1.6%, which fell by 0.2 percentage point over the same period of time. Among the resident population aged 3 and above, 85.7% spoke mostly Cantonese at home, 3.2% spoke Mandarin, 6.7% spoke other Chinese dialects, 1.5% spoke English, 0.6% spoke Portuguese and 2.3% spoke other languages.

#### ***c. Gender and age structure of the population and dependency ratios***

7. As regards the gender structure, according to the results of the By-census 2006, 48.8% of the resident population were male and 51.2% were

female. The higher ratio of the female population was considered to be due to the fact that the majority of legal immigrants and persons authorized to reside were female. The last population estimates indicate that, among the resident population in 2009, 48.2% were male and 51.8% were female.

8. In terms of age structure, the By-census 2006 showed a decline in fertility rate that brought the proportion of the youth population (aged 0-14) down significantly by nearly 20%, from 20.6% in 2001 to 15.2% in 2006. As to the elderly population (aged 65 and over), although an increment was recorded at the time, the rate of increase was lower than that of the population growth; as a result, the proportion of the elderly population dropped slightly, from 7.3% in 2001 to 7% in 2006. The By-census 2006 also showed that the influx of immigrants and expatriates contributed to an increment in the number of the adult population (aged 15-64), thus reducing the proportion of elderly population and the elderly dependency ratio to 9.1%. At the time, the child dependency ratio, the overall dependency ratio and the ageing ratio were 19.6%, 28.6%, and 46.3%, respectively.

9. According to subsequent population estimates, the proportion of youth population was 13.5% in 2007, 12.8% in 2008, and 12.7% in 2009. In those same years, the adult population accounted for 79.5%, 80.0% and 79.5% of the total, respectively, and the elderly population took up 7.1%, 7.2% and 7.7%, respectively.

10. The youth dependency ratio was 17% in 2007, 16.1% in 2008 and 16% in 2009. The elderly dependency ratio was 8.9% in 2007, 9% in 2008 and 9.7% in 2009. The overall dependency ratio was 25.9% in 2007, 25.1% in 2008 and 25.7% in 2009. The ageing ratio was 52.4% in 2007, 56.2% in 2008 and 60.3% in 2009.

#### *d. Disability*

11. Information on the MSAR's population with disabilities was collected for the first time for the Census 2001. It was sought again for the By-census 2006. However, different methods and criteria were used

in these two operations. In the Census 2001, a “self-reporting” method was used. The respondents were asked to identify whether any of their household member(s) suffered from physical, mental and/or emotional conditions. In the By-census 2006, the method to collect information was revised and the criteria used were: (i) as a result of one’s physical, mental or emotional condition that even with the help of auxiliary equipment, one still requires assistance from others in order to move around, communicate with others, take care of oneself and perform other daily activities; (ii) the type of impairment affecting the individual had been lasting continuously for not less than 6 months. Thus, the term “person with a disability” should be here understood in this latter sense.

12. According to the By-census 2006, the number of persons with a disability totalled 8,298, corresponding to 1.7% of the total resident population. Among them, 42.8% were male and 57.2% were female.

13. Analysed by age group, persons with a disability accounted for 0.4% of the resident population aged 0-14 and 0.8% of those aged 15-64, while for the elderly population aged 65 and above, the respective proportion reached 13.4%.

14. Analysed by type of disability, 38.1% had chronic illnesses, 23.3% had physical impairment (limbs or trunk), 12.3% had visual impairment, 11.9% had hearing impairment and 10.1% suffered from mental debility, 8.8% suffered from psychiatric conditions, 7.8% had speech difficulties, 4.4% suffered from complete deafness, 2.9% had blindness, 2.4% had had speech impairment, 1.7% suffered from Autism, 20.6% had other disabilities and the remaining was unknown (individuals with more than one type of disability were counted repeatedly). Congenital disability accounted for 7.8% of the total population with a disability. Furthermore, 65.8% of them had one type of disability, 23.2% had two and 9.4% had three or more types of disabilities (the remaining was unknown).

15. The majority of the persons with a disability (85%) lived in domestic living quarters; among them, 13.7% lived alone. Meanwhile,

15% lived in collective living quarters such as institutions. Results also showed that 69.7% of those with a disability had used or were using services for persons with disabilities, such as health rehabilitation services, special education services, financial/in kind assistance, *etc.* that were provided by the Government or social service organizations.

***e. Birth and mortality rates***

16. The crude birth rate was of 7.8‰ in 2005, 8.1‰ in 2006, 8.6‰ in 2007, 8.5‰ in 2008 and 8.8‰ in 2009.

17. The crude mortality rate was 3.4‰ in 2005, 3.1‰ in 2006, 2.9‰ in 2007, 3.2‰ in 2008 and 3.1‰ in 2009.

***f. Life expectancy***

18. The average life expectancy at birth was 81.5 years in 2003/2006, 82 years in 2004/2007, 82.1 years in 2005/2008 and 82.4 in 2006/2009 (the latter being a provisional value).

***g. Fertility rates***

19. The total fertility rate was 0.91‰ in 2005, 0.95‰ in 2006, 0.99‰ in 2007, 0.96‰ in 2008, and 0.99‰ in 2009.

***h. Household size***

20. Results from the By-census 2006 revealed that the number of households in the MSAR totalled 159,412, up by 18.1% over the Census 2001. Households with less than 4 members accounted for 59.3% of the total, an increase of 3.7 percentage points over 2001. The average household size was 3 persons, corresponding to a decrease of 0.14 compared with 3.14 persons in 2001, indicating the tendency towards smaller household. Furthermore, the number of households per living quarter also presented a decreasing tendency. The phenomenon of multi-household per living quarter became a rare scenario; in fact, the majority of the living quarters (96.8%) comprised only one household.

21. According to more recent data, the average household size was 2.93 in 2007, 2.88 in 2008 and 2.86 in 2009. An analysis by household size revealed that the relative importance of 1 to 3-person households rose from 55.9% in 2002/2003 to 59.3% in 2007/2008, with that of 2-person households increased by 1.7 percentage points over the last 5 years, while the proportion of 4-person households dropped notably by 4.1 percentage points to 24.7%. Although the average household size shrank from that of 5 years ago, the average number of economically active person per household rose from 1.65 in 2002/2003 to 1.88 in 2007/2008.

22. The By-census 2006 indicated that the proportion of single-parent households was 3.06% and the proportion of households headed by women was 29%.

### **3. Social and cultural indicators**

#### ***a. Share of household consumption expenditures***

23. The household's bi-weekly consumption expenditure amounted to MOP 5,049 in 2002/2003 and to MOP 8,827 in 2007/2008, of which the relative importance of the expenses on food and non-alcoholic beverages (27.9% and 27.4% of the total, respectively) and housing, water, electricity, gas and other fuels (19.5% and 20.5%, respectively) accounted for 47.9% of total consumption expenditure, similar to the 47.4% in 2002/2003. In the same period, the share of consumption expenditure on healthcare was 3% and 2.3%, and on education 9.6% and 8.9%, respectively (both decreased by 0.7 percentage points).

#### ***b. Gini coefficient***

24. The Gini coefficient was 0.44 for the period 2002/2003 and 0.38 for the period 2007/2008.

#### ***c. Prevalence of underweight children under five years of age***

25. The only available data is on low birth weight (<2500g) per annual number of live births, which was 6.4% in 2002, 2003 and 2005, 6.7% in 2004, 7.1% in 2006, 6.9% in 2007 and 7.4% in 2008.

**d. Infant and maternal mortality rates**

26. In 2005, 2006, 2007, 2008 and 2009, the infant mortality rate was 3.3‰, 2.7‰, 2.4‰, 3.2‰ and 2.1‰ per live births, respectively. In those same years, the rate for maternal mortality per 1,000 live births equalled an absolute value of 0.

**e. Rates of infection of HIV/AIDS and major communicable diseases**

27. The rate of infection of HIV/AIDS (to end-year population) was 0.66‰ in 2005, 0.67‰ in 2006, 0.68‰ in 2007, 0.70‰ in 2008 and 0.74‰ in 2009, while the rate of communicable diseases was 5.16‰ in 2005, 7.88‰ in 2006, 4.39‰ in 2007, 5.91‰ in 2008 and 15.69‰ in 2009.

**f. Prevalence of major communicable diseases and immunization rates**

28. Cases of major communicable diseases are relatively low and immunization coverage rates are high, as showed in the following tables:

<i>Incidence rate (1/100,000) of communicable diseases</i>						
<i>ICD-10</i>	<i>Disease</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
<i>A06.0</i>	<i>Acute amoebic dysentery</i>	<i>0.00</i>	<i>0.19</i>	<i>0.00</i>	<i>0.36</i>	<i>0.00</i>
<i>B17.0</i>	<i>Acute delta infection of Hep B carrier</i>	<i>0.00</i>	<i>0.19</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>
<i>B15.0-9</i>	<i>Acute hepatitis A</i>	<i>0.83</i>	<i>0.39</i>	<i>1.49</i>	<i>0.91</i>	<i>1.66</i>
<i>B16.1-9</i>	<i>Acute hepatitis B</i>	<i>4.75</i>	<i>2.53</i>	<i>2.97</i>	<i>2.55</i>	<i>4.06</i>
<i>B17.1</i>	<i>Acute hepatitis C(4)</i>	<i>7.23</i>	<i>5.65</i>	<i>3.35</i>	<i>4.37</i>	<i>1.11</i>
<i>B17.2</i>	<i>Acute hepatitis E</i>	<i>1.86</i>	<i>0.19</i>	<i>0.19</i>	<i>0.55</i>	<i>1.84</i>
<i>A80</i>	<i>Acute poliomyelitis</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>
<i>A60</i>	<i>Anogenital herpes viral</i>	<i>1.45</i>	<i>0.19</i>	<i>0.00</i>	<i>2.55</i>	<i>0.37</i>
<i>Z21</i>	<i>Asymptomatic HIV infection</i>	<i>4.75</i>	<i>5.06</i>	<i>3.53</i>	<i>4.01</i>	<i>3.14</i>
<i>A05.0-9</i>	<i>Bacterial food-borne intoxication</i>	<i>12.80</i>	<i>7.40</i>	<i>6.88</i>	<i>2.37</i>	<i>15.49</i>
<i>A00</i>	<i>Cholera</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>
<i>P35.0</i>	<i>Congenital rubella syndrome</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>

<i>Incidence rate (1/100,000) of communicable diseases</i>						
<i>ICD-10</i>	<i>Disease</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
A90	<i>Dengue fever</i>	0.00	0.39	1.49	0.55	0.74
A91	<i>Dengue haemorrhagic fever</i>	0.00	0.00	0.00	0.00	0.00
A36	<i>Diphtheria</i>	0.00	0.00	0.00	0.00	0.00
B08.4-5	<i>Enteroviral infections</i>	45.01	199.26	26.76	149.67	309.48
A54	<i>Gonococcal infections</i>	6.61	6.43	3.90	5.10	1.66
G00.0	<i>Haemophilus meningitis</i>	0.00	0.00	0.00	0.00	0.00
B20-B24	<i>HIV</i>	0.00	0.39	0.74	1.09	0.92
A83.0	<i>Japanese encephalitis</i>	0.00	0.00	0.00	0.00	0.00
A48.1	<i>Legionnaires disease</i>	0.00	0.00	0.00	0.00	0.00
A30	<i>Leprosy</i>	0.00	0.00	0.00	0.18	0.00
B50-B54	<i>Malaria</i>	0.00	0.00	0.00	0.00	0.00
B05	<i>Measles</i>	0.00	0.39	0.00	0.73	0.00
A39.0	<i>Meningococcal meningitis</i>	0.00	0.00	0.00	0.00	0.00
B26	<i>Mumps</i>	17.55	12.86	10.04	18.03	13.09
A34	<i>Obstetrical tetanus</i>	0.00	0.00	0.00	0.00	0.00
A06.1-9	<i>Other Amoebiasis</i>	0.00	0.19	0.19	0.00	0.18
A55-A64	<i>Other sexually transmitted disease (not include A59, A60)</i>	0.00	0.00	0.00	0.55	0.37
A35	<i>Other tetanus</i>	0.00	0.00	0.00	0.00	0.00
A17-19	<i>Other tuberculosis</i>	6.81	5.84	3.53	6.37	7.93
J10x	<i>Pandemic Influenza 2009</i>	0.00	0.00	0.00	0.00	646.26
A01.1-4	<i>Paratyphoid fever</i>	0.62	0.19	0.19	0.00	0.92
A20	<i>Plague</i>	0.00	0.00	0.00	0.00	0.00
A15-A16	<i>Pulmonary tuberculosis</i>	78.46	79.86	70.99	69.74	60.68
A82	<i>Rabies</i>	0.00	0.00	0.00	0.00	0.00
A08.0	<i>Rotaviral enteritis</i>	0.00	0.00	8.18	50.07	42.97
B06	<i>Rubella (German measles)</i>	0.21	1.36	0.74	1.64	2.95
A02.0-9	<i>Salmonella infections</i>	15.49	22.40	4.65	7.10	8.67
B97.2	<i>SARS</i>	0.00	0.00	0.00	0.00	0.00

<i>Incidence rate (1/100,000) of communicable diseases</i>						
<i>ICD-10</i>	<i>Disease</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
A38	Scarlet fever	6.61	4.09	1.12	2.73	4.24
A03.0-9	Shigellosis	0.00	0.00	0.56	0.18	0.18
A50-A53	Syphilis	1.24	1.56	1.86	11.29	13.46
A33	Tetanus neonatorum	0.00	0.00	0.00	0.00	0.00
A71	Trachoma	0.00	0.00	0.00	0.00	0.00
A59	Trichomoniasis	0.00	0.00	0.19	0.00	0.00
A01.0	Typhoid fever	0.41	0.00	0.00	0.36	0.18
B01	Varicella (chickenpox)	291.35	402.42	259.80	168.97	119.70
A37	Whooping cough	0.00	0.00	0.00	0.36	0.00
A95	Yellow fever	0.00	0.00	0.00	0.00	0.00

Source: Health Bureau

(%)

<i>Vaccines</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
BCG 1 <sup>st</sup> dose	98.0	99.0	99.7	99.6	99.8
Diphtheria, tetanus, pertussis 3 <sup>rd</sup> dose	88.9	90.1	90.2	91.3	91.8
Polio 3 <sup>rd</sup> dose	88.8	90.1	90.0	90.8	91.8
Hepatitis B 3 <sup>rd</sup> dose	87.2	89.7	90.0	91.3	92.0
Measles containing vaccine 1 <sup>st</sup> dose	90.9	90.3	89.9	89.7	90.8
Measles containing vaccine 2 <sup>nd</sup> dose	82.8	84.9	87.2	87.2	88.1
Haemophilus influenza type b 3 <sup>rd</sup> dose	–	–	–	80.6	90.4
Varicella 1 <sup>st</sup> dose					89.5

Source: Health Bureau

### **g. Ten major underlying causes of death**

29. From 2005 to 2009, the ten major underlying causes of death were:

(No.)

<i>Underlying causes of death</i>	<i>ICD-9</i>		<i>ICD-10</i>		
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Essential (primary) hypertension	176 <sup>(1)</sup>	168 <sup>(1)</sup>	143 <sup>(1)</sup>	175 <sup>(1)</sup>	166 <sup>(1)</sup>
Malignant neoplasm of trachea, bronchus and lung	119 <sup>(2)</sup>	124 <sup>(2)</sup>	117 <sup>(2)</sup>	143 <sup>(2)</sup>	142 <sup>(2)</sup>



(No.)

<i>Underlying causes of death</i>	<i>ICD-9</i>		<i>ICD-10</i>		
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
<i>Pneumonia, organism unspecified</i>	95 <sup>(3)</sup>	85 <sup>(3)</sup>	93 <sup>(3)</sup>	110 <sup>(3)</sup>	109 <sup>(3)</sup>
<i>Malignant neoplasm of liver and intrahepatic bile ducts</i>	58 <sup>(5)</sup>	62 <sup>(5)</sup>	62 <sup>(4)</sup>	62 <sup>(5)</sup>	70 <sup>(4)</sup>
<i>Chronic airways obstruction, not elsewhere classified</i>	46 <sup>(6)</sup>	49 <sup>(6)</sup>			
<i>Non-insulin-dependent diabetes mellitus</i>	77 <sup>(4)</sup>	66 <sup>(4)</sup>	48 <sup>(6)</sup>	68 <sup>(4)</sup>	56 <sup>(5)</sup>
<i>Chronic Ischaemic Heart disease</i>	39 <sup>(8)</sup>		29 <sup>(10)</sup>	46 <sup>(9)</sup>	55 <sup>(6)</sup>
<i>Hypertensive heart disease</i>			34 <sup>(9)</sup>	44 <sup>(10)</sup>	49 <sup>(7)</sup>
<i>Heart failure</i>	46 <sup>(6)</sup>				
<i>Other chronic obstructive pulmonary disease</i>			47 <sup>(7)</sup>	54 <sup>(6)</sup>	47 <sup>(8)</sup>
<i>Malignant neoplasm of colon</i>	32 <sup>(10)</sup>	44 <sup>(7)</sup>	48 <sup>(6)</sup>	51 <sup>(7)</sup>	40 <sup>(9)</sup>
<i>Acute myocardial infection</i>		30 <sup>(10)</sup>			
<i>Chronic renal failure</i>		36 <sup>(8)</sup>	46 <sup>(8)</sup>	48 <sup>(8)</sup>	32 <sup>(10)</sup>
<i>Malignant neoplasm of nasopharynx</i>		31 <sup>(9)</sup>			
<i>Bacterial pneumonia, not elsewhere classified</i>			55 <sup>(5)</sup>		
<i>Other diseases of endocardium</i>	37 <sup>(9)</sup>				

Source: Statistics and Census Bureau, Demographic Statistics

#### *h. Net enrolment ratio, attendance and drop-out rates*

30. The net enrolment ratio and drop-out rates in primary and secondary education in the last 5 academic years were as follows:

<b>Academic years (%)</b>						
<b>Net enrolment ratio</b>	<b>G</b>	<b>2004/2005</b>	<b>2005/2006</b>	<b>2006/2007</b>	<b>2007/2008</b>	<b>2008/2009</b>
<b>Primary education</b>	<b>MF</b>	<b>89.5</b>	<b>90.8</b>	<b>87.4</b>	<b>88.2</b>	<b>89.3</b>
	M	89.2	90.1	87.1	88.5	88.8
	F	89.9	91.5	87.8	87.9	89.8
<b>Secondary education</b>	<b>MF</b>	<b>74.7</b>	<b>74.9</b>	<b>73.2</b>	<b>73.3</b>	<b>73.3</b>
	M	71.7	72.1	71.4	71.6	71.4
	F	77.9	78.0	75.2	75.1	75.6

Source: Statistics and Census Bureau, Demographic Statistics

Academic years (%)						
Drop-out rate	G	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
Primary education	MF	1.9	1.7	3.0	2.3	2.2
	M	2.3	2.0	3.3	2.6	2.3
	F	1.5	1.4	2.6	2.0	1.9
Secondary education	MF	6.7	7.0	7.5	6.3	4.8
	M	8.0	8.4	8.9	7.5	5.6
	F	5.4	5.6	6.2	5.1	4.0

Source: Statistics and Census Bureau, Demographic Statistics

#### *i. Teacher-student ratio*

31. The teacher-student ratio in government-funded schools decreased in the last 5 academic years, leading to 22 in 2004/2005, 21 in 2005/2006, 19.4 in 2006/2007, 17.9 in 2007/2008 and 16 in 2008/2009.

#### *j. Literacy rate*

32. At the time of the By-Census 2006, the literacy rate of the population aged 15 or above was 93.5%. Among those not satisfying the criteria of being literate, 73.8% were female and 26.2% were male. According to posterior estimates, the overall literacy rate was 95% in 2007 (50.2% male and 49.8% female), 95% in 2008 (50.1% male and 49.9% female), and 95.2 % in 2009 (49.3% male and 50.7% female).

### 4. Economic indicators

#### *a. Labour participation rates, unemployment and underemployment rates*

33. Except for the year of 2009, labour force participation rates increased in the last 5 years, with the male labour force having a higher participation rate; in the same period, unemployment rates decreased, and the underemployment rate decreased from 2005 to 2006, held steady from 2006 to 2007 and rose in 2008 and 2009 by 0.6 and 0.3 percentage points, respectively, as shown in the following tables.

(%)

<i>Years</i>	<i>Labour force participation</i>			<i>Unemployment</i>			<i>Underemployment</i>		
	<i>MF</i>	<i>M</i>	<i>F</i>	<i>MF</i>	<i>M</i>	<i>F</i>	<i>MF</i>	<i>M</i>	<i>F</i>
<b>2005</b>	63.4	70.9	56.8	4.1	4.4	3.8	1.4	1.6	1.2
<b>2006</b>	68.5	76.7	61.0	3.8	3.8	3.8	1.0	1.2	0.7
<b>2007</b>	71.7	78.8	64.8	3.1	3.4	2.7	1.0	1.3	0.7
<b>2008</b>	72.9	79.9	66.3	3.0	3.2	2.8	1.6	2.4	0.6
<b>2009</b>	72.0	78.0	66.5	3.6	4.2	2.8	1.9	2.9	0.7

Source: Statistics and Census Bureau, Employment Surveys and 2007 to 2008 Yearbooks of Statistics

### *b. Employment by major sectors of economic activity*

34. The labour force in major sectors of economic activity was as follows:

<i>Sectors of economic activity</i>	<i>G</i>	<i>No. (10<sup>3</sup>)</i>				
		<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
<b>Total</b>	<i>MF</i>	<b>205.4</b>	<b>265.1</b>	<b>300.4</b>	<b>323.0</b>	<b>317.5</b>
	<i>M</i>	<b>108.3</b>	<b>141.6</b>	<b>160.5</b>	<b>172.3</b>	<b>164.0</b>
<b>Agriculture, farming of animals, hunting, forestry, fishing, mining and quarrying</b>	<i>MF</i>	1.5	0.5	0.2	0.5	1.1
	<i>M</i>	0.4	0.3	0.1	0.2	0.6
<b>Manufacturing</b>	<i>MF</i>	37.7	29.5	24.0	24.6	17.0
	<i>M</i>	11.8	10.5	8.7	11.5	8.3
<i>Textiles</i>	<i>MF</i>	3.8	2.5	2.5	2.7	1.4
	<i>M</i>	1.3	0.9	0.9	1.5	0.5
<i>Wearing apparel; dressing and dyeing of fur</i>	<i>MF</i>	25.5	20.1	14.9	14.8	8.8
	<i>M</i>	5.2	4.7	3.4	4.8	2.5
<i>Other manufacturing</i>	<i>MF</i>	8.4	6.9	6.6	7.1	6.8
	<i>M</i>	5.3	4.9	4.3	5.2	5.5
<b>Electricity, gas and water supply</b>	<i>MF</i>	1.3	0.9	1.2	0.9	1.0
	<i>M</i>	1.0	0.8	1.0	0.6	0.7

						<i>No. (10<sup>3</sup>)</i>
<i>Sectors of economic activity</i>	<i>G</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
<i>Construction</i>	<i>MF</i>	16.4	31.1	38.6	38.4	32.7
	<i>M</i>	14.8	27.8	33.9	33.7	28.9
<i>Wholesale and retail trade, repair of motor vehicles, motorcycles, and personal and household goods</i>	<i>MF</i>	33.2	36.4	38.4	39.6	41.5
	<i>M</i>	17.4	17.8	19.3	19.3	19.8
<i>Hotels, restaurants and similar activities</i>	<i>MF</i>	22.4	30.0	34.7	41.3	43.7
	<i>M</i>	11.8	14.6	16.7	20.5	21.0
<i>Transport, storage and communications</i>	<i>MF</i>	14.4	16.8	16.4	16.0	16.7
	<i>M</i>	10.6	12.0	11.8	11.8	12.4
<i>Financial intermediation</i>	<i>MF</i>	6.3	6.9	7.9	7.5	7.5
	<i>M</i>	2.6	2.9	3.1	2.8	2.9
<i>Real estate, renting and business activities</i>	<i>MF</i>	12.0	16.3	20.1	23.8	25.6
	<i>M</i>	7.7	9.9	11.7	14.5	16.0
<i>Public administration, defence and compulsory social security</i>	<i>MF</i>	18.1	20.3	22.0	20.2	20.3
	<i>M</i>	12.5	14.0	14.2	13.0	12.9
<i>Education</i>	<i>MF</i>	9.8	11.3	11.9	11.5	12.3
	<i>M</i>	3.1	3.7	3.8	3.5	3.9
<i>Health and social welfare</i>	<i>MF</i>	4.7	5.4	6.0	6.5	7.3
	<i>M</i>	1.5	1.4	1.7	2.0	2.0
<i>Other community social and personal services</i>	<i>MF</i>	23.9	52.5	69.1	78.9	75.2
	<i>M</i>	12.8	25.6	33.9	38.3	34.1
<i>Gaming</i>	<i>MF</i>	15.4	42.6	58.7	66.6	62.7
	<i>M</i>	8.8	21.3	28.9	33.3	28.7
<i>Others</i>	<i>MF</i>	8.5	9.9	10.4	12.3	12.5
	<i>M</i>	4.0	4.3	5.0	5.0	5.4
<i>Households with employed persons</i>	<i>MF</i>	4.3	6.9	9.6	13.3	15.7
	<i>M</i>	0.2	0.3	0.5	0.3	0.5
<i>Others and Unknown</i>	<i>MF</i>	0.3	0.2	0.1	0	0
	<i>M</i>	0.2	0	0	0	0

Source: Statistics and Census Bureau, Employment Surveys and Yearbook of Statistics

*c. Gross domestic product, annual growth rates and per capita income*

35. The MSAR economy is a high-income economy. Tourism and gaming industries are the main economic activities. The liberalization of the gaming industry in 2001 generated significant investment inflows, leading to high average annual growth rates of the gross domestic product (GDP) of 6.9% in 2005, 16.5% in 2006, 26% in 2007 and 12.9% in 2008. Nevertheless, the MSAR economy was affected by the global financial crisis, for the whole year of 2009, the GDP rose by 1.3% in real terms to MOP 169.34 billion, with per-capita GDP amounting to MOP 311,131 (US\$ 38,968). The MSAR GDP indicators for the last 5 years are as follows:

GDP Indicators					
Item	2005	2006	2007	2008	2009
GDP (billion MOP)	92.19	113.71	150.21	173.55	169.34
GDP growth in real terms (%)	6.9	16.5	26.0	12.9	1.3
Per-capita GDP (MOP)	193,619	227,721	285,695	316,143	311,131
Per-capita GDP growth in real terms (%)	2.6	11.1	19.7	8.2	2.2

Source: Statistics and Census Bureau, *Estimates of GDP 2009*; Note: USD 1 = MOP 7.9335

*d. Public revenue*

36. The MSAR's public revenue was MOP 28.201 billion in 2005, MOP 37.189 billion in 2006, MOP 53.710 billion in 2007, MOP 62.259 billion in 2008 and MOP 57.641 billion in 2009 (provisional value, it does not include autonomous entities' income) (*Financial Services Bureau*).

*e. Consumer Price Index (CPI)*

37. The consumer price index was 83.19 in 2005, 87.48 in 2006, 92.35 in 2007, 100.30 in 2008 and 101.48 in 2009.

*f. Social expenditures*

38. Regarding the social expenditures as proportion of the total public expenditure and the social expenditures as proportion of the GDP, the

former was 49.8 % in 2005, 51.5 % in 2006, 55.3 % in 2007 and 57.3 % in 2008. The latter was 8.5 %, 7.9 %, 6.9 % and 8.7 %, respectively.

*g. External and internal debt*

39. The MSAR has not incurred any external or domestic public debt.

## **B. THE POLITICAL AND LEGAL FRAMEWORK OF THE MSAR**

40. With respect to the MSAR political and legal framework, the information contained in Part III of China's Core Document remains accurate, except for the dissolution of the two municipalities (mentioned in its paragraphs 170 to 176) and the update given in the following paragraphs.

### **1. The Chief Executive of the MSAR**

41. As mentioned in the said Part III of China's Core Document, the Basic Law stipulates that the Chief Executive shall be selected by election or through consultations held locally and appointed by the Central People's Government. The term of office of the Chief Executive shall be 5 years and he/she cannot serve for more than 2 consecutive terms. The method for the selection is specified in Annex I to the Basic Law, which stipulates that the Chief Executive shall be elected by a broadly representative Election Committee in accordance with the Basic Law. In conformity with the referred method, "*the delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the MSAR in accordance with the principles of democracy and openness*". Consequently, Law 3/2004, of 5 April, on the election of the Chief Executive, was adopted. Later on, it was amended by Law 12/2008, of 6 October, which further detailed some matters of the election as well as provided for specific electoral crimes.

42. In 2004, the first Chief Executive was re-elected to serve a second and final term as the head of the MSAR Government and a new Chief

Executive (the third office term) was elected and appointed by the Central People's Government to assume office on 20 December 2009.

43. In this connection, it is also worth mentioning the amendments introduced to Law 12/2000, of 18 December, Law on Electoral Registration, by Law 9/2008, of 25 August, with the aim of optimizing the electoral registration process, ameliorating the framework to recognize legal persons in each sector as well as the requisites for their eligibility to participate in indirect elections, unifying deadlines for display of voter registration records and for electoral registration operations' cancellation, and reinforcing the combat to corruption in elections.

44. In the same token, Law 22/2009, of 17 December, on limitations imposed to former chief executives and principal officials, was adopted. This law restricts such high officials from performing private professional activities for a period of 2 years. Only in exceptional circumstances may such restrictions be waived.

## **2. The Legislative Assembly of the MSAR**

45. As to the Legislative Assembly, which formation method is stipulated in Annex II to the Basic Law (also described in Part III of China's Core Document), it is currently in its fourth term. In its second term (2001/2005), it accounted for 27 members (10 directly returned, 10 indirectly returned by functional constituencies and 7 appointed by the Chief Executive); in its third term (2005/2009) and subsequent terms, it accounted for 29 deputies (12 directly returned, 10 indirectly returned and 7 appointed members).

46. The method for electing its members is presently governed by the above-mentioned Law on Electoral Registration and by Law 3/2001, of 5 March, as amended by Law 11/2008, of 6 October, Electoral Law for the Legislative Assembly, wherein the rules concerning the right to vote and to be elected on a non-discriminatory basis to ensure free, fair and periodic elections are established. The strengthening of the powers of the Legislative Assembly Electoral Affairs Commission and the extension of

its term of office, the amelioration of electoral activities and of the voting process, stricter rules regarding the supervision of electoral campaigns' financing and the reinforcement of the combat to corruption in elections were some of the amendments towards a more open and transparent electoral environment.

47. The said electoral method comprises different frameworks according to the double system of direct and indirect elections. Direct elections are conducted by means of universal, direct, secret and periodic suffrage in a single voting session from ballot lists in accordance with a system of proportional representation. Each voter is entitled to a single vote. Article 26 of the Basic Law enshrines the right to vote and to stand for election to all MSAR permanent residents. To be able to vote in direct elections, it is necessary to have attained legal majority (18 years of age) and to have registered in the electoral rolls in accordance with the Law on Electoral Registration. Electoral capacity is legally presumed upon registration in the electoral rolls. In indirect elections, members that represent organized social interests are elected through indirect, secret and periodic suffrage by means of the following electoral colleges: industrial, commercial and financial sectors (4 mandates), professional sector (2 mandates), social, cultural, educational and sports sectors (2 mandates) and labour sector (2 mandates). Electoral colleges are formed by associations or organizations, the objectives of which fall under one of the above social sectors.

48. Within this context, it should be clarified that, although there are no political parties in the MSAR, the political system is an association-based one since associations may stand and vote for elections. Legal persons are entitled to vote for indirect elections, and the requirements for such are: to be registered in the Identification Services Bureau, to be recognized as representatives of one of the above-mentioned social sectors for at least 4 years and to have legal personality for at least 7 years. The recognition that a legal person belongs to a sector of social interests is valid for 5 years provided that an annual activity report is submitted to the competent authority. Such recognition must be renewed from 150 to 90 days prior to its expiry date.



### **3. Main indicators on the political system**

#### ***a. Proportions of population eligible to vote and registered to vote***

49. On 31 December 2009, there were 250,268 registered electors, of which 51.2% were women. The number of electors and candidates is increasing. Comparing the third term of the Legislative Assembly with its fourth term, the number of electors rose from 220,653 to 248,708, while the number of legal persons for indirect elections rose from 905 to 973. The number of electoral lists or groups participating in direct election has decreased from 18 to 16.

#### ***b. Complaints on the conduct of elections***

50. The registered number of complaints on the conduct of the 2005 and 2009 elections was 423 and 255, respectively. The majority of them were about irregular propaganda approaches such as posting campaign posters on forbidden places, others were about unfair coverage by local newspapers and only a few were about bribing voters (mainly, in the forms of buying dinners, giving away gift coupons or travelling abroad). From those complaints, only a very small number led to opening of investigation for eventual prosecution, more precisely 13 in 2005 and 6 in 2009, and even fewer were transferred to the Public Prosecutions Office for purposes of criminal action, i.e., 7 relating to the 2005 election and 1 to the 2009 election, from which 5 cases have been tried relating to the 2005 election, and 1 relating to the 2009 election, the remaining are pending.

#### ***c. Media access by the population***

51. There are 14 daily newspapers, 36 periodicals (the circulation of daily newspapers per day was 232,880 and of periodical per year was 7,563,300 in 2009), 3 radio stations and 6 television stations in the MSAR.

#### ***d. Recognition of non-governmental organizations***

52. Freedom of association, including the right and freedom to form and join trade unions, is guaranteed by Article 27 of the Basic Law. Law

2/99/M, of 9 August, and Article 154 *et seq.* of the Civil Code further regulate the right of association.

53. Everyone has the right to form an association freely and without prior authorization, provided that the association is not intended to promote violence and that its objectives are not contrary to the criminal law. Armed, quasi-military, militarized or paramilitary associations and racist organizations are not permitted. No one can be put under a duty to join an association or compelled to remain in it. Associations pursue their aims and objectives freely, and without any interference from public authorities and they may not be dissolved or their activities suspended, unless in the cases provided by law and by means of a court decision.

54. Non-governmental organizations are subject to the provisions of general law on private legal persons. Registration at the Identification Bureau is required. Any NGO that pursues activities of public interest may be recognized as such on a case-by-case basis. Those NGOs may enjoy certain benefits (e.g. tax exemption and granting of subsidies) but must fulfil certain conditions (e.g. summary report of activities and balance sheets).

55. As of 31 December 2009, there were 4,407 associations: 292 professional associations, 290 employer associations, 172 educational associations, 967 charity associations, 834 cultural associations and 1,009 sports associations registered at the Identification Services Bureau.

***e. Percentage of women in the Legislative Assembly***

56. The percentage of women members in the Legislative Assembly was 20.7 between 2005 and 2008 and 13.8 in 2009.

***f. Average turnout***

57. The average voter turnout in the Legislative Assembly election was 58.39% in the third election (2005/2009) and 59.91% in the fourth election (2009/2013), corresponding to 128,830 and 149,006, respectively.

#### **4. Judicial, administrative and other bodies with jurisdiction over human rights**

##### ***a. The judicial***

58. The MSAR judiciary structure remains basically unchanged, although Law 9/1999, of 20 December, which approved the basis of the judiciary organization, has been complemented and amended by Law 9/2004, of 16 August, and Law 9/2009, of 25 May.

##### ***b. The Commission against Corruption (Ombudsman)***

59. The Commission against Corruption promotes the protection of rights, freedoms and legitimate interests of the individuals, ensuring that the exercise of public powers abide by criteria of justice, legality and efficiency but it also has independent powers of criminal investigation within the scope of its activity. Its powers have been enlarged by Law 19/2009, of 17 August, on the prevention and repression of corruption in the private sector. The “*Ombudsman*” functions were retained and powers and competences on autonomous criminal investigation within its scope of activity and to counter corruption and fraud, in both public and private sectors, were added.

##### ***c. Unitary Police Service***

60. Law 1/2001, of 29 January, established the Unitary Police Service, which is the body responsible for the MSAR’s public security, constituting the operational command and direction of police units, including the Public Security Police and Judiciary Police. Its Commissioner General is one of the principal officials of the MSAR Government and is appointed by the Central People’s Government.

#### **5. Main indicators on crime and on the administration of justice**

##### ***a. Incidence of violent death as life-threatening crimes***

61. The incidence of violent death as life threatening crimes reported to the police was, per 100,000 persons, 159.2 in 2005, 142.6 in 2006, 142

in 2007, 155.4 in 2008 and 120.3 in 2009. The number of cases of sexually motivated violence was 80 in 2005, 67 in 2006, 75 in 2007, 96 in 2008 and 95 in 2009 (provisional figure).

***b. Number of persons arrested or brought before the court for violent or other serious crimes***

62. The number of persons arrested or brought before the court for violent or other serious crimes was 3,417 in 2005, 3,735 in 2006, 3,944 in 2007, 4,428 in 2008 and 4,366 in 2009 (provisional figure) (*Security Forces Coordination Office*).

***c. Maximum and average time of pre-trial detention***

63. During the same period, the maximum time of pre-trial detention and the average time needed by the Court of First Instance for adjudication of criminal cases was of 8.2 months and 10.1 months, respectively (*Courts' information*).

***d. Prison population***

64. The prison population was 704 in 2005, 665 in 2006, 604 in 2007, 592 in 2008 and 623 in 2009, being the majority of the inmates of Asian origin. The following tables illustrate the number and type of offences committed by the prison population as well as the length of respective sentences.

<i>Offences committed by the prison population</i>										
<i>Types of offences/ Age groups</i>	<i>2005</i>		<i>2006</i>		<i>2007</i>		<i>2008</i>		<i>2009</i>	
	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>
<b><i>Drug Trafficking</i></b>										
<i>Age 16-20</i>	14	0	11	1	17	1	42	4	35	3
<i>Age 21-30</i>	97	11	92	10	83	12	99	14	94	12
<i>Age 31-50</i>	156	30	146	25	138	22	134	22	117	18
<i>Age &gt;50</i>	21	0	22	1	14	2	17	3	13	3
<b><i>Subtotal/gender</i></b>	<b>288</b>	<b>41</b>	<b>271</b>	<b>37</b>	<b>252</b>	<b>37</b>	<b>292</b>	<b>43</b>	<b>259</b>	<b>36</b>
<b><i>Subtotal/offence</i></b>	<b>329</b>		<b>308</b>		<b>289</b>		<b>335</b>		<b>295</b>	

<i>Offences committed by the prison population</i>										
<i>Types of offences/ Age groups</i>	<i>2005</i>		<i>2006</i>		<i>2007</i>		<i>2008</i>		<i>2009</i>	
	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>
<b><i>Burglary</i></b>										
<i>Age 16-20</i>	15	0	6	0	6	0	8	0	5	0
<i>Age 21-30</i>	71	7	69	6	56	3	43	2	33	2
<i>Age 31-50</i>	118	4	121	4	90	3	87	3	76	1
<i>Age &gt;50</i>	1	0	3	0	4	0	4	0	3	0
<b><i>Subtotal/gender</i></b>	<b>205</b>	<b>11</b>	<b>199</b>	<b>10</b>	<b>156</b>	<b>6</b>	<b>142</b>	<b>5</b>	<b>117</b>	<b>3</b>
<b><i>Subtotal/offence</i></b>	<b>216</b>		<b>209</b>		<b>162</b>		<b>147</b>		<b>120</b>	
<b><i>Larceny</i></b>										
<i>Age 16-20</i>	4	0	4	0	3	0	1	0	0	0
<i>Age 21-30</i>	47	5	45	3	49	2	49	4	39	5
<i>Age 31-50</i>	96	6	105	8	101	8	113	7	92	6
<i>Age &gt;50</i>	7	0	11	0	9	0	9	0	6	0
<b><i>Subtotal/gender</i></b>	<b>154</b>	<b>11</b>	<b>165</b>	<b>11</b>	<b>162</b>	<b>10</b>	<b>172</b>	<b>11</b>	<b>137</b>	<b>11</b>
<b><i>Subtotal/offence</i></b>	<b>165</b>		<b>176</b>		<b>172</b>		<b>183</b>		<b>148</b>	
<b><i>Fraud</i></b>										
<i>Age 16-20</i>	0	0	1	1	1	1	1	0	1	0
<i>Age 21-30</i>	11	4	11	5	9	4	6	3	4	0
<i>Age 31-50</i>	35	8	35	6	33	12	47	16	41	15
<i>Age &gt;50</i>	9	0	13	1	15	1	16	3	11	3
<b><i>Subtotal/gender</i></b>	<b>55</b>	<b>12</b>	<b>60</b>	<b>13</b>	<b>58</b>	<b>18</b>	<b>70</b>	<b>22</b>	<b>57</b>	<b>18</b>
<b><i>Subtotal/offence</i></b>	<b>67</b>		<b>73</b>		<b>76</b>		<b>92</b>		<b>75</b>	
<b><i>Homicide</i></b>										
<i>Age 16-20</i>	0	0	0	0	0	0	0	0	0	0
<i>Age 21-30</i>	21	0	16	0	12	0	14	0	13	0
<i>Age 31-50</i>	31	3	36	4	35	5	36	5	29	5
<i>Age &gt;50</i>	6	0	5	0	6	0	12	0	11	0
<b><i>Subtotal/gender</i></b>	<b>58</b>	<b>3</b>	<b>57</b>	<b>4</b>	<b>53</b>	<b>5</b>	<b>62</b>	<b>5</b>	<b>53</b>	<b>5</b>
<b><i>Subtotal/offence</i></b>	<b>61</b>		<b>61</b>		<b>58</b>		<b>67</b>		<b>58</b>	
<b><i>Others</i></b>										
<i>Age 16-20</i>	33	0	20	8	16	4	13	0	24	0
<i>Age 21-30</i>	107	5	110	4	104	9	67	13	71	11

<i>Offences committed by the prison population</i>										
<i>Types of offences/ Age groups</i>	<i>2005</i>		<i>2006</i>		<i>2007</i>		<i>2008</i>		<i>2009</i>	
	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>
<i>Age 31-50</i>	173	9	184	14	167	22	136	23	131	26
<i>Age &gt;50</i>	13	0	18	0	15	0	22	2	20	2
<i>Subtotal/gender</i>	326	14	332	26	302	35	238	38	246	39
<i>Subtotal/offence</i>	340		358		337		276		285	
<i>Total</i>	1178		1185		1094		1100		981	

Source: Macao Prison

<i>Length of Sentence</i>	<i>(No.)</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
<i>1 year or below</i>	79	108	139	261	278
<i>1 to 5 years</i>	429	294	264	463	519
<i>6 to 10 years</i>	359	273	312	281	261
<i>11 to 15 years</i>	103	87	96	94	81
<i>16 to 20 years</i>	27	25	25	28	23
<i>21 years or above</i>	9	16	8	12	12
<i>Total</i>	1006	803	844	1193	1174

Source: Macao Prison

***e. Incidence of death in custody and death penalty***

65. There is no record of death in custody at the Macao Prison.

66. There is no death penalty, neither life imprisonment in the MSAR.

***f. Average backlog of cases per judge***

67. The average backlog of cases per judge at different levels of the judicial system was 396 in 2005, 390 in 2006, 411 in 2007 and 438 in 2008.

***g. Number of police/security personnel***

68. The number of police/security personnel per 100,000 persons was 1,164 in 2005, 1,116 in 2006, 1,093 in 2007, 1,106 in 2008 and 1,141 in 2009.

### *h. Number of prosecutors and judges*

69. The number of prosecutors and judges per 100,000 persons decreased from 2005 to 2008, being 12 in 2005, 11.3 in 2006, 10.78 in 2007 and 10.56 in 2008.

### *i. Share of public expenditure on police/security and judiciary*

70. The share of public expenditure on police/security and judiciary was 15.4% in 2005, 15.7% in 2006, 16.6% in 2007 and 14% in 2008.

## II. GENERAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

71. As regards information on the general framework for the protection and promotion of human rights at the internal level, reference is made to paragraphs 177-246 of Part III of China's Core Document to the extent that no changes have occurred in the MSAR Basic Law since its submission. The remaining aspects are still accurate if no particular observations are made to the contrary herein.

### C. ACCEPTANCE OF INTERNATIONAL HUMAN RIGHTS NORMS

72. At present, the following human rights and related treaties are applicable in the MSAR:

#### *a. Main international human rights conventions and protocols*

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Content of reservations</i>
<b>International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966</b>	27/4/1993; <b>China's notifications with respect to the MSAR:</b> 1. dated 2/12/1999; registered with the UN Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-14531, pp. 158-161);	In 1999, China has declared that "(...) 1. The application of the Covenant, and its article 1 in particular, to the Macao Special Administrative Region shall not affect the status of Macao as defined in the Joint Declaration and in the Basic Law.

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Content of reservations</i>
<b>International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966</b>	2. dated 28/2/2001, registered with the UN Secretary-General on 27/3/2001 (UNTS, vol. 2142, No. A-14531, pp. 185-161).	<p>2. <i>The provisions of the Covenant which are applicable to the Macao Special Administrative Region shall be implemented in Macao through legislation of the Macao Special Administrative Region. The residents of Macao shall not be restricted in the rights and freedoms that they are entitled to, unless otherwise provided for by law. In case of restrictions, they shall not contravene the provisions of the Covenant that are applicable to the MSAR (...)</i>”.</p> <p>In 2001, China further stated with respect to the MSAR that “(...) 2. <i>in accordance with the official notes addressed to Secretary-General of the United Nations (...) on 20 June 1997 and 2 December 1999, respectively, the International Covenant on Economic, Social and Cultural Rights shall be applicable to (...) the Macao Special Administrative Region of the People’s Republic of China and shall, pursuant to the provisions of the Basic Law of (...) the Macao Special Administrative Region of the People’s Republic of China, be implemented through the respective laws (...)</i>”.</p>
<b>International Covenant on Civil and Political Rights (ICCPR), 1966</b>	27/4/1993; <b>China’s notification with respect to the MSAR:</b> – dated 2/12/1999; registered with the UN Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-14668, pp. 169-173).	In 1999, China has declared that “(...) 1. <i>The application of the Covenant, and its article 1 in particular, to the Macao Special Administrative Region shall not affect the status of Macao as defined in the Joint Declaration and in the Basic Law.</i> ”



<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Content of reservations</i>
<b>International Covenant on Civil and Political Rights (ICCPR), 1966</b>		<p>2. Paragraph 4 of Article 12 and Article 13 of the Covenant shall not apply to the Macao Special Administrative Region with respect to the entry and exit of individuals and the expulsion of aliens from the territory, these matters shall continue to be regulated by the provisions of the Joint Declaration and the Basic Law and other relevant laws of the Macao Special Administrative Region.</p> <p>3. Paragraph b of Article 25 of the Covenant shall not apply to the Macao Special Administrative Region with respect to the composition of elected bodies and the method of choosing and electing their officials as defined in Joint Declaration and the Basic Law.</p> <p>4. The provisions of the Covenant which are applicable to the Macao Special Administrative Region shall be implemented in Macao through legislation of the Macao Special Administrative Region. The residents of Macao shall not be restricted in the rights and freedoms that they are entitled to, unless otherwise provided for by law. In case of restrictions, they shall not contravene the provisions of the Covenant that are applicable to the MSAR (...)"</p>
<b>International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD), 1966</b>	<p>27/4/1999;  <b>China's notification with respect to the MSAR:</b>  – dated 19/10/1999; registered with the UN Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-9464, pp. 24-26).</p>	<p>China's reservation to Article 22 of the Convention also applies to the MSAR.</p>

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Content of reservations</i>
<b>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979</b>	27/4/1999; <b>China's notification with respect to the MSAR:</b> – dated 19/10/1999; registered with the UN Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-20378, pp. 116-118).	China's reservation to Article 29(1) of the Convention also applies to the MSAR.
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984</b>	15/6/1999; <b>China's notification with respect to the MSAR:</b> – dated 19/10/1999; registered with the UN Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-24841, pp. 124-127).	China's reservation to Article 20 and Article 30(1) of the Convention also apply to the MSAR.
<b>Convention on the Rights of the Child (CRC), 1989</b>	27/4/1999; <b>China's notification with respect to the MSAR:</b> – dated 19/10/1999; registered with the UN Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-27531, pp. 139-142).	
<b>Optional Protocol to the CRC on the involvement of children in armed conflict, 2000</b>	Same as China, i.e., 20/3/2008; <b>China's communication with respect to the MSAR:</b> Depositary C.N.165.2008.TREATIES-4, of 11/3/2008.	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Content of reservations</i>
<b>Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography, 2000</b>	Same as China, i.e., 3/1/2003  <b>China's communication with respect to the MSAR:</b>  Depositary C.N.1328.2002. TREATIES-50, of 19/12/2002).	

*b. Other United Nations human rights and related conventions*

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Convention on the Prevention and Punishment of the Crime of Genocide, 1948</b>	16/9/1999;  <b>China's notification with respect to the MSAR:</b>  – dated 16/12/1999; registered with the UN Secretary-General on 17/12/1999 (UNTS, vol. 2095, No. A-1021, pp. 51-53).	China's reservation to Article 9 of the Convention also applies to the MSAR.
<b>Slavery Convention, 1926</b>	4/10/1927 (declaration of extension repeated on 20/10/1999);  <b>China's notification with respect to the MSAR:</b>  – dated 19/10/1999; registered with the UN Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. C-1414, pp. 267-270).	China made a reservation to Article 8 of the Convention in relation to its application to the MSAR.

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950</b>	29/12/1992 (declaration of extension repeated on 7/7/1999 with designation of competent entity of Macao for the purpose of Article 14 of the Convention); <b>China's notification with respect to the MSAR:</b> – dated 2/12/1999; registered with the UN Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-1342, pp. 55-57).	
<b>Convention relating to the Status of Refugees, 1951, and its 1967 Protocol</b>	13/7/1996 (declaration of extension repeated on 27/4/1999); <b>China's notification with respect to the MSAR:</b> – dated 2/12/1999; registered with the UN Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-2545, pp. 64-66 and vol. 2095, No. A-8791, pp. 133-134).	The reservation made by China to Article 4 of the Protocol also applies to the MSAR.
<b>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956</b>	10/8/1959 (declaration of extension repeated on 27/4/1999); <b>China's notification with respect to the MSAR:</b> – dated 2/12/1999; registered with the UN Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-3822, pp. 73-75).	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>United Nations Convention against Transnational Organized Crime, 2000</b>	Same as China, i.e., 23/10/2003; <b>China's communication with respect to the MSAR:</b> – dated 23/9/2003; registered with the UN Secretary-General on 23/9/2003 (UNTS, vol. 2226, No. A-39574, pp. 482-483).	Same as China, i.e., reservation to Article 35(2) of the Convention. China's communication with respect to the MSAR also refers to the specific modalities of application of Articles 5(3), 16(5), 18(13) (14) and 31(6) of the Convention in the MSAR.
<b>Protocol to the United Nations Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children, 2000</b>	Same as China, i.e., 10/3/2010; <b>China's notification with respect to the MSAR:</b> – dated 4/2/2010; registered with the UN Secretary-General on 8/2/2010 (Depositary C.N.46.2010. TREATIES-2, of 8/2/2010).	Same as China, i.e., reservation to Article 15(2) of the Protocol.

### *c. Conventions of the International Labour Organization*

73. At present, the following Conventions of the International Labour Organization are applicable in the MSAR:

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Weekly Rest (Industry) Convention, 1921 (No. 14)</b>	11/11/1964 (declaration of extension repeated on 20/10/1999); <b>China's notification with respect to the MSAR:</b> – dated 20/10/1999; registered with the	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Weekly Rest (Industry) Convention, 1921 (No. 14)</b>	Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-597, p. 342).	
<b>Forced or Compulsory Labour Convention, 1930 (No. 29)</b>	26/6/1957; <b>China's notification with respect to the MSAR:</b> – dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-612, p. 351).	
<b>Labour Inspection Convention, 1947 (No. 81)</b>	12/2/1963 (declaration of extension repeated on 29/11/1999); <b>China's notification with respect to the MSAR:</b> – dated 14/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-792, p. 355)	
<b>Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)</b>	14/10/1978 (declaration of extension repeated on 6/9/1999); <b>China's notification with respect to the MSAR:</b> – dated 3/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-881, p. 358).	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Right to Organize and Collective Bargaining Convention, 1949 (No. 98)</b>	1/7/1965 (declaration of extension repeated on 1999); <b>China's notification with respect to the MSAR:</b> – dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-1341, p. 362).	
<b>Equal Remuneration Convention 1951 (No. 100)</b>	20/2/1968 (declaration of extension repeated on 1999); <b>China's notification with respect to the MSAR:</b> – dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-2181, p. 367).	
<b>Abolition of Forced Labour Convention, 1957 (No. 105)</b>	23/11/1960 (declaration of extension repeated on 4/10/1999); <b>China's notification with respect to the MSAR:</b> – dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-4648, p. 374).	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)</b>	24/10/1961 (declaration of extension repeated on 1999); <b>China's notification with respect to the MSAR:</b> – dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-4704, p. 375); and – reaffirmed on 6/1/2006.	
<b>Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</b>	19/11/1960 (declaration of extension repeated on 1999); <b>China's notification with respect to the MSAR:</b> – dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-5181, p. 383).	
<b>Employment Policy Convention, 1964 (No. 122)</b>	9/1/1983 (declaration of extension repeated on 9/8/1999); <b>China's notification with respect to the MSAR:</b> – dated 3/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-8279, p. 387).	



<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<p><b>Minimum Age Convention, 1973 (No. 138)</b></p>	<p>20/5/1959 (declaration of extension repeated on 29/11/1999 – not valid); 10/10/2001;</p> <p><b>China’s notification with respect to the MSAR:</b></p> <p>– dated 5/10/2000; registered with the Director-General of ILO on 6/10/2000 and with the UN Secretary-General on 20/2/2001 (UNTS, vol. 2138, No. A-14862, p. 213).</p>	<p>China’s notification in respect to the MSAR also refers to the specific modalities of application of the Convention in the MSAR:</p> <p><i>“(…) 1. The minimum age for admission to employment or work in the Public Service is 18 years old;</i></p> <p><i>2. The minimum age for admission to employment or work in the Private Sector is 16 years old; the employment of persons under 16 years of age but no less than 14 is exceptionally authorized by law if the minor’s physical capacity required for the exercise of the work is previously attested;</i></p> <p><i>3. Schooling is compulsory for all the persons from 5 to 15 years of age. (...)”</i></p>
<p><b>Occupational Safety and Health Convention, 1981 (No. 155)</b></p>	<p>28/5/1985 (declaration of extension repeated on 6/8/1999 – not valid); 20/12/1999;</p> <p><b>China’s notification with respect to the MSAR:</b></p> <p>– dated 3/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the UN Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-22345, p.431) – reaffirmed by China on 25/1/2007.</p>	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Worst Forms of Child Labour Convention, 1999 (No. 182)</b>	Same as China, i.e., 9/8/2003;  <b>China's communication with respect to the MSAR:</b>  – dated 7/8/2002; registered with the Director-General of ILO on 8/8/2002 and with the UN Secretary-General on 6/3/2003 (UNTS, vol. 2210, No. A-37245, p. 265).	

*d. Conventions of the United Nations Educational, Scientific and Cultural Organization*

74. At present, the following UNESCO Convention is applicable in the MSAR:

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Convention against Discrimination in Education, 1960</b>	8/4/1981 (declaration of extension repeated on 31/4/1999);  <b>China's notification with respect to the MSAR:</b>  – dated 17/10/1999; registered with the Director-General of UNESCO on 21/10/1999 and with UN Secretary-General on 13/4/2000 (UNTS, vol. 2105, No. A-6193, p. 591)	

*e. Conventions of the Hague Conference on Private International Law*

75. At present, the following Hague Conventions are applicable in the MSAR:

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Convention on the law applicable to maintenance obligations towards children, 1956</b>	23/4/1968 (declaration of extension repeated in 1999); <b>China's notification with respect to the MSAR:</b> – dated 30/9/1999; received by the MFA of the Netherlands on 30/9/1999, and registered with the UN Secretary-General on 27/12/1999 (UNTS, vol. 2095, No. A-7412, pp. 118-120).	
<b>Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, 1958</b>	24/2/1974 (declaration of extension repeated in 1999); <b>China's notification with respect to the MSAR:</b> – dated 10/12/1999; received by the MFA of the Netherlands on 30/9/1999.	China's notification in respect to the MSAR also refers to the specific modalities of application of the Convention in the MSAR (designation of MSAR' entities, as other China's entities, for the purpose of the application of the Convention in the MSAR).
<b>Convention concerning the powers of authorities and the law applicable in respect of the protection of children, 1961</b>	4/2/1969 (declaration of extension repeated in 1999); <b>China's notification with respect to the MSAR:</b> – dated 30/9/1999; received by the MFA of the Netherlands on 30/9/1999; and registered with the UN Secretary-General on 28/12/1999 (UNTS, vol. 2095, No. A-9431, pp. 139-141).	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/Content of declarations</i>
<b>Convention on the Civil Aspects of International Child Abduction, 1980</b>	1/3/1999; <b>China's notification with respect to the MSAR:</b> – dated 10/12/1999; received by the MFA of the Netherlands on 10/12/1999 and registered with the UN Secretary-General on 23/2/2000 (UNTS, vol. 2100, No. A-22514, p. 160).	
<b>Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993</b>	Same as China, i.e., 1/1/2006; <b>China's communication with respect to the MSAR:</b> – dated 7/9/2005; received by the MFA of the Netherlands on 10/12/1999 and registered with the UN Secretary-General on 23/2/2000 (UNTS, vol. 2100, No. A-22514, p. 160).	China's notification in respect to the MSAR also refers to the specific modalities of application of the Convention in the MSAR (designation of MSAR' entities, as other China's entities, for the purpose of the application of the Convention in the MSAR).

*f. Geneva Conventions and other treaties on international humanitarian law*

76. In relation to these conventions and protocols, which must apply to the entire territory of a state as they concern foreign affairs or defence, please refer to the information provided by China.

## **D. LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS AT THE INTERNAL LEVEL**

*a. Structure of protection of human rights within the MSAR legal system*

77. As detailed in Part III of China's Core Document, fundamental rights and freedoms are enshrined in the Basic Law, mainly in its chapter

III (Articles 24 to 44), without prejudice to other rights and freedoms being recognized in other chapters of the Basic Law and in ordinary law.

78. In fact, the majority of the human rights provided for in main international treaties have exact or analogous correspondence both at constitutional and ordinary law levels. As in other civil law systems, fundamental rights are held to signify much more than individual rights. Indeed, they are held as general principles of law embodying the legal system in its overall and can be directly invoked. The legislature, the executive and the judiciary are bound by them.

79. Furthermore, it is worth recalling that applicable international law is directly integrated and prevails over ordinary law.

***b. Further legislative developments***

80. A short non-exhaustive summary of some of the most significant legislative developments that have occurred in the field of protection of human rights during the last years is provided below:

- i) Law 1/2004, of 23 February, which, for the purpose of application in the MSAR of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, sets up the procedures for the recognition and loss of refugee status, establishes a Commission for Refugees and reinforces refugees' rights and the cooperation with UNHCR;
- ii) Law 8/2005, of 22 August, on the legal framework for the protection of personal data, which strengthens the fundamental right of intimacy of private life;
- iii) Law 9/2006, of 26 December, on the legal framework of non-tertiary education system, which reaffirms and expands everyone's right to education without discrimination;
- iv) Law 2/2007, of 16 April, on the juvenile justice system, which reforms the system on the basis of restorative justice principles;

- v) Law 6/2008, of 23 June, on the fight against trafficking in persons, which reformulates the crime of trafficking in persons in accordance with the 2000 UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, grants specific protection for victims of trafficking, provides for legal person's criminal liability and amends the criminal provisions on extraterritorial jurisdiction;
- vi) Law 7/2008, of 18 August, on labour relations in the private sector, which is based on the principles of non-discrimination, equality of opportunities and of access to employment;
- vii) Law 16/2008, of 31 December, which amends and republishes the previous law on the right of assembly and of demonstration, clarifying civil procedural matters connected with the right of appeal from decisions that deny or restrict the exercise of the right of assembly or of demonstration;
- viii) Law 1/2009, of 29 January, which complements the law on the access to the Law and courts by enlarging its personal and material scope as to cover everyone in the MSAR, regardless of his/her status on legal proceedings as well as the stage of such proceedings, broadening to that same extent the right to legal aid and judicial compensation.

***c. New measures of a restrictive nature***

81. Article 40(2) of the Basic Law stipulates that the rights and freedoms enjoyed by MSAR residents shall not be restricted unless as prescribed by law and that such restrictions shall not contravene, *inter alia*, the applicable provisions of both International Covenants. Thus, any measure that may restrict or derogate fundamental rights and freedoms are subject to those limits. In this respect, only the adoption of Law 9/2002, of 9 December, and of Law 2/2004, of 8 March, has to be reported. Nevertheless, it is important to highlight that the restrictive measures

therein contained are of an exceptional and temporary nature and are subordinate to the criteria of need, proportionality and end.

82. The said Law 9/2002, on internal security, allows for the possibility of restrictions to fundamental rights in case of emergency arising from a serious threat to the MSAR's internal security. For the temporal limit of such restrictions to exceed 48 hours, previous consultation of the Executive Council and immediate communication to the President of the Legislative Assembly are required. As to Law 2/2004, on the prevention, control and treatment of transmissible diseases, which aim is to avoid risks of propagation of listed transmissible diseases, it allows for restrictions to fundamental rights in some situations where public health is at high risk. Under this law, infected persons, persons suspected of having contracted a transmissible disease or with a high risk of contracting it may be subject to medical exams or restrictions to the exercise of certain activities or to compulsory isolation. However, the decision of compulsory isolation is subject to confirmation by the Court of First Instance within 72 hours of isolation. The decision of this Court may be appealed against.

***b. New bodies for the protection of human rights***

83. A large number of consultative bodies have been created for the advancement of fundamental rights, such as the mentioned Commission for Refugees (2004), the Consultative Council for the Urban Renovation of Old Districts (2005), the Consultative Commission for Women's Affairs (2005), the Commission for Disciplinary Control of the MSAR's Security Forces and Services (2005), the Commission on the Fight against HIV/AIDS (2005), the Mental Health Commission (2005), the Data Protection Office (2007), the Commission to Follow Up the Implementation of Dissuasive Measures against Trafficking in Persons (2007), the Commission for Senior Citizens Affairs (2007), the Commission on the Fight against Drugs (2008) and the Commission for Rehabilitation Affairs (2008).

84. Most of these bodies, which play a key role in the promotion and protection of fundamental rights, are composed of representatives of

MSAR government entities and of NGOs, as well as prominent members of the civil society.

## **E. FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROMOTED AT THE INTERNAL LEVEL**

### ***a. Interconnection between promotion of human rights and their full exercise***

85. In the MSAR, protection and promotion of fundamental rights are seen not only as key factors for their full enjoyment by individuals, but also a major policy ground for the sustainable harmonized social development of the Region. To that end, particular efforts have been and continue to be made.

### ***b. The general principle of law of publicity***

86. Authentic texts of applicable treaties are published in the MSAR Official Gazette accompanied by their translation into both official languages. The Official Gazette is made available electronically free of charge (<http://www.io.gov.mo>). The MSAR Printing Bureau, whenever possible, also makes available their full texts in English. Texts of laws and treaties are also available on the websites of other government entities and departments.

### ***c. Other types of promotion of law and human rights***

87. Most of the main international human rights treaties have been published in brochures and widely disseminated to the population. Special shelves were designed and placed in easily accessible places for free distribution of brochures and leaflets. For example, brochures relating to each of the International Covenants, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women were disseminated all over the MSAR, together with other explanatory brochures such as the “ABC of Fundamental Rights”, the “Easy to know the Basic Law”, “Workers’ Rights”, “Family Rights”, “Rights to



Legal Aid” and “Adoption”. In this connection, it is worth referring to the special editions of the *Macau Law Journal* in which the implementation of the core international human rights instruments applicable to the MSAR were covered in 2006, 2007 and 2008, respectively.

88. The dissemination of laws is the responsibility of the Legal Affairs Bureau, which has a specific division for that purpose. Notwithstanding, many other MSAR entities and departments collaborate with it or develop dissemination actions on their own. The promotion of interactive programmes, awareness campaigns, contests and inquiries through the media, fun fairs, and schools activities, *etc.*, are considered important means to raise human rights awareness and enlarge public access to information on fundamental rights.

89. Since 2001, the Legislative Assembly has compiled and published the most important laws regarding fundamental human rights, such as freedom of religion, freedom of association, freedom of press, right of petition, right of abode, refugee and family rights. These publications are available online. In the same token, full texts of courts’ decisions and the opinions and recommendations of the Commission against Corruption (*Ombudsman*) are also available online.

90. Specialized training courses targeted at officials, the judiciary and at different community sectors have also been carried out. In this regard, the work of the Legal and Judicial Training Centre, another government department, should be highlighted. The Centre has organized several seminars and workshops focused on the protection of fundamental rights, as for example the seminars on *Refugee Law, Human Rights, United Nations Covenants and Fundamental Rights: Glorified Esperanto? Realizing Human Rights, Human Rights Conventions and Their Implementation, Human Rights and International Law: Some Global Challenges* and workshops on the *Human Rights Reporting Procedure*.

91. According to their area of intervention, each of the above-mentioned consultative Commissions plays an important role not only in

safeguarding fundamental rights and freedoms but also in promoting them and raising community awareness.

92. Moreover, Macao has a valuable historical and cultural heritage, as a result of 500 years of cross-cultural characteristics of eastern and western cultures. Landmark recognition of such heritage is the inscription of “The Historic Centre of Macao” on UNESCO’s World Heritage List in 2005. It should be stressed that the MSAR Government is deeply engaged in promoting Macao’s cultural heritage and raising community awareness to its preservation, including through education, campaigns and training.

*d. Budget allocations and trends*

93. As to budget allocations and trends, fundamental rights issues are reflected in all areas of public administration, thus funding for fundamental rights is not specifically allocated in the MSAR’s public budget. Allocation of funds is objective and follows strict rules of law. Hence, it is equally accessible to all and non-discriminatory, depending solely upon the nature of the measures, for instance, there are some measures that benefit women in specific, as it is the case of maternity care-related benefits, while there are other measures that benefit other specific groups of people, such as children and old age persons.

**F. REPORTING PROCESS**

94. China is responsible for the submission of reports in respect of the MSAR under the various human rights treaties. However, the parts of China’s reports related to the MSAR are prepared by the MSAR Government and submitted to the Central People’s Government.

95. Within the MSAR Government, the drafting of reports to be submitted to the Central People’s Government are prepared by the Law Reform and International Law Bureau (formerly the International Law Office), under the supervision of the Secretary for Administration and Justice. All government entities and departments as well as relevant Commissions and NGOs are invited to submit their contributions and suggestions.

96. In accordance with the Human Rights Committees' Guidelines for reports, the reporting process has been further ameliorated. After the submission of the reports to the Central People's Government, but before finalizing them, their full texts are made available on the MSAR Government webpage for consultation and comments. Relevant contributions are then inserted.

97. The same methodology is followed in relation to the Human Rights Committees' lists of issues and concluding observations. In the last years, the concluding observations have also been sent to the Legislative Assembly.

### **III. INFORMATION ON NON-DISCRIMINATION AND EQUALITY AND EFFECTIVE REMEDIES**

98. The rights to equality and non-discrimination are guaranteed by the Basic Law. Article 25 of the Basic Law expressly provides that "*all persons shall be equal before the law, and shall be free from discrimination, irrespective of their nationality, descent, race, sex, language, religion, political persuasion or ideological belief, educational level, economic status or social conditions.*" Furthermore, recognizing that *de facto* inequalities still exist, Article 38(2) and (3) of the Basic Law also explicitly provides for special protection of the legitimate rights and interests of women and of minors, aged people and people with disabilities.

99. Article 233 of the Criminal Code provides for the crime of racial discrimination. Its paragraph 1 makes it an offence to establish organizations or engage in organized propaganda activities which incite or encourage discrimination, hate, or racial violence, including the participation in such organizations or activities and their financing. Paragraph 2 of the same Article punishes whoever in a public meeting, in writing intended for dissemination, or by any other means of social communication, provokes acts of violence against an individual or group of individuals on grounds of their race, colour, and ethnic origin with the

intention of inciting to or encouraging racial discrimination. Paragraph 2 also punishes anyone who in a public meeting, in writing intended for dissemination, or by any other means of social communication, defames or insults an individual or group of individuals on grounds of their race, colour or ethnic origin. Penalties range from 6 months to 8 years of imprisonment.

100. Most of the ‘policy-basis’ ordinary laws and several other legislative acts expressly reiterate the general principles of law, in special equality and non-discrimination. However, though legally there is equality as regards all aspects of life (political, civil and economic and social), as in any other developed society, *de facto* inequalities still exist. To overcome them, several steps have been taken and still are in course.

101. Without prejudice to judicial remedies, within the public administration, there are several mechanisms to promote, protect and monitor equality and non-discrimination. Individuals may submit applications, petitions and complaints to any administrative authority. The safeguarding of fundamental rights is also ensured through *quasi-judicial* and non-judicial remedies. A growing body of norms exists for the protection of fundamental rights like lodging complaints to the Commission against Corruption and to the Legislative Assembly and the right to petition.

102. In relation to monitoring mechanisms, the creation of the above-mentioned consultative Commission for Women’s Affairs and of the Commission for Rehabilitation Affairs, covering all spectrums of women’s and disability issues were major achievements. The participation of NGOs in both Commissions enhances the policy process on the promotion and protection of equality and non-discrimination, ensures transparency on allocation of resources and quality of services.

103. In the MSAR, a multiracial and multicultural society, promoting equality and non-discrimination has always been a key priority. Governmental policies are based on a stakeholder approach and, when

being formulated, reaching a social consensus is of major importance. Effective measures to promote and protect equality and non-discrimination are carried out, mainly through education, law in action, training of officials and public awareness campaigns. These actions shall continue to be undertaken in partnership with the civil society, mainly with relevant NGOs. Regular dialogue with the civil society, including the participation of local associations in many consultative mechanisms, in particular for setting up governmental policies, is an important feature of MSAR's governance.

**CONSIDERATION OF REPORTS FROM STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**FOURTH PERIODIC REPORT OF STATES PARTIES DUE IN  
2001**

**ADDENDUM**

**MACAO SPECIAL ADMINISTRATIVE REGION**

**INTRODUCTION**

1. This third part of the supplementary report of the People's Republic of China is the first information submitted by China under Article 19(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as Convention) with regard to its Macao Special Administrative Region (hereinafter referred to as MSAR). It covers the period between 20 December 1999 and 31 December 2004.

2. Thus, it was prepared in accordance with the General Guidelines regarding the Form and Contents of Initial Reports to be Submitted by States Parties under Article 19, paragraph 1, of the Convention, adopted by the Committee against Torture (contained in document CAT/C/4/Rev.2 and consolidated in document HRI/GEN/2/Rev.1) and should be read together with Part III of the second revision of the Core Document of China (HRI/CORE/1/Add.21/Rev.2).

3. The referred Part III of the Core Document of China contains the general information on the land and population, the political structure and

the framework for the protection of human rights within the MSAR legal system.

4. The Convention became applicable to Macao on 15 June 1999 and its text was published in the Macao Official Gazette, Series I, No. 11, of 16 March 1998.

5. On 19 October 1999, China notified the Secretary-General of the United Nations that the Convention would apply to the MSAR with effect from 20 December 1999, having declared that the reservation made by China to Article 20 and to Article 30(1) of the Convention would also apply to the MSAR.

6. On 20 December 1999, the People's Republic of China resumed the exercise of sovereignty over Macao and the MSAR was thus established. On the same day, the Basic Law of the MSAR (hereinafter referred to as the Basic Law) was put into effect.

7. Pursuant to the "One country, Two systems" principle, the Basic Law enshrines the general principles, policies and provisions relating to the MSAR, thereby defining the extent of the autonomy to be enjoyed by the MSAR.

8. Under Article 2 of the Basic Law, "The National People's Congress authorizes the Macao Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication (...)"

9. The Basic Law has a constitutional value. In fact, therefore, its Article 11(2) stipulates that, "no law, decree, administrative regulations and normative acts of the Macao Special Administrative Region shall contravene this Law".

## **PART I - GENERAL INFORMATION**

10. The Basic Law, under its Article 4, establishes that "the Macao Special Administrative Region shall safeguard the rights and freedoms

of the residents of the Macao Special Administrative Region and of other persons in the Region in accordance with law”.

11. Furthermore, in its Article 11(1), it also stipulates that, in accordance with the “(...) Constitution of the People’s Republic of China, the systems and policies practiced in the Macao Special Administrative Region, including (...) the system for safeguarding the fundamental rights and freedoms of its residents (...) shall be based on the provisions of this Law”.

12. The fundamental rights and duties of the residents of the MSAR are enshrined in Chapter III of the Basic Law. Being expressly specified in Article 40(2) that such rights “(...) shall not be restricted unless as prescribed by law” and, in Article 43, that “persons in the Macao Special Administrative Region other than Macao residents shall, in accordance with law, enjoy the rights and freedoms of Macao residents (...)”.

13. From the provisions of Chapter III, and without prejudice to a subsequent more detailed exposition, Article 28(4) of the Basic Law should be singled out, as it states that “torture or inhuman treatment of any resident shall be prohibited”.

14. In regard to the continuity of the legal system, the Basic Law stipulates, in its Article 8, that “the laws, decrees, administrative regulations and other normative acts previously in force in Macao shall be maintained, except for any that contravenes this Law, or subject to any amendment by the legislature or other relevant organs of the Macao Special Administrative Region in accordance with legal procedures” and, in its Article 18(1), that “the laws in force in the Macao Special Administrative Region shall be this Law, the laws previously in force in Macao as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region”.

15. Law 1/1999, the Reunification Law, reiterating the principle of the continuity of the legal system, lists the laws, decree-laws, administrative regulations and other normative acts previously in force in Macao that are deemed inconsistent with the Basic Law and therefore are not adopted



as legislation of the MSAR. However, regarding some of those acts not adopted as legislation of the MSAR, the Reunification Law allows the Region to handle issues regulated therein according to the principles contained in the Basic Law and taking previous practices as reference until new legislation is enacted.

16. None of those normative acts that have not been adopted as legislation of the MSAR is related to human rights issues.

17. At the level of ordinary law, Title III of the Macao Criminal Code, on crimes against peace and humanity, provides for and punishes the crime of torture or other cruel, inhuman or degrading treatment, both in its simple and qualified forms (Articles 234 and 236, respectively), as well as other criminal offences connected with the commission of these acts, namely the usurpation of a function for infliction of torture and the omission of report (by a superior who is aware that a subordinate has committed any of the aforesaid crimes) (Articles 235 and 237, respectively).

18. On the other hand, torture and other cruel, degrading and inhuman treatment constitute one of the aggravating circumstances for other criminal offences also provided for in the Criminal Code, being for example, one of the conducts, which may result in the practice of the criminal offence of genocide (Article 230(c) of the Criminal Code).

19. The crime of torture and other cruel, degrading or inhuman treatments as defined in the Criminal Code does not have a broader scope than the definitions provided for in the Convention, for the crime is committed only if the offender is vested with certain professional functions, even though he need not be a public official or a person acting in an official capacity, and if his conduct is aimed at disturbing the victim's determination capability or free display of his will.

20. Later on, reference will be made to other specific laws, which may prove important for the prevention and elimination of torture and other cruel, inhuman or degrading punishment or treatment.

21. In what concerns international law relevant to the subject matter of torture, it should be highlighted that the International Covenant on Civil and Political Rights, of 16 December 1966, which in its Article 7 prohibits torture and other cruel, inhuman or degrading punishment or treatment, is applicable to the MSAR.

22. According to Article 40(1) of the Basic Law, “the provisions of the International Covenant on Civil and Political Rights, (...) as applied to Macao shall remain in force and shall be implemented through the laws of the Macao Special Administrative Region”. And, as mentioned Article 40(2), determines that “the rights and freedoms enjoyed by Macao residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the first paragraph of this Article”.

23. In what concerns treaties relating to armed conflicts that implicitly or explicitly prohibit torture, it also has to be mentioned that all the treaties that China is a Party to in this field are equally applicable to the MSAR, mainly the 1899 and 1907 Hague Conventions and the four Geneva Conventions of 12 August 1949, as well as their respective Additional Protocols of 8 June 1977.

24. On the subject of international law, it should also be noted that the MSAR legal system is a continental or a civil law system, which is characterized by the principle of international law as recognized by all civilized nations and applicable international treaties integrate into it directly.

25. In fact, international treaties, which have been decided to apply to the MSAR, once published in the MSAR Official Gazette, enter into force directly in the Region. Their provisions can be directly invoked and enforced through the existing judicial and non-judicial means. Only when international treaty contains one or more provisions that are not self-executing would there be a need to adopt local legislation in order to ensure the execution of such provisions, as with the provisions of the Covenant.

26. International treaties applicable to the MSAR take precedence over ordinary laws (Article 1(3) of the Civil Code).

27. With respect to the organs of the MSAR empowered to act on matters governed by the Convention, reference should be made primarily to the judiciary (i.e., the courts and the Procuratorate) and to the Commission Against Corruption (hereinafter referred to as CAC).

28. According to Articles 82 and 83 of the Basic Law, “the courts of the Macao Special Administrative Region shall exercise the judicial power” and they “(...) shall exercise judicial power independently. They shall be subordinated to nothing but law and shall not be subject to any interference”.

29. Article 84 of the Basic Law establishes that the MSAR has primary courts (Court of First Instance and Administrative Court), intermediate courts (Court of Second Instance) and Court of Final Appeal. The power of final adjudication of the MSAR is vested in the latter.

30. To implement the referred Article 84, the structure, powers and functions of the MSAR courts are regulated by Law 9/1999, which approves the Basis of the Organization of the Judiciary, as amended by Law 9/2004.

31. This Law provides that the courts are attributed with the power of safeguarding legally protected rights and interests, suppressing breaches of legality and settling public and private disputes (Article 4).

32. Still regarding the courts, it should also be pointed out that the Court of First Instance comprises criminal investigation sections competent to execute prison sentences and security measures involving internment. (Articles 27(2), 29(2.2), (2.3), (2.14) and (2.15) of Law on the Basis of the Organization of the Judiciary).

33. The judicial intervention on the execution of penalties of imprisonment and of security measures involving internment and the respective effects is governed by Decree-Law 86/99/M, of 22 November, which will be detailed.

34. Likewise, the Procuratorate exercises its “(...) functions as vested by law, independently and free from any interference” (Article 90(1) of the Basic Law). The aforementioned Law 9/1999 also regulates the structure, powers and functions as well as the operation of the Procuratorate.

35. The Procuratorate is competent to institute criminal proceedings, to lead criminal investigations, to control procedures by criminal police bodies, and to promote and cooperate in actions for crime prevention. Save otherwise provided by procedural laws, the Procuratorate act *ex officio* (Articles 56(1) and (2) and 59 of Law 9/1999).

36. Law 10/1999, which approves the Statute of the Members of the Judiciary, ensures the conditions necessary to enable them to discharge their functions independently (Article 2(2)), *inter alia*, by guaranteeing, in the case of judges, irremovability (except for the cases provided by law) and the immunity from legal action for discharging their judicial functions, that is, they can only incur civil, criminal or disciplinary liability in cases stipulated by law (Articles 4, 5(1) and (2), and 6(1) and (2)) and, in the case of procurators, stability (Article 10(1) and (2)).

37. The CAC is a public and independent body endowed with fighting corruption and concurrently entrusted with some functions of an Ombudsman, such as that of protecting rights, freedoms, safeguards and legitimate interests of the residents and ensuring justice, legality and efficiency in the public administration, resorting both to means provided for by law (making inquiries and denunciations for the purpose of disciplinary action, following criminal and disciplinary proceedings, etc.) and to other informal means (Article 3(1)(4) of Law 10/2000, which approves its Organic Law).

38. Finally, mention should be made of the Judiciary Police and the Public Security Police (hereinafter referred to as JP and PSP, respectively), which are criminal police bodies with functions of crime prevention and investigation (Article 1(1)(2) of Decree-Law 27/98/M, of 29 June, reorganizing the JP, and Articles 1(2) and 2(1)(2) of Administrative Regulation 22/2001, governing the structure and operation of the PSP).

39. The JP and the PSP act within criminal proceedings under the guidance and functional dependence of judicial authorities, carrying out necessary procedures and investigations at the stages of inquiry and judicial inquiry, whenever these tasks are delegated to them by those authorities (Articles 1(3) and 4(1) of Decree-Law 27/98/M and Articles 1(2) and 3(1)(10) of Administrative Regulation 22/2001).

40. The Social Welfare Bureau (hereinafter referred to as SWB) also deals with victims of torture, by assisting the applicants for refugee status who have been victims of torture, rape or other abuses of a physical or sexual nature (Article 34 of Law 1/2004, approving the Legal Framework on the Recognition and Loss of Refugee Status).

## **PART II - INFORMATION REGARDING EACH ARTICLE OF PART I OF THE CONVENTION**

### **ARTICLE 1**

41. As previously mentioned, Chapter III of the Basic Law enshrines the fundamental rights of the residents of the MSAR.

42. In the MSAR, subjecting a person to torture or inhuman treatments is expressly forbidden by Article 28(4) of the Basic Law (read together with Article 43 of the Basic Law), which should be recalled, bears a constitutional value.

43. The crime of torture or other cruel, degrading or inhuman treatment is provided for and punished under Article 234(1) of the Criminal Code, which stipulates that: “whosoever, charged with the function of prevention, follow-up, investigation or knowledge of criminal infractions, or disciplinary infractions, the application of related sanctions, or the protection, guard or supervision of a detainee or prisoner, tortures or subjects such persons to torture, cruel, inhuman or degrading treatment shall be punished with a prison sentence of two to eight years, if a heavier sentence is not applicable by virtue of another legal provision.”

44. This provision does not cover sufferings inherent in the execution of the sanctions foreseen under the mentioned Article 234(1) or engendered by it (paragraph 3 of the same Article).

45. This type of crime seems to have its scope limited to acts committed by someone vested with specific public functions, since preventing, tracking, investigating or handling criminal offences and enforcing criminal sanctions, as well as protecting, guarding or watching a detainee or a prisoner, are all functions exclusively entrusted to the organs and public authorities of the MSAR. Yet, any person may commit the crime provided for in Article 234, if that person carries out the above-mentioned acts of torture or inflicts cruel, degrading or inhuman treatment while exercising disciplinary functions.

46. Under paragraph 2 of the Article in quotation, it is considered torture or cruel, degrading or inhuman treatment the “act consisting in the infliction of intense physical or psychological suffering or a severe physical or psychological fatigue, or involving the use of chemical substances, drugs or other natural or artificial means, intended to impair the victim’s ability to make decisions or freely express his will”. As in the Convention (Articles 1 and 16), the referred provision draws no distinction between torture and other relevant kinds of treatment. Intense suffering is defined by doctrine as being vivid, violent or intense. Severe fatigue is understood as being acute, profound, strong or intense. This enumeration bears a merely exemplifying character, for the expression “other natural or artificial means” encompasses different types of behaviour, all subject to the occurrence of an essential element, which is the intention to impair the victim’s ability to make decisions or freely express his will.

47. The MSAR criminal law is satisfied with the specific intention of the offender to impair the victim’s ability to make decisions or freely express his will, thus differing from the Convention, which, by resorting to an “open list”, enumerates possible aims of the conduct, such as obtaining information or confessions, punishing, intimidating or pressing the victim or a third person.

48. Article 235 of the Criminal Code provides for the crime of usurpation of functions for infliction of torture. Thus, any person, by his own initiative or following order from a superior, usurps the function referred to in Article 234(1) in order to carry out any of the acts described in the same Article is liable to the same sentence. This provision gives room to the possibility of the offender's being a person who performs *de facto* the functions described in the crime of torture and other cruel, degrading or inhuman treatments.

49. Article 236 of the Criminal Code provides for the crime of serious torture and other cruel, degrading or inhuman treatment. This type of crime comprises the facts described in Articles 234 and 235, differing in the specifications concerning the concept of torture or in the usual character of the offender's conduct (paragraph (1)(a), (b) and (c)). The first situation contemplates the hypothesis of the agent having "caused a serious physical injury" or "used particularly harsh means and methods of torture, such as physical abuse, electric shocks, mock executions or hallucinogenic substances". The second situation is fulfilled when the offender habitually commits the acts described in Article 234 or 235. In these cases, the penalty is of 3 to 15 years of imprisonment.

50. In the same way, this type of crime is also reckoned as perpetrated where the facts described above or in Article 234 or 235 lead to the victim's suicide or death. In this case, the offender shall be liable to a penalty of 10 to 20 years of imprisonment (Article 236(2) in quotation).

51. Furthermore, still under the Criminal Code, infliction of torture or cruel treatment constitutes aggravating circumstances for the crimes of homicide, of offence to physical integrity and, alongside degrading or inhuman treatment, of kidnapping (Articles 129(2)(b), 140(1) and (2), and 152(2)(b)). Cruel treatment is one of the ways of committing the crime of ill-treatment or excessive loads on minors, incapables or one's spouse and, alongside inhuman or degrading treatment, the crime of genocide (Articles 146(1)(a) and 230(c)).

52. It should also be pointed out that Article 136(1) of the Criminal Code provides for the crime of abortion, punishing “any person that (...) without consent of the pregnant woman concerned, causes her to abort (...)”. Voluntary interruption of pregnancy - i.e., with the express consent of the pregnant woman - is admissible in certain situations provided for in Decree-Law 59/95/M, of 27 November, as amended by Law 10/2004.

53. The Criminal Code expressly enshrines the principle of legality. Accordingly, “only an act described and declared punishable by a law previous to the moment of its commission is subject to criminal punishment”, “a security measure can only be applied to a state of «periculum», prerequisites of which are set in a law previous to their fulfilment” and “penalties and security measures are determined by the law in force at the time of the commission of the act or the fulfilment of the prerequisites they depend upon” (Articles 1(1) and (2) and 2(1)).

## ARTICLE 2

54. Taking into consideration of what has already been mentioned regarding the definition of torture in the MSAR legal system, in the following paragraphs, other measures currently in force contributing to the prevention and struggle against torture will be mentioned.

### **Measures directed towards prevention of torture**

55. As far as substantive criminal law is concerned, in addition to the mentioned crimes, it should also be referred Article 237 of the Criminal Code, which provides for and punishes the crime of omission of report which occurs when “a superior having knowledge that his subordinate has engaged in the acts referred to in Articles 234, 235 or 236 and fails to report him within the maximum period of 3 days after learning of the fact”. The penalty is of 1 to 3 years imprisonment.

56. A set of principles and norms enshrined in the Basic Law and relevant for this matter are also embodied in the Macao Criminal Procedure



Code. Such are the cases of Article 28(2) of the Basic Law, which states that “no Macao resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment” and of Article 36(1) of the Basic Law, which ensures Macao residents “(...) the right to resort to law and to have access to the courts, to lawyers’ help (...)”.

57. Among others, the following elements should be pointed out from the legal framework established by the Criminal Procedure Code:

- a) The principle of procedural legality, established in its Article 2, by virtue of which the application of penalties and security measures can only take place in accordance with its provisions; to be read together with Article 8, which stipulates that only the courts alone are empowered to impose penalties and security measures;
- b) The right of any defendant, at any stage of the proceedings, to “choose a counsel or to request the appointment of a counsel by the judge”, as well as the right to “be assisted by a counsel in all procedural acts in which he takes part and, whenever detained, to communicate with him, even in private” (Article 50(1)(d) and (e)).

58. The requirement that a defendant under detention who is not to be tried immediately be interrogated by an examining judge within a maximum delay of 48 hours upon his detention (Article 128(1)).

59. The principle of legality, under which “person’s freedom can only be restricted (...) through the coercive measures including bail provided for by law” (Article 176(1)), such measures being prescribed by a judge (Article 179(1)).

60. The principle of adequacy and proportionality, by virtue of which “coercive measures including bail (...) must be adequate to the precautionary requirements (...) and proportional to the seriousness of the crime and to the sanctions foreseeable to be imposed” and their enforcement should not “(...) impair the exercise of fundamental rights that are not incompatible with the precautionary requirements of the case” (Article 178(1) and (2)).

61. The application of most coercive measures solely in cases of escape or risk of escape, risk of disturbance of ongoing proceedings, in particular, at the level of the obtaining, conservation or reliability of evidence, the risk of disruption of public order or public tranquillity, or the risk of continued criminal activity (Article 188(a) to (c)).

62. The pre-trial detention as the measure of last resort vis-à-vis other measures (Article 178(3)).

63. The exhaustive enumeration of the reasons that may justify detention, and the ensuing requirement of immediate release in case of error regarding the person or when the detention is not admitted or turns out to be unnecessary (Articles 237(a) to (c) and 244(1)).

64. The Basic Law determines, in its Article 28(2), that “in case of arbitrary or unlawful detention or imprisonment, Macao residents have the right to apply to the court for the issuance of a writ of *habeas corpus*”. Articles 204 and 206 of the Criminal Procedure Code regulate this topic.

65. The Legal Framework on Administrative Infractions and Related Procedure, approved by Decree-Law 52/99/M, of 4 October, embodies principles that are relevant to the subject matter dealt with in the Convention, particularly, the fact that only acts provided for and declared punishable by a law previous to the moment of its commission are subject to punishment, the prohibition of measures involving deprivation or restriction of liberty or even the fact that any evidence obtained through torture is null and void (Articles 9, 11(1) and 19).

66. The Legal Framework on the Execution of Measures Depriving Personal Freedom, approved by Decree-Law 40/94/M, of 25 July, is also of special importance.

67. The general principle that shapes the mentioned regime is that the person in custody remains entitled to his fundamental rights, subject to the limitations that are inherent to the conviction (Article 3).

68. The prisoner must be provided with the accommodation, clothing, hygiene and food standards that safeguard his health and dignity. His contact with the outside world is also promoted, by means of his right to receive visitors and of his right to send correspondence (Articles 11 to 20, 22(1), (2) and (3) and Article 30(1) of the said Decree-Law 40/94/M).

69. The prisoner has the right to appropriate medical care and treatment, particularly to free primary health care. It is not allowed, even with his own consent, to submit him to medical or scientific experiments that may impair his health. In reference to this matter, it is also worth noting that the prisoner's physical and psychological health is permanently under scrutiny, in order to, inter alia, monitor his ability to work and control the adoption and enforcement of special security and disciplinary measures (Articles 41(1) and (2), 45(1) and 46(1)(e) and (g) of the same Decree-Law).

70. Although a convicted prisoner is bound to work, he must not be assigned tasks that may go against his dignity or are especially dangerous and insalubrious (Article 52(1) and (2) of Decree-Law 40/94/M).

71. Chapter IX of this same Decree-Law should be highlighted as it regulates the special security measures and the disciplinary measures that may be adopted inside correctional facilities. These measures are subject to the principle of *numerus clausus*, meaning that solely the measures expressly listed in this Decree-Law may be adopted (Article 65(a) to (f) and Article 75(1)(a) to (g)). Special security measures require the existence of a serious risk of absconding or commission of violent acts on account of the behaviour or the psychological condition of the prisoner and can only be imposed if there is no other way to avoid such risk or when considerable disruption of order and tranquillity occurs in the facility (Article 66(1) and (2)).

72. The imposition of the most serious special security measures is always subject to the *ultima ratio* criterion. Hence, the solitary confinement of a prisoner can only take place when other special security measures

prove inefficient or inappropriate in view of the seriousness or the nature of the situation, the use of physical coercion on a prisoner is only permitted in cases of legitimate defence, escape attempt or resistance to a legitimate order and the use of fire weapons is subject to even tighter conditions, being allowed only under the circumstances of necessity, direct action or legitimate defence (Articles 70(1), 72(4) and 73(1) (a) to (e) of the same Decree-Law, respectively).

73. The imposition of disciplinary measures must always be in line with the seriousness of the offence and with the prisoner's conduct and personality and should be replaced by a simple admonition whenever the latter suffices. It is an established principle that the imposition of these measures must never endanger the prisoner's health (Articles 75(3) and 78 (1) of Decree-Law 40/94/M).

74. The prisoner enjoys the right to submit representations and complaints and is entitled to address the director and staff of the correctional facility, as well as prison inspectors (Article 80(1)(a), (b) and (c) of Decree-Law 40/94/M).

75. The prisoner may equally appeal to the court against any measure of confinement to disciplinary or ordinary cells for over eight days. The appeal stays the execution of the measure starting from the eighth day. The judge must hear the prisoner within 48 hours and may maintain, reduce or annul the measure appealed against (Articles 82(1) and (2) and 83(2) and (3) of Decree-Law 40/94/M, respectively and read together with Article 17 of Decree-Law 86/99/M).

76. As already mentioned, the execution of prison sentences and security measures involving internment is under the competence of the criminal investigation sections of the Court of First Instance. The law expressly establishes that the court's intervention on the enforcement covers, *inter alia*, visit the correctional facility, hearing of prisoner's complaints and decision on appeals against disciplinary decisions passed by the relevant organs of correctional facility (Articles 27 and 29 of Law

on the Basis of the Organization of the Judiciary and Article 2(c), (d) and (e) of Decree-Law 86/99/M).

77. It is equally determined by law that visits to correctional facility must take place at least once a month and that the judge may circulate freely in it and inquire any staff member or prisoner. Prisoners are entitled to present a verbal claim to the judge, provided such claim is expressed in the right manner and at the due time. At the end of the visit, the judge meets with the Procurator and the director of the correctional facility to let them know his impressions from his visit and the prisoners' claims and hears their verbal opinions, after which he makes his decision (Articles 13(1), 14(1) and 15(1) and (2) of Decree-Law 86/99/M).

78. The prisoner also has the right to submit a written complaint to the judge on "matters of his interest". Once again, the judge decides after hearing the Procurator and the director of the correctional facility (Article 16 of Decree-Law 86/99/M).

79. The Macao Prison Regulations, approved by Order 8/GM/96, of 5 February, acknowledge prisoners' rights and guarantees what are already enshrined in the Regime on the Implementation of Measures that Deprive Liberty, such as the right to submit representations or complaints, the right to healthy and appropriate accommodation, clothing, hygiene and food standards, the right to receive visitors and correspondence and the right to health care (Articles 6(2), 9 to 26 and 40 to 43, respectively).

80. Decree-Law 65/99/M, of 25 October, which establishes the Legal Framework on Educational and Social Protection on Juvenile Justice, transposes to this framework the rights and guarantees referred to in the preceding paragraphs.

81. In the Educational Framework, the principle of *numerus clausus* of educational measures prevails (Article 7(a) to (e) of Decree-Law 65/99/M). To minors placed in educational institutions are applicable, with necessary adaptations, the provisions governing the enforcement of measures of deprivation of liberty, regarding accommodation, clothing, hygiene and

food, visits and communication with the outside world, medical health care, work and training. The same can be said regarding special security measures (their enumeration, prerequisites and requirements), disciplinary offences and corresponding measures (their identification, adoption and enforcement). It is also prescribed judicial intervention in the enforcement of these institutional measures, with the aims, among others, of visiting educational institutions and hearing minors' complaints or appeals against disciplinary decisions passed by the relevant organs of the correctional facility (Articles 45 and 56 of Decree-Law 65/99/M).

82. Under the Social Protection Framework, apart from the exhaustive enumeration of the general measures applicable (Article 68 of Decree-Law 65/99/M), contact of the minor with his parents is secured, whenever a measure entailing their separation has been imposed (Article 76(2) of the same Decree-Law). Where the minor has been entrusted to an institution, judicial intervention is also foreseen, ensuring regular visits to the institution and hearing of the minor's complaints (the relevant rules of Decree-Law 86/99/M would be followed in the Article 87(2) of Decree-Law 65/99/M). Other rights are also guaranteed, such as the right of a minor entrusted to an institution to keep in touch with his affective references and the representative appointed by the court, to be provided with health care, to receive an education ensuring his full development, and to be granted schooling and professional training.

83. Decree-Law 31/99/M, of 12 July, approving the Mental Health Regime, establishes the general principles of mental health protection and promotion policy, ensuring persons suffering from mental disorders, among others rights, the right to receive protection and treatment with respect for his individuality and dignity, the right to refuse diagnostic and therapeutic interventions (except in cases of compulsory internment and in urgent situations from which a serious risk may arise), the right to refuse to participate in investigations, clinical experiments or training activities, and the right not to be submitted to mechanical restrictions or placed in isolation wards (Article 4(1) (b), (c), (e) and (g)). This Decree-Law also

provides for the right to benefit from proper inhabitability, hygiene, food and safety standards, to communicate with the outside world and to be visited by relatives, friends and legal representatives, with the limitations inherent to the functioning of the services or the nature of the illness, as well as the right to receive support in exercising the rights of objection and complaint (Article 4(1) (i), (j) and (m)). Psychosurgical interventions require a written consent of the person suffering from mental disorders and a favourable written opinion of two psychiatric doctors (Article 4(2)).

84. The regime pertaining to compulsory internment set out its prerequisites, once again in exhaustive terms and list the rights and duties of the internee, among others, the right to be assisted by a counsel with whom he may communicate in private and the right to appeal against the decision whereby the internment has been imposed or maintained (Articles 8(a) and (b) and 10(1)(c) and (d) of Decree-Law 31/99/M). Furthermore, it submits compulsory internment in a private health institution to judicial authorization and decisions of internment in a public health institution, as well as decisions to maintain urgent compulsory internment, to judicial confirmation within 72 hours (Articles 12, 13(3) and 14). In addition, the situation of the internee is subject to a mandatory review as soon as two months have elapsed since the beginning of the internment or of the decision to maintain it (Article 17(2)).

85. Decree-Law 111/99/M, of 13 December, establishes the Legal Framework on the Protection of Human Rights and Human Dignity in the Face of Biology and Medicine Applications. As a rule, a health-related act can only be carried out after a free and enlightened consent has been given. If the act is to be performed on an incapable, the consent shall be given by his legal representative or by a court. Moreover, in case of surgical operation, the consent shall be expressed in writing (Articles 5(1) and (3) and 6(2) and (3)). In any case, the consent is freely revocable up to the performance of the act (Article 5(4)). Notwithstanding, should the consent be impossible to obtain due to an urgent situation, the intervention, if indispensable to safeguard the health of the person concerned, shall be performed promptly (Article 8(1)).

86. Likewise, subjecting a person to scientific research is conditioned, *inter alia*, to the inexistence of alternative investigation methods and of disproportion between risks and potential benefits, as well as to the express, specific and written consent of the concerned person (Article 15(a), (b) and (e) of Decree-Law 111/99/M). If the research is to be conducted on an incapable (legally), it will be necessary, in addition to the general requirements, that a real and direct benefit for his health is to occur, that the research cannot be carried out with a comparable effectiveness on a person capable to consent, that his legal representative or the court authorizes, and he does not oppose (Article 16(1) (a) to (e)).

87. The violation of the rights and principles enshrined in Decree-Law 111/99/M is, in accordance with its Article 23, subject to disciplinary, civil or criminal liability in accordance with general law. In this respect, it should be pointed out that Article 150 of the Criminal Code provides for and punishes the crime of arbitrary medico-surgical intervention or treatment, which is basically the performance, by a doctor or other legally authorized person, of an intervention or treatment without an effective consent of the patient. Urgent situations where it cannot be surely assumed that the consent would be denied are exempted.

88. Law 2/96/M, of 3 June, sets the rules to be observed in acts involving donation, collection and transplant of human organs and tissues, requiring the free, informed, unequivocal and, as a rule, written consent of the donor (and of the recipient, for donation in life) (Article 7(1)). If the donor is a minor, the consent is given by his parents or by his guardian and requires non-opposition of the minor, and his express agreement is mandatory should he possess the capability of understanding and of expressing his will (Article 7(2) and (3)). Where a person is incapable by reason of psychological abnormality, the collection requires judicial authorization and non-opposition of the incapable (Article 7(4)). The concerned person is free to revoke his consent at any time until the act is performed (Article 7(6)). This Law defines the types of crimes to which the violation of its rules and principles may amount and refers to the general rules on civil and disciplinary liability (Articles 15 to 22).



89. To the effect of the application to the MSAR of the Convention Relating to the Status of Refugees, of 28 July 1951, and of its Protocol of 31 January 1967, it was adopted Law 1/2004 which establishes the Legal Framework on the Recognition and Loss of Refugee Status. According to this Law, these three instruments are to be considered and interpreted together (Articles 1 and 2(1)). This Law guarantees conditions of dignity to the applicant from the moment of the appraisal of the admissibility of his request to the moment when a final decision thereon is taken. It also ensures applicants who have been victims of torture, rape or other abuses of a physical or sexual nature special attention and follow-up by the SWB or humanitarian entities (Articles 15(2) (2), 32 and 34).

#### **Prohibition of torture under exceptional circumstances**

90. With regard to the occurrence of exceptional circumstances and to the rules applicable there under, it should be noted that, according to Article 18(4) of the Basic Law, “in the event that the Standing Committee of the National People’s Congress decides to declare a state of war or, by reason of turmoil within the Macao Special Administrative Region which endangers national unity or security and is beyond the control of the Government of the Region, decides that the Region is in a State of emergency, the Central People’s Government may issue an order applying the relevant national laws in the Region”.

91. On the other hand, as already referred to, Article 40(2) of the Basic Law stipulates that “the rights and freedoms enjoyed by Macao residents shall not be restricted unless as prescribed by law”, adding that “such restrictions shall not contravene the provisions of the first paragraph of this Article”, which stipulates that “the provisions of the International Covenant on Civil and Political Rights (...) as applied to Macao shall remain in force and shall be implemented through the laws of the Macao Special Administrative Region”.

92. The Covenant prohibits torture and cruel, inhuman or degrading punishment and treatment (Article 7), expressly ruling out any possible derogation from this prohibition (Article 4(2)).

93. The very same limit is set by Law 9/2002, which approves the Law on Internal Security of the MSAR. It states that “in cases of emergency arising from a serious threat of disturbance of internal public security and subject to compliance with Article 40 of the Basic Law, the Chief Executive may decree measures involving restriction of the exercise of rights, freedoms and guarantees that are deemed reasonable, adequate and proportional to the maintenance of public order and tranquillity (...)” (Article 8(1)).

94. Decree-Law 72/92/M, of 28 September, which reorganizes and updates the Regime on Civil Protection, as amended by Administrative Regulation 32/2002, provides for the possibility of restricting Macao residents’ rights and freedoms, in particular, at the level of freedom of circulation, of the requisition of their goods and services or of their civil conscription. Such restrictions arise from the application of exceptional measures that should respect the criteria of necessity, proportionality and suitability.

95. Also worth mentioning are the right of necessity and the exculpatory state of necessity, which are factors clearing unlawfulness and guilt, provided for in Articles 33 and 34 of the Criminal Code, respectively.

96. Under the right of necessity, an act is not unlawful if it is “committed as a suitable way to remove an actual danger that threatens legally protected interests of the offender or of a third person” and if a) “the danger” has not “been voluntarily originated by the offender, unless the act aims at protecting interests of a third person”; b) there is “a sensible superiority of the interest to be safeguarded as compared to the interest sacrificed”; and c) it is “reasonable to impose on the offended person the sacrifice of his interest in view of the nature and value of the interest threatened” (Article 33(a), (b) and (c) of the Criminal Code).

97. Under the exculpatory state of necessity, it is considered that whoever commits an unlawful act suitable to remove an actual and not otherwise removable danger that threatens the life, the physical integrity,

the honour or the liberty of the offender or of a third person, acts without guilt (prerequisite of the act's punishability) when, in the light of the circumstances of the case, it would not be reasonable to demand a different behaviour (Article 34(1) of the Criminal Code).

### **Prohibition of torture in compliance with orders from one's superior or from public authorities**

98. Article 35(2) of the Criminal Code provides that "the duty of obedience stops whenever it would lead to the commission of a crime", thus ruling out the possibility of justifying torture with an order from one's superior. As to the allegation of an order issued from a public authority, Article 312(1) of the Criminal Code states that the crime of disobedience only takes place where a lawful order or lawful warrant (from a competent authority or official) is not complied with. It is commonly accepted that no obedience is due to orders entailing the perpetration of crimes.

99. The General Provisions for Workers in the Macao Public Administration (GPWMPA), approved by Decree-Law 87/89/M, of 21 December, as last amended by Decree-Law 89/99/M, of 29 November, accords civil servants the right not to comply with orders leading to the commission of a crime (Article 278(1)(f)).

## **ARTICLE 3**

100. The legal concept of extradition is not encountered within the MSAR legal system, as it presupposes the existence of relationship between sovereign states. Article 213 of the Criminal Procedure Code alludes to the surrender of fugitives, referring its regulation to the rules laid down by the international applicable conventions or to judicial cooperation agreements and, in their absence, to its own provisions. Article 217 of the said Code directs the discipline of this reference to special legislation.

101. Article 94 of the Basic Law provides that "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”.

102. An agreement on Mutual Legal Assistance was concluded with Portugal on 17 January 2001, which entered into force on 1 May 2002. This Agreement, besides providing for consultations towards the conclusion of another agreement governing reciprocal surrender of fugitives, also confirms the previous Agreement between Macao and Portugal on the Transfer of Sentenced Persons, done on 7 December 1999.

103. The referred Agreement on the Transfer of Sentenced Persons requires as a condition for the transfer the consent of the convict or of his legal representative. In addition, the legal nature and duration of the sanction as established by the sentence are binding for the jurisdiction of destination, and, if the sanction is to be adapted to the destination having jurisdiction, it must not be more severe, neither in its nature nor in its duration. Even if the condemnatory sentence is to be converted by the jurisdiction of destination, the penal situation of the convict shall not be aggravated.

104. The MSAR is drafting legislation on international mutual legal assistance in criminal matters, which will establish, among other aspects, the general principles and procedures to be followed. Such legislation will regulate the surrender of fugitives, including the grounds for refusal. At the same time, the MSAR is negotiating the conclusion of interregional agreements, i.e., with Mainland China and with the Hong Kong Special Administrative Region on mutual legal assistance in criminal matters.

105. Law 6/2004, Law on Illegal Immigration and Expulsion, prescribes the expulsion of illegal immigrants from the MSAR (Article 8(1)). Persons are considered to be in a situation of illegal immigration if they are not allowed to remain or reside in the MSAR and have entered through a way other than the immigration posts or under a false identity or using false identification or travel documents or during a period of entry interdiction. Likewise, persons who overstay are also deemed to be in a situation of illegal immigration, as well as those who have had their

permission of stay cancelled, but have not left the Region within the set time limit (Article 2).

106. Still according to the same Law, the power to order the expulsion rests with the Chief Executive, while the act proper is to be carried out by the PSP. The order of expulsion must be motivated and must indicate the destination of the expelled person and the period during which he will be prohibited from entering the MSAR (Articles 8(2) and 10).

107. Under Article 27 of the above mentioned Law, in pursuance of obligations arising from the rules of international law applicable to the Region (such as Article 3 of the Convention), or whenever it is justified by exceptional circumstances, the Chief Executive may determine the exemption from, or the remission of, the expulsion.

108. Closely related to this subject matter is the already mentioned Legal Framework on the Recognition and Loss of Refugee Status, in which the principle of “*non-refoulement*” is fully observed. In accordance with this Legal Framework, a person who is recognized as a refugee is allowed to remain in the MSAR as long as he maintains such status. This Law also provides that “the submission of an application for the recognition of refugee status suspends any administrative proceedings (...) instituted against the applicant or his family dependents on account of his entry into the MSAR”, such being the case of expulsion proceedings, which shall be archived, if the refugee status is recognized (Article 10).

109. The mentioned Law on Internal Security establishes, as a precautionary measure of police, the expulsion of non-residents considered inadmissible, or posing a threat to the stability of the internal security or reported as suspects of connections with transnational crime, including international terrorism (Article 17(1) and (4)). Nonetheless, the said Law places all the activities related to internal security within the boundaries drawn by the rights, freedoms and guarantees of persons (Article 2(1)).

#### ARTICLE 4

110. From the above analysis regarding the application of Articles 1 and 2 of the Convention to the MSAR, it is clear that acts of torture amount to a variety of criminal offences provided for and punished under the Region's criminal law.

111. According to the Criminal Code, the crime of torture and other cruel, degrading and inhuman treatment is punished with a penalty ranging from 2 to 8 years of imprisonment (Article 234(1)) while its aggravated form is punished with a penalty ranging from 3 to 15 years of imprisonment or, in the event of penalty aggravation due to the result of the act (suicide or death of the victim), with a penalty ranging from 10 to 20 years of imprisonment (Article 236(1) and (2)).

112. The crime of usurpation of a function for infliction of torture is punished with a penalty ranging from 2 to 8 years of imprisonment (Article 235 of the Criminal Code).

113. The crime of omission of report of the said crimes is punished with a penalty of 1 to 3 years of imprisonment (Article 237 of the same Code).

114. As regards the types of criminal offences where torture or cruel, degrading or inhuman treatment is an aggravating circumstance, the crimes of:

- a) Aggravated homicide is punished with a penalty of 15 to 25 years of imprisonment (Article 129(1) of the Criminal Code);
- b) Aggravated offence to physical integrity is punished with the penalties applicable to the crime of simple offence to physical integrity, to the crime of serious offence to physical integrity or to the result-aggravated variant of these crimes, further amplified by one third in both their minimum and maximum limits (Article 140 (1) of the Criminal Code); and

- c) Kidnapping is punished with a penalty of 3 to 12 years of imprisonment (Article 152(2) of the Criminal Code).

115. Furthermore, the crime of ill-treatment or excessive loads on minors, incapable or one's spouse involving cruel treatment is punished with a penalty of 1 to 5 years of imprisonment (Article 146(1) of the Criminal Code), whereas the crime of genocide involving cruel, degrading or inhuman treatment is punished with a penalty of 10 to 25 years of imprisonment (Article 230 of the Criminal Code).

116. The punishability of the attempt to commit the referred crimes is governed by Article 22(1) of the Criminal Code, under which the attempt is punishable only where the consummation of the same crime would be punishable with a maximum penalty of over 3 years of imprisonment.

117. Article 25 of the Criminal Code establishes the punishability of the person who carries out the act either by himself or through another person, who directly takes part, either by agreement or jointly with other or others, and who intentionally prompts another person to commit the act, provided that it has been carried out or begun to be carried out.

118. Article 26 of the Criminal Code stipulates that "who, wilfully and by whatever means, provides material or moral assistance for the commission of a wilful act by someone else, shall be punished as an accomplice", adding that "the penalty prescribed for the principal offender shall be applicable to the accomplice, subject to a special mitigation".

## ARTICLE 5

119. The relevant provisions regarding Article 5 of the Convention are inscribed in Articles 4 and 5 of the Criminal Code.

120. Article 4 of the Criminal Code stipulates that, "unless otherwise provided by an international convention (...) or judicial cooperation

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".

121. Article 5 of the Criminal Code determines the situations in which, unless otherwise provided by an international agreement or a judicial cooperation agreement, Macao criminal law shall be applicable to acts committed outside the Region.

122. Thus, amongst other situations, Macao criminal law shall be applied when the acts constitute a crime of serious torture and other serious cruel, degrading or inhuman treatments, a crime of kidnapping with infliction of torture or other cruel, degrading or inhuman treatment, a crime of genocide involving such type of treatment, provided that the offender is found in Macao and cannot be surrendered to another territory or state (Article 5(1)(b) of the Criminal Code).

123. Macao criminal law shall likewise be applied to acts 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 on account of which the surrender is admitted but cannot be granted" (Article 5(1)(c) of the Criminal Code).

124. Article 5(1)(d) of the same Code prescribes the application of Macao criminal law to the acts committed outside the Region "against a Macao resident, by a resident, whenever the offender is found in Macao".

125. Article 5(2) of the Criminal Code 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".



## ARTICLE 6

126. Perpetrators of torture may be detained and subject to coercive measures, provided for in Article 237 *et seq.*, and Article 181 *et seq.* of the Macao Criminal Procedure Code, for the purpose of appearing before the authorities.

127. Under the referred Article 237, the detention shall be carried out for purposes, *inter alia*, of bringing the detainee before a court to be judged or before the competent judge for the first judicial questioning or the application of a coercive measure within 48 hours following the arrest.

128. The detention can be made in *flagrante delicto* by any judicial authority or police body, or by any person, if none of those entities is on the scene nor can be called in time. In the latter case, the detainee must be immediately handed over to one of those entities, which shall promptly notify the Procuratorate (Articles 238(2) and 242 of the Criminal Procedure Code).

129. Apart from the offences committed in *flagrante delicto*, the detention requires a warrant from a judge or, when pre-trial detention is admissible, from the Procuratorate. Criminal police authorities may also order the detention in cases, other than of *flagrante delicto*, where pre-trial detention is admissible, a reasonable escape risk exists and, owing to urgency and to the risks a delay would pose, it is not possible to await the intervention of a judicial authority (Article 240 of the Criminal Procedure Code).

130. Whenever a police body makes a detention, it must immediately notify the judge who has issued the warrant of detention or the Procuratorate, as appropriated (Article 242 of the said Code).

131. As to coercive measures, one of the necessary prerequisites is the actual occurrence of escape or risk of escape. In order to counter an escape or risk of escape, any of the following measures may be

imposed: declaration of identity and residence, obligation to present oneself periodically, prohibition of absence and contact, suspension from the performance of one's duties, the practice of one's occupation or the exercise of one's rights, bail and pre-trial detention (Articles 181 to 186 and 188 of the Criminal Procedure Code).

132. Pre-trial detention may only be imposed if, in the given situation, all other measures have proved inadequate or insufficient. Being that the case, its application also requires the existence of strong indications pointing to the commission of a wilful crime punishable with a maximum penalty of over 3 years of imprisonment or that the person in question has unlawfully entered or remained in Macao or there are ongoing proceedings to surrender the person concerned to another territory or State. However, if the crime ascribed to the person in question has been committed with violence and is punishable with a maximum penalty of over 8 years of imprisonment – as it is the case of serious torture and other serious cruel, degrading or inhuman treatment – the law prescribes that the judge must impose pre-trial detention (Articles 186 and 193(1) of the Criminal Procedure Code).

133. According to Article 199(1) of the Criminal Procedure Code, pre-trial detention ends when the following time periods have elapsed since its commencement: a) 6 months, and no accusation has been filed against the detainee; b) 10 months, if, after the pre-trial investigation has taken place, no decision regarding committal for trial has been rendered; c) 18 months, when no first instance conviction has been rendered; d) 2 years, when no decision of conviction with *res judicata* force has been delivered. If the crime has been committed with violence and is punishable with a maximum penalty of over 8 years of imprisonment, the referred limits are increased by 8 months, 1 year, 2 years and 3 years respectively. In such a case, as well as in cases referred to in c) and d), if the criminal proceedings have been suspended for ruling on a prejudicial question, the limits are increased by 6 months.

134. As to whether a preliminary inquiry is compulsory, Article 245(2) of the Criminal Procedure Code stipulates that, apart from the exceptions provided for therein, “the notice of a crime shall always give rise to the opening of an inquiry”. The exceptions relate to crimes where criminal proceedings require a complaint or a private accusation by the interest person. Crimes dealt with in this report are not included.

135. With respect to the right of the detainee to promptly get in touch with the representative of the State of his nationality, it should be referred in the first place that, due to the MSAR system of reception of international law, Article 6(3) and (4) of the Convention are directly applicable. Furthermore, the Vienna Convention on Consular Relations, of 24 April 1963, is also applicable to the MSAR.

136. In accordance with its obligations under the Vienna Convention, the MSAR authorities, whenever a foreigner is remained in custody in the Region, shall immediately inform the person by writing of his rights and, if the person so wishes, communicate the situation to the competent consular post, ensuring to the respective consular authority the right to visit him and to converse and correspond with him and to arrange for his defence before the court.

137. Furthermore, the Regime on the Implementation of Measures that Deprive Liberty entitles, *inter alia*, the detainee to inform his legal representative of his condition immediately upon his entry into the correctional facility and to be visited by the competent diplomatic or consular representatives (this visit may also be authorized beyond the statutory hours and days).

## ARTICLE 7

138. According to Article 7(1) of the Convention, the State Party in the territory under whose jurisdiction a person alleged to have committed acts of torture is found shall, if it does not extradite him, submit the case to its

competent authorities for the purpose of prosecution. The fulfilment of this obligation has already been dealt with in this report in what regards Article 5 of the Convention.

139. Criminal prosecution must always abide by the principles and rules of the Criminal Procedure Code, meaning that, as far as evidence is concerned, the provisions of its Book III shall apply.

140. In the event of alleged perpetration of acts of torture, the defendant shall enjoy all the guarantees of a fair treatment provided for in the Basic Law and in the MSAR ordinary law. He shall be, in particular, recognized “(...) the right to an early court trial and shall be presumed innocent before convicted” as well as the right to lawyers’ help for protection of his lawful rights and interests (Articles 29(2) and 36(1) of the Basic Law, respectively).

## **ARTICLE 8**

141. As already mentioned, the concept of extradition does not exist within the MSAR legal system, as it presupposes the existence of a relationship between sovereign States.

## **ARTICLE 9**

142. Also as already mentioned, Article 94 of the Basic Law allows the MSAR, with the assistance and authorization of the Central People’s Government, to enter into reciprocal mutual legal assistance agreements. In addition, Article 213 of the Criminal Procedure Code establishes that the relations with authorities outside Macao are governed by international conventions or mutual legal assistance agreements and, in their absence, by the criminal procedure provisions therein.

143. In compliance with Article 94 of the Basic Law, Law 3/2002 established the Legal Framework on the Notifications to be Addressed to

the Central People's Government by the MSAR Competent Authorities, either before the expedition of a request for judicial cooperation addressed to foreign authorities or after the reception of such a request from foreign authorities. These rules apply to all requests for judicial cooperation issued or received under the law or the relevant applicable bilateral or multilateral treaties.

144. The Criminal Procedure Code and, alternatively, the relevant provisions of the Civil Procedure Code govern the relations with the authorities outside Macao for the purpose of administering criminal justice. This framework is based on rogatory letters, through which the performance of certain procedural acts (service abroad, obtaining of evidence, etc.) requiring the intervention of foreign authorities is requested, or through which these authorities may request Macao courts for the performance of such acts.

## ARTICLE 10

145. Due to the nature of their functions, information pertaining to the training and conduct standards of the police will be analysed first, followed by information concerning prison guards, judicial officers, the CAC, health care workers and, lastly, non-higher education teaching personnel will ensue.

### **Police bodies**

146. The Statute of Militarized Personnel of the Security Forces, approved by Decree-Law 66/94/M, of 30 December, establishes that the incorporation in the staff framework of each one of the corps in the Macao Security Forces (hereinafter referred to as the MSF), both at the senior career level and at the junior career level, requires the successful completion of specific courses. Successful completion of a course for promotion is a key prerequisite in the promotion to all posts within the foundation career framework. The curriculum of the courses encompasses the Basic Law, criminal law / criminal procedure law and police ethics (Order 53/SAS/98 of 18 May and Orders of the Secretary for Security 32/2003 and 36/2004).

147. The Statute expressly imposes on the militarized personnel the duty of “(...) respect for human dignity and preservation and support of human rights (...), forbidding them to inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment (...)” (Article 5(3)(b) of Decree-Law 66/94/M).

148. In the training domain, the Unitary Police Service (UPS), in its capacity as an organ exercising command and operational direction over police and police-like bodies, and the Legal and Judicial Training Centre, a public institution set up for training purposes in the areas of justice and law, organize conferences on criminal law and criminal procedure law, targeting at MSF.

149. The Judiciary Police School programs and carries out professional training activities specifically directed to the JP personnel. Such training includes initial training (basic general and practical preparation) and permanent training (Decree-Law 32/98, of 27 July). The curriculum of the courses encompasses the Basic Law, criminal law, criminal procedure law, and professional deontology (Administrative Regulation 27/2003), and fundamental rights are studied in all of these courses, among them being the right not to be subject to torture.

150. Still with regard to the JP, it should be highlighted that criminal investigation personnel are specially bound by the duty to “hinder, in the exercise of their functions, any abusive, arbitrary or discriminatory practice involving physical or moral violence” and to “look after the life and physical integrity of persons under detention or otherwise under their responsibility, respecting their honour and dignity”. In line with these duties, “(...) the commission of inhuman, degrading, discriminatory or humiliating acts against persons under protection or custody” is reckoned as a very serious disciplinary offence (Articles 48 and 51 of Decree-Law 27/98/M, of 29 June, respectively).

151. The Customs Service needs to be taken into account as well, to the same extent, as it is entrusted with police-like functions pertaining to customs control (Article 1(3) of Law 11/2001). Under Law 3/2003, which establishes the

legal framework on customs personnel's career, posts and pay, successful completion in foundation training courses is equally a condition for entry into both the junior and the senior careers within the Customs Service (Articles 10(1) and (3) and 11(1)). Access to their careers it is, as a rule, through a competition mechanism, this may also be complemented by a training course (Article 18(2) of the said Law).

152. Still within the Customs Service, Permanent Instruction 106, of 23 September 1996, on the processing of and direction conferred to prisoners and detainees, guarantees them, *inter alia*, the right to communicate with their families, respect for their privacy and dignity and medical-hygiene care (No. 8(a), (b) and (e)).

### **Prison wardens**

153. Decree-Law 62/88/M, of 11 July, which restructures the career of prison guard, sets attendance of a basic training course as a condition and selection method for entry into the career. The 2003 open access competition involved, among other selection methods, examinations on knowledge on the Basic Law, the Regime on the Implementation of Measures that Deprive Liberty and the Disciplinary Framework for the Corps of Prison Guards, the Macao Prison Regulations, as well as a training course in which general notions of criminal law were taught.

154. This legal framework also forbids torture by imposing the duty to “keep a relationship with prisoners based on justice, correctness and humanity (...)” (Article 3(i) of Decree-Law 60/94/M, of 5 December and Articles 7(c) and 25(i) of Decree-Law 62/88/M).

### **Magistrates**

155. In the judicial realm, Law 10/1999, which approves the Legal Statute of the Members of the Judiciary, sets successful attendance of a training course and traineeship as one of the special requirements for the definite appointment as a judge of first instance and as a procurator. That

course, as well as the training course and internship for entry into the judiciary, provides for theoretical training in relevant subject matters such as the Basic Law, criminal law and criminal procedure law, international law and the deontology (Article 16 of Law 10/1999 and Articles 13 and 17 of Administrative Regulation 17/2001).

156. The prohibition of committing acts of torture ensues from the very nature of the functions and powers of the MSAR courts and Procuratorate. Moreover, the provisions of the GPWMPA are applicable in a subsidiary manner. According to the GPWMPA, civil servants are bound by the duty of correctness, i.e., the duty to treat users of public services with respect and urbanity (Article 112 of Law 10/1999 and Article 279 of GPWMPA).

### **Investigators of the CAC**

157. With regard to the CAC, it should be pointed out that investigators are recruited from those who successfully concluded training provided by the CAC (Article 29(3) of Law 10/2000). The CAC investigation personnel undergo an initial training of theoretical and practical nature that includes subjects relating to the MSAR legal system (Basic Law, criminal law and criminal procedure law, GPWMPA, etc.), personal ethics by which their conduct is expected to abide and investigation procedures and techniques. Regarding the latter, methods of obtaining evidence prohibited by law, in particular, the use of torture, as well as the disciplinary and criminal consequences of the resort to such methods, are analysed. Investigation personnel are also subject to periodical training concerning investigation techniques and protection of witnesses. In this training, regular collaboration is rendered by professionals working for investigation bodies outside the MSAR.

158. Law 10/2000 stipulates that the acts practised within the CAC domain are subject to the rules of criminal procedure legislation (in particular, regarding the legality of the means of proof) and to the limitations on obtaining of evidence imposed by the respect for rights, freedoms, guarantees and lawful interests of persons (Articles 11(1) and



12(1)). The provisions of the GPWMPA are also applicable, in subsidiary terms, to the CAC personnel. On the other hand, the CAC has worked out internal guidelines laying down the criteria to handle complaints and to carry out investigation actions.

### **Health care workers**

159. Entry into and accession to medical and nursing careers require graduation from specific courses and completion of specific training, such as the general and complementary internship (Decree-Law 68/92/M, of 21 September, establishing the Legal Framework on Medical Careers and Pre-career Training) or courses in nursing and nursing specialization (Law 9/95/M, of 31 July, on the Legal Framework on Nursing Career). The three-year diploma course in General Nursing comprises subjects of nursing ethics and nursing-related legal issues (Annex II to Order of the Secretary for Social Affairs and Culture 60/2002, mapping out the scientific-pedagogical organization and the new curriculum of the three-year course in General Nursing at the Macao Polytechnic Institute).

160. Besides the qualifications required for entry into and promotion within health care workers' careers, the aforementioned Decree-Law stresses the necessity of continuous training. Thus, Article 6(1) of the referred Decree-Law 68/92/M expressly states that a doctor's continuous training must contemplate knowledge pertaining to other professional areas, particularly, legal issues concerning his activity and his relationship with patients. In this way, many training programs and plans organized by the Health Department (hereinafter referred to as HD) are implicitly connected with the prohibition of torture. For example, the Paediatrics and Neonatology Service held, in June 2001, jointly with the Legal Medicine Service, a symposium under the title "Child Abuse – A Medical Perspective". The HD Social Welfare Service staff have also attended several seminars on ill-treatment of women and children.

161. Infliction of torture is forbidden in the laws governing medical and nursing careers, in as much as they impose the duty to perform one's

functions with full responsibility (Article 5(1) of Decree-Law 68/92/M and Article 3(1) of Decree-Law 9/95/M). Health care personnel of the public sector are also subject to the rules that apply to civil servants (Article 2 of Law 22/88/M, of 15 August, defining the Legal Framework on the Specific Careers of the Health Department) and therefore have to respect the duty of correctness prescribed by the GPWMPA.

162. It is worth pointing out the role assigned to the HD Social Welfare Service in humanizing operational conditions of health care units (Article 41(1)(c) of Decree-Law 81/99/M, of 15 November, restructuring the HD). Within this context, it should be pointed out that the Code of Ethics of Social Workers, which integrates the Internal Regulation of the referred HD Social Welfare Division, imposes the duty to respect dignity and human values (point 2(1) and (2) of Article IX of the Code of Ethics).

163. The Psychiatry Service is governed by the mentioned Decree-Law 31/99/M, which, in its Article 4(1)(b), grants persons suffering from mental disorders the right to receive adequate protection and treatment with respect for their individuality and dignity. The Internal Regulation of the Psychiatry Service also imposes the duty to respect the dignity and the rights of patients (points I, II and IV).

### **Public education teaching personnel**

164. Decree-Law 41/97/M, of 22 September, on the Legal Framework on the Training of Teachers at Pre-school, Primary and Secondary Levels, Defining its Coordination, Administration and Support System, regulates initial training, on-duty training, continuous training and specialized training. These training levels feature a component directed at the teachers' personal and social development, with the goal of, among others, interiorizing deontological values underlying their activity (Articles 4 to 14 and 22 to 40).

165. Forbiddance of torture ensues from the duties prescribed to teachers by Decree-Law 67/99/M, of 1 November, enacting the Statute

of Teaching Personnel of the Education and Youth Affairs Bureau. This Statute provides that teaching personnel must favour the creation and development of relations based on mutual respect, specially among teachers, pupils, persons in charge of the latter's education and non-teaching staff (Article 3(2)(c)). Likewise, Decree-Law 15/96/M, of 25 March, enacting the Statute of Teachers and Educators from Private Schools Integrated into the Public School Network, imposes on those teachers the duty to create and develop relations based on mutual respect within the educational process (Article 4(2)(b)).

166. On the other hand, Order 46/SAAEJ/97, of 2 December, establishing the Disciplinary Framework for Pupils in Official Educational Institutions, stipulates, by way of a general principle, the prohibition of taking disciplinary measures that are contrary to the moral and physical integrity and to the personal dignity of pupils.

## ARTICLE 11

167. The legality review over interrogation practices is undertaken, in the first place, by the criminal police bodies themselves. To this end, the JP has installed video-recording systems in the interrogation rooms enabling the supervision of all questioning stages. Inside the PSP premises, video-recording systems have been set up as well, particularly in the on-duty chief agents' rooms, in the investigation room, in the interrogation room and in the public reception room.

168. In addition, under the Law on the Basis of the Organization of the Judiciary, the Procuratorate is charged with monitoring criminal police bodies' procedures and may even step in *ex officio* (Articles 56(2)(5) and 59).

169. Internal review is also carried out in CAC. Its investigators are instructed, as a rule, not to meet individually persons under investigation, defendants or witnesses, so that mutual control between the investigators attending the procedure is ensured. The CAC interrogation rooms are

equipped with a thermometer, a clock and a video-recording system. An internal video-surveillance system in non-reserved areas is also installed, in order to enable the detection of any change in the physical or psychological conditions of persons subject to interrogation, before and after its completion.

170. This internal review framework is reinforced by the fact that, already mentioned, the crime of omission of report (by one's superior) is provided for in Article 237 of the Criminal Code.

171. The legality of a detention is appraised when the detainee is brought before the criminal investigation judge, which, as referred, must occur within 48 hours from the detention. Similarly, the provisional decision of compulsory internment in a health care institution and the decision to maintain an urgent compulsory internment are subject to judicial confirmation within 72 hours (Articles 12(3) and 14 of Decree-Law 31/99/M). The judge plays the very same role of legality control under Legal Framework on Educational and Social Protection on Juvenile Justice. When the minor is brought before him, the judge is expected to assay the need for intervention and the legality of the measures adopted by the criminal police bodies before it became possible to contact him (Articles 24(1) and (2) and 77(1) of Decree-Law 65/99/M).

172. Switching to another issue, it should be reminded that the criminal investigation sections of the Court of First Instance are competent to execute prison sentences and security measures involving internment and to decide on the complaints and appeals lodged by persons in custody, as well as to visit the correctional facility, not less than once a month, in order to verify whether decisions of pre-trial detention or conviction are being enforced in compliance with law. Such judicial intervention in the enforcement of prison sentences and security measures involving internment is governed by Decree-Law 86/99/M, as already described.

173. The Legal Framework on Educational and Social Protection on Juvenile Justice also prescribes the judicial intervention in the execution of

institutional measures under the educational system and in situations where the minor has been entrusted to an institution under the social protection system, as also already described. Provisions of Decree-Law 86/99/M are applicable in both cases.

## ARTICLE 12

174. As previously mentioned, since criminal proceedings related to the crime of torture and other cruel, degrading or inhuman treatments, to its qualified type and to other criminal types involving commission of these acts do not require a complaint or a private accusation, the notice of any of these crimes always gives rise to the opening of an inquiry by the Procuratorate (Article 245(2) of the Criminal Procedure Code).

175. As stipulated in the said Code, the Procuratorate receives notice of a crime either by its own learning, or through a criminal police body, or by virtue of a denunciation (Article 224). Denunciation is mandatory for police bodies and civil servants, as well as for anyone, who perform, in any way whatsoever, an activity comprised within the civil service and learn of a crime while discharging their functions and on account of them (Article 225(1)).

176. The inquiry comprises the procedures aiming at inquiring about the occurrence of a crime, at determining its perpetrators and their liability, as well as at finding out and obtaining evidence in order to decide on an accusation (Article 245(1) of the Criminal Procedure Code).

177. This preliminary investigation is led by the Procuratorate, whereas the criminal police bodies act under its direct guidance and functional dependence. Subject to the exceptions provided for by law, the Procuratorate may delegate to these bodies the carrying out of investigation acts. The examining judge may also intervene at this stage. The acts that he alone may perform or he alone may order or authorize are exhaustively listed in law, such as the adoption of most coercive measures,

house search and seizure of correspondence. (Articles 246 and 250 to 252 of the Criminal Procedure Code).

178. The inquiry is subject to a maximum duration of 6 or 8 months. An accusation is brought, if the Procuratorate has gathered enough evidence that a crime has been committed and of the identity of its perpetrator (Articles 258(1) and (2) and 265 of the Criminal Procedure Code).

179. In another perspective, given the fact that civil servants incur disciplinarily liability for the offences they commit, once an act of torture, which constitutes a disciplinary offence, is known to have been committed, disciplinary proceedings must be instituted (Articles 280(1) and 290 (2) of the GPWMPA).

180. The commission of a disciplinary offence may be reported to the offender's superior by anyone, and such report is compulsory for any civil servant who knows about the offence (Article 290(1) of the GPWMPA).

181. The competence to institute disciplinary proceedings rests with the entity responsible for the service to which the offender is assigned at the moment he commits the offence, and, as a rule, it is also the responsibility of this entity to render the ensuing decision (Article 318(2) of the GPWMPA).

182. Disciplinary proceedings are independent from their criminal counterparts. Whenever disciplinary proceedings disclose the existence of facts that are also punishable under the criminal law, the authority empowered to institute the relevant criminal proceedings shall be notified (Article 287(1) and (2) of the GPWMPA).

183. Once the decision to commit to trial a civil servant in the course of criminal proceedings has become non-appealable, it must be notified to the defendant's place of work. On the other hand, once a sentence convicting a civil servant of any crime has become non-appealable, the institution of disciplinary proceedings shall be originated as well, with regard to all facts that have been held proven in the sentence and have not

been subject to previous proceedings (Articles 287(3) and 288(1) of the GPWMPA).

184. The public entities and authorities referred to are to apply the disciplinary norms laid down in the GPWMPA, although, in some cases, just in subsidiary terms.

### ARTICLE 13

185. Under Article 36(1) of the Basic Law, “Macao residents shall have the right to resort to law and to have access to the courts, to lawyers’ help for protection of their lawful rights and interests, and to judicial remedies”. Second paragraph of the same Article further states that “Macao residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel”.

186. The Basic Law also establishes that residents are entitled to lodge complaints to the Chief Executive and the Legislative Assembly (Articles 50(18) and 71(6) respectively).

187. It should be reminded that the fundamental rights of residents are shared, to the extent foreseen in law, by non-residents in the MSAR (Article 43 of the Basic Law).

188. The Criminal Code grants the offended, in this case, the victim of an act of torture, the right to file a complaint and it further provides for the transmission of this right to his relatives in the event of his death (Article 105(1) and (2)).

189. The following table contains a chart of complaints about police violence in the period that comprises the years 2000 and 2004:

Type of Crime	2000	2001	2002	2003	2004*
Homicide committed in police quarters	**	0	1	0	0
Homicide committed in a correctional facility	**	0	1	0	1

Type of Crime	2000	2001	2002	2003	2004*
Rape	0	1	1	1	0
Other crimes against sexual freedom/self-determination	0	1	0	0	0
Offence to physical integrity	4	1	0	12	10
Extortion	1	0	0	0	1
Breaking and entering	1	0	0	0	1
Threat	4	5	3	3	1
<b>Total</b>	<b>10</b>	<b>8</b>	<b>6</b>	<b>16</b>	<b>14</b>

Source: Security Forces Coordination Office

\* The available data for the year 2004 refer to the period between January and June

\*\* Data not available

190. The following table contains a chart of denunciations of the commission of crimes of torture and other cruel, degrading or inhuman treatment, received by the Procuratorate in the period that comprises the year 2000 and 2004:

Crime	Occurrence	Accusation	Opening of enquiry	Follow-up
Torture and other cruel, degrading or inhuman treatment	20/08/2001	25/08/2001	04/04/2002	Filed
Usurpation of function for the commission of torture	23/04/2002	23/04/2002	23/04/2002	Filed
Serious torture and other cruel, degrading or inhuman treatment	26/10/2002	26/10/2002	05/11/2002	Filed

Source: Public Prosecutions Office

191. Also, listed hereby are the denunciations of commission of the crime of torture and other cruel, degrading or inhuman treatment by civil servants, as received by the CAC, an entity that, as already referred, has functions that are characteristic of an Ombudsman:



Date of occurrence	Date of accusation	Follow-up
09/2001	10/2001	Investigation proceeding has not been instructed after preliminary enquiry
10/2001	10/2001	Investigation proceeding has been instructed but was filed in 10/2002, due to lack of evidence and non-collaboration of the complainant
02/2002	02/2002	Investigation proceeding has been instructed but was filed in 05/2002, due to lack of evidence and non-collaboration of the complainant
05/2002	05/2002	Investigation proceeding has been instructed but was filed in 08/2002**
05/2002	05/2002	Investigation proceeding has been instructed but was filed in 02/2003, due to lack of evidence
06/2002	06/2002	Forwarded to the entity bearing the complaint and therein filed due to lack of evidence
08/2002	08/2002	Investigation proceeding has not been instructed after preliminary enquiry
09/2002	10/2002	Investigation proceeding has been instructed but was filed in 01/2003, due to lack of evidence
10/2002	06/2003	Investigation proceeding has not been instructed after preliminary enquiry
06/2003	06/2003	Forwarded to the entity bearing the complaint and therein filed due to existence of inconsistencies in the allegations and in the presented evidence
08/2003	08/2003	Investigation proceeding has not been instructed after preliminary enquiry

Source: CAC

\* All accusations received by the CAC refer to cases of police violence.

\*\* Complaint was directly made to the responsible entities, which instituted internal investigation proceedings that led to the filing of the investigation proceeding of the CAC.

192. Under the framework governing judicial intervention, as mentioned, the prisoner is entitled to submit representations and complaints. Specific laws, described earlier, accord prisoners those rights, allowing them to address the judge, the director and staff of the facility, as

well as prison inspectors. Such rights, which, also as explained, are equally guaranteed, with necessary adaptations, to minors allocated in educational establishment or entrusted to an institution under the Social Protection Legal Framework.

193. Under the framework governing non-judicial intervention, the handling of suggestions and complaints received by public entities is ruled by Decree-Law 5/98/M, of 2 February. In its Article 21, it is foreseen that these entities should make a monthly analysis of the received opinions, suggestions, complaints and grievances while the reply to complaints and grievances by identified authors should be handled swiftly within 45 days from the date of the entry of the document.

194. The referred Decree-Law 31/99/M, which approves the Mental Health Regime, ensures that persons suffering from mental disorders are entitled to receive support in exercising the right of objection and complaint (Article 4(1)(m)).

195. Within the health care system, a technical commission exists, named Evaluation Centre of Complaints Relating to Health Care Activities. This commission is an advisory organ whose functions are to receive complaints by persons who feel harmed by health care workers' conducts, to examine them from a technical-scientific point of view, to propose the administrative procedure that should be adopted, to inform the complainants of the proposed administrative procedure, as well as to seek an extra-judicial conciliation when the liability of the HD is evident. Those complaints must be analysed within a maximum period of 48 hours. The commission includes two representatives of the HD and two representatives of the private sector (Order 5/2002 of the HD).

#### **ARTICLE 14**

196. The right of the victim of an act of torture to obtain compensation ensues from the system of civil liability for unlawful acts, regulated in Articles 477 to 491 of the Macao Civil Code.

197. The general principle of this system imposes on the person who, wilfully or just negligently, unlawfully violates the rights of another person or any legal provision intended to protect another person's interests, the obligation to compensate the offended for the damages arising from the violation (Article 477(1) of the Macao Civil Code).

198. This system covers compensation both for property-related damages, *i.e.* losses sustained by the offended that can be assessed in pecuniary terms, wherein expenses incurred for his treatment might be included, and for non-property related damages (*i.e.*, harm caused to goods unconnected to the property of the offended, such as physical integrity or honour), that, owing to their seriousness, are worthy of legal protection (Articles 477 (1) and 489 (1) of the same Code, respectively).

199. In the event of the death of the victim, persons who were entitled to demand maintenance from the offended or whom the latter used to give it to fulfill a natural obligation are entitled to compensation (Article 488 (3) of the Civil Code) and the heirs of the offended are entitled to receive, by way of inheritance, the compensation corresponding to the property-related damages that the offended would have suffered.

200. The right to compensation for non-property related damages is also transmitted by the death of the victim, falling jointly to his spouse (provided that the latter was not separated *de facto* from the former) and to his children or other descendents; failing them, it falls to the person who was on a *de facto* union basis with the victim and to victim's parents or other ascendants; failing them, it falls to the victim's siblings and nephews. In this case, both the damages suffered by the victim and the ones suffered by his relatives entitled to compensation may be taken into account (Article 489 of the Civil Code).

201. As this petition for civil compensation is founded on the commission of a crime, it must be filed, as a rule, within the corresponding criminal proceedings. It is up to the offended himself to petition for the compensation. Judicial authorities and the criminal police bodies being

bound to make this right known to the person entitled to it at the moment the latter partakes in the criminal proceedings (Articles 60 and 62(1) and 64(1) of the Criminal Procedure Code).

202. Even where no petition for civil compensation has been filed, the judge shall adjudicate in his decision, even if it was of acquittal, an amount intended to redress damages, whenever it is justifiable for a reasonable protection of the interests of the offended, provided that the latter does not oppose and the prerequisites as well as the amount of the compensation to be adjudicated have been proven on trial (Article 74(1) of the Criminal Procedure Code).

203. As an additional guarantee for the redress of damages suffered by a victim of violent crimes, it was established a specific legal framework by Law 6/98/M, of 17 August.

204. This framework accords victims of severe corporal injuries, if caused as a direct result of intentional acts of violence committed in the MSAR (or aboard vessels or aircrafts registered therein) as well as persons to whom the civil law grants maintenance rights, and persons that voluntarily helped the victim or cooperated with the authorities in preventing the offence or in pursuing the wrongdoer, the right to request the MSAR for an allowance.

205. The Law establishes as prerequisites that the victims were legally in the Region, the injury has caused death, permanent incapability or a temporary and absolute incapability to work for not less than 30 days, the damage has considerably affected the victim's life standard and no redress has been obtained through the execution of a condemnatory sentence or, while the obtainment of a redress from the persons responsible is not foreseeable, it is not possible either to secure effective and sufficient reparation from any other sources.

206. The victims may apply for this allowance even if the identity of the offender is not known or, by some other reasons, he cannot be accused or convicted. The redress of non-property related damages is

also permitted, as long as it is warranted by their nature and seriousness (Article 1(2) and (5) of Law 6/98/M).

207. The amount of the allowance is set in accordance with equity. Amounts received from other sources, in particular, from the offender or from social security are taken into account (Article 2(1) and (3) of Law 6/98/M).

208. Victims are furthermore entitled to specific allowance borne by the Region, particularly, to medical and surgical care, to medication, to nursing care and to hospitalisation (Article 2(2) of Law 6/98/M, applicable per force of Article 28 of Decree-Law 40/95/M, of 14 August).

209. According to Article 3(1) of Law 6/98, the allowance may, however, “be (...) reduced or denied altogether, in view of the victim’s or applicant’s behaviour before, during or after the commission of the acts, his relationship with the offender or his milieu, or if the allowance runs counter the sentiment of justice or public order, particularly on account of the victim’s or applicant’s connections with organized crime”. Article 3(2) stipulates that, save exceptional circumstances, no allowance is to be granted when the victim belongs to the offender’s household or cohabits with him in family-like conditions.

210. In case of urgency, anticipated amounts deductible from an allowance may be granted. The power to grant the allowance as well as the anticipated amounts is vested in the Chief Executive (Articles 4 and 7 of Law 6/98).

## ARTICLE 15

211. In the MSAR, the principle of legality of evidence is expressly enshrined in Article 112 of the Criminal Procedure Code.

212. According to this principle, only evidence that is not banned by law is admissible. In Article 113 of the said Code, methods of obtaining

of evidence which are forbidden are expressly listed. It stipulates, as a general rule, that “evidence obtained by torture or coercion or, in general, by means of any offence to physical or moral integrity of a person is null and void and must not be used”. For this purpose, it also establishes what is deemed offensive to physical or moral integrity.

213. Thus, and in concrete, all “evidence obtained, even with the consent of the person concerned, by means of: a) disturbance of his freedom of will or decision through ill-treatment, offence to physical or moral integrity, administration of means of whatever nature, hypnosis or employment of cruel or deceitful means; b) disturbance, by whatever means, of his memory or evaluation capability; c) use of force beyond the cases and limits provided for by law; d) threatening with a legally inadmissible measure (...)” are offensive.

214. It should be highlighted that, in accordance with the same Article 113, evidence extorted by any of the referred illegal means may be used for criminal prosecution against those resorted to them.

## **ARTICLE 16**

215. The analysis undertaken in this third part of the present report with respect to the fulfilment in the MSAR of the obligations arising from the Convention proceeds from the types of criminal offences as defined in the Macao Criminal Code. Therefore, all the observations made herein are applicable, without distinction to the prohibition of torture and the prohibition of other cruel, degrading or inhuman treatment.

216. In fact, the MSAR criminal law provides for and punishes infliction of torture, which along with cruel, degrading or inhuman treatment which incorporates in the unlawful criminal acts, defined in Article 234 of the Criminal Code, as already analysed. This provision defines torture and cruel, degrading or inhuman treatments without drawing any distinction between these concepts.

217. Thus, let it be reminded, an act is qualified as an act of torture, or cruel, degrading or inhuman treatment if it consists “in the infliction of intense physical or psychological suffering or a severe physical or psychological fatigue, or involving the use of chemical substances, drugs or other natural or artificial means, intended to impair the victim’s ability to make decisions or freely express his will” (Article 234(2) of the Criminal Code).

218. Remarks already made concerning the scope limitation of the type of offence defined in this Article 234, by virtue both of its objective element (the specific characteristics the offender is required to possess) and of its subjective element (specific intention that underlies the offender’s conduct), hold likewise for cruel, degrading or inhuman treatment.

219. On the other hand, infliction of torture or cruel treatment constitute an aggravating circumstance for the crime of homicide, for the crime of offence to physical integrity and, alongside degrading or inhuman treatment, for the crime of kidnapping (Articles 129(2)(b), 140(1) and (2) and 152(2)(b) of the Criminal Code).

220. Cruel treatment is one of the ways of committing the crime of ill-treatment or excessive loads on minors, incapables or one’s spouse and, alongside inhuman or degrading treatment, the crime of genocide (Articles 146(1)(a) and 230(c) of the Criminal Code).

**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 Criminal Code;
3. Macao Criminal Procedure Code;
4. Macao Civil Code;
5. Decree-Law 62/88/M of 11 July, which restructures Prison Guard's Career;
6. Law 22/88/M of 15 August, which defines the Legal Framework on the Specific Careers of the Health Department;
7. Decree-Law 87/89/M of 21 December, which approves the General Provisions for Workers in the Macao Public Administration, as last amended by Decree-Law 89/99/M, of 29 November (GPWMPA);
8. Decree-Law 68/92/M of 21 September, which establishes the Legal Framework on Medical Careers and Pre-career Training;
9. Decree-Law 72/92/M of 28 September, which reorganizes and updates the Regime on Civil Protection, as amended by Administrative Regulation 32/2002, of 16 December;
10. Decree-Law 40/94/M of 25 July, which approves the Regime on the Implementation of Measures that Deprive Liberty;
11. Decree-Law 60/94/M of 5 December, which establishes the Disciplinary Framework on the Macao Corps of Prison Guards;
12. Decree-Law 66/94/M of 30 December, which approves the Statute of Militarized Personnel of the Security Forces;



13. Law 9/95/M of 31 July, which establishes the Legal Framework on Nursing Career;

14. Decree-Law 59/95/M of 27 November, which rules the Interruption of Pregnancy, as amended by Law 10/2004 of 22 November;

15. Order 8/GM/96 of 5 February, which establishes the Macao Prison Regulations;

16. Decree-Law 15/96/M of 25 March, which enacts the Statute of Teachers and Educators from Private Schools Integrated into the Public School Network;

17. Law 2/96/M of 3 June, which sets the Rules to be Observed in Acts Involving Donation, Collection and Transplantation of Human Organs and Tissues;

18. Permanent Instruction 106 of 23 September 1996, which regulates the processing of and direction conferred to prisoners and detainees;

19. Decree-Law 41/97/M of 22 September, which establishes the Legal Framework on the Training of Teachers at Pre-school, Primary and Secondary Levels, Defining its Coordination, Administration and Support System;

20. Order 46/SAAEJ/97 of 2 December, which establishes the Disciplinary Framework on Pupils in Official Educational Institutions;

21. Decree-Law 5/98/M of 2 February, which governs official communications, the use of symbols and logotypes, the standardization of documents of Public Administration, simplification of some administrative procedures and establishment of the validity of documents issued outside the territory of Macao that produce effects in Macao;

22. Order 53/SAS/98 of 18 May, which maps out the courses for promotion posts within the Public Security Police's junior careers;

23. Decree-Law 27/98/M of 29 June, which reorganizes the Judiciary Police;

24. Decree-Law 32/98/M of 27 July, which defines the functions, powers and internal organization of the Judiciary Police School;

25. Law 6/98 of 17 August, which regulates the protection of victims of violent crimes;

26. Decree-Law 26/99/M of 28 June, which maps out the special regime careers of the Judiciary Police's personnel;

27. Decree-Law 31/99/M of 12 July, which approves the Mental Health Regime;

28. Decree-Law 52/99/M of 4 October, which approves the Legal Framework on Administrative Infractions and Related Procedure;

29. Decree-Law 65/99/M of 25 October, which establishes the Legal Framework on Educational and Social Protection on Juvenile Justice;

30. Decree-Law 67/99/M of 1 November, which approves the Statute of the Teaching Personnel of the Education and Youth Department;

31. Decree-Law 81/99/M of 15 November, which restructures the Macao Health Department;

32. Decree-Law 86/99/M of 22 November, which governs judicial intervention in the enforcement of prison sentences and security measures involving internment and their respective effects;

33. Decree-Law 111/99 of 13 December, which establishes the Legal Framework on the Protection of Human Rights and Human Dignity in the Face of Biology and Medicine Applications;

34. Law 1/1999 of 20 December, which approves the Reunification Law;

35. Law 3/1999 of 20 December, which approves the publication and forms of legislations to be used therein;

36. Law 9/1999 of 20 December, which approves the Law on the Basis of the Organization of the Judiciary, as amended by Law 9/2004 of 18 August;

37. Law 10/1999 of 20 December, which approves the Legal Statute of the Members of the Judiciary;

38. Law 10/2000 of 14 August, which approves the Organic Law of the Commission Against Corruption;

39. Law 11/2001 of 6 August, which creates the Customs Service of the Macao Special Administrative Region of the People's Republic of China;

40. Administrative Regulation 17/2001 of 27 August, which establishes the rules on the training course and traineeship for entry into the judiciary or the Procuratorate;

41. Administrative Regulation 22/2001 of 22 October, which governs the structure and operation of the Public Security Police;

42. Law 3/2002 of 4 March, which establishes the Legal Framework on the Notifications to be Addressed to the Central People's Government by the MSAR Competent Authorities;

43. Order 5/2002 of the Health Department of 26 June, which sets up the *Evaluation Centre of Complaints Relating to Health Care Activities*;

44. Order of the Secretary for Social Affairs and Culture 60/2002 of 23 July, which maps out the scientific-pedagogical organization and the new curriculum of the three-year diploma course in General Nursing at the Macao Polytechnic Institute's School of Health Sciences;

45. Law 9/2002 of 9 December, which approves the Law on Internal Security;

46. Law 3/2003 of 24 February, which establishes the Legal Framework on Customs Personnel's Careers, Posts and Pay;

47. Order of the Secretary for Security 32/2003 of 23 June, which enacts the General Regulations of the Instruction Course;

48. Administrative Regulation 27/2003 of 25 August, which regulates the procedure for enrolment, selection and training for entry into, or accession to, the special regime careers in the Judiciary Police;

49. Law 1/2004 of 23 February, which approves the Legal Framework on the Recognition and Loss of Refugee Status;

50. Law 6/2004 of 2 August, which approves the Law on Illegal Immigration and Expulsion;

51. Order of the Secretary for Security 36/2004 of 9 August, which establishes the curricula of the officers' training courses held in the Academy of Security Forces.



**ANNEX II****MULTILATERAL TREATIES MENTIONED IN THE REPORT**

1. Convention for the Pacific Settlement of International Disputes, done at the Hague on 29 July 1899;
2. Convention for the Pacific Settlement of International Disputes, done at the Hague on 18 October 1907;
3. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva on 12 August 1949;
4. Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva on 12 August 1949;
5. Geneva Convention (III) Relative to the Treatment of Prisoners of War, done at Geneva on 12 August 1949;
6. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, done at Geneva on 12 August 1949;
7. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 8 June 1977;
8. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977;
9. Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951;
10. Protocol relating to the Status of Refugees, done at New York on 31 January 1967;

11. Vienna Convention on Diplomatic Relations, done at Vienna on 18 April 1961;

12. Vienna Convention on Consular Relations, done at Vienna on 24 April 1963;

13. International Covenant on Civil and Political Rights, adopted at New York on 16 December 1966.

**CONSIDERATION OF REPORTS FROM STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**FOURTH PERIODIC REPORT OF STATES PARTIES DUE IN  
2001**

**ADDENDUM**

**MACAO SPECIAL ADMINISTRATIVE REGION**

Page 1, line 3

For Russian Federation should read China

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**CONSIDERATION OF REPORTS FROM STATES PARTIES  
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**FOURTH PERIODIC REPORTS OF STATES PARTIES DUE IN  
2001**

**ADDENDUM**

**MACAO SPECIAL ADMINISTRATIVE REGION**

*Page 10, fifth line*

*Paragraph 58. should be indented and read c)*

*Eighth line: paragraph 59. should be indented and read d)*

*Eleventh line: paragraph 60. should be indented and read e)*

*Sixteenth line: paragraph 61. should be indented and read f)*

*Twentieth line: paragraph 62. should be indented and read g)*

*Twenty fourth line: paragraph 63. should be indented and read h)*

*Twenty seventh line: paragraph 64. should read 58.*

*Renumber following paragraphs accordingly.*

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**WRITTEN REPLIES BY THE MACAO SPECIAL  
ADMINISTRATIVE REGION TO THE LIST OF ISSUES TO  
BE CONSIDERED DURING THE EXAMINATION OF THE  
FOURTH PERIODIC REPORT OF MACAO\* (CAT/C/MAC/4)**

**Article 1**

*Question 1. Please clarify whether the author of a crime of torture can be any public official or other person acting in official capacity or with the consent or acquiescence of public officials according to article 1 of the Convention, or whether this is limited - as laid down in article 234 paragraph 1 of Macao Special Administrative Region Criminal Code - to acts committed by persons “charged with the function of prevention, follow-up, investigation or knowledge of criminal infractions, or disciplinary infractions, the application of related sanctions, or the protection, guard or supervision of a detainee or prisoner”.*

1. In the Macao SAR’s legal system, the crime of torture and other cruel, degrading or inhuman treatments (hereinafter “crime of torture”) is, in fact, a specific crime, in the sense that its legal type requires an element relating to the status of the perpetrator.

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

2. Nevertheless, it should not be assumed that the definition of the crime of torture is inadequate *vis-à-vis* the Convention's definition, either in terms of the enumeration of the functions used to describe that status, or in terms of encompassing only acts committed by persons charged with such functions. In this respect, it is important to stress firstly that the range of functions enumerated in article 234(1) of the Criminal Code of Macao (hereinafter CC) is very broad, covering public functions by means of which a person actually may hold and/or exercise authority over another person, and secondly that there is no restriction as to the form of exercising such functions and/or the capacity in which they may be exercised.

3. Indeed, under article 234(1) of the CC, as the expression "*charged with the function of (...)*" covers merely *de jure* situations, *i.e.*, situations in which the referred functions have been legally assigned, the crime of torture can be committed only by a public official or other person acting in an official capacity. Yet (and as mentioned in paragraph 48 of the report), *de facto* situations are covered under article 235 of the said Code, which stipulates that any person who, on his/her own initiative, or following orders from a superior, usurps the functions [referred to in article 234(1)] (any of them) to commit any of the acts described therein [in article 234(2)] shall be liable to the same penalty; thus, in this latter case the author of the crime of torture can be any person *de facto* holding those functions and/or acting in a *de facto* capacity.

4. Therefore, article 235, read in conjunction with article 234(1), must be interpreted as meaning that the element of the crime of torture relating to the status of the perpetrator is not limited to acts committed by persons charged with public functions; on the contrary, that element is expressly enlarged as to comprise the commission of the crime by any public official or other person acting in official capacity or with the consent or acquiescence of public officials.

**Question 2.** *Please also clarify the difference between the crimes provided for by the Criminal Code in articles 234 (torture) and 236 (serious torture). Please elaborate on the difference contained in paragraph 2 of article 234 between intense suffering (sofrimento agudo) and severe fatigue (cansaço grave).*

5. On the subject of the difference between the crimes of *torture* provided for in articles 234 and 235 and the crime of *serious torture* provided for in article 236, technically speaking article 236(1) embodies the crime of “*aggravated torture*”, and article 236(2) provides for an aggravation of the penalty of the crime of torture on the basis of its effect/result.

6. According to prevailing Doctrine, in case of “*aggravated torture*” (article 236(1)), all the essential constituents of the crime are the same (author, act and purpose) but for:

- (a) Two specificities at the level of the concept of torture, namely, the act of torture caused serious physical injury to the victim (article 236(1)(a)), and the act of torture was carried out by particularly harsh means and/or methods, such as beatings, electric shocks, mock executions or hallucinogenic substances (article 236(1)(b)), the enumeration being exemplificative; and
- (b) One specificity regarding the conduct of the author of the act of torture, more precisely, if he/she habitually commits acts of torture; it is the habitual conduct of the offender that constitutes the justification for the aggravated type.

7. As to the aggravation of the penalty (article 236(2)), the emphasis lies upon the consequences added to the injurious level of the crime of torture itself, namely, suicide or death of the victim.

8. Regarding the difference between *intense suffering*<sup>1</sup> (*sofrimento agudo*) and *severe fatigue* (*cansaço grave*), both expressions are to be

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<sup>1</sup> In fact, the word used in article 234(2) in relation to suffering is “acute”, which was translated as “intense”. In the context of this provision, the words *agudo* and *grave* in Portuguese (the original language in which the relevant provision was drafted), are almost synonymous.

constructed literally. *Suffering* means pain, whether physical or mental, and though *fatigue* is obviously a type of suffering, it may be caused without inflicting pain *stricto sensu*; the scholar example which is normally given is that of submitting a person to a prolonged interrogatory. Article 234(2) does not distinguish between torture and other cruel and degrading or inhuman treatments (hereinafter “ill-treatment”); however, there is an implicit differentiation in terms of degree of gravity of the acts in question, torture being at the top, followed by inhuman and degrading treatments. By reason of the principle of legality, which precludes interpretation by analogy in criminal law, it is believed the rationale to be that of covering all possible forms of conduct/means that may be used to impair a victim’s ability to make decisions or freely express his/her will, including those that by themselves would not be considered *intense* or *severe* but become ill-treatment over a period of time.

## Article 2

***Question 3. Please provide further information on the basic legal safeguards of persons detained in police custody, in particular their right of access to legal counsel and to an independent doctor, to be informed of their rights and to inform a relative promptly of their detention.***

9. Police criminal bodies may gather identification from persons found in public places habitually frequented by criminals. If there is ground for suspicion, and the requested persons cannot or refuse to identify themselves, the police can take them to the nearest police station and compel them to remain there for the time strictly necessary for their identification, but in any case, never for more than 6 hours. However, for the purpose of identifying suspected persons, the police must always allow suspects to communicate with any trustworthy person named by them (article 233(1), (2) and (3) of the Criminal Procedure Code of Macao (hereinafter CPC).

10. Detention, as a measure of a preventive nature, can only take place for the reasons and in situations expressly provided for by law (articles 237 to 240 of the CPC).

11. Persons detained on the suspicion of having committed a crime must be conferred the *status* of an “*accused*” and, within 48 hours of their detention, brought before a court for summary trial or presented to a Judge either for a first judicial questioning or for the application of a coercive measure (article 47(1)(c) read together with article 237(a), both of the CPC).

12. The status of accused is acquired by means of the suspected person being notified that he/she is, from that moment onwards, the subject of a criminal procedure. Such notification (verbal or written) is made by the judicial authority or a criminal police body. The accused is, then, informed of, and if necessary given explanation about, his/her procedural rights and obligations (article 47(2) of the CPC), which are expressly enumerated in article 50 of the CPC, including, but not exclusively, the right to choose a legal representative (or to request for one to be appointed), the right to the presence of a defence lawyer in all procedural acts, and the right to communicate with the defence lawyer in private, even if under detention, *etc.*

13. General conditions for detention on remand to be effected are laid down in article 243 of the CPC, which determines the ‘corresponding application’ to detention, *inter alia*, of article 179(4) and (5) on pre-trial detention. Meaning that, subject to the consent of the detained person (except for minors, whose consent is not required), the detention must be immediately communicated to a relative, or to any trustworthy person named by the detained person, or to a lawyer of his/her choice.

14. If the accused is not interrogated by a Judge immediately after the detention, he/she is presented to a Procurator, who may question him/her. The rules governing the first judicial questioning apply to this first non-judicial questioning, except for the presence of the defence lawyer, which is mandatory only if the accused, after being informed of his/her rights, requests so. Another exception consists of the fact that the Procurator, in cases of terrorism or highly violent organized crime, has the power to prevent the accused from communicating with other persons, except with the defence lawyer (article 129 of the CPC).



15. Notwithstanding, and within the referred deadline of 48 hours, if the accused was not released by the Procurator or was not presented to the court to be judged immediately, the first judicial questioning takes place (article 128(1) of the CPC).

16. The purpose of this first judicial questioning is solely to ensure the legality of the detention on remand and/or the application of a coercive measure, including pre-trial detention. The Judge must inform the accused of his/her rights under article 50 of the CPC, of the reasons for the detention and the facts imputed to him/her (article 128(5) of the CPC). The absence of the defence lawyer in the first judicial questioning results in it being void and null (article 106(c) of the CPC).

17. Whenever (during this questioning, or latter on in the course of the investigation or of the criminal enquiry) a Judge decides to order the continued detention of an accused pending trial, such a decision must be motivated, notified to the accused and, with his/her consent, immediately communicated to a relative, or to a trustworthy person named by the accused, or to his/her defence lawyer (article 179(4) of the CPC).

18. At any time, during detention on remand, medical care is provided if the detained person so requests or if deemed necessary.

19. If subject to the coercive measure of pre-trial detention, or after judgement, when convicted to a prison sentence, detainees/prisoners continue to enjoy their fundamental rights, except for those limitations inherent to the deprivation of liberty (article 3 of Decree-Law 40/94/M, of 25 July, which approves the Legal Framework on the Execution of Measures Depriving Personal Freedom).

20. Immediately upon entrance into the Prison Establishment, all inmates have the right to contact their families or their legal representatives to inform them about their situation. If they are not able to do so, such communication is performed by the Prison Establishment's social workers (article 6(1) of Decree-Law 40/94/M).

21. Also upon their entrance into the Prison Establishment, but within 48 hours, all inmates are interviewed by a social worker, who has the duty to inform them of the laws and regulations that apply to them, in particular those related to the Prison Establishment's legal framework (article 6(2)(a) of Decree-Law 40/94/M). Besides the interview, all inmates are also given a copy of the "*Notice to Prisoners*", which contains information on their rights and obligations in the Prison Establishment.

22. Moreover, during the mentioned interview, the social worker must inquire about any questions put forward by inmates requiring resolution either immediately or in short, medium or long term, as well as to assess if inmates show any sign of poor health condition. In both cases, if urgency is detected, the social worker is bound to immediately report the situation to the relevant authority in order that the problem may be solved without delay (article 6(2)(d)(e) in conjunction with 6(3) of Decree-Law 40/94/M).

23. Notwithstanding, within 72 hours of their entrance into the Prison Establishment, a health check-up is performed to all inmates by a doctor of the Prison Establishment with a view to identify any illness, physical or physiological disorder requiring the adoption of special and immediate measures (article 39 of Order 8/GM/96, of 5 February, which approved the Macao Prison Regulations).

24. All inmates are entitled to free basic medical care. Other types of medical care are also provided, but at their own expenses. However, in case of lack of economic resources, such expenses are supported, totally or partially, as appropriate, by the Social Reintegration Fund (article 41(1), (2) and (3) of Decree-Law 40/94/M and articles 40(1), (2), and (5), 41 and 42 of Order 8/GM/96).

25. Inmates are entitled to consult/be treated by a doctor that is not the Establishment's staff, upon advice or proposal of the Prison Establishment's doctor and subject to authorization of the Prison Establishment's Director. The corresponding expenses are supported by inmates if this occurs on their initiative, and by the Prison Establishment in

other cases (article 48 of Decree-Law 40/94/M and article 40(6) of Order 8/GM/96).

***Question 4. Please provide further information with respect to the law and practice related to the length of custody and pre-trial detention.***

26. As mentioned in the previous answer, the maximum length of custody for identification purposes is of 6 hours. As for detention on remand (which, in the context of Macao SAR's legal system, is assumed to properly concur with the term "custody" used in the present question), its maximum length is of 48 hours.

27. In fact and also as mentioned, detention on remand is a preventive measure, as opposed to procedural measures of a coercive nature, in particular pre-trial detention, which can only take place for the reasons and in situations expressly provided for by law.

28. More precisely, such reasons are those provided under article 237 of the CPC, *i.e.*: (a) to ensure that the detainee, within 48 hours, is brought before a court for summary trial or presented to a Judge either for a first judicial questioning and/or for the application of a coercive measure; (b) to ensure prompt appearance of the detainee before a Judge for a procedural act; (c) to notify the detainee of a judgement delivered *in absentia* whereby he/she has been convicted; or (d) to ensure execution of an imprisonment penalty or of a security measure involving internment.

29. As regards the situations in which detention on remand can occur, firstly, according to article 238 of the CPC, it is possible in cases of *flagrante delicto* of criminal offences punishable by a prison term (*flagrante delicto* is defined in article 239 of the CPC). In such cases, detention may be carried out by any judiciary authority, by the police or by any person, though, in the latter case, subject to the condition that the competent authorities are not present and cannot be called in time.

30. Apart from *flagrante delicto*, detention requires a warrant issued by a judge or, where pre-trial detention is admissible, by the Procuratorate. Exceptionally, criminal police authorities may also order detention, provided that: (a) pre-trial detention is admissible in the concrete case; (b) there are serious reasons to fear that the suspect poses an escape risk; (c) such issuance is urgent in view of the impossibility of timely intervention by the competent judiciary authorities (article 240 of the CPC).

31. Detention warrants are issued in triplicate and must contain (a) the signature of the issuing authority; (b) the suspect's identification; (c) the indication of the facts that motivate the detention and of the respective legal grounds. Warrants that fail to contain any of the said elements are null and void (article 241 of the CPC). Furthermore, a criminal police authority, whenever it detains a person, is bound to immediately inform the Judge or, as appropriate, the Procuratorate (article 242 of the CPC).

32. In the previous answer, reference was also made to the fact that under article 243 of the CPC, the "corresponding application" to detention, *inter alia*, of article 179(4) and (5) is determined as a general condition for its effectiveness. The other requisite, provided for in article 177(2) of the CPC (also applicable to detention by force of article 243 in quotation) is that procedural measures of a coercive or pecuniary nature cannot be applied whenever there are justified reasons to believe that there is no criminal liability and/or the criminal proceedings ceased to exist (e.g. by reason of amnesty, statute of limitations, *etc.*).

33. Any authority having ordered detention or to whom the detainee has been presented shall release him/her immediately if it becomes manifestly apparent that there was a mistaken identification of the detained person, or if detention was not legally admissible, or has become unnecessary (article 244 of the CPC).

34. As explained before, detained persons must immediately be notified of and attributed the status of an accused and presented to a court

for trial or to a judge for a first questioning and/or for the application of a coercive measure. Without prejudice to the application of procedural measures (coercive or pecuniary), from the moment of such notification, the accused is assured the exercise of procedural rights and duties, must be judged in the shortest period of time possible compatible with guarantees of defence and is presumed innocent until found guilty by final decision of a court of law (article 49 of the CPC).

35. The application of any procedural measure of a coercive nature may be ordered only by a judge either in the first judicial questioning or afterwards, at any moment during the enquiry, in this case such application must be, whenever possible and appropriate, preceded by a hearing of the accused. The accused is informed of the consequences of non-compliance with the applied measures.

36. Pre-trial detention is the most severe type of coercive measure as it implies deprivation of the person's freedom. Though the law determines certain specific cases in which the judge should apply it, the general rule is the exceptional nature of pre-trial detention (articles 178(3), 186 and 193 of the CPC).

37. In this respect, it should be stressed that the principles of legality, subsidiarity and necessity constitute key principles of the Macao SAR's criminal justice system. These principles are contained in several provisions of the Basic Law, the CC and the CPC. Hence, procedural measures are subject to the *numerus clausus* rule, and must be applied in accordance with the principles of adequacy and proportionality, *i.e.*, they must be adequate for the purpose of crime prevention, according to the circumstances of the case, and proportional to the seriousness of the criminal offence and the applicable punishment. Such measures may not affect the exercise of fundamental rights, insofar as these are not incompatible with the purposes and objectives of crime prevention (articles 176 and 178 of the CPC).

38. As general requisites, the application of procedural measures (except for the declaration of identity and residence) depends upon the concrete

existence of: (a) escape or risk of escape of the accused; (b) risk of the course of the investigation being corrupted, particularly with regard to the obtaining of evidence; (c) danger to public order or risk of further criminal activity pondered on the basis of the nature or circumstances of the criminal offence or of the personality of the accused (article 188 of the CPC).

39. Specific requisites are set forth case-by-case in regard to each of the measures (articles 181 to 186 of the CPC).

40. As to pre-trial detention in concrete, it may be applied only if other procedural measures less restrictive of freedom are inadequate or insufficient and if: (a) there are strong indication that the accused has wilfully committed a crime carrying a minimum sentence of 3 years of imprisonment, or (b) the accused has entered and remained illegally in the Macao SAR, or surrender or expulsion proceedings have been instituted against him/her (article 186(1) of the CPC). However, when it becomes apparent that the accused suffers from mental anomaly, instead of pre-trial detention, the Judge, after hearing the defence lawyer and whenever possible a family member, may order the accused to be preventively confined to a psychiatric hospital or to a suitable analogous institution (article 186(2)).

41. In addition, the judge should also apply pre-trial detention to certain cases, namely if the crime was committed with violence and carries a maximum sentence of over 8 years of imprisonment and, provided that the same penalty is imposable, to the crimes of larceny of vehicles or forgery of documents related to such vehicles or to their identification, falsification of currency, securities/bonds, stamp values and stamps, or of equivalent articles, and their respective circulation, and of illicit manufacture and traffic of drugs (article 193 of the CPC).

42. Any court decisions imposing pre-trial detention must be accompanied by an order elaborating the facts motivating the decision.

43. Furthermore, procedural measures must be revoked by the judge if they have been illegally applied or if the circumstances that lawfully

justified their application cease to exist. Proceedings for revocation or modification of procedural measures may be initiated *ex officio* or at the request of the Procurator or the accused (article 196 of the CPC). Specifically in relation to pre-trial detention, the judge must re-examine on a quarterly basis the conditions which justify its continued application (article 197 of the CPC). The termination of procedural measures of a coercive nature is governed by article 198 of the CPC.

44. Pre-trial detention must be discontinued after a period of: (a) 6 months without the formal accusation having been made; (b) 10 months, in cases where investigation is due, and there is no decision for committal to trial; (c) 18 months, if no conviction has been rendered by a court of first instance; and (d) 2 years, if no conviction with *res judicata* force has been rendered (article 199(1) of the CPC). In case of the crimes referred to in article 193, such time limits are increased to 8 months, 1 year, 2 years and 3 years, respectively (article 199(2) of the CPC). If the criminal proceedings have been suspended by reason of a separate judgment on a prejudicial question, the time limits referred to in article 199(1)(c) and (d) and 199(2) are increased by 6 months (article 199(3) of the CPC).

45. There is no available data on the average length of pre-trial detention in 2008. However, according to information provided by the Office of the President of the Court of Final Appeal, the average length of pre-trial detention was of 6.4 months in 2006.

***Question 5. Please explain whether Macao SAR's authorities would have jurisdiction over Chinese military present in Macao for violation of the rights protected under the Convention. If so, please clarify under which jurisdiction (i.e. civil or military) and where (i.e. in mainland China or in Macao) such persons would be eventually tried and prosecuted.***

46. In accordance with the first paragraph of article 14 of the Basic Law, the Central People's Government (CPG) is responsible for the defence of the Macao SAR.

47. On the other hand, under article 19 of the Basic Law, although the Macao SAR's courts are granted jurisdiction over all cases in the Region, an exception is made as regards acts of state, such as defence and foreign affairs. Whenever such questions arise in the adjudication of cases, the courts must obtain a certificate from the Chief Executive on questions of fact concerning acts of state. This certificate is binding on the courts. Before issuing such a certificate, the Chief Executive must obtain a certifying document from the CPG.

48. Furthermore, the Law of the People's Republic of China on Garrisoning the Macao Special Administrative Region, adopted by the 10<sup>th</sup> Meeting of the Standing Committee of the Ninth National People's Congress (NPC) on 28 June 1999, and promulgated by Order 18 of the President of the People's Republic of China, is one of the 11 national laws that apply in the Macao SAR (hereinafter Garrison Law).

49. The Garrison Law was added to the list of the National Laws in Annex III of the Basic Law by Decision of the Standing Committee of the NPC, adopted at its 13<sup>th</sup> Meeting on 20 December 1999, and became effective on that same date. This law was published in the Macao SAR's *Official Gazette* by means of Notice of the Chief Executive 4/1999.

50. Under the quoted law, the military forces, *i.e.*, the Macao Garrison of the Chinese People's Liberation Army, stationed by the CPG in the Macao SAR for defence, are subject to the direction of the Central Military Commission of the People's Republic of China (article 2).

51. However, the said law also stipulates that the members of the Macao Garrison shall abide by not only national laws but also the laws of the Macao SAR (articles 4, 16(2) and 19(1)).

52. Concretely on the issue of jurisdiction, either civil or criminal, expressly reiterating the rule contained in article 19 of the Basic Law, the Garrison Law sets forth specific provisions in its Chapter V (articles 20 to 28).



53. In what relates to criminal jurisdiction, it stipulates that criminal offences committed by members of the Macao Garrison shall be under the jurisdiction of the military judicial organs; but offences which are committed by members of the Macao Garrison when not performing their official duties and in such violation of the personal right or property right of Macao residents or other persons who are not of the Macao Garrison or otherwise in such contravention of the laws of the Macao SAR as to constitute crimes shall be subject to the jurisdiction of the judicial organs of the Macao SAR. Moreover, Macao residents or other persons not of the Macao Garrison involved as defendants in the criminal cases of members of the Macao Garrison under the jurisdiction of the military judicial organs shall be tried by the courts of the Macao SAR (article 20 of the Garrison Law).

54. As regards to civil jurisdiction, the underlying reasoning is similar. Where any member of the Macao Garrison, in contravention of the Macao SAR's law, infringes the civil rights of any Macao resident or other person not of the Macao Garrison, the infringed party may bring an action in court. If the infringement act is committed when not performing their official duties, the Macao SAR's courts have jurisdiction, whilst if the act is committed when performing their official duties, the Supreme People's Court of the People's Republic of China has jurisdiction, and compensation for any loss or injury incurred by such acts is governed by the Macao SAR's law (article 23 of the Garrison Law).

***Question 6. With reference to paragraphs 96 and 97 of the Macao SAR's report, please clarify whether the right of necessity or the exculpatory state of necessity (articles 33 and 34 of the Criminal Code) may be considered grounds for excluding criminal responsibility also in case of acts of torture.***

55. In this context, it is important to stress that one of the peremptory requisites of both the *right of necessity* and the *exculpatory state of necessity* is the existence of a sensible superiority of the interest/value to be safeguarded as compared to the interest sacrificed. In the Macao SAR,

torture or inhuman treatments are not only expressly prohibited at the highest level (article 28 of the Basic Law), and the absolute prohibition contained in the Convention applies directly, but also the crime of torture is a crime against humanity, *i.e.*, the highest of all of the protected interests. Therefore, it is not foreseeable how the mentioned requisite could be fulfilled in case of acts of torture.

***Question 7. Please clarify how the independence and impartiality of the judiciary is maintained.***

56. In the Macao SAR, the judiciary is composed of the courts and the Procuratorate. The independence and impartiality of both magistracies is guaranteed at all levels.

57. As mentioned, the Macao SAR's courts are vested with independent judicial power, including that of final adjudication and they have jurisdiction over all cases in the Region, except as regards acts of state (article 19(1)(3) of the Basic Law and article 1(2) of Law 9/1999, of 20 December, which approves the Basis of the Organization of the Judiciary, as amended by Law 9/2004, of 18 August).

58. Courts exercise judicial power independently and are subordinated to nothing but law, and are not subject to any interference (articles 83 of the Basic Law and 5(1)(2) of Law 9/1999).

59. Another factor of the independence and impartiality of the judiciary arises from the independence, irremovability and unaccountability of the Judges themselves.

60. All judges are appointed by the Chief Executive on the recommendation of an independent commission composed of one local Judge, one lawyer and five eminent persons from other sectors. The Presidents of the courts are chosen from the respective comprising Judges.

61. The appointment by the Chief Executive of the judges of the Court of Final Appeal (including its President) shall be reported to the Standing

Committee of the NPC for record (articles 87(1)(4) and 88(1) of the Basic Law and 15(1) and 91(3) of Law 10/1999).

62. Judges are subject solely to law and cannot be transferred, suspended, retired, discharged, dismissed or removed, except as provided for by law. And by law, they may only be removed for inability to discharge their functions or for behaviour incompatible with their post (see *infra*). Irremovability is guaranteed for the whole duration of the term in office for which they were appointed. Judges also enjoy immunity from legal action for discharging their judicial functions (articles 87(2) and 89(2) of the Basic Law and 4 to 6 of Law 10/1999, which approves the Legal Statute of the Members of the Judiciary).

63. The assignment, transfer and promotion of Judges, as well as the supervision and initiation of disciplinary proceedings related to them are of the competence of an autonomous and independent body, the Judicial Council. This Council is composed of the President of the Court of Final Appeal, two selected judges and two persons designated by the Chief Executive (articles 93 to 95 of Law 10/1999).

64. The removal of the Judges of the Court of Final Appeal (including its President) is decided by the Chief Executive upon the recommendation of a review committee consisting of members of the Legislative Assembly. Such removal also shall be reported to the Standing Committee of the NPC for record (articles 87(4) of the Basic Law and 18(2) of Law 10/1999).

65. However, any removal of judges for inability to discharge their duties or for misbehaviour may only be decided by the Chief Executive on the recommendation of a tribunal appointed by the President of the Court of Final Appeal and consisting of not less than three local judges (articles 88(3) and 87(2) of the Basic Law, respectively).

66. As mentioned, the Procuratorate is part of the judiciary. This magistracy comprises three levels: the Procurator-General, the Assistant Procurators and the Deputies of the Procurator. The Procurator-General is appointed, upon nomination by the Chief Executive, and removed, by the

CPG. Assistant Procurators and Deputies of the Procurator are nominated by the Procurator-General and appointed by the Chief Executive, and they may be compulsively retired or dismissed only by the Chief Executive (article 90(2)(3) of the Basic Law, article 62(2) of Law 9/1999 and articles 15(2)(3) and 84(1) of Law 10/1999, respectively).

67. The Procuratorate carries out its powers and functions independently and is free from any interference. Its independence and impartiality are guaranteed by the duties of strict observance of the law and obedience toward objectivity criteria in handling cases (articles 90 of the Basic Law, 12 and 55 of Law 9/1999).

68. Although the magistrates of the Procuratorate may be held liable, in accordance with the law, for the performance of their duties and for the compliance with instructions given by their superiors, they may not be suspended, compulsively retired, discharged, dismissed or removed from their functions, except as provided for by law. These magistrates are guaranteed stability with regard to the duration of their term of office (articles 10 and 11 of Law 10/1999).

69. All magistrates may be held accountable under disciplinary rules. The law classifies as a disciplinary infraction any conduct by Judges or magistrates of the Procuratorate, including negligent acts, which constitute a breach of their professional duties or any action or omission in their public life or with repercussions thereto which are incompatible with the required dignity of their functions. The disciplinary action may be carried out only by the Judicial Council and by the Council of Magistrates of the Procuratorate, respectively (articles 64 *et seq* of Law 10/1999).

70. Judges and magistrates of the Procuratorate may not perform any public or private duties, except teaching or scientific research, and may not be appointed to public commissions, unless exceptionally authorised by the Judicial Council or by the Procurator, respectively. During their term of office, both legal professions may not concurrently take on other public or private positions, nor may they take on any position in organisations of

a political nature (article 89(3) of the Basic Law and articles 22 and 24 of Law 10/1999).

71. The selection of magistrates is made according to their professional qualifications. They may be appointed on a permanent basis or for a tenure of 3 years (in the case of local magistrates), or hired for a period of 2 years (in the case of foreign magistrates) (articles 13 and 14 of Law 10/1999).

### Article 3

***Question 8. Please provide information on:***

***(a) The number of asylum requests registered, the number of requests granted and the number of expulsions/deportations/removals since the review of the last periodic report, disaggregated by age, sex and nationality, and country to which returned;***

72. Requests for recognition of refugee status are assessed according to Law 1/2004, of 23 February, which approves the Legal Framework on the Recognition and Loss of Refugee Status. The data on refugees' applications is as follows:

Refugees' applications								
Country of nationality	2001	2002	2003	2004	2005	2006	2007	2008 <sup>(1)</sup>
Pakistan	1	1	1 <sup>(2)</sup>					1
Colombia		1						
Afghanistan			1	1				
Nepal								
Sri Lanka		1				3		
Syria								1 <sup>(3)</sup>
Nigeria	1							

Source: Commission for Refugees of the Macao SAR

Notes: <sup>(1)</sup> As of May; <sup>(2)</sup> Involving 6 persons (household); <sup>(3)</sup> Involving 4 persons (household).

73. From the mentioned 13 applications, 2 of the requests were considered inadmissible, 6 have been denied since they did not meet the necessary legal requisites for the status of refugee to be granted, and the remaining 5 are pending under analysis. None of such decisions was appealed. The concerned persons left the Macao SAR and returned to the places of origin, except for one (who went to Singapore). Repatriation expenses were supported by the Macao SAR in 5 of those cases.

***(b) Whether there is a provision prohibiting return or expulsion if a person faces a risk of torture, how often persons have made such claims, and with what result;***

74. The principle of *non-refoulement*, as expressed in article 33 of the 1951 Convention relating to the Status of Refugees (and its 1967 Protocol), in article 13 of the International Covenant on Civil and Political Rights (ICCPR) (read together with its article 7), and in article 3 of the present Convention, applies directly. Indeed, in the Macao SAR's legal system, customary international law and applicable conventional international law have immediate effect and prevail upon ordinary law (article 1(3) of the Civil Code of Macao that establishes the rules on direct sources of law and their hierarchy).

75. For the purposes of its application, Law 1/2004 determines that it should be constructed as one with the 1951 Convention and related 1967 Protocol. It also directly refers to the refugee's definition contained in the Convention, together with articles 6 and 7 of the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) (articles 2(1) and 3).

76. If a person seeking to be recognized as refugee claims to have been or to face the risk of being tortured or ill-treated, the Macao SAR's Commission for Refugees, in cooperation with the UNHCR, will assess the claim according to international law's criteria to which the internal law directly refers to. It is worth mentioning that the UNHCR is entitled to take direct part in the application process, to freely contact persons who

request the status of refugee (as well as refugees), and to give them any kind of support that it deems necessary. Furthermore, all decisions within the application process must be notified to the UNHCR (article 4 of Law 1/2004).

***(c) Whether asylum seekers and/or irregular migrants are held in detention and, if so, indicate their number and whether they are separated from convicted persons or persons detained pending trial;***

77. Persons who seek to be recognized as refugees are not held in detention. They merely have the obligation of informing the *Migration Service* about their address, and of presenting themselves at the day, hour and place fixed by the competent authority (article 8 (2)(3) of Law 1/2004).

78. Pending decision, if they are minors, mentally disturbed or lack economic resources, the Macao SAR Government, through the Social Welfare Bureau (SWB), grants them (and in the latter case, also to their families) the necessary support. Vulnerable persons, *i.e.*, incapable persons or persons who have been victims of any kind of abuse (including torture) are entitled to special support (articles 32 to 34).

79. According to Law 6/2004, of 2 August, on Illegal Immigration and Expulsion, illegal migrants may be held in detention in police stations up to 48 hours or in special detention centres up to 60 days. Any detention for more than 48 hours may only occur to guarantee the execution of expulsion or for security reasons and must be communicated to the Procuratorate and submitted to judicial appreciation, within that same period of 48 hours. The Judge has the power to decide on the detention and if continued detention is ordered, the Judge may, at any moment, *ex officio* or at request, decide to revoke it. Detained migrants have the same rights and obligations granted to persons to whom the status of an accused has been attributed (articles 2 to 7 of Law 6/2004).

80. In practice, as the detention centre is not yet constructed, once the 48 hours deadline has expired, if the process of expulsion is not concluded, migrants are released on condition and must report to police station periodically. Once the decision of expulsion is taken, persons are notified that they must leave the Macao SAR, otherwise they will be obliged to do so. In most cases, they do so of their own free will.

81. The following table refers to persons who have been forced to leave the Macao SAR.

Persons forced to leave the Macao SAR					
	2004	2005	2006	2007	2008 <sup>(1)</sup>
Due to problems related to travel documents/all nationalities	90	64	75	115	30
Illegal entrance/Chinese Mainlanders	403	516	1085	1575	570

Source: Security Forces Coordination Office

Note: <sup>(1)</sup> As of May 2008.

***(d) Whether an appeal filed against a decision of expulsion/deportation/removal has suspensive effect;***

82. As mentioned, requests for the recognition of refugee status are governed by Law 1/2004. The decision is of the competence of the Chief Executive. In case of denial of the request, the interested person may file an appeal to the Court of Second Instance. The appeal has suspensive effect (articles 20 to 22 of Law 1/2004).

83. As to expulsion, the process must be instructed by the police within 48 hours, and submitted for decision to the Chief Executive, whose order may be appealed in general terms (articles 8 to 10 of Law 6/2004). The hierarchic administrative appeal has suspensive effect, except when there is prejudice to public interest (article 157 of the Administrative Proceedings Code). The judicial administrative appeal does not have



suspensive effect, unless suspension is requested by the interested person and the court declares it. This request is judged as a prejudicial question within the main procedure (article 120 and *seq.* of the Administrative Procedure Code).

84. However, it should be mentioned that expulsion is restricted to situations that constitute illegal migration as expressly defined in the law (*e.g.*, it does not apply to persons who entered legally but engaged in illegal work). The order of expulsion implies prohibition of entrance into the Macao SAR for a certain period of time. There are no cases of appeal against expulsion decisions, but only against decisions prohibiting entrance (which may occur by other reasons).

85. The following tables refer to appeals against decisions of prohibition of entrance.

Administrative appeals against decisions of prohibition of entrance					
Results of the appeals	2004	2005	2006	2007	2008 <sup>(1)</sup>
Rejected	1	6	13	17 <sup>(2)</sup>	4
Decision reversed totally or partially	2	6	9	8 <sup>(3)</sup>	6
Pending	0	0	0	1	1
Suspended	0	3	0	1	1
Unknown/non available data	0	4	2	1	0
<b>Total</b>	<b>3</b>	<b>19</b>	<b>24</b>	<b>28</b>	<b>12</b>

Source: Office of the Secretary for Security

Notes: <sup>(1)</sup> As of May 2008; <sup>(2)</sup> One of these appeals relates to 14 persons; <sup>(3)</sup> One of these appeals relates to 3 persons.

Judicial appeals against decisions of prohibition of entrance					
Results of the appeals	2004	2005	2006	2007	2008 <sup>(1)</sup>
Rejected	3	2	3	1	0
Decision reversed totally or partially	-	-	1	1	1
Pending	-	-	-	1	2
<b>Total</b>	<b>3</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>3</b>

Source: Office of the Secretary for Security

Note: <sup>(1)</sup> As of May 2008.

*(e) Whether foreign persons charged with an administrative or criminal offence enjoy in practice the right to be informed promptly and in a language they understand of the nature and cause of the charge against them.*

86. In the Macao SAR, the language of judicial proceedings is one of its official languages (Chinese or Portuguese); whenever a person (regardless of that person's nationality or of his/her position in the proceedings) does not know or cannot speak the language in which the proceedings are conducted, an interpreter is assigned free of charge (article 82 of the CPC, article 89 of the Civil Procedure Code, applicable to administrative procedure by force of article 1 of the Administrative Procedure Code).

#### Article 4

*Question 9. With reference to question 2 above, please clarify the criteria used by the investigative and judicial authorities to legally qualify and distinguish in practice the crimes referred to in articles 234 (torture) and 236 (serious torture) of the Criminal Code.*

87. As mentioned in response to question 2, the distinction between the crimes of *torture* and *serious torture* rests with the means/methods employed, the outcome of the offence and the habitual conduct of the offender, which vary and may only be qualified on the basis of the circumstances of each concrete case and collected evidence. Criminal investigations are directed by the Procurators, who are magistrates with competence, *inter alia*, to oversee the legality of all criminal police bodies' actions during the investigation process, and to decide whether to prosecute or not after the completion of an investigation. Overall, the CPC lays down strict rules on systems such as investigation, evidence, *etc.* The Procurators strictly abide by the principle of legality in the collection of

evidence in criminal procedures, and at the same time, safeguard the legal rights and interests of the parties involved.

***Question 10. With reference to paragraph 116 of the Macao SAR's report and article 22, paragraph 1 of the Criminal Code, please clarify whether all attempts to commit torture (in all the forms provided for by articles 234, 235 and 236 of the Criminal Code) are punished in practice, and please provide relevant statistics on actual practices for the period since the review of the last periodic report.***

88. As of May 2008, there were no cases reported to, or detected by the police, and consequently there were no prosecutions for crimes of torture in the Macao SAR.

***Question 11. Please provide information, disaggregated by sex, age and nationality of victims, on the number of investigations, convictions and sanctions that have been applied in cases of human trafficking, commercial sexual exploitation or sexual violence since the review of the last periodic report. Is there any form of rehabilitation or assistance programme in place for persons subject to these forms of violence, including for children?***

89. In relation to trafficking in persons, it is worth stressing that to better tackle the problem, a new law was recently adopted. The previous provision criminalizing trafficking in persons was inserted in a special criminal law on organized crime and raised serious doubts as regards to the constitutive elements of the crime. It was found to be of limited scope and not in line with the definition contained in the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

90. The new Law 6/2008, of 23 June, on the Fight Against Trafficking in Persons, provides not only for a modern enlarged definition, but also

includes legal persons' criminal liability, extends jurisdiction, and sets up measures on victims' protection. Meanwhile, prevention has already been reinforced by the establishment of an interdepartmental body, the Commission to Follow the Implementation of Dissuasive Measures Against Trafficking in Persons (created by Order of the Chief Executive 266/2007, of 10 September).

91. As regards data on trafficking, there are only available data in relation to: (a) non-residents allegedly engaged in prostitution whenever there are reasons to suspect a link with procurement, and (b) situations related to criminal offences investigated or under investigation by the police. It should be noted that as prostitution is not a crime, the concerned persons are intercepted during police raids, and thus, unless there are grounds to suspect such persons to be victims of a crime, they are dealt with within immigration and permanence laws.

92. The following table illustrates the number of cases of suspected criminal offences of procurement (either simple, aggravated or procurement of minors, provided for and punished under articles 163, 164 and 170 of the CC, respectively) investigated or under investigation by the police.

Suspected cases of procurement					
Types of cases	2004	2005	2006	2007	2008 <sup>(1)</sup>
Explored, but voluntarily engaged in prostitution	N/A	20	30	25	2
Forced/by means of deception	N/A	14	19	19	8
Forced/by means of violence	N/A	24	8	7	5
<b>Total</b>	<b>N/A</b>	<b>58</b>	<b>57</b>	<b>51</b>	<b>15</b>

Source: Security Forces Coordination Office

Note: <sup>(1)</sup> As of May 2008.

93. Crimes of procurement usually entail more than one person (offenders or victims), the following tables refer to the same cases as the previous table, though in the perspective of the persons involved, alleged victims.

Non-residents allegedly engaged in prostitution/by place of origin					
Nationality/gender <sup>(1)</sup>	2004	2005	2006	2007	2008 <sup>(2)</sup>
Mainland China	25	46	46	45	12
Nigeria	0	0	0	0	2
Mongolia	0	4	0	0	0
Philippines	0	3	4	3	0
Russia	4	1	0	0	0
South Africa	1	0	0	0	0
Uzbekistan	0	3	0	0	0
Vietnam	5	1	7	3	1
<b>Total</b>	<b>35</b>	<b>58</b>	<b>57</b>	<b>51</b>	<b>15</b>

Source: Security Forces Coordination Office

Notes: <sup>(1)</sup> All female; <sup>(2)</sup> As of May 2008.

Non-residents allegedly engaged in prostitution/by age					
Age	2004	2005	2006	2007	2008 <sup>(1)</sup>
≤ 14	N/A	0	0	1	1
15	N/A	0	2	3	0
16	N/A	2	6	2	1
17	N/A	5	4	5	1
18	N/A	11	1	3	2
19	N/A	6	10	3	0
20	N/A	5	2	7	3
21	N/A	4	5	8	1
22	N/A	6	4	3	0
23	N/A	4	1	0	0
24	N/A	2	1	5	2
≥ 25	N/A	13	21	11	4
<b>Total</b>	<b>35</b>	<b>58</b>	<b>57</b>	<b>51</b>	<b>15</b>

Source: Security Forces Coordination Office

Note: <sup>(1)</sup> As of May 2008.

94. With reference to criminal offences against sexual freedom and sexual auto-determination, the desegregated data per gender, age and place of origin available concerns only to situations related to criminal offences investigated or under investigation by the police.

Sexual abuse of children (article 166 of the CC) ( $\leq 14$ years old)										
Age <sup>(2)</sup>	2004		2005		2006		2007		2008 <sup>(1)</sup>	
	F	M	F	M	F	M	F	M	F	M
3			1		2					
4									1	
5					1		2			
8									2	
9			2							
11	1						1			
12	1		3		2		3		2	
13	2		3		2		2			1
<b>Total</b>	<b>4</b>		<b>9</b>		<b>7</b>		<b>8</b>		<b>6</b>	

Source: Security Forces Coordination Office

Notes: <sup>(1)</sup> As of May 2008; <sup>(2)</sup> With the exception of one victim from Mainland China, all the other victims are from the Macao SAR.

Statutory rape (article 168 of the CC) (14 to $\leq 16$ years old)					
Age <sup>(2)</sup>	2004	2005	2006	2007	2008 <sup>(1)</sup>
	F	F	F	F	F
14	1	1		5	
15		2			
<b>Total</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>5</b>	<b>0</b>

Source: Security Forces Coordination Office

Notes: <sup>(1)</sup> As of May 2008; <sup>(2)</sup> All victims are from the Macao SAR.

Sexual act with minors (article 169 of the CC) (14 to $\leq 16$ years old)										
Age/place of origin <sup>(2)</sup>	2004		2005		2006		2007		2008 <sup>(1)</sup>	
	F	M	F	M	F	M	F	M	F	M
14	2		3		2		1		3	

Sexual act with minors (article 169 of the CC) (14 to ≤ 16 years old)										
Age/place of origin <sup>(2)</sup>	2004		2005		2006		2007		2008 <sup>(1)</sup>	
	F	M	F	M	F	M	F	M	F	M
15	2		1		4		4		1	
<b>Total</b>	<b>4</b>		<b>4</b>		<b>6</b>		<b>5</b>		<b>4</b>	

Source: Security Forces Coordination Office

Notes: <sup>(1)</sup> As of May 2008; <sup>(2)</sup> With the exception of one victim from the USA, all the other victims are from the Macao SAR.

Rape (article 157 of the CC) (≥ 16 years old)/by place of origin					
Place of origin	2004	2005	2006	2007	2008 <sup>(1)</sup>
	F	F	F	F	F
Hong Kong SAR, China		1			
Macao SAR, China	9	8	9	3	7
Mainland, China	6	6	2	3	5
Taiwan, China		1			
India				1	
Philippines		2	2	1	
Thailand	1				
USA			1		
<b>Total</b>	<b>16</b>	<b>18</b>	<b>14</b>	<b>8</b>	<b>12</b>

Source: Security Forces Coordination Office

Note: <sup>(1)</sup> As of May 2008.

Rape (article 157 of the CC) (≥ 16 years old)/by age					
Age	2004	2005	2006	2007	2008 <sup>(1)</sup>
	F	F	F	F	F
16	1	1			2
17	3	3	2		2
18			1		
19	2	2	1		1
20		2	1	1	1

Rape (article 157 of the CC) ( $\geq$ 16 years old)/by age					
Age	2004	2005	2006	2007	2008 <sup>(1)</sup>
	F	F	F	F	F
21			1	2	
22		2	1	1	
23	1	2			1
24			1		
25	9	6	6	4	5
Total	<b>16</b>	<b>18</b>	<b>14</b>	<b>8</b>	<b>12</b>

Source: Security Forces Coordination Office

Note: <sup>(1)</sup> As of May 2008.

95. The remaining available data on criminal offences against sexual freedom and sexual auto-determination is desegregated as follows:

No. of criminal procedures regarding offences against sexual freedom and sexual auto-determination		
Years	Instituted	Accusations brought to court
2001	121	32
2002	68	17
2003	49	22
2004	45	23
2005	65	28
2006	55	23
2007	47	16

Source: Procuratorate Statistics for the years 2001-2007

96. On rehabilitation or assistance programs for victims, it should be mentioned that such assistance exists and is provided to all persons, including children, by the Macao SAR's SWB. Assistance is given on the basis of an assessment of the victims' needs and it may include accommodation and shelter, financial assistance, medical referral, clinical psychological consultation, individual counselling, and legal consultation.



97. When notified of a case of sexual exploitation or sexual violence, trafficking in persons, *etc.*, the SWB assigns specialized workers to the case. Upon their assessment, the SWB provides shelter and accommodation to victims, as well as an allowance, depending on their financial status. For those who are minors, institutional accommodation may be considered. Victims are referred to the Macao SAR's Health Department for health check-up or to receive treatment, as appropriate. Some of the victims may require psychological services and support; in such cases individual counselling is provided, or suggested to them for their consideration. Victims are also referred to clinical psychological assessment when necessary. These services aim to assist victims to resume their daily routine, to lower the intensity of psychological distress and to help them adjust better to the possible imminent changes. It is common that victims are in need of legal advice, if so, and without prejudice to the legal aid system, SWB's legal consultants are made available.

## Article 5

***Question 12. Please clarify whether Macao can establish its jurisdiction over acts of torture committed abroad according to article 5, paragraph 2 of the Convention, even if these acts are not punishable under the legislation in force where the act has been committed. Also, please indicate whether Macao SAR has ever prosecuted anyone present in its territory who has committed a crime of torture outside of Macao.***

98. In case of acts of serious torture (article 236 of the CC) committed abroad, the Macao SAR's criminal jurisdiction may be established over such acts of torture according to article 5(2) of the Convention, even if these acts are not punishable under the legislation in force where the act has been committed, provided that the offender is found in Macao and cannot be surrendered to another Territory or State (article 5(1)(b) of the CC).

99. With respect to other torture offences (and correlated offences), the exercise of extraterritorial jurisdiction depends upon the fulfilment of certain conditions enumerated in article 5(1)(c) of the CC, as detailed in the report with reference to article 5 of the Convention. One of those conditions is, in fact, dual criminality, *i.e.*, the act [of torture] must be “*punishable under the legislation in force where the act has been committed*”. However, the very same provision, by stating “*unless the jus puniendi is not exercised there*”, makes it explicit that the requisite of dual criminality is overridden in the absence of the exercise, by any reason, of punitive power in the place where the act was committed.

100. Furthermore, and still on this issue, it seems pertinent to mention that article 7 of the CC, on *sedes delicti*, rules that an “act is considered to have been committed at the place where totally or partially, and under any form of complicity, the offender acted or, in the case of an omission, should have acted, as well as in the place where the typical result of the offence has been produced”.

101. Notwithstanding, and also as mentioned in the report, pursuant to article 5(2) of the CC, extraterritorial jurisdiction may also be established over any acts committed outside the Macao SAR whenever the obligation to bring such acts under trial arises from an applicable international convention.

102. In all cases, extraterritorial jurisdiction is subject to the principle of *ne bis in idem* (article 6 of the CC).

### Articles 6, 7, 8, 9

***Question 13. With reference to paragraph 104 of the Macao SAR’s report, please update the Committee on the progress of the ongoing negotiations with respect to bilateral agreements on mutual legal assistance in criminal matters with mainland China and HKSAR.***

103. The new law on international mutual legal assistance in criminal matters, Law 6/2006, of 24 July, entered into force on 1 November 2006.

An interregional Agreement on the Transfer of Sentenced Persons between the Macao SAR and the Hong Kong SAR was signed on 20 May 2005. Negotiations with Mainland China regarding an interregional agreement on mutual legal assistance in criminal matters are still ongoing.

***Question 14. Please provide information on cases, if any, where Macao SAR rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus has engaged its own prosecution as a result.***

104. There was no such types of cases.

#### Article 10

***Question 15. Please provide more detailed information on the instruction and training provided to law enforcement officials and other public officials with respect to human rights and specifically the treatment of detainees and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Please also provide information on training in areas such as non-coercive investigatory techniques. What monitoring and evaluation is used to assess the impact of these programmes, if any?***

105. Law enforcement officials are given specific training (before, as a prerequisite of their career and while in the exercise of functions). Both the Academy of the Public Security Forces and the Judiciary Police Training School comprise in their curricula disciplines such as deontology, ethics, law (including international law), judiciary thematic and police culture. Human rights are taught within those subject matters. The prevention of torture and other ill-treatments is of special interest for law enforcement

professions, whose members have the duty of protecting and abiding by the law in general and fundamental rights in special. It is addressed in various manners, either in general or in the context of their legal duties or within specific professional techniques.

106. Likewise, in the Prison Establishment, apart from other educational requirements, specific pre-job training is offered. All prison guards must have knowledge of the applicable legislation on the execution of measures depriving personal freedom, of prison regulations, and of the legal framework on the discipline of prison guards (approved by Decree-Law 60/94/M, of 5 December). Prison guards are specially trained to deal with prisoners. This training aims at ensuring that they understand the rights and responsibilities of prisoners and are able to take proper action and to deal with them within the strict limits imposed by law and in full respect for justice, urbanity and human dignity.

107. There are also other mechanisms to ensure that both the fundamental rights of the prisoners and the rules applicable in the Prison Establishment are respected. As mentioned, inmates are informed of their rights. All inmates have the right to send and receive letters, to complain and to petition. They may complain about an unlawful order or bring any matter before the Director of the Prison Establishment, prison guards and prison inspectors. They also may complain or file a petition to judicial authorities and the Procuratorate, to the Prison Establishment's Board, and to other entities who are legally entitled to address the subject of the petition, such as the Commission Against Corruption (CAC), the Legislative Assembly or, if they are foreign, their Consulates. All complaints and petitions must be immediately forwarded to the competent authority. Inmates must be notified in writing of the decision as well as their respective grounds (articles 80 and 81 of Decree-Law 40/94/M and article 6(2) and (3) of Order 8/GM/96).

108. Moreover, audio/video surveillance is set up in interrogatory rooms of the Judiciary Police and in the Prison Establishment.

109. The juvenile justice system is now regulated under Law 2/2007, of 16 April, which entered into force on 16 October 2007. Minors aged between 12 and 16 who have committed a criminal offence are subject to an educational regime in a special facility, the Young Offenders Institute (YOI), under the supervision of the Legal Affairs Bureau. The applicable measures are of a solely educational nature, aimed at the minor's socio-educational needs and social integration. In the YOI, the staff internal regulations detail the instructions and procedures for dealing with the residents. Pre-job training on the application of the internal regulation is offered for new staff and internal trainings are also arranged for the whole staff team periodically. In addition, regular conferences between the operational and administrative staff are held to discuss such issues and to ensure that all activities are carried out in accordance with the law and internal regulations. Up to the present, there are no reported cases or complaints of residents being subjected to any kind of ill-treatments or punishment.

110. Professional permanent training is also available and encouraged, some training actions are directed to law enforcement officials and others to all public officials. Each year a vast number of training actions, seminars, conferences, etc., are organized by the referred educational institutions and by the Legal and Judicial Training Centre; many of them focus on the protection of human rights. For example, recently in regard to law enforcement officials, seminars on "*The accused in the context of the Criminal Procedure Code*", "*Evidence within criminal procedure*", "*Police acts within criminal procedure*", "*Fight against trafficking in human beings*" took place. And for all public officials, training actions were also held, such as the "*International Conference on Criminal Procedure Law: Challenges in the 21<sup>st</sup> Century*", "*Human Rights, UN Covenants and Fundamental Rights: Glorified Esperanto? Realizing Human Rights*", "*Conventions on Human Rights and their implementation*", "*Conventions on Human Rights and related hot topics*", etc.

***Question 16. Please indicate further the nature of programs to train medical and health personnel to identify and document cases of torture and assist in the rehabilitation of victims. Please comment on any training to develop more gender-sensitive treatment in both legal and medical institutions.***

111. Though there is no training on how to identify and document cases of torture or assist in the rehabilitation of victims of torture in specific, the internal regulation for medical staff encompasses rules on how to identify and report cases of abuse or ill-treatments in general. In addition, instructions and procedures have been detailed for developing gender-sensitive treatment.

112. The Emergency Department of the public Hospital *Conde de São Januário* provides immediate assistance treatment to victims, conducts medical examination and drafts medical reports upon request by the competent authorities; in the event of a person with suspicious injury or suspected cases of torture, the Emergency Department will notify the relevant authority for follow-up action.

## Article 11

***Question 17. Please provide updated information on the number of persons and the occupancy rate of the places of deprivation of liberty in the criminal justice system, disaggregated by gender, ethnicity or nationality, and age.***

113. At present, the prison's capacity is of up to 1,050 prisoners. As at 30 June 2008, there were 863 prisoners in the Prison Establishment with an occupancy rate of approximately 82%. The relevant data is as follows:

Composition of the Macao Prison's population							
Nationality	Convicted		On remand		Subtotal p/ gender		Subtotal p/ Country
	M	F	M	F	M	F	
Chinese <sup>(1)</sup>	515	56	202	16	717	72	789

Composition of the Macao Prison's population							
Nationality	Convicted		On remand		Subtotal p/ gender		Subtotal p/ Country
	M	F	M	F	M	F	
Bengali	2	0	0	0	2	0	2
Burmese	1	0	1	0	2	0	2
Cambodian	0	1	0	0	0	1	1
Filipino	1	2	0	2	1	4	5
Ghanaian	0	0	1	0	1	0	1
Indonesian	1	0	0	0	1	0	1
Ivorian	0	0	2	0	2	0	2
Japanese	1	0	0	0	1	0	1
Korean	2	0	1	0	3	0	3
Malaysian	2	0	5	0	7	0	7
Mongolian	1	0	0	0	1	0	1
Nepalese	1	0	0	0	1	0	1
Nigerian	2	0	0	0	2	0	2
Pakistani	1	0	0	0	1	0	1
Peruvian	1	0	0	0	1	0	1
Portuguese	7	0	0	0	7	0	7
Russian	0	0	0	1	0	1	1
Singaporean	1	0	0	0	1	0	1
South African	0	0	1	0	1	0	1
Tanzanian	0	0	4	0	4	0	4
Thai	14	0	0	0	14	0	14
Turkish	2	0	0	0	2	0	2
Uganda	0	0	0	1	0	1	1
Vietnamese	10	2	0	0	10	2	12
Subtotals	565	61	217	20	782	81	-
Totals	<b>626</b>		<b>237</b>		<b>863</b>		<b>863</b>

Source: Macao Prison

Note: <sup>(1)</sup> Subdivision is shown in the next table.

Subdivision of Chinese nationals							
China's place of residence	Convicted		On remand		Subtotal p/ gender		Subtotal p/ place of residence
	M	F	M	F	M	F	
Hong Kong SAR residents	36	1	14	2	50	3	53
Macao SAR residents	298	29	87	9	385	38	423
Mainland China residents	171	26	99	5	270	31	301
Taiwan residents	10	0	2	0	12	0	12
Subtotals	515	56	202	16	717	72	-
Totals	<b>571</b>		<b>218</b>		<b>789</b>		<b>789</b>

Source: Macao Prison

Composition of the Macao Prison's population by age group			
Age group	M	F	Subtotals p/ age group
≤ 20 years old <sup>(1)</sup>	111	12	123
21 to 30 years old	272	18	290
31 to 50 years old	363	46	409
≥ 51	36	5	41
Totals	<b>782</b>	<b>81</b>	<b>863</b>

Source: Macao Prison

Note: <sup>(1)</sup> Young inmates aged between 16 and 21 are segregated from adults and housed in separate blocks (article 7(2) of Decree-Law 40/94/M).

114. As to the composition of the population under the juvenile system, the available data is as follows:

Minors under the responsibility of the Young Offenders Institute						
Interned minors	2003	2004	2005	2006	2007	2008 <sup>(1)</sup>
Minimal No.	65	64	71	71	48	35
Maximum No.	79	78	83	81	83	47
Average No.	68-72	71-75	72-78	74-78	46-67, 75-78	36-46

Source: Macao Young Offenders Institute

Note: <sup>(1)</sup> As of the 2<sup>nd</sup> semester of 2008.



Minors under the responsibility of the Young Offenders Institute by age and gender												
Age groups	2003		2004		2005		2006		2007		2008 <sup>(1)</sup>	
	M/F	F	M/F	F	M/F	F	M/F	F	M/F	F	M/F	F
< 14	2	0	5	2	4	1	2	0	5	2	2	0
14-16	47	8	42	14	52	18	59	15	34	2	34	6
Totals	<b>49</b>		<b>47</b>		<b>56</b>		<b>61</b>		<b>39</b>		<b>36</b>	

Source: Macao Young Offenders Institute

Note: <sup>(1)</sup> as of 15 August 2008.

***Question 18. Please further specify the cases when solitary confinement of a prisoner may be applied and clarify what is its maximum length possible. Can solitary confinement be applied to persons below 18?***

115. Confinement may be applied in the following cases: (a) by order of a court; (b) for medical reasons; (c) as a disciplinary measure; and (d) as a special security measure.

116. A court may order the compulsory psychiatric internment of a person declared criminally incompetent by reasons of insanity (articles 19 and 83 of the CC and article 18 of Decree-Law 31/99/M, of 12 July, which establishes the legal framework for compulsory internment of persons with severe mental disorders).

117. A court may also order a prisoner's compulsory internment in a health establishment, when that prisoner, though not declared criminally incompetent, suffers from a mental disorder and serving the sentence under the Prison Establishment's normal regime would be in his/her detriment, or if there is a serious risk of disturbance of the Prison Establishment's normal regime. The period of confinement is strictly limited to the necessary time for treatment and may not exceed the term of imprisonment. The court may review its decision at any time at request (whenever it is invoked that the reason motivating the internment ceased) and is required to review it, *ex officio*, 2 months after the day of the internment or of the decision

that maintained its application. Judicial appeal against both the order for internment or for its maintenance is possible. All judicial proceedings relating to compulsory internment are secret, urgent and free of charge (article 10 of Decree-Law 40/94/M and articles 16, 17(2), 23 of Decree-Law 31/99/M).

118. In addition, confinement can be applied for medical reasons if the prisoner appears to be suffering or is suffering from a contagious disease. In such case, at the suggestion of the Prison Establishment's doctor, the prisoner's internment takes place in a unit under the Health Department. The period of internment is limited to the necessary time for treatment. The court must be informed of the prisoner's internment and of the dates on which it started and ended (articles 41(5), 46(1)(g) and 47(5) and (6) of Decree-Law 40/94/M).

119. As a disciplinary measure, confinement has a maximum length of 1 month and it can take one of two forms, the first is carried out in an ordinary cell, without authorisation to leave the cell from 1 to 7 days, and the second consists of internment in a disciplinary cell, without access to the outdoors (article 75(1)(f) and (1)(g) of Decree-Law 40/94/M, respectively).

120. Disciplinary measures may be applied when a prisoner commits a disciplinary infraction, *i.e.*, when the prisoner intentionally violates the duties imposed on him/her or any other legal obligations and, in general, when the prisoner's conduct is in breach of the order or discipline of the Prison Establishment or the execution of the penalty. The law provides for an exemplificative list of such conducts, ranging from simple infractions, for instance, lack of personal hygiene, to more serious ones, such as the intimidation or abuse of other inmates, the instigation of, or participation in, disorders, revolts or riots, the escape, and the commission of crimes (article 74 of Decree-Law 40/94/M).

121. The application of disciplinary measures is decided by the Prison Establishment's Director taking into account the seriousness of the

offence, the prisoner's behaviour and personality; such application should always be replaced by mere reprehension whenever that is sufficient. It is preceded by an inquiry, during the course of which the prisoner and all other persons who might supply useful information are heard. The decision and the respective grounds are communicated in writing to the prisoner by the Director. If the infraction committed constitutes a public criminal offence, a file is opened and sent to the relevant judiciary authority (articles 75(3) and 77 of Decree-Law 40/94/M).

122. Disciplinary measures cannot be applied in a manner susceptible of endangering the prisoner's health. Before its application, and depending on the nature of the applied measure, a doctor must examine the prisoner. Disciplinary cells must be habitable and certified by a doctor, in particular with respect to furniture, dimension, ventilation and illumination for reading. Prisoners placed in confinement in disciplinary cells are under strict medical control, if necessary on a daily basis, and may receive visits from social workers, family members, lawyers or ministers of religion provided authorisation has been given to that effect (articles 76 and 78 of Decree-Law 40/94/M).

123. As a special security measure, solitary confinement may only be applied when there are reasons intrinsic to the behaviour or psychological condition of the prisoner, there is serious risk of escape or of the commission of violent acts by or against the prisoner. It can only be applied if there is no other way of preventing the danger or the risk of serious disturbances to the order and security of the Prison Establishment and if other special security measures are revealed to be inoperative or inadequate to tackle the seriousness or nature of the situation. As all other special security measures, confinement cannot be used as a disciplinary measure and it has to be proportional to the risk posed by the situation in hand and can only be maintained exclusively as long as the corresponding risk persists. Furthermore, whenever its length exceeds 30 days, it must be confirmed by the entity supervising the Prison Establishment (articles 66 and 70 of Decree-Law 40/94/M).

124. Prisoners in solitary confinement must be frequently visited by the Prison Establishment's doctor, who must assess the prisoner's physical and mental health and, if necessary, inform and propose the replacement of confinement by another measure (article 70(3) of Decree-Law 40/94/M).

125. Minors starting from the age of 16 are criminally responsible. Solitary confinement can be applied to prisoners from 16 to 18 years of age, provided that the above-mentioned conditions are met.

126. Minors between 12 and 16 years old may be deprived of liberty, by means of compulsory commitment at the YOI, if they have committed a criminal offence carrying a sentence of a maximum term of over 3 years of imprisonment or if they have repeatedly committed criminal offences or misdemeanours punishable by imprisonment terms and if other educational measures prove to be inadequate (articles 4(1)(8) and 28(1) and (2) of Law 2/2007, of 16 April).

127. Confinement can be applied to such minors, either as a disciplinary measure or as a special security measure. It also can be applied by order of a court to minors who have committed criminal offences provided for in the law on organized crime and, according to the same law, must be subject to a regime of internment suited to their age and dangerousness (article 102 of Law 2/2007 in conjunction with 22 of Law 6/97/M, of 30 July).

128. The requisites described above in regard to the application of each one of the referred measures apply with some adaptations.

129. As a disciplinary measure, confinement may be applied to minors who committed an infraction. It is carried out in an individual sleeping room; it cannot exceed the period of 1 month; its application must comply with the rule of last resource, proportionality to the seriousness of the offence, adequacy to the minor's behaviour and personality, and it cannot jeopardize the minor's health, who for that purpose has to be examined by the YOI's doctor. It must also be preceded by an inquiry, in which the minor is heard as well as any person who may have useful information

and the decision of the YOI's Director that orders its application must be notified to the minor. An appeal against the Director's decision can be lodged to the court. The appeal is tried within 5 days after being received, and the Judge has the power to order the appeal to have suspensive effect. The court decision is given in writing and notified to the minor (articles 95 to 98 and 106 of Law 2/2007).

130. As a special security measure, the placement of a minor in confinement also follows the mentioned general rules as regards to the requisites of applicability, namely in what concerns the fulfilment of both personal and material conditions, though in a more strict manner, as it depends upon a previous examination of the minor by a doctor and it is subject to a written medical certification that the minor may be placed in isolation. Moreover, it is always without prejudice to the minor's right to be outdoors for at least one hour per day whenever no other outdoor activity is carried out. Isolation for over 8 consecutive days or 15 alternate days must be confirmed by the judge. The minor placed in isolation must be frequently visited by the doctor, who must inform the YOI's Director about the minor's physical and mental health condition and, if necessary, propose the replacement of isolation by another measure. If the doctor considers isolation to be seriously prejudicial to the minor's physical and mental health, the YOI's Director shall communicate it to the Judge, who shall decide if isolation should be suspended, terminated or replaced by another appropriate measure.

***Question 19. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably women, migrants, persons suffering from mental illness and children.***

131. The juvenile justice legislation was recently revised. The Educational and the Social Protection Regimes on Juvenile Justice, approved by Decree-Law 65/99/M, of 25 October, was superseded in part by the mentioned Law 2/2007, which establishes the new Young Offenders Educational Regime.

132. In regard to minors up to 12 years old, as they are not considered to meet the necessary psychobiological conditions to be criminally responsible, when they commit criminal offences or misdemeanours they are merely subject to a social protection regime under Decree-Law 65/99/M.

133. Minors aged 12 to 16 years old who commit criminal offences or misdemeanours are, as mentioned, subject to the Young Offenders Educational Regime. The measures that may be applied to this age group aim at educating the minors to respect Law and basic rules of social interaction, and at their insertion in the community's life in a dignifying and responsible manner. Such measures are exhaustively enumerated, commitment being the most severe one, which application is restricted (as detailed in the previous answer).

134. The duration of the minor's commitment is always determined by a court decision. Their minimum and maximum lengths are, as a rule, of one year and 3 years, respectively. In cases of criminal offences punishable by imprisonment over 8 years or if the minor has committed several criminal offences punishable by a maximum limit of imprisonment over 5 years, the minimum and maximum lengths are increased to 3 and 5 years, respectively. The maximum limit can be prolonged if certain conditions are met (articles 25 and 26 of Law 2/2007).

135. The implementation of commitment measures must respect the minor's personality and be carried out with absolute impartiality, without discrimination founded in ascendancy, gender, race, language, country of origin, religion, political and ideological convictions, instruction, economic situation and social condition. Minors still enjoy their fundamental rights, except for those limitations inherent to the execution of the measure (articles 73(1) and 74(1) of Law 2/2007).

136. The rights and duties of committed minors and of their parents or guardians are regulated in detail in articles 74(2) to 87 of Law 2/2007.

137. Among others, they have the right to be cared for in terms of physical and health integrity, to religious freedom, to attend necessary classes for the fulfilment of compulsory education or professional training, to the reserve of their dignity and intimacy, to the non-publicizing of the measure of commitment to third parties, to contact with the Judge, the Procurator and the defence lawyer in private, to receive visits, to have contacts with the exterior when authorized (including by writing, phone or e-mail, or to receive and send postal packages), to be outdoors for at least one hour per day whenever no other outdoor activity is carried out, to be heard before the application of any disciplinary sanction, to be informed of their situation and of the evaluation of their individual plans of education, to file complaints or to appeal, to be informed of their rights and duties, including the laws and regulations that apply to them and of the right to complain and appeal, and in case of mothers, to keep the company of their children up to 3 years old. Furthermore, if the child's birth occurs during commitment, the child's birth registration does not mention that fact, neither the fact that the mother is committed. Minors are also entitled to receive free primary medical care. In this respect, it is worth mentioning that there is a clinical treatment room in the YOI. In more serious cases and upon the doctor's advice, hospitalisation is provided.

138. When a minor enters the YOI, a brief evaluation is immediately performed to assess the minor's physical and emotional condition. An individual room is attributed to the minor in order to facilitate his/her observation and gradual adaptation to life at the YOI. The minor's rights and obligations are explained to him/her. On the first workable day following entrance, an interview with the YOI's Director is conducted to better consider the minor's history, family background, the nature of the infraction committed and his/her psychological state at that moment, his/her educational and professional status and other factors relating to his/her necessary social reinsertion. According to each minor's situation, security conditions are determined and a person responsible (a social worker or psychologist) is designated to follow up the minor's case. If needed, medical treatment is immediately provided for and psychological guidance arranged.

139. Afterwards, the person responsible will continue to assess the minor, collecting detailed information on the minor's development, family situation, relationship with his/her family, education, *etc.* Within 20 day of commitment, the person responsible must submit a social report on the minor. Before the end of the 20-day observation period, an evaluation report related to the minor's individual situation, cognitive and emotional capacities, and behaviour, is drafted by a psychologist, who also informs on the need of psychological and/or psychiatric follow-up. In the latter case, if the minor appears to be experiencing serious problems, he/she is referred to the child's psychiatric unit at the Hospital for necessary treatment.

140. According to the situation and needs of each minor, an individual plan of education is established. Such plans focus on 3 main specific areas, more precisely, vocational and educational training, individual counselling and family therapy.

141. In the Macao Prison, offenders aged 16 to 18 years old are separated from other prisoners. Likewise, women and men are also detained separately.

142. Appropriate medical care is provided for to pregnant prisoners. After delivery, they are exempt from obligatory work. Furthermore, at their own discretion, their children may live with them in the prison until the age of 3 (articles 43 and 84 of Decree law 40/94/M, and articles 27(3) and 43 of Order 8/GM/96). Thereafter, the child must leave, but in the absence of family members to take care of the child, the SWB will take the child into its custody.

143. As to foreign persons, in order to protect their rights and in compliance with article 36 of the 1963 Vienna Convention on Consular Relations, upon entrance into the Prison Establishment, and without prejudice to other measures already described, all foreign prisoners are asked to fill in a declaration stating whether they want their Consulate or Embassy to be informed of their detention and, in the affirmative case,



the prison's staff will make the relevant notification immediately. Such form is available in both official languages and in English. If necessary, a translator can be arranged. If an international agreement on the transfer of sentenced persons is in force in the Macao SAR, prisoners who are nationals of the other party to the agreement are informed of their rights under it, in particular conditions for transfer back to their country for the purpose of serving their sentences.

144. As regards prisoners suffering from mild level of mental illness, normally, they stay in ordinary cells, unless confinement is deemed necessary to ensure their own or others' protection. Aside from basic medical care, appropriate psychiatric and/or psychological treatment is arranged periodically.

145. As referred, prisoners suffering from a severe mental disorder, as well as persons incapable of criminal responsibility, may by order of a court be subject to compulsory internment in a psychiatric/health institution.

146. The rights of persons suffering from mental illnesses are protected and guaranteed under the already quoted Decree-Law 31/99/M. All interned persons have the right to be explained about or informed of their rights, in particular, of the reasons for their internment, of the right to appeal against the order for internment, and of the right to be assisted by a lawyer of their choice or, if necessary, appointed to them. Interned persons are entitled, *inter alia*, to be treated in a manner respectful for their individuality, dignity and privacy, and to adequate accommodation and food. When receiving medical treatment, they must be informed of the proposed therapy, the respective predictable effects and of other possible treatments (articles 4, 9 and 10 of Decree-Law 31/99/M).

147. Moreover, an independent consultative body, the Mental Health Commission, was created to monitor all issues connected with mental health policies, including the operation of the institution and the inspection of internment conditions in order to ensure that the rights of the interned

persons are fully complied with. This Commission is composed of 2 doctors, one of them a psychiatric, who presides, a representative of the SWB, a representative of the patients' association and 3 other persons of recognized merit.

### Articles 12 and 13

***Question 20. Please elaborate on the mandate and activity of the Judiciary Police and the Public Security Police. Is there any independent body tasked with receiving complaints of police misconduct, including excessive use of force and abuse of powers, with the power of external oversight and monitoring? If so, please provide information as to its composition, mandate and activities.***

148. Public legal persons are subject to the principles of legality and speciality, meaning that they solely have the powers and competences determined by law. The Judiciary Police (PJ) is mainly governed by Law 5/2006, of 12 June, and Administrative Regulation 9/2006, of 3 July. And the nature, organization and operation of the Public Security Police (PSP) are primarily set forth in Administrative Regulation 22/2001, of 3 July. As law enforcement agencies, both the PJ and the PSP are under the operational command of the Unitary Police Service (SPU), which is the entity responsible for the Macao SAR's public security (established by Law 1/2001, of 29 January, as complemented by Law 5/2001, of 2 May, and governed by Administrative Regulation 2/2001, of 26 March, as amended by Administrative Regulation 17/2003, of 7 July). All of these entities are part of the Macao SAR's Executive. More precisely, they are under the Secretary for Security's supervision.

149. The PJ is a criminal police body, to which the activities of prevention and investigation of crimes are assigned, as well as of assisting the judiciary authorities (*i.e.*, the judicial and the Procuratorate). Within

criminal proceedings, the PJ operates under the direction and hierarchical dependency of the judiciary authorities.

150. In what concerns criminal investigation activity, the PJ has exclusive competence, in general, to investigate all criminal offences punishable by imprisonment term of a maximum limit of over 3 years when the offender is not known. In specific, the PJ has reserved competence in relation to criminal offences of illicit trafficking of narcotic drugs and psychotropic substances, of counterfeiting or passing counterfeit money, credit instruments, stamps, stamped worth forms or other similar values, of slavery, kidnapping, abduction and of illegal restraint or hostage taking (without prejudice to the PSP competence), criminal offences against property and perpetrated with violence in banks or other financial or credit institutions and in public services or entities, of theft of movable property having a high relevance for the technological or economic development, or which is, by its nature, a highly dangerous substance or having a scientific, artistic or historic value or being valuable as cultural property, which may be found in public collections or exhibitions or in places available to the public, of organized criminal association or secrete society, offences carried out inside of casinos or inside gaming rooms or places or around such places connected with gaming, of illicit administration of substances to animals intended for racing, crimes related to electronic means, money-laundering and similar or connected offences, and of terrorism (without prejudice to the competence of the PSP's special units) in case of special danger and high risk to life.

151. The PSP is a security paramilitary force and a criminal police body. As such, within the context of criminal procedure, it also operates under the direction and hierarchical dependency of the judiciary authorities. Its mandate consists of ensuring public order and tranquillity, as well as to exercise the activities of prevention and investigation of, and fight against crime, to defend public and private property, to control illegal migration, to ensure the migration service, to regulate and control traffic of vehicles and persons. Among its various tasks, the PSP is in charge of

the prevention of all crimes, in particular of organized crime. Until the intervention of other relevant criminal police bodies, the PSP is the first line responsible entity for the adoption of all urgent necessary measures to prevent the commission of a crime or to investigate and deter perpetrators of any crime which preparation or commission is of its knowledge. In addition, and without prejudice to the provisions of the CPC, the exclusive competence for the investigation of the offences of slavery, kidnapping, abduction and of illegal restraint or hostage taking is presumed to be delegated in the PSP whenever such investigation happens as an immediate consequence of the gathering of indicia of the commission of those crimes resulting from, and within, the PSP's criminal prevention activity.

152. The investigation of acts of misconduct, including excessive use of force and abuse of powers, falls within the judiciary authorities and the relevant hierarchical structure competence if such acts constitute criminal offences and, thus, automatically also disciplinary infractions. If an act does not meet the necessary legal elements of a criminal offence, it may, nevertheless, fall in the category of disciplinary infractions and be subject to disciplinary action. Different legal frameworks rule disciplinary action, for instance, in the case of the PSP, the corresponding regime is contained in Decree-Law 66/94/M, of 30 December, as amended, and in the case of the PJ in Decree-Law 85/89/M, of 21 December, as amended, in conjunction with the abovementioned Law 5/2006.

153. Notwithstanding, in 2005, the *Commission for Disciplinary Control of the Security Forces and Services of Macao* (CFD) was established by Order of the Chief Executive 14/2005, of 31 January. The CFD is composed of 5 persons of recognized social merit, designated by the Chief Executive. The CFD is directed to the defence of legality and of the fundamental rights of the people in view of achieving an improvement on the quality of law enforcement's services. Its activity complies with strict criteria of legality, justice, impartiality, objectivity and celerity.

154. Within the scope of the CFD's mandate, it is worth mentioning the competence to follow up complaints lodged by citizens against any member of the staff of the Public Security Forces of the Macao SAR related to their members' civic conduct, eventual legality infringements, actions against fundamental rights or any suspicions of irregularities or deficient operation of those Services. The CFD can act on its own initiative or at request. Complaints can be lodged directly by the citizens. Within 5 days of the complaint's reception, the relevant Corporation or Service must send a copy thereof to the CFD. Likewise, a copy of all decisions taken in regard to complaints, including disciplinary sanctions or any other measure, is sent to the CFD in the same deadline of 5 days following their adoption. The CFD drafts an opinion on each of such decisions, which is then forwarded, as a recommendation, to the Secretary for Security.

155. Even though the CFD has no investigative or prosecution powers, its activity has shown an important impact in what concerns the exercise of disciplinary action in regard to enforcement agents' misconducts. Furthermore, the CFD has conducted visits to the Public Security Bodies and Bureau, including some places of detention, and has frequently promoted seminars, where necessary compromise between police action and full respect of human dignity is a recurrent topic.

156. The activity of the CFD, since its inception in what concerns its direct intervention can be resumed as follows: in 2005, 13 complaints were received, corresponding to the issuance of 13 recommendations; in 2006, from a total of 29 complaints received, 18 procedures were concluded and 6 recommendations issued; in 2007, from a total a 12 complaints received, 12 procedures were concluded and 6 recommendations issued. With regard to the CFD's interaction with citizens, the following table illustrates its activity of control over the disciplinary actions of all Public Security Forces of the Macao SAR.

CFD's activity in terms of follow-up and monitoring of complaints and the respective disciplinary actions			
	2005	2006	2007
Registered complaints by citizens(1)	2001	-	1677
Disciplinary actions instituted	442	721	441
Disciplinary actions concluded	319	396	439

Source: CFD Annual Reports 2005, 2006 and 2007

Note: <sup>(1)</sup> The complaints concern a vast number of subject matters, rarely to the violation of fundamental rights.

Sanctions applied as a result of the disciplinary actions			
	2005	2006	2007
Demission <sup>(1)</sup>	5	43	15
Suspension	6	6	11
Fine	256	258	253
Admonishment (verbal or written)	109	115	94

Source: CFD Annual Reports 2005, 2006 and 2007

Note: <sup>(1)</sup> Includes similar situations, as compulsory retirement or non-renewal of employment contract.

***Question 21. Please provide the following updated information since the review of the last periodic report:***

- (a) With reference to the tables contained in paragraphs 190 and 191 of the Macao SAR's report, on any specific complaint of torture, the authorities before which they are pending, the status and the outcome of the investigations;***

157. With reference to the table contained in paragraph 190 of the report relating to denunciations of crimes received by the Procuratorate, and as mentioned therein, all the corresponding inquiries have been filed.

158. According to article 259 of the CPC, the Procuratorate files criminal inquiry without charges when there is no sufficient evidence that

a crime has been committed, there is enough evidence that the accused did not commit the crime or the prosecution is legally inadmissible. The inquiry is also filed whenever it is not possible for the Procuratorate to gather sufficient information to establish the commission of a crime or to identify its perpetrator. However, the inquiry can be reopened if new evidence is found (article 261 of the CPC) and in any case if the Procuratorate files the case, it still has to be continued if the offended, formally intervening in the proceedings, requests so (article 270 of the CPC).

159. As to the table contained in paragraph 191 of the report relating to denunciations of crimes received by the CAC, the corresponding outcome is as described in the said table.

***(b) With reference to the table contained in paragraph 189 of the Macao SAR's report, on the number of complaints related to police misconduct in Macao and inform on whether investigations have been opened as well as on the number of disciplinary and/or criminal proceedings initiated as a result of those complaints, and their results, if known;***

160. As to the total number of complaints lodged by citizens and received by all the Public Security Forces of the Macao SAR, please refer to the final part of the response to question 20. It is important to stress, however, that the data therein contained, in what concerns the object of the complaints, is not disaggregated in terms of police misconduct. Nevertheless, other references in the mentioned table to the numbers of disciplinary actions instituted and corresponding sanctions applied may be useful for the present purpose. Still, the given infractions may concern police misconducts not related to violations of citizens' rights.

161. Specifically, in what regards the table contained in paragraph 189 of the report, there is no available data disaggregated as requested by the Committee. The available data, based on police records, is as follows:

No. of complaints (C) and of persons (P) involved p/ complaint <sup>(1)</sup>										
Public Security Forces Bodies and Services whose personnel the complaints concern	2004		2005		2006		2007		2008 <sup>(2)</sup>	
	C	P	C	P	C	P	C	P	C	P
PJ	4	7	11	19	2	2	4	10	1	2
PSP	8	9	6	7	5	10	11	27	2	2
Customs services	1	6	1	1	1	1	1	3	0	0
Total	13	22	18	27	8	13	16	40	3	4

Source: Security Forces Coordination Office

Notes: <sup>(1)</sup> When a complaint refers to several persons without more specifications, it is registered as involving 3 persons; <sup>(2)</sup> As of May 2008.

Follow up of the complaints referred to in the previous table							
Year	No. of cases	Disciplinary actions			Criminal proceedings		
		Instituted	Filed	Sanctions applied	Reported to the Procurator	Filed	Pending
2004	13	7	7	0	11	1	1
2005	18	2	2	0	9	7	2
2006	8	4	4	0	4	3	1
2007	16	9	5	2	10	3	2
2008 <sup>(1)</sup>	3	0	0	0	2	0	1

Source: Security Forces Coordination Office

Note: <sup>(1)</sup> As of May 2008.

Criminal offences allegedly committed by Public Security Forces Bodies and Services' personnel					
Criminal offences by type	2004	2005	2006	2007	2008 <sup>(1)</sup>
Offences against sexual freedom (rape)	0	0	0	1	0
Offences against physical integrity <sup>(2)</sup>	11	10	12	17	6
Offences against physical integrity <sup>(3)</sup>	13	18	8	15	3



Criminal offences allegedly committed by Public Security Forces Bodies and Services' personnel					
Criminal offences by type	2004	2005	2006	2007	2008 <sup>(1)</sup>
Extortion	1	0	0	1	1
Breaking and entering	1	1	0	0	0
Threat	3	2	6	7	4
Other offences	6	9	6	14 <sup>(4)</sup>	1
<b>Total</b>	<b>35</b>	<b>40</b>	<b>32</b>	<b>55</b>	<b>15</b>

*Source:* Security Forces Coordination Office

*Notes:* <sup>(1)</sup> As of May 2008; <sup>(2)</sup> Committed by law enforcement officials in their private capacity; <sup>(3)</sup> Committed by law enforcement officials in the exercise of their functions;

<sup>(4)</sup> One case resulted in death of the victim.

Sanctions applied to Public Security Forces Bodies and Services' personnel as a result of disciplinary actions relating to the commission of criminal offences					
Criminal offences by type	2004	2005	2006	2007	2008 <sup>(1)</sup>
Demission <sup>(2)</sup>	3	4	2	2	3
Suspension	2	1	2	5	1
Fine	0	2	0	0	0
<b>Total</b>	<b>5</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>4</b>

*Source:* Security Forces Coordination Office

*Notes:* <sup>(1)</sup> As of May 2008; <sup>(2)</sup> Includes similar situations, as compulsory retirement or non-renewal of employment contract.

Deaths occurred under police custody					
Place	2004 <sup>(1)</sup>	2005	2006	2007	2008 <sup>(2)</sup>
At the Prison Establishment	1	0	0	0	0
At police stations	1	0	0	1 <sup>(3)</sup>	0
<b>Total</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>

*Source:* Security Forces Coordination Office

*Notes:* <sup>(1)</sup> The data concerning 2004 relates to the entire year (in the table contained in paragraph 189 of the report, the data corresponded to the period from January to June); <sup>(2)</sup> As of May 2008; <sup>(3)</sup> Criminal proceedings were instituted and are in course.

162. Still with reference to the table contained in paragraph 189 of the report, regarding the two cases mentioned therein as being homicide, the respective inquiries concluded the cause of death to be self-inflicted by hanging. In one of these cases, a sub-inspector was punished for breach of the duty to exercise full due care.

163. Meanwhile, in 2005, the last appeal decision was rendered in relation to a case of another death occurred in a police station in 2002, and referred in the table as homicide. In this latter case, the accused was charged for the crime of serious coercion (provided for and punished in articles 148(1) and 149(1)(b) of the CC). The accused was sentenced in first instance to an imprisonment term of 3 years and 6 months, which was commuted by the appeal decision into imprisonment term of one year and 6 months. The court of appeal further decided to order the admissibility of extra-contractual civil liability request. Later on the accused and the Macao SAR were, jointly, ordered to pay the victim's family a monetary compensation.

*(c) With reference to paragraph 74 and following the Macao SAR's report, on the number of complaints from persons deprived of their liberty, the results of the investigations and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints, and the results, if known.*

164. There is no available data.

*Question 22. Please explain whether Macao has taken, or envisages to take, any steps to establish a fully independent national human rights institution in conformity with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993) with, inter alia, investigative, oversight and monitoring powers. Are there limitations in the present oversight mechanisms, for instance the ombudsperson? What independent oversight mechanism has authority regarding inspection of jails and other places of detention or confinement? Please provide information on the findings of these mechanisms.*

165. Not at the moment. However, apart from the Commission for Refugees, it is worth mentioning that several other independent specialized bodies have been established to improve the protection of humans rights in different domains, such as the Commission for Women's Affairs (created by Administrative Regulation 6/2005, of 5 May), the Commission to Follow the Implementation of Dissuasive Measures against Trafficking in Human Beings (created by Order of the Chief Executive 266/2007, of 10 September), the Commission for the Senior Citizens' Affairs (created by Order of the Chief Executive 307/2007, of 12 November), the Commission on the Fight against Drugs (created by Order of the Chief Executive 179/2008, of 16 June), *etc.*

166. Specifically in regard to the inspection of jails and other places of detention or confinement, besides the CFD, it should be recalled the existence of the Commission Against Corruption (CAC), which is an independent public body entrusted with ombudsman functions. For more detail on CAC, please refer to paragraphs 27, 37, 139, 151-152 and 163 of the report. As mentioned therein, the CAC is governed by Law 10/2000, of 14 August, as complemented by Administrative Regulation 31/2000, of 21 August, which, meanwhile was amended by Administrative Regulation 13/2005, of 8 August. At the moment it is being pondered the adoption of further legislation to reinforce the CAC's powers. Within the scope of its ombudsman's activity, the CAC aims to protect human rights, freedoms and legitimate interests of individuals, as well as to uphold fairness, lawfulness and efficiency of the public administration.

167. The CAC has the powers to carry out any inquiries and investigations necessary to fulfil its aims, in particular, to inspect, with or without notice, any places of public entities, to examine documents, and request for such information and documents as it deems fit, to conduct (or request) inquiries, investigations, or any other measures aimed at examining the legality of administrative acts and proceedings with regard to relations between public entities and individuals. As to

any shortcomings it finds in any legal provisions, especially those that may affect rights, freedoms, safeguards or any legitimate interests of the individuals, the CAC may formulate recommendations or suggestions concerning their interpretation, amendment or repeal, or make suggestions for new legislation.

168. Also relevant is the Commission for Mental Health (created by article 6 of the quoted Decree-Law 31/99/M), which plays an important role in all matters related to mental health, including the protection of the rights of the mentally impaired. For that purpose, the Commission was granted, *inter alia*, the powers to inspect conditions of confinement and treatment. It may also draft opinions on the operation of the mental health establishments, as well as formulate recommendations or suggestions for new legislation.

169. Foremost, external independent supervision of detention places is of the competence of the Judges and Procurators. Inspections to the prison must be conducted at least once a month. Prisoners are allowed to express their grievances and their needs to the Judges and Procurators during inspections (articles 13 and 14 of Decree-Law 86/99/M).

#### Article 14

***Question 23. Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred since the last periodic report. Please also indicate whether the right to compensation depends on the existence of a judgement in criminal proceedings ordering compensation. Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment the perpetrator of which has been subjected to a disciplinary, but not to a penal sanction?***

170. There is no available statistic data on compensation provided to victims of torture or ill-treatments.

171. The right to compensation does not depend on the existence of a judgement in criminal proceedings.

172. The general rules on civil liability are provided for in the Civil Code of Macao (articles 477 and *seq.*). Any person who wilfully or negligently causes damage to another must pay compensation for the damage caused, including damage caused by omission whenever the duty to perform the omitted act exists. If the damage is caused by more than one person, all of them shall be jointly and severally liable.

173. Decree-Law 28/91/M, of 22 April, establishes the legal framework on extra-contractual civil liability of the Macao SAR, public legal persons, their officials and agents for acts of public administration. Both liabilities for lawful and unlawful acts are covered. In respect to the latter, reference is made to acts committed wilfully by the Macao SAR's public bodies or public legal persons' officials or agents in the exercise of their functions and by reasons of such functions. Furthermore and without prejudice to that, reference is equally made to acts committed by the same persons with *mens rea*. In addition, and for the purpose of this law, an unlawful act is explicitly defined as any violation of the rights of third parties or of a legal provision intended to protect their interests, as well as any legal act in violation of applicable legal provisions, regulations or general principles, any concrete act against such legal provisions and principles or against any rules of a technical or of prudence nature which should be taken into consideration. Evaluation of the degree of wilfulness/intent and plurality of liable persons are governed by the Civil Code general rules (articles 2, 3, 7 and 4, respectively).

174. Furthermore, compensation can be obtained regardless of the result of a disciplinary action. However, as torture and other ill-treatments constitute criminal offences, both actions, disciplinary and criminal, must be instituted.

175. The Criminal Code dictates that compensation for damages suffered as a result of a criminal offence is governed by the civil provisions. Such compensation should be paid by the person who caused the damage, the offender, to any person who has suffered damage, including the victim (or his/her heirs or legal representatives). However, if that is not possible by any reason, the court may, at the request of the injured party, assign as compensation for the damage, the property forfeited to the Macao SAR or the proceeds from their sale, up to the value of the damage suffered. If the damage caused by the criminal offence is serious enough to leave the injured party in need and if the offender is unlikely to pay compensation, the court may also assign to the injured party all or part of any fine paid, up to the value of the damage. The Macao SAR remains subrogated in the injured party's right to compensation for any sums it may have paid (articles 121 and 122 of the Criminal Code).

176. As a rule, compensation claims for damages caused by criminal offences should be brought up within the relevant criminal proceedings by the injured party, except for certain cases specifically provided for in the law (articles 60 and 62 of the CPC).

177. More precisely, article 61(1) of the CPC determines that a civil claim can be made separately when: (a) within 8 months of the crime being reported, no charges were brought up in the criminal proceedings or there have been no developments; (b) the criminal proceedings have been filed or lapsed before the judgment has acquired *res judicata* force; (c) the proceedings depend upon a private complaint or charge; (d) there was no damage at the time charges were brought up, or the damage or its full extent were not known; (e) the criminal sentence did not include a decision on the claim for damages as provided for in article 71(4), namely, when the issues involved by such claim may impede a thorough decision or give cause to incidents which may delay the criminal procedures in an intolerable manner; (f) the claim is brought against the defendant and other persons with merely civil liability, or only against the latter and the defendant is summoned to those proceedings; (g) the criminal proceedings take the form of summary, very summary or of contravention proceedings.

178. Acquittal in the criminal proceedings does not necessarily entail refusal of the right to compensation (article 358 of the CPC).

179. Moreover, another way of seeking compensation by means of a subsidy from the Macao SAR is provided for under Decree-Law 6/98/M, of 17 August, which regulates the protection of the victims of violent crime. This compensation scheme benefits persons who sustained serious bodily injury as a result of an intentional act of violence, as well as, in case of death, those to whom, under the civil law provisions, maintenance is due by such persons, even when they did not or cannot constitute themselves as a party in the criminal proceedings.

180. The established requisites are: (a) the victims are legally in the Macao SAR or in a ship or aircraft registered therein; (b) the injury caused death, permanent incapacity or temporary total incapacity for work of at least 30 days; (c) the injury caused a serious deterioration in the standard of living of the victim or of the persons entitled to maintenance; and (d) compensation could not be provided by means of the judgment of an application in criminal proceedings pursuant to articles 60 to 74 of CPC or when there are serious reasons to believe that the offender and persons who bear civil liability will not pay the compensation and it is not possible to obtain effective and adequate compensation by any other means.

181. The compensation will be awarded even if the offender is unknown or cannot be prosecuted or punished. Compensation is limited to material damages caused by the injury and will be equitably determined. The maximum amount payable to each injured party is determined by reference to the index 1000 of the civil servants wages' chart. Any amounts received from any other source, including from the offender or from social security will be taken into account. Life or personal accident insurance will only be taken into account if reasons of equity so dictate.

182. The power to grant the subsidy is of the Chief Executive, who decides upon the advice of a Commission set up for that purpose. The subsidy must be applied for, at the request of the victim, or other interested

parties or of the Procuratorate, within one year of the commission of act that caused the damage, unless criminal proceedings are still pending, in which case the referred time limit is counted from the date of the corresponding sentence, or after the deadline if the Chief Executive, on the basis of exceptional circumstances, grants a relief from the expiration of the time.

183. The Commission comprises two persons of recognized social merit, a lawyer appointed by the Lawyers' Association, and by the Directors of the Legal Affairs Bureau and of the SWB.

***Question 24. Please indicate in further detail what services exist for the treatment of trauma and other forms of rehabilitation of victims of torture or other cruel, inhuman or degrading treatment.***

184. The public Hospital provides care for victims or seeks other specialized assistance for them according to their condition of injury, thus providing comprehensive treatment for trauma patients and victims.

185. The Hospital's Rehabilitation Department provides full facilities, human and equipment resources similar to clinical rehabilitation program of any developed country. In what concerns psychiatric care, specific work flow and particular measures have been adopted to ensure patients are provided with safe and professional medical treatment, which includes the opening of a special diagnostic and therapeutic area to guarantee patients' privacy. At the same time, immediate psychiatric counselling services and therapies such as rehabilitation for post-psychological trauma are offered.

186. On the other hand, there is a social service at the public Hospital. The social workers are trained to try to form a therapeutic alliance with the family in view of facilitating their ability to better communicate with medical professionals, anticipate and solve psychosocial problems, and develop a sense of confidence in the process of health care. The social workers help to provide necessary social and peer support to the rehabilitation experience.



## Article 16

***Question 25. Please clarify the difference between torture and other cruel, inhuman or degrading treatment according to article 234 of the Criminal Code, since -at it is stated in the Macao SAR's report -this provision does not draw any distinction between the two concepts. In this respect, please also clarify the criteria used by investigative and judicial authorities to legally qualify and distinguish between acts of torture and other cruel, inhuman or degrading treatment in practice.***

187. Please refer to the answers to questions 1 and 2.

***Question 26. Please inform the Committee of measures taken to prohibit the use of corporal punishment in all settings.***

188. Corporal punishments of persons deprived of freedom are forbidden. If a prisoner considers himself/herself to have been subject of corporal punishment (or, for that matter, of any other kind of abuse), he/she can lodge a complaint to the Judge or to the Procurator, the CAC, the CFD, the Prison Establishment's Director or to any other relevant entity of his/her choice. If the Prison Establishment receives a complaint, an internal investigation is instituted, culminating in disciplinary and/or criminal action, as may be the case.

## Other

***Question 27. Please clarify what measure, if any, Macao has taken to inform citizens of their right to petition the Committee under article 22, as discussed in previous reviews.***

189. No specific dissemination action regarding the right to petition has been undertaken; nonetheless, divulgation actions on the Convention took place. The Macao SAR has been, and still is, endeavouring continuous

efforts to disseminate information on fundamental rights and freedoms, either through the *mass media*, or by means of the publication of books, brochures and leaflets, which are made available in public places for free, as well as by carrying out and promoting “learning-leisure” activities in the Community, such as contests, plays, shows, and other interactivity, whereby human rights, and more importantly the ways of exercising them in practice, are made easy to understand to the general population.

***Question 28. Is Macao considering adhering to the Optional Protocol to the Convention against Torture?***

190. The OPCAT is a treaty reserved to sovereign States; the Macao SAR is not a State.



## **PART III**

# **CONCLUDING OBSERVATIONS OF THE COMMITTEE AGAINST TORTURE**



**CONSIDERATION OF REPORTS SUBMITTED BY STATES  
PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture\***

**MACAO SPECIAL ADMINISTRATIVE REGION**

**A. Introduction**

1. The Committee against Torture considered the fourth periodic report of China with respect to the Macao Special Administrative Region (Macao SAR) (CAT/C/MAC/4) at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), and adopted, at its 864th meeting, on 21 November 2008 (CAT/C/SR.864), the following concluding observations.

**B. Positive aspects**

2. The Committee welcomes the submission of the report of Macao SAR, included in the fourth periodic report of the State party China. It also welcomes the written replies to the list of issues (CAT/C/MAC/Q/4/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken for the implementation of the Convention.

3. The Committee notes with appreciation:

- (a) The new Law 6/2008 on the Fight Against Trafficking in Persons, which define and criminalize trafficking in accordance with international standards;

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\* CAT/C/MAC/CO/4, 19 January 2009

- (b) Law 1/2004, establishing the Legal Framework on the Recognition and Loss of Refugee Status, which set up a Commission for Refugees to assess asylum claims in cooperation with UNHCR; and
- (c) The creation, in 2005, of the Commission for Disciplinary Control of the Security Forces and Services of Macao, which has, *inter alia*, the mandate to consider complaints lodged by individuals who consider that their rights have been infringed.

### C. Main issues of concerns and recommendations

#### Definition and criminalization of torture

4. The Committee takes note of the Macao SAR's explanation with respect to the term "public official" contained in article 234 read in conjunction with article 235 of the Criminal Code. Nonetheless, the Committee is concerned that the restriction mentioned in article 234 (1) of the Criminal Code regarding the scope of the crime to the mentioned public officials is not fully compliant with the definition of torture contained in article 1, paragraph 1, of the Convention.

**The Macao SAR should adopt a definition of the term "public official" fully in line with article 1, paragraph 1, of the Convention, so as to include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity. The Committee further recommends that Macao SAR consider using a wording of the definition of torture similar to that used in the Convention so as to ensure that all elements contained in article 1, including discrimination of any kind, are covered in the definition.**

5. The Committee takes note of the difference between the crimes provided for by the Criminal Code in articles 234 (torture) and 236 (serious torture) as illustrated in the Macao SAR's report and replies to the list of issues. The Committee is concerned that this distinction may lead to the perception that there are more and less serious crimes of torture, a

distinction which not only is wrong but can create obstacles to effective prosecution of all cases of torture.

**The Macao SAR should define and criminalize torture in its Criminal Code in full conformity with article 1 and 4 of the Convention. To this end, the Committee recommends that the crime of torture constitute a single offence subject to the relevant aggravating circumstances applicable to the crime of torture.**

### **Jurisdiction**

6. The Committee is concerned that while Macao SAR's jurisdiction can always be established over acts of serious torture committed abroad (art. 236 of the Criminal Code), the exercise of extra territorial jurisdiction with respect to other torture offences (art. 234 of the Criminal Code) is conditional to the requirement of double criminality.

**The Macao SAR should establish its jurisdiction for all acts of torture committed abroad, in accordance with article 5, paragraph 2, of the Convention.**

### **Training**

7. The Committee welcomes information about the training given to police officers, prison wardens and other law-enforcement officials regarding human rights and the prohibition of torture, but is concerned that there appears to be no special training programmes for health professionals aiming at identifying and documenting cases of torture and provide rehabilitation for the victims.

**The Macao SAR should ensure that health care professionals are equipped with the necessary training to recognize and detect features and signs that may suggest the occurrence of torture. To this end, the Macao SAR should, *inter alia*, further promote, disseminate and use the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol).**



### **Solitary confinement**

8. The Committee is concerned that children as young as 12 can be potentially subjected to solitary confinement to up to one month.

**The Macao SAR should ensure that persons under the age of 18 should not be subjected to solitary confinement; if applied, it should be limited to very exceptional cases and closely monitored. The Macao SAR should also ensure that solitary confinement remains in all cases a measure of limited duration and of last resort, in accordance with international standards.**

### **Trafficking in persons**

9. While noting the measures taken in order to reduce trafficking, including new legislation, as well as the intensification in investigation and prosecution of this crime, the Committee is still concerned at the incidence of trafficking in Macao SAR, notably in women and children, especially for the purpose of sexual exploitation.

**The Macao SAR should continue to take measures to combat trafficking in persons, notably women and children. To this end, it should:**

- (a) Investigate all cases of trafficking and strengthen its efforts to prosecute and punish the perpetrators;**
- (b) Increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized; and**
- (c) Strengthen cooperation with the authorities of countries from or to which individuals are trafficked in order to combat this practice; such cooperation should include multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible of trafficking as well as strategies for supporting the victims.**

10. The Macao SAR should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

11. The Committee invites the Macao SAR to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document.

12. The Committee requests that the Macao SAR provides, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 8 and 9 above.

13. The Macao SAR is invited to submit its next periodic report, which will be included in China's fifth periodic report, by 21 November 2012.



**PART IV**

**FOLLOW UP TO THE OBSERVATIONS OF THE  
COMMITTEE AGAINST TORTURE**



**Responses of the Macao Special Administrative Region of  
the People’s Republic of China to the  
Concluding Observations of the Committee against Torture**  
*(CAT/C/MAC/CO/4, 21 November 2008 — Extracts for follow-up)*

(...)

***C. Main issues of concerns and recommendations***

(i)

***Training***

*7. The Committee welcomes information about the training given to police officers, prison wardens and other law-enforcement officials regarding human rights and the prohibition of torture, but is concerned that there appears to be no special training programs for health professionals aiming at identifying and documenting cases of torture and provide rehabilitation for the victims.*

***The Macao SAR should ensure that health care professionals are equipped with the necessary training to recognize and detect features and signs that may suggest the occurrence of torture. To this end, the Macao SAR should, inter alia, further promote, disseminate and use the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol).***

**Response**

In view of the Committee’s recommendation and the Macao SAR’s concrete situation, specialized training on how to recognize and detect

features and signs that may suggest the occurrence of torture shall be provided to the associated frontline medical staff of the Public Hospital (*Centro Hospitalar Conde de São Januário*). This training shall be based on the Istanbul Protocol and other relevant educational and training materials.

Furthermore, to ensure that persons who allege or are suspected of being victims of torture are immediately transferred to the Emergency Department of the Public Hospital, and thus enhance both their prompt assessment in conformity with the highest medical and ethical standards and the effective investigation and documentation of such cases, information on torture shall also be extended to the frontline medical staff of the Prison Establishment and of emergency service of private hospitals as well as to private medical practitioners.

### ***Solitary confinement***

8. *The Committee is concerned that children as young as 12 can be potentially subjected to solitary confinement to up to 1 month.*

***The Macao SAR should ensure that persons under the age of 18 should not be subjected to solitary confinement; if applied, it should be limited to very exceptional cases and closely monitored. The Macao SAR should also ensure that solitary confinement remains in all cases a measure of limited duration and of last resort, in accordance with international standards.***

### **Response**

Paragraphs 115 to 130 of the Macao SAR's part of the reply of China to the Committee's list of issues contain detailed explanations on the application of confinement measures (including to minors). As therein referred, confinement measures are limited to exceptional cases expressly provided for in the law (which clearly states their nature of last resort), their duration is limited (within the Macao SAR's criminal system, there are no unlimited measures of whatever nature) and they are closely

monitored (they are under medical control and judicial supervision) (in what concerns minors, please refer in particular to paragraph 129 of the said reply).

Indeed, and as also mentioned in the quoted document (see paragraph 37), the key principles of the Macao SAR's criminal justice system are the principles of legality, subsidiarity and necessity. All procedural measures are subject to the *numerus clausus* rule, and must be applied in accordance with the principles of adequacy and proportionality.

Nevertheless, upon consideration of the Committee's recommendation, two written instructions on how to construe the existing legal provisions regarding the application of confinement measures to minors were laid down.

- a) In relation to minors from 12 to 16 years old, Order 91/ DSAJ/2009, of September, issued by the Director of the Legal Affairs Bureau, reads as follows:

“Taking into account that the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish rules that should be complied with within the scope of measures applicable to young offenders, any disciplinary measure that could be interpreted as a cruel, inhuman or degrading treatment, including the measure of solitary confinement, is strictly prohibited;

Equally considering that, under Law 2/2007 (Educational Supervision Regime for Juvenile Delinquency), in case a young offender confined at the Young Offenders Institute commits a disciplinary offence during the implementation of this measure of confinement, the Young Offenders Institute may apply to this young offender the corresponding security measures, such as the placement of that young offender in an individual sleeping room for a period that cannot exceed one month;



Also bearing in mind that the interpretation of “placement of a young offender in an individual sleeping room” taken literally might instigate the misunderstanding that the legal intention behind it is to place the young offender in an individual sleeping room during the entire day, thus not allowing him/her to participate in any activity, it is therefore important, in order to avoid conflicting interpretations, to clarify the actual substance of the disciplinary measure of “placement of a young offender in an individual sleeping room”:

1. The decision on the application of the measure of “placement of a young offender in an individual sleeping room” should be made with due regard to the seriousness of the offence, the behaviour and the personality of the young offender. This measure can only be applied when the offence committed by the detained young offender is serious and when other types of disciplinary measures are not sufficient to amend his/her error in an efficient manner.

2. The application of the referred measure merely implies placing the young offender to sleep in an individual sleeping room, therefore only during the evening period, and not in one of the collective rooms (please consult the annexed document) so that he/she might better reflect on his/her wrongdoings.

3. The “placement of a young offender in an individual sleeping room” cannot prevent the young offender from continuing to be accompanied and counselled according to his/her educational necessities, nor prevent him/her from participating with other minors in normal activities during daytime (for example, curricular or extra-curricular activities).

The Young Offenders Institute should reduce, as much as possible, the number of days of this disciplinary measure that the detained young offender must be subject to, taking specially into account his/her attitude of repentance and his/her behaviour.

(.../date and signature).

## Annex

- a) Transcript of the contents of page 76 of Opinion 1/III/2007, of the 2<sup>nd</sup> Permanent Commission of the Legislative Assembly:

“The Commission and the proponent have accorded to modify the array of the types of the disciplinary measures, in order to give compliance to the relevant guidelines pertaining to international law that prohibit, in terms of disciplinary matter, the loss of the concessions given to minors or young persons and, moreover, the measures of solitary confinement, which are as follows: (...) (iii) the disciplinary measure foreseen by paragraph 6) of the original version of the Proposal of Law was substituted - ‘solitary confinement in an individual sleeping room for up to one month’ — by a new measure: ‘placement of the young offender in an individual sleeping room, for up to one month.’ The proponent explained to the Commission that this new disciplinary measure implies placing the young offender to sleep in an individual room, therefore only during the evening period, and not in one of the collective rooms used by young offenders.”

- b) In relation to minors from 17 to 18 years old, Order 19/SS/2009, of 31 March, issue by the Secretary for Security, reads as follows:

“Taking into account the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is applicable to the Macao Special Administrative Region, as well as the fact that such provisions prevail over internal ordinary law;

The Secretary for Security, considering that the Regime on the Implementation of Measures that Deprive Liberty allows for the application of the disciplinary measure of confinement to prisoners, regardless of whether or not they reached 18 (eighteen) years old, which is forbidden by the provisions of the Convention,

Recommends that —

1. The disciplinary measure of confinement referred to in Articles 65(c), 70, 75(1)(g) of Decree-Law 40/94/M, of 25 July, all in conjunction, which approves the Regime on the Implementation of Measures that Deprive Liberty, should not be applied to prisoners less than 18 years old;
2. When the timely revision of the referred Decree-Law will take place, it should be considered to better adapt its legal framework to the international law provisions applicable to the Macao Special Administrative Region.

(.../date and signature).”

### ***Trafficking in persons***

*9. While noting the measures taken in order to reduce trafficking, including new legislation, as well as the intensification in investigation and prosecution of this crime, the Committee is still concerned at the incidence of trafficking in Macao SAR, notably in women and children, especially for the purpose of sexual exploitation.*

***The Macao SAR should continue to take measures to combat trafficking in persons, notably women and children. To this end, it should:***

***a) Investigate all cases of trafficking and strengthen its efforts to prosecute and punish the perpetrators;***

***b) Increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized; and***

***c) Strengthen cooperation with the authorities of countries from or to which individuals are trafficked in order to combat this practice; such cooperation should include multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible of trafficking as well as strategies for supporting the victims.***

## **Response**

The Macao SAR continues to endeavor its best efforts to combat trafficking in persons, especially women and children.

As a result of the entry into force of the new law to combat the crime of trafficking in persons, Law 6/2008, of 23 June, the investigation and consequent prosecution of cases of trafficking were intensified.

According to available data, the police registered 19 occurrences of trafficking in persons in 2008. After further investigation, 7 of those occurrences were dismissed, 3 were reclassified as crimes of procurement, 5 were confirmed as constituting crimes of trafficking and the corresponding accusations took place, and 4 are pending. From the referred 5 confirmed trafficking cases, one of the resulting criminal proceedings already reached its term in first instance, and led to the conviction of one person for 2 crimes of trafficking.

Sexual exploitation was the purpose of trafficking in all cases (confirmed and pending). Some of them involved multiple victims. The alleged victims (14) were all young females (with ages ranging from 16 to 24 years) from Asia (12 from Mainland China and 2 from the Macao SAR). The trafficking suspects (12 persons, 7 males and 5 females) were also all from Asia (10 from Mainland China and 2 from the Macao SAR).

As of October 2009, 4 occurrences of trafficking in persons were registered. From those, one occurrence was dismissed, one was reclassified as crime of procurement, and 2 are pending.

In what relates to the protection of trafficked persons, especially women and children, it should be noted that, under the auspices of the *Commission to Follow Up the Implementation of Dissuasive Measures against Trafficking in Persons* (Commission against Trafficking), several actions were carried out, such as training, awareness campaigns, setting up of hotlines, assistance programmes for victims of trafficking, setting up of operational guidelines.

Specific training has been — and still is — being provided to law enforcement agents, social welfare staff and health care professionals.

The said training comprises methods of identification of victims, how to deal with victims, including ethical and safety recommendations for interviewing and interviewing skills, possible physical and psychological health impact, *etc.* Training materials from the United Nations and other international organizations are being used.

Simultaneously, two 24-hour hotline services were launched; one is operated by the Public Security Police (PSP) and the other by the Women's General Association of Macao, a local NGO, but financed by the Social Welfare Bureau. Calls are handled by experienced social workers and, if appropriate, screened by the relevant law enforcement authorities or judiciary.

To increase efficiency, police officers are trained to improve their skills in how to deal with alleged victims' phone calls. A training programme entitled *Psychological status and handling of victims of human trafficking and of sexual abuse* was conducted by a clinical psychologist from the Social Welfare Bureau; 226 police officers from the *Action and Control Centre* of the PSP attended that training.

It should be pointed out that false documents detecting techniques were also improved through training courses organized in cooperation with the European Union (e.g. *Detection of Forged Travel and Identification Documents*, held under the ANEAS programme) and training on the improvement of skills to identify victims of trafficking in persons was provided by the International Organisation for Migration.

A special team within the PSP was set up to combat the crime of trafficking; 11 of its police officers completed a specific programme on protection and assistance to victims of trafficking.

In 2008, a new module on the law, prevention, investigation and suppression of the crime of trafficking in persons and related crimes was

introduced in the course for the professional promotion of police officers. A total of 150 police officers of the PSP attended this course. The said module was also introduced in the curricula of the Police Academy. In 2009, specialized training on the subject matter was also organized for 286 police officers.

In addition, the Paediatric Department of the Public Hospital and the Macao Paediatric Society co-organized a training session, aimed at topics of child abuse. Paediatrics and other medical staff are prepared to report any suspicious case of child abuse to the relevant law enforcement agencies.

To improve the coordinated performance of the different Government entities in charge of protection to victims, an arrangement was concluded between the law enforcement agencies, the Social Welfare Bureau and the Health Bureau. This arrangement pertains to referral of victims for purposes of assistance and/or protection, training of specialized staff on how to deal with victims, *etc.*

In this respect, the Commission against Trafficking has been fostering partnership with and between public entities, institutions and local NGOs in order to increase mutual understanding of trafficking issues and the sharing of information. By stimulating a community's response, it expects to help build in the Macao SAR the necessary capacity to collect data and better assess the problem.

Special assistance programmes for victims were designed following the new law on trafficking.

Assistance to victims is focused on the particular needs of victims, including the facilitation of their physical and psychological recovery and social reintegration. Under the available assistance programmes, the necessary clinical, psychological, social, financial and legal assistance, as well as counselling, shelter, occupational training and assurance of personal safety are ensured to victims.

The Social Welfare Bureau being the main entity responsible to provide such assistance has within its staff specialized personnel and works in close cooperation with other governmental departments and NGOs (e.g. the Women's General Association of Macao, the Macao Association against Child Abuse and the Good Shepherd Centre).

The Health Bureau also plays an important role in what concerns assistance to victims. The Social Work Division of the Public Hospital deals with cases of abuse and assistance requests. It provides psychological support and counselling to victims and child victims, assesses their family situation, examines whether they are in danger, *etc.* This Division may refer certain cases to other entities for follow-up, in order to assure the safety of victims or any other special need and care.

Victims of trafficking are entitled to protection, including special police protection if their lives are in danger, to stay in the Macao SAR while investigation and proceedings are taking place, to an interpreter, legal counselling/aid and to compensation.

In relation to international cooperation, it should be mentioned that Article 94 of the Basic Law allows the Macao SAR, with the assistance and authorization of the Central People's Government, to make appropriate arrangements with foreign States and territories for reciprocal judicial assistance.

As such, a bilateral agreement between the Macao SAR and Mongolia on cooperation to combat trafficking in persons is under negotiation.

Yet, it should be stressed that mutual legal assistance in criminal matters may be afforded or requested even in the absence of any bilateral agreement.

Mutual legal assistance in criminal matters with foreign jurisdictions is regulated under Law 6/2006. This law establishes the rules concerning the surrender of fugitive offenders, the transfer of criminal proceedings, the execution of criminal sentences, the transfer of sentenced persons, the

surveillance of sentenced persons or persons on parole, as well as other forms of legal assistance. The said law is based on principles such as the primacy of international law, reciprocity, speciality and *non bis in idem*.

Other forms of possible mutual legal assistance include service of judicial documents, provision of documents, gathering of evidence, searches and seizures; examination of objects and sites, experts evaluations, effecting service of accused persons, witnesses or experts; taking testimony or statements of accused persons, witnesses or experts and transit of persons.

At law enforcement level, it should be underscored that a contact system between the Macao SAR and neighbouring regions has been set in place (designation of liaison officers) so as to collect intelligence concerning several aspects of police co-operation, including trafficking in persons. The Customs Department has set up a communication system with the border checkpoint of the *Gongbei* Public Security Police and the Hong Kong SAR Police Force to exchange intelligence. A GPS system to monitor ships was installed, so as to better control their conditions and to better track down potential smuggling of migrants and trafficking in persons.

Furthermore, the topic of fighting against trafficking in persons and related crimes was also on the agendas of this year's Beijing-Macao SAR Police Meeting and the Guangdong-Macao SAR Police Meeting. In addition, joint operations under this mechanism were discussed at the Meeting of the Criminal Investigation Chiefs of Guangdong, Hong Kong SAR and Macao SAR.