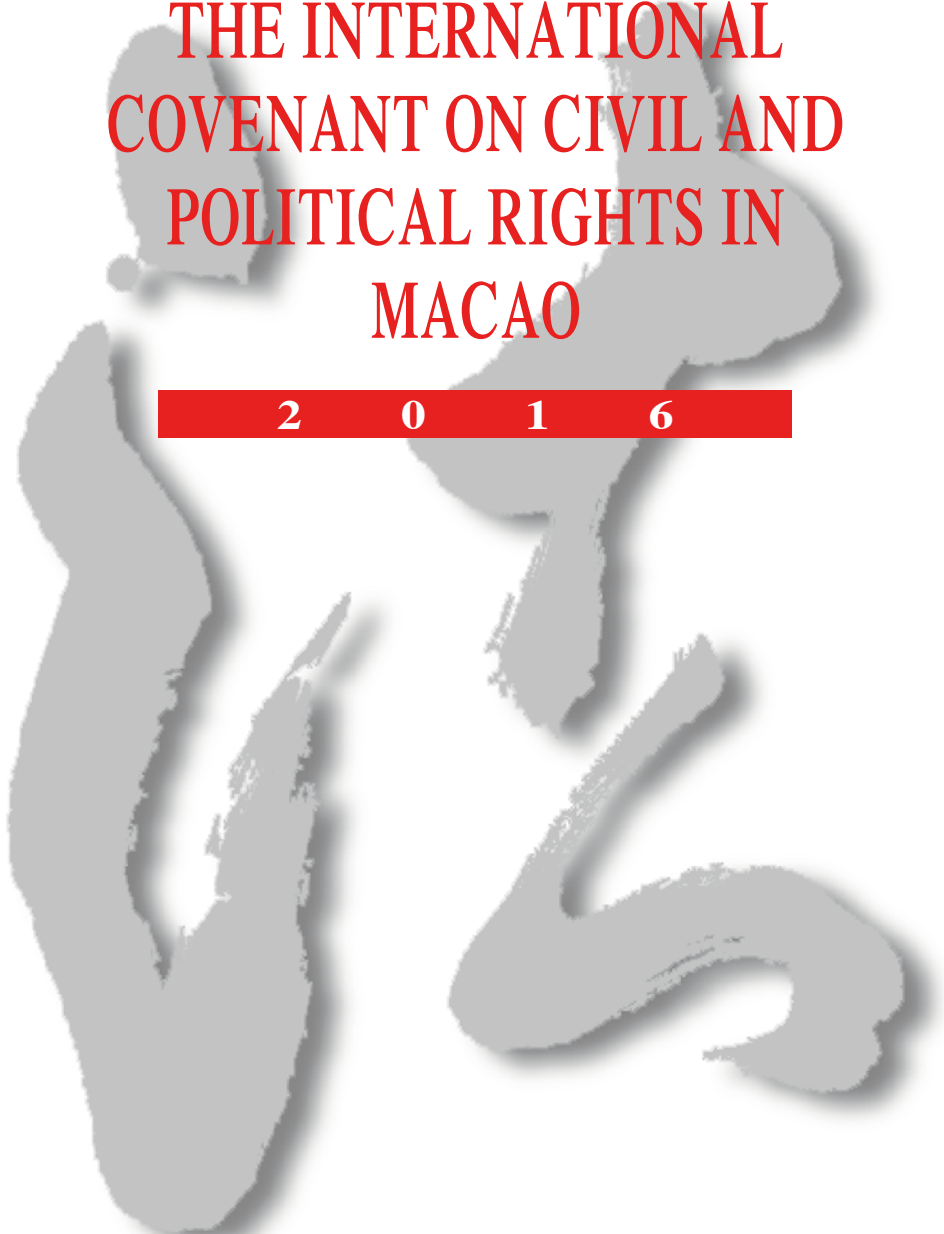


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L A W J O U R N A L

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

THE INTERNATIONAL
COVENANT ON CIVIL AND
POLITICAL RIGHTS IN
MACAO

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MACAO-EU CO-OPERATION PROGRAMME IN THE LEGAL FIELD



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PREFACE

This is the 10th volume of the Special Edition of the Macao Law Journal aiming at disseminating the core international human rights conventions applicable to the Macao Special Administrative Region. This edition will focus on the application of the International Covenant for Civil and Political Rights (hereinafter referred to as “ICCPR”) in the Macao Special Administrative Region, a cornerstone international human rights convention.

As in previous editions, we have assembled in a comprehensive and systematic manner a selection of documents related to the application of the ICCPR which encompasses the reporting documents submitted to the concerned human rights treaty monitoring body, where one can find a brief record of policies, normative acts and practices concerning the enjoyment and protection of civil and political rights in the Macao Special Administrative Region, as well as the observations and recommendations of the Human Rights Committee.

The compilation of user-friendly materials in this edition aims at providing legal practitioners, researchers, law students and the general public with a better understanding of the civil and political rights that Macao residents are entitled to and how they may be exercised and enjoyed, as well as at providing an enhanced insight of the human rights treaties applicable to the Macao Special Administrative Region and their reporting and monitoring mechanisms.

We hope that the special edition of the seven core international human rights treaties applicable to the Macao Special Administrative Region prove to be a useful tool to disseminate and to raise awareness as regards human rights in the Macao Special Administrative Region as well as to

encourage the study of human rights in the academia curricula in relation to their implementation in the Macao Special Administrative Region.

The Government of the Macao Special Administrative Region attaches great importance to this subject matter, upholding the need to make the public at large aware of the essence, principles, rights of human rights treaties, laws and practices applicable in the Region and the commitment undertaken by the Macao Special Administrative Region at international level to ensure the full enjoyment of human rights in the Region.

The Executive Director

Liu Dexue

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PART I

THE ICCPR AND ITS APPLICATION TO MACAO

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS * **

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and 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 these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

* Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

** Published in the Official Gazette of Macao, No.52, I Serie, 3rd Suppl., 31 December 1992.

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take

the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance

with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

- (a) No one shall be required to perform forced or compulsory labour;
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and

obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in

conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law

shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for re-nomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

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

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. 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 terms of nine 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 nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within

six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

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 the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

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) Twelve members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
- (b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant 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 the present Covenant. Communications under this article may be received and considered 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 received by the Committee 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 to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, 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 only after it has ascertained that all available 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;
- (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 human rights and fundamental freedoms as recognized in the present Covenant;
- (f) In any matter referred to it, 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 in 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 ten States Parties to the present Covenant have made declarations under paragraph I 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 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 42

1.

- (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
- (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

- (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
- (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
- (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
- (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary,

before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, 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 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of

the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that 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 to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

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

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

**PORTUGUESE PARLIAMENT RESOLUTION 41/92
CONCERNING THE APPLICATION OF THE COVENANT TO
MACAO ***

Parliament Resolution 41/92

Extends to the territory of Macao the application of the International Covenant on Civil and Political Rights.

The Parliament decides, in accordance with Articles 137 (b) and 169 (5) of the Constitution, the following:

Article 1

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, ratified, respectively, by Act 29/78 of 12 June, and by Act 45/78 of 11 July, shall be applicable in the territory of Macao.

Article 2

(1) The applicability in Macao of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and in particular of article 1 in both Covenants, shall in no way effect the status of Macao as defined in the Constitution of the Portuguese Republic and in the Organic Statue of Macao.

(2) The applicability of the Covenants in Macao shall in no way affect the provisions of the Joint Declaration of the Government of the

* Published in the Official Gazette of Macao, No.52, 3rd Suppl., 31 December 1992.

Portuguese Republic and the Government of the People's Republic of China on the Question of Macao, signed on 13 April 1987, especially with respect to the provision specifying that Macao forms part of Chinese territory and that the Government of the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999, and that Portugal will be responsible for the administration until 19 December 1999.

Article 3

Article 25 (b) of the International Covenant on Civil and Political Rights shall not apply to Macao with respect to the composition of elected bodies and the method of choosing and electing their officials as defined in the Constitution of the Portuguese Republic, the Organic Statute of Macao and provisions of the Joint Declaration on the Question of Macao.

Article 4

Article 12 (4) and article 13 of the International Covenant on Civil and Political Rights shall not apply to Macao with respect to the entry and exit of individuals and the expulsion of foreigners from the territory. These matters shall continue to be regulated by the Organic Statute of Macao and other applicable legislation, and also by the Joint Declaration on the Question of Macao.

Article 5

(1) The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights that are applicable to Macao shall be implemented in Macao, in particular through specific legal documents issued by the organs of government of the territory.

(2) The restrictions of the fundamental rights in Macao shall be confined to those cases prescribed by law and shall not exceed the limits permitted by the applicable provisions of the aforementioned Covenants.

(...)

NOTICE OF THE CHIEF EXECUTIVE 16/2001 *

Considering that the People's Republic of China notified on 2 December 1999, the Secretary-General of the United Nations, in its capacity of depository entity of the International Covenant on Civil and Political Rights, adopted at New York, on 16 December 1966, in respect to the continuation of the application of the referred Covenant to the Macao Special Administrative Region.

The Chief Executive orders the publication, in accordance with Article 6 (1), of the Law 3/1999, 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, 5 February 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 signed on 13 April 1987 (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

* Published in the Macao SAR Official Gazette No.7, Series II, 14 February 2001.

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

It is provided both in Section VIII of Elaboration by the Government of the People's Republic of China of its Basic Policies Regarding Macao, which is Annex I to the Joint Declaration, and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) which was adopted on 31 March 1993 by the National People's Congress of the People's Republic of China, that international agreements to which the People's Republic of China is not yet a party but which are implemented in Macao may continue to be implemented in the Macao Special Administrative Region.

In accordance with the above provisions, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to inform Your Excellency of the following:

The International Covenant on Civil and Political Rights, adopted at New York on 16 December 1966 (hereinafter referred to as the "Covenant"), which applies to Macao at present, will continue to 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:

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.

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.

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 the Joint Declaration and the Basic Law.

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 Macao Special Administrative Region.

Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Covenant. (...)"

PART II

REPORTS, WRITTEN QUESTIONS & ANSWERS

1996 'CORE DOCUMENT' IN RELATION TO PORTUGAL (MACAO)*

1. Macao, a territory under Portuguese administration, lies on the South China coast around 65 km to the west of Hong Kong.

2. The Territory of Macao includes the Peninsula of Macao (where the "City of the Name of God" is located) and the islands of Taipa and Coloane, covering a total surface area of approximately 18 square kilometres.

3. Macao's geographical location, its traditional openness and its economic, social and cultural environment have attracted and facilitated the coexistence of extremely varied cultures, languages and religions.

4. According to the last (13th) General Population Census taken in 1991 (Censos '91), the total resident population stood at 355,693 inhabitants with an estimated increase to 381,000 inhabitants by the end of 1992.

5. The composition of the population and relative standing of the main ethnic and cultural, linguistic and religious groups can be seen in the XIIIth Population Census/IIIrd Housing Census Global Results, annexed to this report**, and in the information given with regard to article 27 of the International Covenant on Civil and Political Rights.

6. The establishment of the Portuguese in Macao dates back to 1557.

7. Currently, the territory's situation is defined in the Portuguese Constitution and in 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 (usually called the Sino-Portuguese

* HRI/CORE/1/Add.73, 13 June 1996

** Available for consultation in the files of the Centre for Human Rights.

Joint Declaration*) signed in Beijing on 13 April 1987. In this it is stated that Macao forms part of China's territory and that the Government of the People's Republic of China shall resume sovereignty over Macao on 20 December 1999. Under the terms of this agreement, Portugal shall be responsible for the administration of Macao during the "transition period" leading up to 19 December 1999.

8. Macao's legal system is based on the Romano-Germanic branch of continental European law. It is characterized by the fact that laws proper are, by far, the most important source of law, and the relevant legislation is inserted in specific legal codes known as the five "big codes": the Civil Code*, the Commercial Code*, the Civil Procedure Code*, the Criminal Code* and the Criminal Procedure Code*.

9. Macao's constitutional organization has undergone major changes over the territory's history. Initially, there was a system of "mixed jurisdiction" (from 1557 to 1822), followed by a "colonial period" (1822 to 1976) and latterly a "transition period" (lasting from 1976 until 19 December 1999). A constant feature of Macao's history has been the ongoing cooperation displayed between Portugal and China. In addition to this, Macao has always enjoyed a high degree of autonomy.

10. Right from the start of the Portuguese settlement of Macao, this high degree of autonomy was reflected in the administrative organization of the Territory. The post of Governor was only introduced in the mid-seventeenth century but, in fact, until 1783, when the Royal Provisions 1/ were approved, the Portuguese settlement of Macao was governed by the politically powerful *Senado*. The *Senado*, a body based on the medieval Portuguese tradition of local government, represented Portuguese interests through the offices of three councillors elected for three years by the Portuguese population, two judges and one procurator. The *Senado* was vested with political, administrative and judicial powers.

11. Even during the "colonial period", Macao enjoyed a high degree of political-administrative autonomy. Firstly, the agents of central Portuguese

power were located far away in Goa. Secondly, whenever there were crises in what were generally healthy relations with the Chinese authorities, the emphasis was on finding quick local solutions. Finally, there were deeply rooted traditions of autonomy.

12. At present, Macao is in the course of the “transition period” which will end when China resumes full sovereignty over the territory on 20 December 1999 (Sino-Portuguese Joint Declaration, art. 1). Following this date, and for a period of 50 years, the People’s Republic of China undertakes to uphold the various principles, policies and provisions which, under the principle of “one country, two systems”, are included in the Sino-Portuguese Joint Declaration (art. 2 (12)) and to enshrine them in a Basic Law of the Macao Special Administrative Region of the People’s Republic of China, approved by the First Session of the Eighth National People’s Congress of the People’s Republic of China on 31 March 1993*.

13. With regard to Macao’s legal system, article 2 (4), of the Sino-Portuguese Joint Declaration states that “the current social and economic system will remain unchanged, and so will the life-style”, and that “the laws currently in force in Macao will remain basically unchanged”. The Joint Declaration also makes provision that “the laws, decree-laws, administrative regulations and other normative acts previously in force in Macao shall be maintained, save for any whatever therein that may contravene the Basic Law or subject to any amendment by the Macao Special Administrative Region legislature” following the establishment of the Macao Special Administrative Region (annex I, sect. III, para. 2).

14. The same principle of the continuity of Macao’s legal system in the Special Administrative Region is enshrined in the Basic Law of the Macao Special Administrative Region. Here article 8 states that “the laws, decree-laws, 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”. The principle of continuity also applies to international

conventions to which China is not party, as stipulated in annex I, section VIII, paragraph 3, of the Sino-Portuguese Joint Declaration: “international agreements to which the People’s Republic of China is not a party but which are implemented in Macao may continue to be implemented”. This rule is also repeated in article 138, paragraph 2, of the Basic Law of the Macao Special Administrative Region.

15. The Sino-Portuguese Joint Declaration also stipulates specific fundamental rights. In article 2 (4), provision is made accordingly: “All rights and freedoms of the inhabitants and other persons in Macao, including those of the person, of speech, of the press, of assembly, of association, of travel and movement, of strike, of choice of occupation, of academic research, of religion and belief, of communication and the ownership of property will be ensured by law in the Macao Special Administrative Region.” In annex I, section V, paragraph 1, of the Sino-Portuguese Joint Declaration, this safeguard is presented in greater detail: “The Macao Special Administrative Region shall, according to the law, ensure the rights and freedoms of the inhabitants and other persons in Macao as provided for by the laws previously in force in Macao, including freedoms of the person, of the press, of assembly, of demonstration, of association (e.g. to form and join non-official associations), to form and join trade unions, of travel and movement, of choice of occupation and work, of strike, of religion and belief, of education and academic research; inviolability of the home and communication, and the right to have access to law and courts, rights concerning the ownership of private property and of enterprises and their transfer and inheritance, and to obtain appropriate compensation for lawful deprivation to be paid without undue delay; freedom to marry and the right to form and raise a family freely.” Paragraph 2 of the same section merits special attention as it enshrines the principles of equality and non-discrimination, stating that “the inhabitants and other persons in the Macao Special Administrative Region shall all be equal before the law, and shall be free from discrimination irrespective of nationality, descent, sex, race, language, religion, political or ideological belief, educational level, economic status or social conditions”.

16. In mid-1992, Portugal and the People's Republic of China began negotiations in the Sino-Portuguese Joint Liaison Group concerning the extension to Macao of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights. An agreement was reached in October 1992 when a memorandum on the subject was signed by the leaders of the Portuguese and Chinese teams of the Sino-Portuguese Joint Liaison Group. By the terms of this agreement, Portugal undertook to extend the two Covenants to Macao by means of a proposed Resolution of the Assembly of the Portuguese Republic. The People's Republic of China undertook to guarantee, through a clause expressly included for this end in the Basic Law of the Macao Special Administrative Region, the continuity of the two Covenants after 19 December 1999.

17. The Assembly of the Portuguese Republic implemented Portugal's side of the agreement by approving Resolution No. 41/92 of 31 December, published in the Official Gazette (Boletim Oficial) of Macao, No. 52, 3rd Supplement, of 31 December 1992*, going ahead with the extension of the two Covenants to the territory of Macao with only four restrictions. (These restrictions are explained in the report on the International Covenant on Civil and Political Rights). The Declaration extending the application of the Covenants to Macao, approved by the Assembly of the Portuguese Republic's Resolution No. 41/92, was lodged by Portugal with the Secretary-General of the United Nations on 27 April 1993.

18. In turn, the People's Republic of China observed its side of the agreement reached in the Joint Liaison Group by including in the Basic Law of the Macao Special Administrative Region a clause which anticipates that "the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Macao shall remain in force and shall be implemented through the laws of the Macao Special Administrative Region. The rights and freedoms enjoyed by Macao residents shall not be restricted except as prescribed by law.

Such restrictions shall not contravene the provisions of the first paragraph of this Article” (art. 40).

19. In response to specific questions raised by the United Nations Human Rights Committee on the regime for civil and political rights in force in Macao, the following points should be noted.

20. The nature of the sources of norms enshrining protected rights. Article 292 of the Portuguese Constitution states that the Territory of Macao shall be governed by a statute adequate to its special situation as anticipated in the Organic Statute of Macao (hereinafter referred to as OS) approved by Law 1/76 of 17 February with the amendments introduced by Law 53/79 of 14 September and Law 13/90 of 10 May*. It should be noted that the OS is a constitutional law. In turn, article 2 of the OS includes a direct transfer to Macao’s system of the principles of rights, freedoms and safeguards, i.e. the Fundamental Principles of Section I (“General Principles”) and Section II (“Rights, Freedoms and Safeguards”) of Part I (“Fundamental Rights and Duties”), established in the Portuguese Constitution. The same conclusion can be drawn from the provision made in article 11, paragraph 1 d), of the OS.

21. The rights, freedoms and safeguards of the Portuguese Constitution - which not only takes into account the civil and political rights included in the Covenant but exceeds them on several points - are applied in Macao’s legal system under the provisions of article 2 of the OS. These rights, freedoms and safeguards are not applied in the exact same terms and with the same content as in Portugal due to a few limitations arising from special precepts of the OS reflecting Macao’s specific and different situation. The exercise of these rights, freedoms and safeguards is limited or restricted in Macao under the terms of article 18, paragraphs 2 and 3, of the Portuguese Constitution in which it is stated that:

“2. Rights, freedoms and safeguards may be restricted by law in only those cases expressly provided for in the Constitution. Restrictions shall be limited to what is necessary to safeguard other rights or interests protected by the Constitution.

“3. Laws restricting rights, freedoms and safeguards shall be general and abstract in character, shall not have retroactive effects, and shall not limit in extent and scope the essential content of provisions.”

22. Article 19 of the Portuguese Constitution is also in force in Macao, allowing the organs of supreme authority to suspend the exercise of rights, freedoms and safeguards only in the case of a state of siege or a state of emergency declared in the form laid down in the Constitution. The Governor of Macao also has the power to take the necessary measures to restore public order anywhere in Macao on the advice of the Consultative Council. Should it be necessary to restrict or suspend the exercise of constitutional rights, freedoms and safeguards, the advice of the Legislative Assembly must first be sought and the President of the Republic informed as soon as possible (OS, art. 11, para. 1 d)).

23. In turn, article 5, paragraph 2, of the Assembly of the Republic’s Resolution No. 41/92 of 31 December, published in the Official Gazette of Macao, No. 52, 3rd Supplement, of 31 December 1992, applying the two Covenants to Macao, states that: “Fundamental rights in Macao shall not be restricted unless as prescribed by law and these restrictions may not exceed the applicable provisions of the Covenants [on Civil and Political Rights and on Economic, Social and Cultural Rights].”

24. The limitations and restrictions on the exercise of these rights enshrined in locally produced legislation regulating fundamental rights have, moreover, been considerably fewer than those referred to in the Covenant.

25. This is the case with Law 7/90/M of 6 August (The Press Law*) which, in article 4, paragraph 3, establishes that “limits on press freedom shall occur only under the terms of the provisions of this law and those imposed by general law to safeguard the moral and physical integrity of the people and any examination or application of these shall be effected by the courts”.

26. Possibility of the provisions of the Covenant being directly applicable and invoked. In both Macao and Portugal, the same constitutional rules regarding the relationship between international and domestic law are in force, namely article 8 of the Portuguese Constitution which establishes the principle of primacy of international law over ordinary domestic law. Thus the precepts of the Covenant are applied and invoked under the same terms as in Portugal, although it should be noted that article 8, paragraph 2, of the Portuguese Constitution establishes a regime for the automatic acceptance of the norms of international conventions.

27. Article 5, paragraph 1, of the Assembly of the Republic's Resolution No. 41/92 of 31 December, establishes that: "The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights applicable to Macao shall be implemented in Macao, namely through specific laws issued by the Territory's own organs of government." Nevertheless, this provision does not, and could not, taking into account the general principles of the hierarchy of sources of law, change in any way the constitutional norms regarding whether or not the provisions, of the Covenant can be directly applied or invoked. This article is intended to emphasize the need for those provisions of the Covenant(s) applicable to Macao to be drafted by local legislating bodies, on the one hand implying that these powers should be transferred from Portugal to Macao, 2/ and on the other highlighting the political objective of localizing legislation.

28. Administrative, judicial and other bodies with relevance to human rights. This point is dealt with in the report on the International Covenant on Civil and Political Rights which should be consulted to avoid repetition.

29. Remedies available to individuals whose rights have been violated. Of the principle forms of remedies available to individuals whose rights have been violated, the following deserve mention:

- (a) A complaint lodged with the Public Information and Assistance Centre (PIAC);

- (b) A complaint lodged with the High Commission against Corruption and Administrative Illegality;
- (c) An administrative complaint (reclamação administrativa);
- (d) Appeal for an administrative review;
- (e) Appeal for a judicial review of administrative action;
- (f) Appeal to the Constitutional Court from an individual case under litigation;
- (g) Support appeal (recurso de amparo).

This is discussed further in the information provided on article 2 of the International Covenant on Civil and Political Rights.

Notes

1. The Royal Provisions of 4 April 1783 were issued by the Portuguese Crown with the main objective of transferring to the Governor of Macao the powers required to make him the most important figure in Macao's political life. One of the orders they contained was that the Macao Senado should submit its accounts to the Governor and the Magistrate and that it should not take any decision without consulting the Governor. Thus the Governor came to play a compulsory role in all affairs concerning the Government of the Territory and was entitled to veto Senado decisions, reinforcing central Portuguese power in Macao.

2. These transfers of legislative powers represent one of the most important factors in Macao's progressive autonomy which arose from the changes to the OS created by Law 53/79 of 14 September and by Law 13/90 of 10 May (texts with the Secretariat).

**1996 PORTUGAL'S REPORT UNDER ARTICLE 40 OF THE
COVENANT CONCERNING THE APPLICATION OF THE
ICCPR TO MACAO * ** *****

Article 1

1. The status of the Territory of Macao is defined in both Portugal's and Macao's legislation by the 1976 Portuguese Constitution (PC) (annex 2) and the Organic Statute of Macao (OS) (annex 12) approved by Law 1/76 of 17 February and amended by Law 53/79 of 14 September and Law 13/90 of 10 May.

2. Under international law, Macao's status is defined by 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 (annex 3) signed in Beijing on 13 April 1987, and by the United Nations decisions on the issue, namely the 1972 recommendation of the United Nations Special Committee on Decolonization concerning Macao's situation (see A/8723/Rev.1) and United Nations General Assembly resolution 2908 (XXVII) of 2 November 1972 approving the report of the Special Committee.

3. From the original 1976 version until the present, the PC has included specific provisions concerning Macao's situation with a view to defining the Territory's legal status according to the new Portuguese constitutional regime and in accordance with the above-mentioned international directives from the United Nations.

* The present document contains information submitted by the Government of Portugal on the application of the Covenant in Macao.

** The information submitted by Portugal in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.73).

*** CCPR/C/70/Add.9, 28 November 1996

4. The Constituent Assembly which drew up the present Constitution - in which the Territory of Macao was expressly defined as such - included a fourth paragraph in article 5 of the Constitution under the heading “Territory”, with the following text: “The Territory of Macao, under Portuguese administration, shall be governed by a statute adequate to its special situation.” The PC clarified the situation once and for all and, in contrast to paragraph 1 of the same article, Macao was explicitly excluded from the national territory. Under the terms of this provision, the powers of the Portuguese State were defined as simple administrative powers. Although this was to change the internal framework, the Portuguese legislators were merely absorbing the theory which had already been recognized at international level by both the People’s Republic of China and the United Nations, namely that Macao is Chinese territory under Portuguese administration.

5. The Sino-Portuguese Joint Declaration was to consolidate Portugal’s and the People’s Republic of China’s existing understanding of Macao’s legal character. Article 1 of the treaty states: “The Government of the People’s Republic of China and the Government of the Republic of Portugal declare that the Macao area (including the Macao Peninsula, Taipa Island and Coloane Island, hereinafter referred to as Macao) is Chinese territory, and the Government of the People’s Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999.”

6. Similarly, article 2 of the Assembly of the Republic’s resolution No. 41/92 of 31 December (annexes 10 and 11) reiterates that:

“1. The application in Macao of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, namely article 1 of both Covenants, shall not in any way affect the status of Macao as defined by the Portuguese Constitution and the Organic Statute of Macao.

“2. The application in Macao of those Covenants shall in no way affect the provisions of the Sino-Portuguese Joint Declaration on the Question of Macao signed on 13 April 1987, namely insofar as it states that Macao is part of the territory of China and that the Government of the People’s Republic of China shall resume the exercise of sovereignty over Macao with effect from 20 December 1999 while Portugal shall be responsible for the administration of Macao until 19 December 1999.”

7. In the light of the Sino-Portuguese Joint Declaration, the 1989 review of the Constitution included a revision of the provisions concerning Macao and these have now been merged into a single article, article 292, under the heading “Statute of Macao”, with the following text:

- “1. While under Portuguese administration, the territory of Macao shall [remain under] a statute adequate to its special situation.
- “2. The Statute of the Territory of Macao, embodied in Law No. 1/76 of 17 February, and incorporating the amendments thereto that were introduced by Law No. 53/79 of 14 September, shall continue in force.
- “3. Upon proposal of either the Legislative Assembly of Macao or the Governor of Macao, the latter after having heard the Legislative Assembly of Macao, the Assembly of the Republic shall be empowered to amend or to replace the Statute after having sought the opinion of the Council of State.
- “4. Where the proposal is approved with amendments, the President of the Republic shall not promulgate the decree of the Assembly of the Republic unless the Legislative Assembly of Macao or, as appropriate, the Governor of Macao, gives a favourable opinion.
- “5. The Territory of Macao shall have its own judicial organization, autonomous and adapted to the specificities of that territory, in conformity with the law; the latter shall safeguard the principle of the independence of the judges.”

8. Article 2 of the OS states, in turn that: “the Territory of Macao shall be organized as a juridical entity and, in respect of the principles and the rights, freedoms and safeguards established in the Constitution of the Republic of Portugal and this Statute, shall have administrative, economic, financial and legislative autonomy”.

9. Under article 4 of the OS, the Territory’s own governing bodies shall be the Governor and the Legislative Assembly. The Consultative Council operates alongside the Governor and is responsible for advising him on all matters concerning his duties or the administration of the Territory whenever the Governor deems it appropriate. With regard to the appointment of the Governor, article 7 of the OS states that the Governor is to be appointed and dismissed by the President of the Republic following consultation with the local population through the Legislative Assembly and representatives of social organizations. The consultation procedure provided for in article 7 is regulated in articles 180 to 183 of the Legislative Assembly’s Regulations (annex 14).

10. The Legislative Assembly consists of 23 members appointed in the following manner: 8 elected by direct, universal suffrage; 8 elected by indirect suffrage; 7 appointed by the Governor from amongst local residents of recognized merit and standing in the local community.

11. It should be pointed out that all aspects of Macao’s public life are strongly influenced by the notion of participation by and consultation with the population and representatives of social, cultural and economic interests. A fair reflection of this high degree of participation by and consultation with the population is that there are several consultative organs, such as the Council for Transitional Affairs, the Standing Committee on Coordinating Social Affairs, the Consumer Council, the Economic Council and the Education Committee, which place a heavy emphasis on participation. This subject is dealt with in greater detail in the information pertaining to article 25 of the Covenant.

Article 2

Paragraph 1

12. Article 13 of the PC upholds, fully and explicitly, the principle of equality of all citizens before the law, making special provision that: “no one shall be privileged, favoured, injured, deprived of any right or exempt from any duty because of his ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social condition” (para. 2).

Paragraph 2

13. Although Portugal’s legislative bodies retain their powers with regard to Macao, the Territory’s own governing bodies have special responsibilities for adopting the measures (namely, through legislation) intended to give effect to the rights recognized in the Covenant, as provided for in article 5, paragraph 1, of the Assembly of the Republic’s resolution No. 41/92 of 31 December which extended the Covenant to Macao.

14. Issues concerning rights, freedoms and safeguards are, in effect covered by the powers of the Legislative Assembly and of the Governor, according to article 31, paragraphs 1 (b) and 5, of the OS.

15. In practice, even before the Covenant was extended to Macao, legislative bodies in Macao had, over recent years, been regulating the various fundamental rights provided for in the Covenant and the PC, as shall be seen in greater detail in the information pertaining to various articles of the Covenant.

16. Without providing an exhaustive list, the following legal documents which appeared after the signing of the Sino-Portuguese Joint Declaration should be noted:

- (i) Decree-Law 31/87/M of 1 June, which established the Standing Committee on Coordinating Social Affairs to operate alongside the Governor as a tripartite consultative body with representatives from employers' and employees' associations, intended to promote communication and harmonization between the Administration and these organizations in order to guarantee their participation in defining socio-economic policies (annex 15);
- (ii) Law 14/87/M of 7 December, approving the criminal law on corruption (annex 16);
- (iii) Governor's Orders 12/GM/88 of 26 January and 49/GM/88 of 10 May, concerning the importation of labour (annex 17);
- (iv) Law 10/88/M of 6 June, regulating electoral registration, altered by Law 10/91/M of 29 August (annex 18);
- (v) Law 12/88/M of 13 June, defining the general regime for protecting consumer rights and creating the Consumer Council (annex 19);
- (vi) Law 21/88/M of 15 August, regulating access to the law and courts (annex 20);
- (vii) Law 24/88/M of 3 October, approving the legal framework of the municipal councils, altered by Law 4/93/M of 5 July (annex 21);
- (viii) Law 25/88/M of 3 October, approving the electoral system for the Municipal Assembly (annex 22);
- (ix) Law 26/88/M of 3 October, approving the status of office bearers in the municipalities (annex 23);
- (x) Decree-Law 11/89/M of 20 February, establishing the use of Chinese in government documents (annex 24);

- (xi) Decree-Law 24/89/M of 3 April, approving the legal framework for labour relations in Macao, altered by Decree-Law 32/90/M of 9 July (annex 25);
- (xii) Decree-Law 128/89 of 15 April, published in the Official Gazette of Macao No. 20 of 15 May 1989, governing the validity of identity documents issued in Macao (annex 26);
- (xiii) Law 7/89/M of 4 September, establishing the general framework for the regulation of advertising (annex 27);
- (xiv) Law 8/89/M of 4 September, establishing the legal framework for television and radio broadcasting (annex 28);
- (xv) Decree-Law 59/89/M of 11 September, creating the Environment Committee (annex 29);
- (xvi) Decree-Law 2/90/M of 31 January, regulating the entry, length of stay and establishment of residence in the territory of Macao (annex 30);
- (xvii) Law 2/90/M of 3 May, establishing measures concerning illegal immigration, altered by Decree-Law 39/92/M of 20 July (annex 31);
- (xviii) Law 7/90/M of 6 August, approving the Press Law (annex 13);
- (xix) Decree-Law 47/90/M of 20 August, approving the norms for publishing, identifying and formulating legal documents, altered by Decree-Law 23/93/M of 24 May (annex 32);
- (xx) Decree-Law 49/90/M of 27 August, regulating the issuing of Macao temporary residence permits and defining the legal implications, altered by Decree-Law 16/91/M of 25 February and Decree-Law 55/93/M of 11 October (annex 33);

- (xxi) Law 11/90/M of 10 September, creating the High Commission against Corruption and Administrative Illegality (annex 34);
- (xxii) Decree-Law 61/90/M of 24 September, defining the Organic Law of the Directorate of the Judicial Police of Macao (annex 35);
- (xxiii) Decree-Law 76/90/M of 26 December, defining and establishing the guiding principles and aims of domestic security activities, and the bodies, forces and intervention services involved (annex 36);
- (xxiv) Administrative Regulation 11/91/M of 28 January, regulating press registration (annex 37);
- (xxv) Law 4/91/M of 1 April, approving the electoral systems for the Legislative Assembly of Macao (annex 38);
- (xxvi) Governor's Order 92/GM/91 of 25 March, approving the operating norms for the Security Council (annex 39);
- (xxvii) Decree-Law 112/91 of 20 March, published in the Official Gazette of Macao No. 14 of 8 April 1991, unifying Macao's identification system by issuing a compulsory identity document for all residents, altered by Decree-Law 133/92 of 10 July, published in the Official Gazette of Macao No. 29 of 20 July 1992 (annex 40);
- (xxviii) Decree-Law 28/91/M of 22 April, establishing the framework for extra-contractual civil liability of the Administration of Macao, public corporations, their office-bearers and agents in acts of public management (annex 41);
- (xxix) Decree-Law 31/91/M of 6 May, approving the Lawyers Statute, altered by Decree-Law 26/92/M of 4 May (annex 42);

- (xxx) Governor's Order 106/GM/91 of 27 May, institutionalizing improved communication systems between the Administration and Macao's citizens (annex 43);
- (xxxii) Governor's Order 128/GM/91 of 5 August, approving the operating norms for the Security Coordination Bureau (annex 44);
- (xxxiii) Law 11/91/M of 29 August, establishing the general framework for education in Macao (annex 45);
- (xxxiv) Law 112/91 of 29 August, published in the Official Gazette of Macao No. 36 of 9 September, establishing the basic organization of the judiciary of Macao, altered by Law 4-A/93 of 26 February, published in the Official Gazette of Macao No. 9 of 1 March 1993 (annex 46);
- (xxxv) Decree-Law 51/91/M of 15 October, approving the status and electoral regime for members of the Consultative Council (annex 47);
- (xxxvi) Decision of the Consultative Council of 2 October 1991, approving the regulations of the Consultative Council, published in the Official Gazette of Macao No. 41 of 15 October 1991 (annex 48);
- (xxxvii) Decree-Law 54/91/M of 21 October, establishing the rules for authorizing, practising and regulating the activities of private insurance companies (annex 49);
- (xxxviii) Decree-Law 455/91 of 31 December, published in the Official Gazette of Macao No. 2 of 13 January 1992, elevating Chinese to the status of an official language alongside Portuguese (annex 50);
- (xxxix) Decree-Law 6/92/M of 27 January, regulating the issue of the new Macao resident identity card (annex 51);

- (xxxix) Decree-Law 7/92/M of 29 January, approving the composition, organic structure and regime of the High Commission against Corruption and Administrative Illegality (annex 52);
- (xl) Decree-Law 438/88 of 29 November, published in the Official Gazette of Macao No. 8 of 24 February 1992, approving the legal regime for passports (annex 53);
- (xli) Decree-Law 11/92/M of 24 February, approving the regulations for the award and issue of passports in Macao (annex 54);
- (xlii) Governor's Order 16/GM/92 of 17 February, creating the Committee for Overseeing the Language Situation in Macao (annex 55);
- (xliii) Decree-Law 17/92/M of 2 March, approving Macao's judicial system (annex 56);
- (xliv) Decree-Law 18/92/M of 2 March, regulating the organization, powers, operations and procedures of the Court of Audit (annex 57);
- (xlv) Decree-Law 24/92/M of 22 April, regulating the installation, operation and maintenance of security alarms (annex 58);
- (xlvi) Decree-Law 37/92/M of 13 July, regulating proof of residence for obtaining a resident's identity card in special cases (annex 59);
- (xlvii) Decree-Law 51/92/M of 17 August, altering Decree-Law 79/84/M of 21 July, regulating the issuing of the national citizen's identity card in Macao (annex 60);
- (xlviii) Decree-Law 55/92/M of 18 August, approving the statute of the magistrates of Macao's courts and the statute of members

of the Macao High Council of Justice and the Macao Judicial Council and their organic structure (annex 61);

- (xlix) Law 16/92/M of 28 September, defining the rules governing confidentiality in communication and the right to privacy (annex 62);
- (l) Decree-Law 72/92/M of 28 September, reformulating and updating the norms concerning civil protection (annex 63);
- (li) Regulations for admission to the legal profession, approved by the Macao Lawyers' Association on 19 November 1992 and published in the Official Gazette of Macao No. 48 of 30 November 1992 (annex 64);
- (lii) Governor's Order 121/GM/92 of 31 December, ratifying the Code of Ethics submitted by the Macao Lawyers' Association (annex 65);
- (liii) Decree-Law 11/93/M of 15 March, reviewing sanctions for the use, possession and carrying of arms (annex 66);
- (liv) Law 2/93/M of 17 May, regulating the right to meet and demonstrate in public places (annex 67);
- (lv) Resolution of the Legislative Assembly 1/93/M of 12 March, published in the Official Gazette of Macao No. 23 of 7 June, approving the regulations of the Legislative Assembly of Macao (annex 14);
- (lvi) Decree-Law 30/93/M of 21 June, reorganizing the structure of the Legal Translation Office (annex 68);
- (lvii) Decree-Law 32/93/M of 5 July, approving the legal framework for Macao's financial system (annex 69);
- (lviii) Resolution 1/TC/M-93 of 25 May 1993, published in the Official Gazette of Macao, 1st Series, No. 30 of 26 July,

- approving the Administrative Rule of the Court of Audit (annex 70);
- (lix) Law 7/93/M of 9 August, approving the [Legislative Assembly] Members' Statute, altered by Law 10/93/M of 27 December (annex 71);
 - (lx) Law 8/93/M of 9 August, approving the Organic Law for the Legislative Assembly (annex 72);
 - (lxi) Law 64/93 of 26 August, published in the Official Gazette of Macao, 1st Series, No. 36 of 6 September 1993, establishing the legal framework governing conflict of duties and incompatibilities for holders of political office and high-ranking public officials (annex 73)
 - (lxii) Decree-Law 60/93/M of 18 October, partially altering the norms regulating employment in Territorial Security (annex 74);
 - (lxiii) Decree-Law 357/93 of 14 October, published in the Official Gazette of Macao No. 43 of 25 October, defining the terms under which civil servants of Macao can be integrated into the Portuguese civil service (annex 75);
 - (lxiv) Announcement by the Urban Council (*Leal Senado*), published in the Official Gazette of Macao, 2nd Series, No. 46 of 17 November 1993, on places which can be used for meetings or demonstrations (annex 76);
 - (lxv) Announcement by the Island's Municipal Council, published in the Official Gazette of Macao, 2nd Series, No. 51 of 23 December 1993, on places which can be used for meetings or demonstrations (annex 77);
 - (lxvi) Decree-Law 72/93/M of 27 December, regulating the activities of Parent-Teacher Associations (annex 78);

- (lxvii) Decree-Law 6/94/M of 24 January, establishing the training regime for magistrates and creating the Macao Magistrates' Training Centre (annex 79);
- (lxviii) Decree-Law 7/94/M of 24 January, defining the status of the post of judicial auditor (annex 80);
- (lxix) Decree-Law 9/94/M of 31 January, establishing the regime for forensic and medical examinations required by law (annex 81);
- (lxx) Decree-Law 14/94/M of 23 February, regulating the application in Macao of Decree-Law 357/93 of 14 October, recognizing the right of integration into the Portuguese civil service (annex 82);
- (lxxi) Decree-Law 13/94/M of 21 February, creating the Economic Council (annex 83).

17. In addition to these provisions, a massive task of law reform is currently under way in an attempt to localize and adapt to the local situation legislation which is currently in force in Macao, with regard to the present "transition period". The principle areas in which legislative changes concerning those rights enshrined in the Covenant are being made are reforms to the Civil Code (annex 4), the Commercial Code (annex 5), the Civil Procedure Code (annex 6), the Criminal Code (annex 7) and the Criminal Procedure Code (annex 8), legislation on judicial organization and legislation on administrative procedure. The regulation of each constitutional right, freedom and safeguard in force in Macao is also being effected through specific laws.

18. The jurisprudence of the Constitutional Court - which has jurisdiction over Macao - should also be noted. This has already been discussed in Portugal's second periodic report (CCPR/C/42/Add.1 of 31 October 1988, paras. 162-165).

Paragraph 3

19. Article 18, paragraph 1, of the PC states that “[t]he constitutional provisions relating to rights, freedoms and safeguards shall be directly applicable and binding on public and private bodies”. Furthermore, article 22 of the PC stipulates that “[t]he State and other public bodies shall be jointly and severally liable under civil law with the members of their organs, their officials or their staff members, for actions or omissions in the exercise of their functions or caused by such exercise which result in violations of rights, freedoms and safeguards or in damage to another party”. This provision is protected under local legislation through Decree-Law 28/91/M of 22 April establishing the law for the extra-contractual civil liability of the Administration, public corporations, their office-bearers and agents in acts of public management (annex 41). Finally, article 21 of the PC enshrines the right of any individual to “resist any order that infringes his rights, freedoms or safeguards and to repel by force any form of aggression when recourse to public authority is impossible”.

20. With regard to the remedies available in the case of any violation of rights and freedoms recognized in the Covenant, the following should be mentioned in the area of rights and freedoms violated by administrative authorities:

- (a) A complaint lodged with the Public Information and Assistance Centre (PIAC)*. Citizens may lodge complaints with the PIAC on matters pertaining directly to themselves and concerning acts or omissions by public services (Decree-Law 60/86/M of 31 December, articles 4-6 (annex 84));
- (b) A complaint lodged with the High Commission against Corruption and Administrative Illegality (HCCAI). One of the HCCAI’s responsibilities is to promote the protection of people’s rights, freedoms, safeguards and legitimate interests and it may address recommendations directly to the relevant authorities with a view to remedying illegal or unjust administrative actions.

21. In the field of rights and freedoms violated by private individuals, mechanisms exist to safeguard and assert these with the possibility of appeal to the courts.

22. Further to the judicial safeguards mentioned above, namely judicial appeal against administrative actions, article 20 of the PC and article 2 of Decree-Law 17/92/M of 2 March (annex 56) enshrine the right of access to the courts. This right includes the right to appeal and the right to a court decision without undue delay. The legal right of access to the courts also includes the right for all activities directed towards the enforcement of the courts' decisions to be regulated by law (art. 208, para. 3, of the PC).

* The PIAC is a service provided by the Administration and is intended to promote fair, legal, prompt and efficient practice within the Administration. It has the following responsibilities:

- (a) Receiving criticism and suggestions from citizens concerning the manner in which public services operate, directing these to the relevant departments;
- (b) Accepting complaints from citizens concerning acts and omissions by public services, directing these to the relevant department and overseeing them until they are resolved;
- (c) Providing information requested concerning the services provided by the Administration and directing citizens towards the various public services, depending on which services are offered and required;
- (d) Disseminating information amongst the public concerning services provided by the Administration and the rights of those under administration;
- (e) Ensuring communication between the other services of the Administration attending to the public in order to ensure complementary services (art. 4, para. 1, of Decree-Law 60/86/M of 31 December) on the basis of information received in any form or manner (art. 3, para. 1 (c); art. 4 (m), and article 9 of Law 11/90/M of 10 September (annex 34));
- (f) An administrative complaint. Individuals whose legitimate personal interests are deemed to have been violated by administrative actions may appeal to those responsible, requesting modification, suspension or revocation of the act in question (Decree-Law 23/85/M of 25 March, articles 25-29 (annex 85));
- (g) Appeal for an administrative review by a superior administrative body. All administrative actions carried out by individuals who are subject to supervision by a higher office may be subject to appeal to that office requesting modification, suspension or revocation of the act in question, the reason given being the illegality, injustice or inappropriateness of the act (Decree-Law 23/85/M, arts. 30-38));

23. The general principle of law contained in article 8, paragraph 1, of the Civil Code should also be mentioned: “the court may not abstain from reaching a decision by claiming an omission or ambiguity in the law

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- (h) Appeal for a judicial review of administrative action. Administrative actions giving rise to litigation may be reviewed in the competent courts. The examination and judgement of appeals against administrative actions by the Governor and the Under-Secretaries is the responsibility of the Supreme Administrative Court, while the Macao Administrative Court is responsible for judging appeals concerning other litigious acts of the Administration of the Territory (OS, art. 19; Law 112/91 of 29 August (annex 46), arts. 9 and 16; Decree-Law 23/85/M, art. 39);
 - (i) Appeal to the Constitutional Court from an individual case under litigation. In Macao the provisions of article 280 of the PC and article 70 of Law 28/82, of 15 November establishing the organization, operation and procedures of the Constitutional Court, altered by Law 143/85 of 26 November and by the Organic Law 85/89 of 7 September (annex 86), allow for appeals to be made to the Constitutional Court against the following decisions:
 - (i) Those rejecting the application of any provision on the grounds of unconstitutionality;
 - (ii) Those confirming the application of any provision, the constitutionality of which was questioned before that court;
 - (iii) Those rejecting the application of any provisions of a legislative act on grounds of violation of higher ranking law;
 - (iv) Those giving application to a provision, the legality of which was questioned before that court on the grounds of the preceding subparagraph;
 - (v) Those applying a provision which has previously been deemed unconstitutional or illegal by the Constitutional Court;
 - (vi) Those applying a provision which has previously been deemed unconstitutional by the Constitutional Committee, where the decision the Constitutional Court is requested to consider is on the exactly same point of law;
 - (vii) Those rejecting the application of a provision contained in a legislative act, on the grounds that it contravenes an international convention, or those which apply it in a manner other than that which has previously been decided by the Constitutional Court;
 - (j) Support appeal (*recurso de amparo*). The Law of Judicial Organization of Macao (hereinafter referred to as LJOM), recently introduced the support appeal for violations of fundamental rights guaranteed in the OS, as shall be explained in greater detail under the information pertaining to article 14 of the Covenant.

or by alleging an irremediable doubt concerning the facts in litigation”. Furthermore, “the duty to obey the law may not be neglected under the pretext of the legislative provisions being unjust or immoral” (art. 8, para. 2, of the Civil Code).

24. As far as the guarantee to enforce sentences efficiently is concerned, it should be noted that “the decisions of Macao’s courts shall be binding on all public and private bodies and shall prevail over the decisions of all other authorities” (art. 6, para. 1, of Decree-Law 17/92/M of 2 March, in the same spirit as art. 208, para. 2, of the PC).

25. Following the implementation of the Law of Judicial Organization of Macao (LJOM), the great majority of appeals concerning the rights and freedoms recognized in the Covenant is being judged in Macao with obvious benefits in efficiency and in safeguards to the parties.

26. According to article 6 of Decree-Law 17/92/M of 2 March, “the law shall regulate the terms in which court decisions are carried out by any authority and shall determine the sanctions to be applied to those responsible should they not be carried out” (para. 2).

27. Holders of political office, including the Governor of Macao, the Under-Secretaries of the Government of Macao and the members of the Legislative Assembly of Macao who, in the course of their duties, fail to observe or carry out a court decision pertinent to their office, shall be punished with a prison sentence of up to one year according to article 13 of Law 34/87 of 16 July (annex 87). Article 12 of the same law makes provision for anyone holding political office who refuses to administer justice or to apply the legal rights which, under the terms of his powers, he is responsible for administering, to be punished with a prison sentence of up to 18 months and a fine equivalent to 50 days’ wages.

28. As far as the guarantee of reasonable dispatch of appeals lodged with the competent authorities is concerned, the right of access to the

courts, contained in article 20 of the PC and article 2 of Decree-Law 17/92/M of 2 March, includes, as has already been mentioned, the right to a court decision without undue delay.

Article 3

29. Article 13 of the Portuguese Constitution (PC) states expressly that no one shall be privileged, favoured, injured, deprived of any right or exempt from any duty because of his sex. In addition to article 13 of the PC, there are several relevant examples of legislation mentioning the equal rights of men and women.

30. Citizens now have free access, regardless of sex, to judicial posts or the Public Prosecutor's Department, and to a career within the court system through Decree-Law 251/74 of 12 June, published in the Official Gazette of Macao No. 29 of 20 July 1974 (annex 88).

31. In the field of employment, Convention No. 100 of the International Labour Organization (ILO) dealing with equal pay for men and women performing work of equal value, has been adopted (Decree-Law 47,302 of 4 November 1996, published in the Official Gazette of Macao No. 50 of 10 December 1966 (annex 89)).

32. The labour relations law in force in Macao enshrines the principle of equality, ordaining that the right to work and the principle of equality imply the absence of any direct or indirect discrimination founded on sex, namely, any referent to marital status or to family circumstances (art. 4 of Decree-Law 24/89/M of 3 April (annex 25)).

33. With reference to women's participation in public life, it should be noted that the President of the Legislative Assembly, the Under-Secretary for Health and Social Welfare, three members of the Legislative Assembly (including the President) and 19 (out of 27) directors of public services are women.

Article 4

34. Article 19 of the Portuguese Constitution (PC) only allows the organs of supreme authority to suspend the exercise of rights, freedoms and safeguards in the case of a state of siege or a state of emergency, declared in the form laid down in the Constitution, and without affecting the most relevant set of fundamental rights. As mentioned above, article 11, paragraph 1 (d), of the OS gives the Governor of Macao the power to take the necessary measures to restore peace and order if public security has been or may be endangered anywhere in the territory of Macao. Nevertheless, according to this provision, this power can only be exercised on the advice of the Consultative Council and, should it be necessary to restrict or temporarily suspend constitutional rights, freedoms and safeguards, the advice of the Legislative Assembly must also be sought beforehand. In the latter case, the President of the Republic must be informed of these measures forthwith.

35. The restriction or suspension of the exercise of constitutional rights, freedoms and safeguards provided for in the OS must respect the limits imposed by article 19 of the PC. The declaration of a state of emergency shall at most entail the suspension of some of those rights, freedoms and safeguards (art. 19, para. 3, of the PC). The declaration of a state of siege or a state of emergency provided for in article 19 of the PC must be substantiated and specify the rights, freedoms and safeguards whose exercise is to be suspended. Under no circumstances may it affect the rights to life, personal dignity and identity, civil capacity and citizenship of the person, the non-retroactive nature of criminal law, the right to defence of accused persons and freedom of conscience and religion (paras. 5 and 6 of the same article).

36. The choice of a state of siege or a state of emergency and ensuing declaration and implementation must respect the principle of proportionality and be limited to what is strictly necessary to promptly resuming the constitutional standards in terms of the scope of the decision,

duration and the ways and means provided for (art. 19, para. 4, of the PC). During the time in which the OS has been in force in Macao, a state of siege or state of emergency has never been declared and it has not been necessary to adopt measures restricting or temporarily suspending the exercise of constitutional rights, freedoms and safeguards under article 19 of the PC and article 11, paragraph 1 (d), of the OS.

37. In turn, the regime for civil protection is regulated in Decree-Law 72/92/M of 28 September (annex 63). This law sets out the principles, aims, manner of execution and the limits of civil protection, understood as “an activity engaged in by the Public Administration of Macao and the citizens with the aim of preventing potential collective risks arising from serious accidents, catastrophes or disasters and to limit their effects and rescue persons in danger”. The fundamental aims of civil protection are as follows:

- (a) To prevent the occurrence of collective risks arising from serious accidents, catastrophes or disasters;
- (b) To limit collective risks and their effects in the case of the circumstances described in the preceding paragraph;
- (c) To rescue and aid persons in danger.

38. Decree-Law 72/92/M makes provision for the adoption of emergency measures. In the case of dangerous situations or serious accidents, catastrophes or disasters the following emergency measures may be implemented in order to safeguard normal living conditions:

- (a) To prohibit or restrict the movements of persons or vehicles of any kind, within specified times and places, or to place certain requirements on these;
- (b) To requisition any property and services;
- (c) To occupy facilities and places of any kind, except personal residences;

- (d) To suspend, limit or ration public transport, communications, water and electricity supplies and basic consumer goods;
- (e) To close public services, except for those which must remain fully operational, without prejudice to the others, to those staff required for the civil protection plans and other staff deemed necessary and indispensable to the protection of the facilities;
- (f) To mobilize civilians for specified periods of time in certain territorial areas or sectors, placing them under the control of the relevant authorities;
- (g) To use special financial resources to support those authorities directly involved in providing assistance to victims (art. 4, para. 1, of Decree-Law 72/92/M).

39. The choice and effective application of emergency measures provided for in the preceding paragraph should observe the criteria of need, proportionality and suitability for the intended ends (art. 4, para. 2, of Decree-Law 72/92/M). When the requisitioning of property and services and occupation of facilities and places interferes with the rights or interests of any citizen or private body, he or it is entitled to compensation for damage caused (art. 4, para. 3, of Decree-Law 72/92/M).

40. With regard to anti-economic infractions and violations of public health, Decree-Law 41,204 of 28 November 1960, published in the Official Gazette of Macao No. 17 of 29 April 1961 (annex 90), stipulates in article 32 that the Government may “order the requisitioning of merchandise deemed indispensable to supplying producers, manufacturers or public consumption”.

Article 5

41. Article 16, paragraph 1, of the Portuguese Constitution (PC) states that the fundamental rights embodied in the Constitution shall not

exclude any other fundamental rights either in the statute or resulting from applicable rules of international law. Paragraph 2 of the same article ordains that the provisions of the Constitution and laws relating to fundamental rights shall be read and interpreted in harmony with the Universal Declaration of Human Rights. Article 17 of the PC applies the constitutional regime of rights, freedoms and safeguards to similar fundamental rights referred to in other provisions of the PC.

42. Article 5, paragraph 2, of the Assembly of the Republic's resolution No. 41/92 of 31 December, which extended the Covenant to Macao, states that: "Fundamental rights in Macao shall not be restricted unless as prescribed by law and these restrictions may not exceed the applicable provisions of the Covenants."

43. In Macao there is no legislation in force which requires revision to bring it into line with the limits or restrictions imposed by the Covenant. Because the ordinary legislation in force observes the parameters of the PC, which are stricter in protecting civil and political rights than the provisions of the Covenant, it contains fewer restrictions or limitations on the exercise of fundamental rights than those permitted by the Covenant.

Article 6

44. Article 6 of the Covenant on the protection of human life places emphasis on the limiting and conditioning of the use of the death penalty.

45. The constitutional norms and laws in force in Macao safeguard the absolute protection of the right to life. The provisions of article 24 of the PC stipulate:

"1. Human life shall be inviolable.

"2. In no case shall the death penalty be applicable."

46. It should be noted that Macao was the first Asian territory known to have abolished the death penalty. In fact, as has already been mentioned

in previous Portuguese reports, Portugal abolished the death penalty for all civil crimes in 1867, although this measure was not immediately extended to Macao and Portugal's other overseas provinces. Later, however, the Decree of 28 October 1868 published in the Official Gazette of Macao No. 2 of 11 January 1869 (annex 91), declared that "the law of 1 July 1867 concerning the application of the death penalty shall be applied in the overseas provinces". Accordingly, the Penal and Prison Reform included in the Law of 1 July 1867 was published in the Official Gazette of Macao No. 3 of 18 November 1869 in which it was expressly stated (art. 1) that "the death penalty has been abolished". Nevertheless, in view of the fact that some doubts arose in the Portuguese provinces in Africa as to the territorial effectiveness of the law abolishing the death penalty, the Decree of 9 June 1870 clarified the situation once and for all, stating expressly that the death penalty had been abolished in all overseas provinces. This Decree was published in the Official Gazette of Macao No. 34 of 22 August 1870 (annex 92), with the following text:

"Article 1. The death penalty is hereby abolished for civil crimes in all overseas provinces.

"Article 2. Crimes formerly punishable with the death penalty must now be punished with the maximum penalty.

"Article 3. All legislation to the contrary is hereby revoked."

Thus, the death penalty for civil crimes was completely abolished in Macao and has not existed for the last 124 years.

47. With regard to the death penalty for military crimes, it should be noted that legislation in Macao has followed that of Portugal. The 1911 Constitution of the Portuguese Republic, published in the Official Gazette of Macao No. 39 of 30 September 1911, established, in article 3, paragraph 22, that "under no circumstances may the death penalty be introduced nor life imprisonment nor imprisonment for an unlimited period of time." It

should be noted, however, that even before this date the death penalty was not being applied to military crimes.*

48. After Portugal entered the First World War, the death penalty was restored for military crimes, on an extraordinary basis and only for crimes committed in the field of operations. It was never applied in Macao (Law 635 of 28 September 1916, published in the Official Gazette of Macao No. 48 of 1916). The death penalty for military crimes was completely abolished when the PC was adopted in 1976.

49. Article 30, paragraph 1, of the PC states that “[n]one shall be subjected to a sentence or security measure involving deprivation or restriction of freedom for life or for an unlimited or indefinite term”. The absolute protection enshrined in this right has as its corollary the fact that it cannot be affected should a state of siege or emergency be declared (art. 19, para. 6, of the PC).

50. Article 33, paragraph 3, of the PC in force in Macao prohibits extradition for “crimes which carry the death penalty under the law of the requesting State”. Decree-Law 437/75 of 16 August, published in the Official

* For example, in the case of Macao, a decree with legal effect issued on 3 April was published in the Official Gazette of Macao, No. 23 on 10 June 1911 commuting a life sentence imposed on a soldier belonging to a European artillery punishment”. The Constitution pays particular importance to the right to personal integrity and highlights the other principal legal provisions to this effect. Article 30, paragraph 5, punishment”. The Constitution pays particular importance to the right to personal integrity and highlights the other principal legal provisions to this effect. Article 30, paragraph 5, of the PC stipulates that detainees and prisoners shall continue to enjoy their fundamental rights, save for those limitations that are inherent in the conviction and the requirements of its enforcement. Constitutional safeguards expressly cover criminal procedure, according to article 32, paragraph 6, which states that “any evidence obtained by torture, force, violation of the physical or moral integrity of the individual shall be of no effect”.**

** As well as evidence obtained by wrongful interference in private life, the home, correspondence or telecommunications (see the information pertaining to art. 17 of the Covenant).

Gazette of Macao No. 47 of 19 November 1977 (annex 93), further prohibits extradition when “the crime carries a life sentence in the requesting State and if no provision is made to replace that penalty” (art. 4 (a)).

51. Article 354 of the Criminal Code (annex 7) punishes providing assistance with suicide.

Article 7

52. Article 25 of the Portuguese Constitution (PC) states that “[t]he moral and physical integrity of the person shall be inviolable” and that “[n]o one shall be subjected to torture or to cruel, degrading or inhuman treatment or

53. The guiding principles of the regime governing police measures are also influenced by the same framework of norms. Consequently, article 19, paragraph 6, of the PC states that, even in a state of siege or a state of emergency, the right to personal dignity shall not be affected. It links the declaration of a state of siege or a state of emergency and the subsequent police measures to the principle of proportionality. Measures must be kept within the limits of those which are absolutely essential and crime prevention should be ensured with a respect for the rights, freedoms and safeguards of citizens.

54. The above-mentioned constitutional framework has been broadly applied in Macao’s legal structure.

55. Criminal law ensures the protection of the physical integrity of the person in several ways. The Criminal Code makes provision for and punishes the crimes of voluntary (arts. 359-366) and involuntary or negligent bodily harm (art. 369). The provisions for punishing voluntary bodily harm are also applied to those who intentionally administer toxic substances to another person with the intention of harming him (art. 364).

56. The law also specifically sanctions acts of violence in the course of public duties. According to article 299 of the Criminal Code, any public

employee who, unnecessarily and without legitimate reason, uses or orders the use of violence against any other person shall be punished.

57. The law ensures protection of prisoners' and detainees' right to integrity of the person, against any form of illegitimate force by public agents (art. 293) and against violence by private individuals (art. 335). Bodily harm inflicted by private individuals with a view to coercing another individual to do or cease doing any action, shall be punished under the terms of article 229 of the Criminal Code.

58. The right to the integrity of the person is also protected by the regime of safeguards contained in criminal procedure. The Criminal Procedure Code (annex 8) forbids any person or body involved in criminal procedures to use force against the accused save in cases and within limits expressly established in law. The law similarly prohibits any interference with the free will or choice of the accused through ill-treatment, bodily harm, the use of hypnosis, or cruel or fraudulent means. Any measure which affects the memory or the sense of judgement of the accused is equally forbidden by article 261, paragraph 1 (a), (b) and (c), of the Criminal Procedure Code. Article 306 of the Criminal Procedure Code forbids any ill-treatment or violence by agents of authority against persons whom they are responsible for arresting. The law only permits the use of force or other unavoidable measures in order to effect and maintain an arrest if there is an attempt to resist arrest, or attempted or actual escape.

59. The right to the protection of the integrity of the person is particularly relevant in the sphere of security policies and the statutory law for police forces. The fundamental principles of domestic security activities are defined in article 2 of Decree-Law 76/90/M of 26 December (annex 36). Domestic security activities and crime prevention are carried out in observance of the general police rules and respecting rights, freedoms and safeguards. Furthermore, police measures must conform to the principles of legality and proportionality, and must not be used other than when strictly necessary (art. 2, para. 2, of Decree-Law 76/90/M).

60. The Code of Discipline of the Macao Security Forces (CDMSF), approved by Decree-Law 84/84/M of 11 August (annex 94), includes amongst the duties of employees and agents of the Macao Security Forces the duty to enforce public order through fair and reasonable procedures (art. 5, para. 19). The maximum disciplinary measures provided for in the CDMSF - compulsory retirement and resignation - may be applied, for instance, when aggression occurs within the workplace, or on public duty (art. 52, para. 2 (a)).

61. The Macao Security Forces is a blanket term covering the Fire Brigade and a further two police forces: the Public Security Police and the Maritime and Customs Police. The statutory laws for the latter two include a code of conduct according to which agents employed to serve the community must always be guided by respect for human dignity and the maintenance and promotion of the human rights of all citizens. The infliction, instigation or tolerance of any act of torture or inhuman, cruel or degrading treatment is expressly forbidden (art. 75 (b), of the Public Security Police Regulations, approved by Decree-Law 13/86/M of 8 February (annex 95), and article 68 (b), of the Maritime and Customs Police Regulations, approved by Decree-Law 14/86/M of 8 February (annex 96).

62. The Judicial Police is governed by identical principles. The Organic Law of the Directorate of the Judicial Police of Macao (Decree-Law 61/90/M of 24 September (annex 35)) dictates that staff employed by the Judicial Police of Macao must, amongst other special duties, prevent any arbitrary or discriminatory abuse involving physical or mental violence and protect the physical integrity of persons detained or in their charge and aid injured persons (art. 44, para. 1 (b), (f), and (h)). In the area of discipline, the Organic Law of the Judicial Police classifies inhuman, degrading, discriminatory or vexatious acts practised against persons under their protection or in custody as being serious and punishable by compulsory retirement or resignation (art. 46 a)).

63. The regime governing the use, possession and carrying of arms is given special attention within the framework of the protection of the

right to integrity of the person. The regulations governing the use of arms by members of the police forces are particularly significant. In the Macao Security Forces, the CDMSF imposes a special duty on the relevant employees and agents not to use arms except on superior orders or in a case of overriding necessity. In the latter situation, the law allows the use of arms when absolutely essential in averting aggression or the imminent prospect of aggression against the agent or other persons or public or private property, or to maintain or restore public order.

64. The Regulations of the Public Security Police and the Maritime and Customs Police provide greater detail of instances in which it is admissible to use firearms and regulate the procedures to adopt prior to and after using firearms. Prior, explicit and audible warning must be given when arms are to be used, so long as the situation and the nature of the service allow. Similarly, any agent who has used a firearm must, as soon as possible, assist or take steps to provide assistance to the injured and submit a written report on the use of the weapon to his immediate superior, even if no injury has occurred (arts. 88-91, of the Regulations of the Public Security Police and arts. 81-84 of the Regulations of the Maritime and Customs Police). The Organic Law of the Judicial Police also limits the use of arms to cases in which there is a serious risk to life or the physical integrity of the agent or third parties, or when public security is seriously threatened. The Organic Law of the Judicial Police also imposes the duty to provide prior warning whenever possible (art. 44, para. 2).*

65. It should be noted that the illegal use, possession or carrying of firearms by private individuals is subject to punishment which, in more

* As a point of historical interest, note the Decree of 21 March 1895 published in the Official Gazette of the Government of the Province of Macao and Timor, vol. XLI, No. 19 of 11 May 1895, which abolished all forms of corporal punishment which were still in force and applied “in the navy and all services dependent on the Ministry of the Navy and Overseas Territories”. Also worth mentioning is the Administrative Ruling 165/80/M of 13 September which establishes that “in view of the fact that hunting is increasingly placing the populations of Taipa and Coloane in danger, the practice of hunting in Macao is hereby forbidden from 1 January 1981”

serious cases, can include a prison sentence (Decree-Law 11/93/M of 15 March (annex 66)).

Article 8

66. The constitutional protection of personal liberty, embodied in the right to individual freedoms, security, physical and moral integrity, civil capacity and identity, means that any kind of slavery, servitude or captivity is inadmissible.

67. In terms of penal law, the Criminal Code (annex 8) makes provision for and punishes the crime of “holding a person captive” in article 328, and the crime of “private imprisonment” in articles 330 et seq. Article 333 makes special provision for the crime of private imprisonment by a public employee.

68. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, signed in Geneva on 7 September 1956, was published in the Official Gazette of Macao No. 32 of 8 August 1959 (annex 97).

69. As has already been noted in Portugal’s second periodical report (CCPR/C/42/Add.1, para. 337), Portugal banned the slave trade in its territory in 1836 and abolished slavery itself in 1858.

70. The “Royal Charter” of 20 March 1758 is of historical interest in that it prohibited the slavery of the Chinese.*

* This “Royal Charter” states that “By the Law of the nineteenth day of February 1642, published in Goa in the month of April 1625, and immediately sent to the Magistrate of Macao, it has been decided that the Chinese neither may nor ought to be slaves. And as I have been party to certain information indicating that in order to avoid obeying this Law and the requirements of Natural and Divine Law according to which the Chinese are by nature free and neither may nor ought to be taken as slaves, different excuses have been contrived - I hereby command that as from the publication of this Charter, there shall be no more enslavement of the Chinese”.

71. In the field of forced labour, other than the constitutional provisions mentioned above, Convention No. 29 of the International Labour Organization on forced or compulsory labour was published in the Official Gazette of Macao No. 42 of 20 October 1956 (annex 98).

72. The range of sentences provided for in the Criminal Code does not permit any sentence of forced labour (arts. 55-57). In accordance with the provisions of article 8, paragraph 3 (c) (i), of the Covenant, the law states that prisoners shall work according to their strength and abilities. Any labour shall be organized so as to promote the social reform and rehabilitation of the prisoner and allow him to learn or perfect a trade (art. 59 of the Criminal Code). Prison labour is paid and the product of remuneration shall be used in accordance with the regulations to heighten an awareness of the prisoner's social and ethical obligations and to facilitate his reintegration into free life once his sentence is complete (art. 59, para. 2, of the Criminal Code).

73. Article 261 of Decree-Law No. 26,643 of 28 May 1936 governing the organization of prison services and which was extended to Macao through Decree-Law 39,997 of 29 December 1954, published in the Official Gazette of Macao, No. 52 of 31 December 1954 (annex 99), states that all prisoners are obliged to engage in labour according to their strength and abilities. Detainees are free to choose the work they wish so long as it is compatible with the regime and conditions of the prison. The choice of work for each prisoner shall depend on his physical, intellectual and professional abilities, his conduct and the term of imprisonment, as well as the possibility of future employment and its potential moral influence. The director of the prison must consult the prison doctor whenever the work is to be continued for a long time and may also use the services of professional guidance.

74. Prisoners must be engaged in productive labour. The legal framework and the terms according to which this labour is carried out are discussed in the information pertaining to article 10 of the Covenant. The exception provided for in article 8, paragraph 3 (c) (ii), of the Covenant is

not relevant to Macao given that there are no military units or forces in the territory of Macao.

75. The law makes provision for a Territorial Security Service through the different corporations and organs of the Macao Security Forces but emphasizes the voluntary nature of the provision of this service (art. 2, para. 2, of the Territorial Security Service Regulations, approved by Decree-Law 34/85/M of 20 April (annex 100)).

76. The admissibility of exacting service in the case of emergency or calamity provided for in article 8, paragraph 3 (c) (iii), of the Covenant has been provided for in article 4, paragraph 1 (f), of Decree-Law 72/92/M of 28 September (annex 63) which allows for the mobilization of individuals for set periods of time if a serious accident, emergency or calamity occurs or is threatening.

Article 9

Paragraph 1

77. The right to freedom and security of the individual is provided for and protected in articles 27 and 28 of the Portuguese Constitution (PC). Article 27, entitled “Right to freedom and security”, states clearly in its first paragraph the general principle of law: “Everyone shall have the right to freedom and security.” This principle is also enshrined in the second paragraph of the same article in the PC which states that “[n]o one shall be deprived of his or her freedom, in whole or in part, except as a result of a court judgement sentencing him or her to a prison term or on account of an offence punishable by law or as a result of judicial application of a security measure.” Several situations are presented in paragraph 3 of the same article, of which the following should be noted:

- (a) Remand in custody where a person is taken in flagrante delicto, or where there is strong evidence that he has wilfully committed an offence punishable by a maximum sentence of over three years’ imprisonment;

- (b) The arrest or detention of a person who has unlawfully entered or stayed in the territory or against whom extradition or deportation proceedings have been instituted;
- (c) Subjection of a minor to measures of protection, assistance or education in a suitable establishment, decided by the competent court;
- (d) Detention by court order owing to disobedience of a court order, or to ensure appearance before the competent judicial authority.

Furthermore, general legislation ensures the effective protection of this right which we find detailed in articles 286 to 311 of the Criminal Procedure Code (annex 8).

78. Article 286 of the Criminal Procedure Code (in the same vein as art. 27, para. 3 (a), of the PC) only permits remand in custody in cases where the person is caught in flagrante delicto for crimes punishable by imprisonment or in cases involving a serious crime punishable by a major sentence. In flagrante delicto is used to describe any crime discovered in the act of being committed or having just been committed, and also for cases in which “the infractor is arrested by any other person immediately after the infraction, or has been found to have objects or indications clearly showing that he committed or participated in the crime” (art. 288 of the Criminal Procedure Code).

79. According to article 291 of the Criminal Procedure Code, remand in custody for cases other than in flagrante delicto is only permitted if three requirements can be met: the perpetration of a serious crime punishable by a major sentence, strong indications of the accused’s involvement in the crime and fears that provisional release may lead to the accused absconding.

80. According to article 303 of the Criminal Procedure Code, “an individual may only be held in a detention centre on an order written, dated and signed by the competent authority and indicating the identity of the

detainee and the reason for detention”. Similarly, according to article 28, paragraph 2, of the PC, “remand in custody shall not be continued where it can be replaced by bail or by any other more favourable measure provided by law”. This clearly reflects the secondary nature of this measure under the Constitution.

81. Finally, it should be mentioned that, according to the provisions of articles 291 and 292 of the Criminal Code, the crimes of illegal or irregular imprisonment shall be punished with sentences varying between three months’ and two years’ imprisonment in the former case and suspension of public duties for a period of up to one year in the latter.

Paragraph 2

82. As far as the right to be informed of the reason for arrest is concerned, article 27, paragraph 4, of the PC states that “every person who is deprived of freedom shall be informed, immediately and in a comprehensible way, of the reasons of his or her arrest or detention, as well as of his or her rights”.

83. Under general legislation, article 291, paragraph 3, of the Criminal Procedure Code states that the judge should give the accused the opportunity to appeal against the reasons for applying this measure prior to reaching a decision as to whether to place him on remand and should inform him of the means by which he can appeal. The constitutional provision is further developed in article 291-A of the same Code which states that “the judge must inform the detainee immediately of the reasons for his detention” and, in a similar form to that of article 28, paragraph 3, of the Constitution, that “a court order for a measure involving deprivation of freedom or for its continuance shall immediately be made known to the person indicated by the prisoner, be it a relative of the latter or a person in his or her trust”.

84. In accordance with the provisions of article 291, paragraph 5, of the Criminal Code (annex 7), “any judge who refuses to inform any person

detained on his orders of the reasons for his arrest shall be punished with a prison sentence of between three months and two years”.

Paragraph 3

85. All prisoners or detainees must appear before a judge, under the terms of article 28, paragraph 1, of the PC: “Detention without judicial charge shall, within forty-eight hours, be subject to the scrutiny of a court, for validation or continuation of detention; the court shall hear the reasons for the detention, inform the prisoner thereof, interrogate the latter and allow him or her the chance to defend him or herself.” Although this norm is sufficient in its own right, it has still been included in general legislation. Consequently, article 311 of the Criminal Procedure Code states that “those held under arrest without formal charges shall be presented to the judge (...) within a maximum period of forty-eight hours after arrest”.

Paragraph 4

86. The right of appeal to a higher court to re-examine the lawfulness of any detention order is dealt with extensively by the law. The general principle governing all criminal procedure is to be found in article 32, paragraph 1, of the PC: “criminal proceedings shall provide all necessary safeguards for the defence”. Article 31 of the PC gives to all those deprived of their liberty the opportunity to lodge a judicial appeal.

87. Here we find that the concept of habeas corpus has been constitutionally enshrined, thereby providing an effective safeguard of the right to liberty. In effect, the remedy of habeas corpus is guaranteed “before a court of law (...) against any wrongful use of power in the form of unlawful detention” (art. 31, para. 1, of the PC). The remedy of habeas corpus may be demanded by the prisoner or by any citizen in enjoyment of his political rights and the court should rule on the application for habeas corpus within eight days at a hearing in the presence of both parties (art. 31, paras. 2 and 3, of the PC).

88. The legal framework governing habeas corpus is defined in articles 312 to 325 of the Criminal Procedure Code. Thus, under the terms of article 315 of the Criminal Procedure Code, this provision may be applied in cases in which the accused is in prison when one of the following illegal situations has occurred:

- (a) Imprisonment has been ordered or carried out by somebody with no legal power to do so;
- (b) Imprisonment has occurred although the law does not authorize it in this case;
- (c) Imprisonment has continued beyond the legal time-limits for a court appearance and formal charges;
- (d) Imprisonment has continued beyond the time set for a court decision on the length of the sentence or security measure or its renewal.

89. Power to exercise jurisdiction in habeas corpus is given to the general jurisdiction department of the Superior Court of Justice (*Tribunal Superior de Justiça*) (art. 14, para. 3 (h); art. 15, “*a contrario*”, of Law 112/91 of 29 August (annex 46), and art. 33 of Decree-Law 17/92/M of 2 March (annex 56)). The Criminal Procedure Code also makes provision for another case in which habeas corpus may be applied. This is defined in article 312 which, in conjunction with article 52 of Decree-Law 17/92/M, allows for an appeal to be made to the President of the Superior Court of Justice to order the immediate appearance of the detainee in court when one of the following situations has occurred:

- (a) The time-limit for presentation before a judge has expired;
- (b) The accused is being held in a place other than one authorized for this purpose by law or by the Governor;
- (c) Detention has been ordered by an authority with no power to do so;
- (d) Detention has occurred for a reason not allowed by law.

Paragraph 5

90. Under the terms of article 27, paragraph 5, of the PC, any person who is imprisoned or held in detention illegally is entitled to receive compensation. This precept states that “any deprivation of freedom in violation of the provisions of the Constitution and the law shall result in the State having the duty to compensate the aggrieved party in accordance with what is laid down by the law”. Similarly, article 29, paragraph 6, of the PC states that “citizens who have been unjustly convicted shall have the right, under conditions to be laid down by law, to have their sentences reviewed and to be compensated for losses suffered”.

91. In both cases, this is a corollary and an extension of the State’s civil responsibility, under article 22 of the PC, for situations concerning jurisdictional powers with wider scope than those of the classic judicial error. Compensation for judicial error is also provided for by article 690 of the Criminal Procedure Code which makes provision for fair compensation for material and moral damages to prisoners who are subsequently found in a review of the sentence to be innocent.

Article 10

Paragraph 1

92. According to article 30, paragraph 5, of the Portuguese Constitution (PC), “persons who are sentenced to a punishment or a security measure involving deprivation of freedom shall enjoy the fundamental rights, save the limitations that are inherent in the sentence and the requirements of its enforcement”. This constitutional rule thus enshrines the general principle of maintaining all those rights recognized for citizens in the cases of persons deprived of their freedom.

93. Decree-Law 26,643 of 28 May 1936 which regulated the organization of prison services, extended to Macao by Decree-Law 39,997 of 29 December 1954, published in the 4th Supplement to the

Official Gazette of Macao No. 52 of 31 December 1954 (annex 99), also establishes in article 229, a general principle for the entire prison service: “Prisoners shall be treated with justice and humanity and may not be subjected to useless humiliation or influences which could prejudice their social rehabilitation.”

94. The humane, respectful treatment of all persons deprived of their freedom is also enshrined in the Codes. Article 293 of the Criminal Code makes “undue force against prisoners” a crime. The article states that “any public agent responsible for guarding a prisoner who uses undue force shall be punished with a prison sentence of up to six months and, if under law his acts are subject to a major sentence, this shall be imposed”. Article 306 of the Criminal Procedure Code forbids “any authority or agent of the authority responsible for any kind of imprisonment from maltreating, insulting or using violence against prisoners and only in the case of resistance, escape or attempted escape shall force or another unavoidable measure be employed to overpower the prisoner or continue imprisonment”.

95. Overall, the provisions available in law ensure the effective protection of prisoners’ rights even though some of the norms contained in Decree-Law 26,643 of 28 May 1936 regulating prison services must be regarded as revoked due to their incompatibility with the provisions of the PC. Consequently, Macao’s prisons are regulated by the Prison Regulations which follow to the letter the provisions of the Constitution, the Criminal Code and the Criminal Procedure Code.

Paragraph 2

96. Bearing in mind Macao’s small size, the prison services are concentrated in the Coloane Prison Complex (hereinafter referred to as CPC) which comprises a female and a male prison in different buildings. In addition to prisoners being separated by sex, there is also a separation on the basis of age so that prisoners aged 21 or under do not come into

contact with those who are aged over 21. This is achieved by housing each group in separate blocks. Furthermore, taking into account their legal status, those prisoners who are completing a sentence and those who are being held on remand are housed in separate blocks with absolutely no contact between them.

97. The physical and mental health of the prisoner also affects where he is to be accommodated. Consequently, those prisoners under medical observation and those in the prison clinic do not come into contact with the others, safeguarding the recovery of the former and the well-being of the latter.

98. Prisoners speaking the same mother tongue (Portuguese, Chinese or any other) are accommodated in the same wing, dormitory or group cell so as to allow greater communication between them.

99. Provision is also made to separate prisoners who could be victimized. These prisoners have been evaluated by staff and found to be particularly susceptible or vulnerable to pressure or hostility from other prisoners owing to their age, situation, or because of the kind of crime they have committed or stand accused of having committed. Prisoners who could be victimized are housed in single cells with different timetables from those of the other prisoners.

100. The general community of prisoners is divided into three major groups: maximum security (those with sentences of eight years or over), medium security (for those serving sentences of less than eight years) and low security (for prisoners who have served most of their sentence and shown reasonable behaviour). Prisoners' accommodation reflects these distinctions: maximum security prisoners are housed in single cells, medium security prisoners are held in cells holding three individuals, and low security prisoners are accommodated in dormitories sleeping 10 inmates.

101. In terms of medical facilities, the CPC has a clinic with both general and specialist doctors available on a visiting basis and a full-time

nursing staff. When prisoners are received, they pass through a meticulous medical examination involving several tests leading to a clinical evaluation. The tests include detecting the presence of any infectious or contagious diseases such as AIDS, hepatitis and tuberculosis. Routine medical examinations are carried out amongst all the prisoners from time to time. The Female Section has special facilities for mothers and a service is provided for pregnant women.

102. The regime governing visits and correspondence is defined in the Prison Regulations. Prisoners may receive visits behind screens in a visiting room or, in certain situations, face to face. Visits from lawyers, notaries and members of the diplomatic corps are held in an appropriate room. Prisoners are allowed to send and to receive correspondence subject to inspection or censorship according to the law. Prisoners are also allowed to make a telephone call or send a telegram when they enter the CPC.

103. Article 59 of the Criminal Code discusses the issues of work, training and professional training, stating that “prisoners shall be obliged to work according to their strength and aptitude”. Nevertheless, because there are fewer jobs available in the CPC than there are prisoners, this order has not been fully implemented. However, the right of all prisoners to paid work according to their professional status and their employment has been recognized. The CPC houses 10 workshops where various activities are available, namely carpentry, sawing, printing, electro-technical work, mechanics, foundry work, tailoring, cobbling, crafts and a laundry. The products of these labours are not sold but are intended to serve the needs of the prison itself and some public departments.

104. As far as education is concerned, prisoners aged under 25 who have not completed their basic education are obliged to attend classes at the appropriate level. At present, there are classes up to the sixth year of primary school and courses in Portuguese and English.

105. Free time is occupied with cultural activities, recreation and sports including weekly videos, football, basketball, gymnastics, table

tennis and volleyball championships together with a games room offering Chinese chess and draughts. Artistic and cultural activities include a painting group, an art room and a music group which plays at parties during festivities at the CPC.

There is also a lion dance group reflecting a strong Chinese tradition. The prison has its own library for the use of all prisoners and books may be read in the cells or dormitories. Newspapers and magazines may be read and radio and television broadcasts are permitted as prisoners are allowed to own their own televisions and radios. The prison publishes its own magazine for the prisoners, entitled Kaipou (Human Prison) which holds drawing and poetry competitions.

106. Relations between the management of the CPC and prisoners are regulated by the Prison Regulations. According to the Regulations, the prison director can contact prisoners directly whenever he deems this necessary or when the law so demands, and prisoners may approach the director individually (when he visits workplaces and accommodation) or request a private meeting in his office (by filling in a request form) to be arranged as soon as possible.

107. Moral and spiritual assistance is ensured in that prisoners are free to profess, study and practise their faith, for which purpose the CPC provides religious assistance for several faiths in a multipurpose room.

108. Social and family support is provided through the services of social workers whose goal is to study the behaviour of the prisoners, encourage their social rehabilitation, protect their relationship with their families, and prepare for their future integration into the labour market. This support is provided from the initial reception at which time there is a personal interview leading to an evaluation of the chief causes for the problems uncovered.

109. Prisoners are free to decorate their cells or dormitories and accommodation may only be inspected in their presence.

110. Prisoner discipline provides for the following sanctions which may be applied by the director: reprimand, loss of visiting rights, loss of correspondence rights, loss of recreation time and solitary confinement.

111. The regime for individuals being held on remand is the same as that for condemned prisoners except that they do not have to wear prison uniforms, their correspondence is not inspected or censored, and they are not obliged to take part in prison work.

Paragraph 3

112. According to Article 58 of the Criminal Code (annex 7), “when a custodial sentence is passed, attention should be paid, without prejudice to its repressive nature, to the social rehabilitation of the prisoner”. In complying with this norm and its general guiding principle- the social rehabilitation of the delinquent - Macao’s prison service operates in close cooperation with the Department of Social Rehabilitation, a public department which is responsible for studying and implementing policies of re-education and social rehabilitation.

113. Article 69 of the Criminal Code refers to the special protection required in the case of young offenders, stating that “young offenders aged between 16 and 21 years of age shall serve their custodial sentences with the aim of educating them in a prison school or in a normal prison separated from the other offenders”. In accordance with this legal imperative, the Prison Regulations state that the prison shall organize professional training courses with a view to the future release of prisoners and their social rehabilitation, particularly for those aged under 25. Under the terms of article 69 of the Criminal Code and the Prison Regulations, prisoners aged under 25 may be obliged to attend classes in Portuguese or Chinese if they are illiterate or have not completed compulsory education.

114. In accordance with the provisions of article 16 of Decree-Law 417/71 of 29 September published in the Official Gazette of Macao No.

42 of 16 October (annex 101), individuals under 16 years are not regarded as criminally responsible. Consequently, when a minor of under 16 is the agent in a crime or infraction punishable under the law, he may be subject to protective measures, social welfare or education as decided by a competent court. Should a minor be sentenced to internment in an educational establishment, this should be done in a young offenders institution, a public service aimed at the re-education and social rehabilitation of the minor, under the terms of article 13 of Decree-Law 1/90/M of 18 January (annex 102) in order to further “the implementation of jurisdictional measures decreed by the competent court which may decide on the observation and internment of minors aged under 16”.

Article 11

115. In Macao, no one may be imprisoned for debt. Although there is no rule expressly prohibiting imprisonment for debt in Macao’s ordinary legislation, this provision follows on from article 27 of the Portuguese Constitution (PC) which enshrines the right to freedom and liberty and lists by type those situations giving rise to deprivation of freedom, excluding imprisonment for debt.

116. The norms contained in articles 1, 8, 15, 27 and 54 of the Criminal Code (annex 7) should be noted in that they respect the principle of legal punishment.

117. Attention should also be paid to the provisions of articles 817 et seq. of the Civil Code (annex 4) where the possible civil measures for dealing with a failure to fulfil a contract are defined.

Article 12

118. Articles 33 and 44 of the Portuguese Constitution (PC) deal with freedom of movement and free choice of residence in conjunction with articles 14 and 15 of the same.

119. The regime governing entry, stay and settling in Macao is defined in Decree-Law 2/90/M of 31 January (annex 30). Individuals wishing to enter or leave Macao must hold valid passports or another of the documents described in article 4, paragraph 2, of Decree-Law 2/90/M. For those cases subject to the provisions of article 6 of the same law, a diplomatic visa or permission to enter may also be required. Under the terms of the OS, the Governor has the power to refuse entry to nationals or foreigners in the public interest, following consultation with the Consultative Committee (art. 16, para. 1 (g) and art. 48, para. 2 (e), of the OS). It may be possible to extend a stay in Macao when this is subject to time-limits (arts 12-17 of Decree-Law 2/90/M).

120. Right of abode is regulated in articles 19 to 32 of the same Decree-Law. Individuals intending to establish a right of abode in Macao should request this of the Governor in a substantiated document. The request shall be evaluated in accordance with the following criteria:

- (a) The applicant's compliance with the laws in force in Macao;
- (b) Means of subsistence;
- (c) Aim and feasibility of staying in Macao;
- (d) Family links with residents in the Territory.

121. Residence permits may be temporary, valid for one year and renewable for equal lengths of time, or they may be permanent in the case of an individual with seven consecutive years of residence in Macao. Those persons born in Macao of parents authorized by law to live in Macao at the time of their child's birth are free to enter, stay and settle in Macao (art. 2 of Decree-Law 2/90/M).

122. Entry to and departure from Macao is free so long as all citizens hold a valid passport and permission to enter or a visa, except for those who are exempted from the latter because of an agreement with their home country.

123. Those persons holding identity documents issued by Macao, a Portuguese Citizen's Identity Card, a safe-conduct issued by the People's Republic of China, Hong Kong Identity Cards, a Macao residence permit and other valid travel documents are free to enter and leave Macao without a passport or any other formality. The Public Security Police Immigration Service controls and inspects entries and departures of all individuals in Macao and issues entry visas to visit or stay in the Territory (Decree-Law 78/88/M of 15 August (annex 103)). The Immigration Service is also responsible for:

- (a) Taking care of services dealing with entry, transit, stays and settling of foreigners or individuals from other regions of China in Macao;
- (b) Issuing residence permits and certificates;
- (c) Producing statistics on migratory flows;
- (d) Issuing extensions of visas to stay in the Territory.
- (e) Taking care of services dealing with entry, transit, stays and settling of foreigners or individuals from other regions of China in Macao;
- (f) Issuing residence permits and certificates;
- (g) Producing statistics on migratory flows;
- (h) Issuing extensions of visas to stay in the Territory.

124. With particular reference to this subject, attention should be drawn to Decree-Law 438/88 of 29 November 1988, published in the Official Gazette of Macao No.8 of 24 February 1992 (annex 53), dealing with the legal framework for passports, and Decree-Law 11/92/M of 24 February (annex 54), approving the regulations governing the awarding and issuing of passports in Macao. The latter law makes provision for three categories of passport which can be issued: normal passports, special passports and

passports for aliens. The Macao Identity Services are responsible for issuing passports in Macao. Normal passports may only be issued to Portuguese citizens and the only obstacles to these being issued are opposition from the parents-in the case of a minor who has not reached majority-or from the judicial organs. Holders of passports for aliens are, amongst others, individuals who have been authorized to live in Macao and who are stateless persons, nationals of countries with no diplomatic or consular representation in Macao or Hong Kong, or those who can prove they cannot obtain another passport. These passports are valid for two years.

125. In addition to these passports, Portuguese nationals residing in Macao and aged over 16 may hold a safe-conduct. This travel document, regulated under the terms of Administrative Regulation 65/86/M of 22 March (annex 104), allows holders to visit Hong Kong and is valid for three years.

126. The Portuguese Citizen's Identity Card is the identity document which Portuguese citizens aged over 10 must possess under the terms of Decree-Law 79/84/M of 21 July (annex 105) and later amendments. It is valid under the same terms as the Identity Card issued in Portugal according to the provisions of Decree-Law 128/89 of 15 April, published in the Official Gazette of Macao No. 20 of 15 May 1989 (annex 26). It is valid for 5 or 10 years depending on the age of the holder.

127. The Resident's Identity Card is the main identity document for citizens residing in Macao and proves the identity and residence of the holder under the terms of Decree-Law 6/92/M of 27 January (annex 51). The nationality of the holder does not appear on the Resident's Identity Card. Possession of the Resident's Identity Card is compulsory for all residents of Macao aged over five, regardless of their nationality. The Resident's Identity Card is valid for between two and seven years depending on the age of the holder but it may not extend beyond 31 December 1998. Nevertheless, those Resident's Identity Cards issued after 1 January 1996 will not show the date of expiry.

128. Identity shall be checked by means of displaying either the National Identity Card or the Resident's Identity Card. No public body may retain or hold a valid identity card and after any check it must immediately be returned to the holder.

129. Police identity cards, which formerly could be obtained by any Chinese national living in Macao, are being replaced by the Resident's Identity Card as are the Foreign Citizen's Identity Cards.

130. Illegal immigration is a significant issue in Macao. The flow of illegal immigrants into Macao was particularly marked in the early 1980s. In March 1990, all persons without any form of documentation were recorded with a view to granting them a temporary stay permit. This permit is valid for a year and is renewable for like periods. Under the terms of Decree-Law 49/90/M of 27 August (annex 45), amended by Decree-law 16/91/M of 25 February, and by Decree-Law 55/93/M of 11 October, holders of this permit are entitled to stay and work in Macao, they have access to health care under the terms of Decree-Law 24/86/M of 15 March (annex 106), and are entitled to register in government and private educational establishments and to obtain driving licences.

131. Individuals in Macao who are not entitled to establish residence but who are working in the Territory are issued with an identity permit for non-resident workers under the terms of Governor's Orders 12/GM/88 of 26 January and 49/GM/88 of 10 May (annex 17).

132. With regard to article 12, paragraph 4, of the Covenant, the proviso contained in article 4 of the Portuguese Assembly's resolution No. 41/92, under the terms of which this provision is not applicable to Macao as far as the entry and departure of people to and from Macao is concerned, this issue continues to be regulated in accordance with the applicable statutory and legal norms as well as the Sino-Portuguese Joint Declaration. This proviso is based on the need for the Macao authorities to have wide discretionary powers regarding the entry of people into the Territory, bearing in mind the fact that Macao is a focal point for neighbouring

populations, hence the fact that the local population has doubled in the last 30 years due to this migratory flow.

Article 13

133. Article 4 of the Portuguese Assembly's resolution No. 41/92 states that article 13 of the Covenant is not applicable to Macao "as far as the entry and departure of persons and the expulsion of foreigners from the Territory are concerned, matters which shall continue to be regulated in accordance with the Organic Statute of Macao and other applicable legislation such as the Sino-Portuguese Joint Declaration on the Question of Macao". This proviso is founded on the same reasons as those presented with regard to article 12, paragraph 4, of the Covenant. The regime currently in effect is based on constitutional provisions which have already been discussed with regard to article 12, but which should be linked to the specific statutory and legal norms of Macao.

134. Article 16, paragraph 1 (g), of the OS gives the Governor power to "deny entry to or to expel, in accordance with the law, any Portuguese national or foreigner whose presence would seriously affect internal or international peace and order. The party involved shall have the right to appeal to the President of the Republic" following a hearing in the Consultative Council (art. 48, para. 2 (e), of the OS).

135. In terms of legal provisions, attention should be drawn to Law 2/90/M of 3 May (annex 31) on illegal immigration with the amendments introduced by Decree-Law 39/92/M of 20 July. Under the terms of this law, individuals who are not authorized to stay or reside in Macao are deemed to be in an illegal situation when they have entered under the following circumstances:

- (a) Outside the official passport control;
- (b) Not carrying any of the required documents;
- (c) During the period of interdiction laid out in an expulsion order.

Those individuals who remain in Macao after the legally established time-limits are also regarded as illegal immigrants.

136. A repatriation order, issued by the Governor, should indicate the time-limit for conforming with it as well as the destination and period of interdiction for re-entry.

137. The general principles governing extradition contained in article 33 of the PC apply to Macao. Of these principles, those that “extradition shall not be allowed for political reasons”, that “extradition for crimes which carry the death sentence under the law of the requesting State shall not be granted” and that “extradition may be decided only by a judicial authority” (art. 33, paras. 2, 3 and 4, respectively, of the PC) should be mentioned.

138. Decree-Law 437/75 of 16 August, published in the Official Gazette of Macao No. 47 of 19 November 1977 (annex 93) regulates extradition. This law, which should be interpreted in the light of the Constitution even though it predates it, states that extradition cannot be granted in cases in which:

- (a) The crime has been committed on Portuguese territory;
- (b) Criminal proceedings against the accused have been filed in a Portuguese court or the accused has already been judged on the basis of the facts which constitute the reason for the extradition request;
- (c) The accused has already been judged in a third country for the crime which constitutes the reason for the request and has been found innocent or has served a sentence;
- (d) Criminal proceedings or the sentence have lapsed or the crime has been subject to an amnesty according to the law of the requesting State;
- (e) The crime is political in nature or extradition has been requested in order to persecute the accused on the basis of his race, religion,

nationality or political opinions or where these causes could make the situation worse;

- (f) The accused has been judged by a special court (*tribunal de excepção*);
- (g) The accused is to be subject to proceedings offering no legal guarantees of procedures respecting conditions which are internationally recognized as essential to safeguard human rights, or will serve the sentence under inhumane conditions.

139. Extradition may be denied when the crime is punishable in the requesting State by life imprisonment where there is no guarantee that this will be reduced.

140. Requests for extradition are dealt with in two stages: firstly on an administrative level and secondly by court proceedings. On an administrative level, the request is examined in order to evaluate whether it should go to court or should be denied for political or other appropriate reasons. Should the request be denied, the matter is filed after the requesting State has been notified. Should the extradition request be approved on an administrative level, the court proceedings begin in Macao's Superior Court of Justice with the normal law of criminal procedure applied subsidiarily. The decision taken at the initial, administrative stage concerning whether or not the request should go to court in no way affects the court's decision. The judicial stage is dealt with solely by the court and is intended to decide, in the presence of the accused, whether or not extraditions should be granted on the basis of his condition and without allowing any proof concerning the relevant crime of which he stands accused to be used as evidence. An appeal may be lodged with the same court in the case of any decision to grant extradition. The extradition order is suspended for the duration of the appeal against the decision to grant extradition. Proceedings for extradition are free and continue during holidays.

141. The provisions of article 33, paragraph 6, of the PC are also applied in Macao, stating “the right of asylum shall be secured to aliens and stateless persons who are persecuted or seriously threatened with persecution as a result of their activities on behalf of democracy, social and national liberation, peace among peoples or individual freedom and human rights”.

142. It should be noted that the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and approved by Decree-Law 43,201 of 1 October 1960, is published in the Official Gazette of Macao No. 44 of 29 October 1960 (annex 107). Compliance with the Convention was made with two restrictions: the first concerns cases in which the Convention provides refugees with the most favourable treatment given to nationals from a foreign country, a clause which is not interpreted as meaning the regime applied to nationals of Brazil, a country with which Portugal maintains special relations; second, with regard to the provisions of the Convention dispensing with reciprocal treatment, the constitutional principles on the subject take precedence.

Article 14

Paragraph 1

143. The principle of access to the Law discussed under this heading and contained both in article 52 of the OS and article 20 of the Portuguese Constitution (PC) is a fundamental element of the right to equality and consequently can be further divided into the right of access to the courts, the right to information and the right to legal assistance. The way in which these principles are protected is directly linked to the structure of judicial organization as a facility at the service of individuals whose interests require legal protection either from acts of other individuals or public offices.

144. In the second report of Portugal there is a discussion of the legal and constitutional principles which guide the administration of justice

(CCPR/C/42/Add.1, paras. 480-481) and it is these which are now in effect in Macao. For the first time in its history, Macao has its own judicial organization which operates independently and is adapted to Macao's specific situation. The process of localizing the judicial system effectively began when the PC was revised in 1989. The revised presentation of article 292, paragraph 5, in Constitutional Law 1/89, established that Macao should have its own judicial organization, autonomous and adapted to the specificities of the Territory, in conformity with the law, which shall safeguard the principle of the independence of the judges. The basic outlines of the judicial system were then integrated into articles 51 to 53 of the OS.

145. Article 52 of the OS states that "in the administration of justice the courts of Macao shall be responsible for ensuring the protection of legally protected rights and interests, preventing any breaches of legality and resolving conflicts between public and private interests". In turn, article 53 of the OS stipulates that:

- "1. The Macao courts are independent and are subject only to the law.
- "2. The independence of Macao's courts is safeguarded by the irremovability of the judges and their non-subjection to any orders or guidance other than the duty to respect decisions made following appeal to higher courts.
- "3. When judges are appointed for a set period of time, their independence is guaranteed for this time.
- "4. Judges cannot be held responsible for their decisions save in exceptional cases indicated by law.
- "5. The Public Prosecutor's Department is independent according to the law."

The same principles are contained in articles 3 and 23 of Law 112/91 of 29 August, published in the Official Gazette of Macao No. 36 of 9 September 1991.

The principles presented in article 53 of the OS enshrine the rules contained in articles 205 et seq. of the PC, particularly article 205, paragraph 2 (sphere of jurisdiction) and article 206 (principle of independence of the court).

146. In the same vein as the provisions of article 218 of the PC, article 3 of Decree-Law 55/92/M of 18 August (annex 61) states that:

- “1. Magistrates may not be transferred, may not have their category changed, be suspended, retired, dismissed or undergo a change in their situation of any kind unless provided for by law.
- “2. When magistrates are appointed for a set period of time, their independence is guaranteed for this time.”

147. The same law states, in article 5, paragraph 1, that “judges shall pass judgement only according to the law and shall not be subject to any guidance other than the duty for lower courts to respect decisions made following appeal to higher courts”.

148. Article 6 of the same Decree-Law stipulates that:

- “1. Judges shall not be held responsible for their decisions.
- “2. Judges may only be subject, in the exercise of their duties, to civil, criminal or disciplinary responsibility in cases stipulated by law.
- “3. Other than cases in which the breach is a crime, the civil responsibility provided for in the preceding paragraph may only be effected by means of an action for the recovery of the amount by the Administration against the relevant judge.”

149. By these means, all the conditions required for the independence of the judges are satisfied in the judicial organization of Macao: irremovability, freedom from responsibility and non-subjection to orders or guidance.

150. As can be seen, as Macao's courts are independent, so are the judges.

151. Law 112/91 of 29 August approved the Law of Judicial Organization of Macao (LJOM), defining and harmonizing the basic elements within the new system. According to the LJOM, the judicial organization of Macao includes courts with general jurisdiction and courts with administrative, fiscal, customs duties and financial jurisdiction (art. 5, para. 1, of Law 112/91). Following the enactment of this law, and in addition to primary courts, an Audit Court and the Superior Court of Justice were introduced (art. 6, para. 1, of Law 112/91).

152. The Superior Court of Justice (SCJ) is the highest organ within Macao's court system, without prejudice to the powers of the Supreme Court of Justice, the Supreme Administrative Court and the Constitutional Court to handle appeals (art. 11 of Law 112/91). The jurisdiction of these Portuguese courts in Macao, which is currently very rarely invoked, shall, according to the terms of article 75 of the OS, be retained until the President of Portugal decides that the Macao courts should be vested with full and exclusive jurisdiction. The SCJ is thus the highest local court with powers of general jurisdiction and jurisdiction over administrative, fiscal and customs duties matters (art. 11 of Law 112/91). The SCJ operates as a court of second instance and as a court of appeal (art. 6, para. 2, of Law 112/91). It consists of a president and six judges and hears cases either as a full bench or in divisions (art. 12, para. 1, of Law 112/91). Until such time as Macao's courts are vested with full and exclusive jurisdiction under the terms of article 75 of the OS, Macao's Superior Court of Justice shall consist of a president and four judges (art. 40, para. 1, of Law 112/91, amended by Law 4-A/93 of 26 February).

153. In Macao there are primary courts with general jurisdiction and jurisdiction over administrative, fiscal and customs duties matters (art. 7, para. 1, of Law 112/91 and art. 18, para. 1, of Decree-Law 17/92/M of 2 March) (annex 56). Matters of general jurisdiction are now dealt with by

the Court of General Jurisdiction and the Court of Criminal Instruction (art. 18, para. 2, of Decree-Law 17/92/M). The Court of General Jurisdiction has powers to deal with all cases which are not attributed by law to a specific court (art. 28, para. 1, of Decree-Law 17/92/M). The Court of Criminal Instruction has powers to deal with jurisdiction over preliminary inquiries, collect evidence, hear the accused and other witnesses and decide on the outcome of the case (art. 30 of Decree-Law 17/92/M).

154. Jurisdiction over administrative, fiscal and customs duties cases is the responsibility of the Administrative Court of Macao which must preside over cases and appeals aimed at resolving cases arising from legal relations involving administrative, fiscal and customs duties acts (art. 9, para. 1, of Law 112/91 and art. 18, para. 3, of Decree-Law 17/92/M). Similarly, the Court of Audit has jurisdiction and powers over matters concerning financial control under Macao's laws (art. 10, para. 1, of Law 112/91).

155. One of the innovations created by the new judicial organization is the support appeal (*recurso de amparo*). The LJOM stipulates that any decision by a court of Macao may be appealed in the Superior Court of Justice on the basis of a claim of a violation of the fundamental rights guaranteed by the OS. Direct appeals are limited to issues of violation of rights (art. 17, para. 1, of Law 112/91). This provision does not rule out the right to judicial review in the administrative courts in cases involving administrative action or simply de facto action by the public authority basing the appeal on a violation of the fundamental rights guaranteed by the OS (art. 17, para. 2, of Law 112/91).

156. The Public Prosecutor's Department is autonomous and enjoys independent status under law. It carries out the duties attributed to it freely and independently without any interference (art. 53, para. 5, of the OS; art. 23 of Law 112/91 and art. 8, para. 1, of Decree-Law 55/92/M of 18 August). The autonomy of the Public Prosecutor's Department is characterized by its links to criteria of legality and objectivity and by the

exclusive subjection of its officers to the guidelines provided for in the law (art. 8, para. 2, of Decree-Law 55/92/M). Article 12 of the same law should also be mentioned as it enshrines the principle of responsibility of officers of the Public Prosecutor's Department. This consists of fulfilling their duties according to the law and following the guidelines provided for them.

157. Other than in cases involving crime, officers of the Public Prosecutor's Department can only be held civilly responsible for their actions by means of an action for the recovery of the amount against the relevant officer.

158. The status of the Public Prosecutor's Department is contained in Law 47/86 of 15 October, which is applied subsidiarily to the organization and status of the Public Prosecutor's Department of Macao in all aspects which do not contravene the LJOM and other relevant legislation, namely Decree-Law 55/92/M (art. 37, para. 2, of Law 112/91).

159. The Public Prosecutor's Department of Macao is responsible for:

- (a) Defending the legality and procedures of criminal actions;
- (b) Representing in law the Public Revenue Office, municipal councils, those who are incapacitated or cannot be located and other bodies decided by law;
- (c) Giving advisory opinions in cases required by law or at the request of the Governor;
- (d) Representing workers and their families in defending their social rights;
- (e) Defending the independence of the courts and ensuring that the legal process conforms to the law;
- (f) Promoting the implementation of court sentences to ensure their legitimacy;

- (g) Directing criminal investigations, even when these are carried out by other organizations;
- (h) Inspecting procedures of the criminal police bodies;
- (i) Promoting crime prevention;
- (j) Intervening in bankruptcy and liquidation proceedings and in all cases of public interest;
- (k) Appealing against any decisions reached by the parties with the intention of defrauding the law or which violate the law;
- (l) Carrying out any other responsibilities granted by law (art. 39 of Decree-Law 17/92/M and art. 14 of Decree-Law 55/92/M).

160. The management and discipline of the judges and agents of the Public Prosecutor's Department in Macao are ensured by the Judicial Council of Macao and the High Council of Justice of Macao (art. 26 of LJOM).

161. The High Council of Justice of Macao consists of the President of the Supreme Court of Justice of Portugal who is also president of this body, the Public Prosecutor of Portugal, a representative of the Minister of Justice and a representative of the President of the Republic, the Governor of Macao or an appointed representative, and two representatives of the Legislative Assembly of Macao (art. 29 of LJOM). The High Council has powers to manage and exercise disciplinary action over the magistrates and Public Prosecutor's Department operating in the Superior Court of Justice and the Court of Audit (art. 31 of LJOM).

162. The Judicial Council of Macao consists of the President of the Superior Court of Justice who is also president of this body, the Deputy-General Public Prosecutor, a lawyer elected by the lawyers of Macao and four persons of recognized merit, two of whom are chosen by the Governor of Macao and two of whom are chosen by the Legislative Assembly of Macao (art. 27 of LJOM). The Council has powers to manage

and discipline the judges and public prosecutors working in the primary courts and also judicial auditors (art. 28 of LJOM).

163. The role of lawyers should also be noted. According to the law, they cooperate in the administration of justice and are exclusively responsible, with the exceptions provided for by law, for the legal defence of the parties and the protection of individual rights and guarantees (art. 24 of Law 112/91 and art. 44 of Decree-Law 17/92/M). Decree-Law 17/92/M strengthens some important principles of procedure such as the principle of public hearings and the principle of obligatory judicial decisions.

164. Hearings in Macao's courts are public unless the court decides otherwise, in a substantiated decision, in order to safeguard personal dignity and public morality or to ensure that the hearing proceeds normally (art. 5, para. 1, of Decree-Law 17/92/M). The sentence is pronounced at a public hearing (art. 5, para. 2, of Decree-Law 17/92/M).

165. The decisions of Macao's courts are binding on all public and private bodies and shall prevail over the decisions of all other authorities (art. 6, para. 1, of Decree-Law 17/92/M).

166. As has already been discussed in the information pertaining to article 2 of the Covenant, any holder of political office, including the Governor of Macao, the Under-Secretaries of the Government of Macao and the members of the Legislative Assembly of Macao, who, in the course of his duties, fails to respect or implement a court sentence, shall be punished with imprisonment of up to one year under the terms of article 13 of Law 34/87 of 16 July (annex 87). Article 12 of the same law punishes any holder of political office who, in carrying out his duty, refuses to administer justice or to apply the rights which he is responsible for administering, according to his powers, with imprisonment of up to 18 months and a fine of up to 50 days' wages.

167. For as long as the Governor of Macao or the Under-Secretaries of the Government of Macao remain in office, civil and criminal cases to

which any of these holders of political office is party shall be settled in Lisbon unless another court has jurisdiction; such a tribunal shall not be from Macao (art. 20, para. 3, of the OS).

168. Both the principle of prohibition of transferral out of a jurisdiction, according to which no criminal case may be removed from a court whose jurisdiction has been fixed by a previous law, and the accusatorial principle, under which any judge who has been involved in the preliminary proceedings or preparation of a case shall be prevented from taking part in the trial, should be noted (arts. 15 and 19 of Decree-Law 17/92/M).

169. Appointment as a judge in primary courts and as delegates of the Public Prosecutor must be preceded by completion of a training course (art. 23 of Decree-Law 55/92/M). The structure and organization of the training course are regulated in Decree-Law 6/94/M of 24 January (annex 79), in which a Training Centre for Macao Magistrates with academic autonomy is set up (arts. 14 to 22). The course will last 18 months and shall be open only to persons who, in addition to complying with the general requirements for employment in the Macao Civil Service, also have the following qualifications:

- (a) A degree in Law from the University of Macao or from another establishment which is legally recognized in Macao;
- (b) Recognized standing within the community;
- (c) Residence in Macao for at least three years;
- (d) A knowledge of Portuguese and Chinese (arts. 2 and 10 of Decree-Law 6/94/M).

170. After the judicial system was reorganized by Law 112/91, the post of judicial auditor was created (art. 19). Its status is defined in Decree-Law 7/94/M of 24 January (annex 80). The judicial auditor advises and assists the judges and staff of the Public Prosecutor's Department employed in the primary courts and the Court of Audit of Macao (art. 2

of the same legislation). The judicial auditor has no powers to engage in jurisdictional actions and may only assist in the preparation of cases and in the judgement (art. 2, para. 3).

171. With regard to access to the law, the general principle expressed in article 2, paragraph 1, of Decree-Law 17/92/M should be noted, ensuring the right of all citizens to have access to the law and the courts to defend their rights and legitimate interests, and that they may not be denied justice simply owing to a lack of financial resources.

172. Law 21/88/M of 15 August (annex 20) lays the foundation of the system of access to the law and the courts. The system is designed to prevent people encountering obstacles to making known, affirming or protecting their rights because of their social or cultural status or lack of financial resources, under the terms of paragraph 1 of the law. Access to the law and the courts is the joint responsibility of the Government and the members of the legal profession, and the Government shall ensure reasonable recompense for the members of the legal profession involved in the system.

173. The law makes provision for four kinds of intervention: legal information, legal protection, legal consultation and legal support.

174. With regard to legal information, the Government's aim is to make the law and legal system known to the public through publications and other means of communication in Portuguese and Chinese, in order to facilitate a better understanding of the rights and duties established by law (art. 5 of the above-mentioned law). Individuals and collective persons without sufficient financial resources to pay the fees of a member of the legal profession and the costs of a court action are entitled to legal protection under the terms of article 7 of the same law. The regime covering legal aid is outlined in Administrative Regulation 11,502 of 2 October 1946, and Decree-Law 33,548 of 23 February 1944, published in the Official Gazette of Macao No. 13, of 29 March 1947 (annex 108). Legal aid for civil cases consists of free advice and exemption from prior

payment of expenses. In criminal cases, the prosecution or other persons whom the law deems able to file an action are entitled to legal aid when the legal action depends on “*a de querela*” accusation or private request. Poor litigants and public utilities are entitled to legal aid in obtaining legal advice. A legal aid committee consisting of a representative of the Public Prosecutor who shall be chairman, and a further three members, is responsible for evaluating requests for legal aid.

175. Legal consultation is provided by the Office for Legal Consultation which is a government department in cooperation with the Public Information and Assistance Centre and the Office for Legislative Affairs.

176. More detailed information is given under the material pertaining to article 25 of the Covenant.

Paragraph 2

177. Article 32, paragraph 2, of the PC states that “everyone charged with an offence shall be presumed innocent until his conviction has acquired the force of *res judicata*, and he shall be tried in the shortest space of time compatible with defence safeguards”. There is a myriad of implications arising from this principle which are enshrined in Macao’s legislation.

178. First of all, contrary to what occurs in civil procedure in which both parties are responsible for introducing the necessary information for resolving the case, in criminal procedure the principle of investigation reigns supreme and the Public Prosecutor’s Department is ultimately responsible for this. Consequently, given that the preparation of the evidence for the case is the responsibility of the prosecution, any reversal of the *onus probandi* to the detriment of the accused is forbidden (art. 9 of the Criminal Procedure Code). Should the prosecution have insufficient proof of the guilt of the accused, the court must dismiss the case due to

lack of evidence (art. 286 of the Criminal Code) in accordance with the principle of *in dubio pro reo*. This principle acquires greater significance if seen in the light of the treatment given to prisoners held on remand under legislation dealing with criminal procedure. Until the final judgement the prisoner benefits from the presumption of innocence.

179. Prior to the court decision, but from the moment in which there is good reason to suspect the accused's involvement in a crime punishable by criminal law, certain precautionary measures are taken, as distinct from genuine sentences, of which remand in custody is applied in the most serious cases. Remand may only be authorized in cases of *flagrante delicto* or a serious crime subject to a major prison sentence (art. 286 of the Criminal Procedure Code). The legal definition of *flagrante delicto* is given in articles 286 and 288 of the Criminal Procedure Code, provided above in the information pertaining to article 9, paragraph 1, of the Covenant. Other than in cases of *flagrante delicto*, remand can only be authorized when a serious crime punishable with a major prison sentence has been committed, there are strong indications of the accused's involvement in this crime and that provisional release will not facilitate the smooth progress of the case (art. 291 of the Criminal Procedure Code).

180. A re-examination of the reasons for holding a person on remand should take place every three months in order to decide whether the measure should be continued, replaced with another, or revoked (art. 273-A of the Criminal Procedure Code). If the legal requirements for remand are not met, the judge may, taking into account the nature of the crime, the damage caused and the circumstances of the accused, decide that he may enjoy provisional release while awaiting trial if he provides proof of identity and residence and, in the case of crimes subject to prison sentences of over one year, bail (arts. 269-274 of the Criminal Procedure Code). Should the accused be unable to post bail, or undergo extreme difficulty and inconvenience in providing it, bail may be replaced with an order to appear before the court or any other authority appointed by the judge at set times on set days (art. 272 of the Criminal Procedure Code).

181. In order to limit as far as possible the deprivation of the right to freedom on the basis of administrative procedures, article 28, paragraph 1, of the PC states that “detention without judicial charge shall, within 48 hours, be subjected to the scrutiny of a court, for validation or continuation of detention; the court shall hear the reasons for the detention, inform the prisoner thereof, interrogate the latter and allow him or her the chance to defend him• or herself”. The same article states that “a court order for a measure involving deprivation of freedom or for its continuance shall immediately be made known to the person indicated by the prisoner, be it a relative of the latter or a person in his or her trust”.

182. A concern with dealing with cases promptly is also reflected in article 308 of the Criminal Procedure Code which establishes a maximum term for remand in custody.

183. From arrest to notifying the accused of the accusation or the request for a case to be filed by the Public Prosecutor’s Department, no more than 40 days may pass in cases involving crimes subject to a major prison sentence, and 90 days when investigation of the crime is the exclusive responsibility of or has been delegated by law to the Judicial Police (art. 308, para. 1, of the Criminal Procedure Code). From notifying the accused of the accusation or the request for a case to be filed by the Public Prosecutor’s Department to the announcement of the indictment arising from the primary investigation, remand in custody may not exceed four months if the crime is subject to a sentence corresponding to *de querela* proceedings, in other words, over two years’ imprisonment (art. 308, para. 2).

184. After charges have been pressed, remand should cease when it reaches half the maximum duration of the sentence for the most serious crime of which the prisoner stands accused and may, under no circumstances, exceed two years (art. 273, para. 1, of the Criminal Procedure Code). Should the time-limit for remand be exceeded, habeas corpus may be claimed, under the terms of article 31 of the PC and articles

312 et seq. of the Criminal Procedure Code, by the detainee or any other citizen in enjoyment of his political rights, and the judge must reach a decision within a maximum period of eight days. (The regime of habeas corpus is explained in further detail in the information pertaining to art. 9, para. 4, of the Covenant.)

185. Article 27, paragraph 5, of the PC states the right of the injured party to claim compensation from the State in cases of deprivation of freedom in violation of the provisions of the Constitution and the law.

186. An appeal may be lodged against the judge's decision to impose remand in custody under the terms of article 645 of the Criminal Procedure Code.

187. The principle of presumption of innocence until proven guilty means that persons held on remand are treated differently from the other prisoners in the Coloane Prison, as has been discussed in the information pertaining to article 10 of the Covenant. Consequently, articles 21 et seq. of Decree-Law 26,643 of 28 May 1936, extended to Macao by Decree-Law 39,997 of 29 December 1954, published in the 4th Supplement to the Official Gazette of Macao No. 52 of 31 December 1954 (annex 99), make provision for separating prisoners held on remand from other prisoners. Nevertheless, this situation is not limited to confining them to their respective cells and they are allowed and encouraged to carry on other activities.

188. This Decree-Law, with the amendments introduced by Decree-Law 45,610 of 12 March 1964, published in the Official Gazette of Macao No. 13 of 28 March 1964 (annex 109), also makes provision for prisoners held on remand to choose any work they wish so long as it is compatible with the prison regime and conditions. They are entitled to engage in intellectual work although this may have no obvious product (art. 262).

189. According to prison rules, prisoners held on remand are entitled to use their own clothes so long as they clean and keep them in order.

190. Decree-Law 43,809 of 20 July 1961, published in the Official Gazette of Macao No. 33 of 19 August 1961 (annex 110), approving the Code of Overseas Judicial Expenses, states that when the accused is the subject of a partial pardon involving various breaches, he shall be liable to pay only that portion of the costs of proceedings which corresponds to the sentence (art. 144, para. 4). If the accused is found not guilty, he shall not be liable to pay the costs of proceedings. If the accused is condemned wholly or partially, the costs of proceedings he must pay are calculated and decided upon in the final judgement, taking into account his financial means and the limits set for the procedure corresponding to the most serious crime of which he stands accused (art. 144 of the same law). If the accused lodges an appeal in a higher court against the judgement and is regarded as being entirely justified, the costs of proceedings shall not be applied, even if the sentence is maintained (art. 144, para. 5).

Paragraph 3

191. Sub-paragraph (a). If there is sufficient evidence that a punishable fact has occurred, and the identity of the persons involved and responsible for it is known, the Public Prosecutor's Department and/or an assistant shall file a case (art. 349 of the Criminal Procedure Code). When the accusation has not been preceded by a contradictory indictment, the accused being held under arrest or their lawyers shall be informed within 24 hours or, should there be no accused held under arrest, within five days (art. 352 of the Criminal Procedure Code).

192. Sub-paragraphs (b) and (d). The right of the accused to choose his own counsel and to be assisted by him at all stages in the proceedings is also enshrined in the PC (art. 32, para. 3, of the PC). When the law determines that the accused must be assisted by counsel and he has none, then the judge shall be responsible for appointing one. In this case, the appointed lawyer shall represent the accused in the subsequent proceedings. If no lawyer is available, the judge shall appoint a person of merit and standing. If at any point the accused chooses to defend himself,

the duties of any counsel appointed officially by the judge shall cease (art. 22, paras. 1-3 of the Criminal Procedure Code).

193. The accused may appoint his own counsel at any point in the proceedings (art. 49 of Decree-Law 35,007 of 13 October 1945, extended to Macao in Administrative Regulation 17,076, published in the Official Gazette of Macao No. 14 of 4 April 1959 (annex 111)).

194. Counsel must be present at the judgement of provisional indictment in *de querela* proceedings and at interrogations of an accused person held on remand (art. 253 and 268 of the Criminal Procedure Code and art. 49 of Decree-Law 35,007 of 13 October 1945). If counsel has been appointed by the judge, he may only be replaced at the request of the accused with good reason, and under no circumstances may he abandon his client without a suitable replacement having been found (art. 22, 26 and 27 of the Criminal Procedure Code). Lawyers may visit accused persons being held in prison.

195. Sub-paragraph (c). In article 2 of the Criminal Procedure Code the principle of sufficiency of criminal action is enshrined, according to which the primacy of criminal jurisdiction is established with regard to all issues which could delay criminal action. On the other hand, the main concern of the legislation on criminal procedure is, as has already been mentioned, to ensure maximum protection for persons held in custody without formal charges. Hence the overriding concern with processing these cases without undue delay.

196. Sub-paragraph (e). “Witnesses shall be questioned as to the alleged facts by the representatives of the prosecution and the defence while the president and judges of which the tribunal consists shall ask those questions they deem necessary to clarifying the truth” (art. 435 of the Criminal Procedure Code). If, in order to clarify the truth, it is deemed necessary to interrogate a witness about a new element which has not been alleged, this questioning may proceed only if the president of the tribunal allows it (art. 435, para. 1, of the same Law).

197. Sub-paragraph (f). If the accused does not speak Portuguese or is a deaf-mute, the judge shall appoint an interpreter who shall, on oath, translate the questions for him and also the answers for the judge. The same applies to witnesses and/or persons making statements (art. 260 of the Criminal Procedure Code). Nevertheless, contrary to the case in Portugal, the need for court interpreters in Macao is not limited to those individual cases indicated in article 260 but is rather a daily necessity given that most of the population neither speak nor understand Portuguese.

198. The fact that, until recently, Portuguese was the only official language has meant that the operation of the legal system is based on the Portuguese language. This, added to the high number of cases in which there is a need for interpreters, has meant that at the moment there is an imbalance between the material resources available in the courts and the requirements of users. Furthermore, note should be taken of the fact that the judges and public prosecutors working in Macao's courts function only in Portuguese with no command of Chinese. The same is true of lawyers. Only around 20 per cent of lawyers speak Cantonese and very few read or write Chinese. Most of the judicial employees neither read nor write Chinese even though they can speak Cantonese.

199. Those interpreters-translators working in the courts carry out their duties without receiving any legal training or support. There are currently six interpreters-translators working in Macao's courts: three in the Court of General Jurisdiction, two in the Criminal Court and one with the Public Prosecutor's Department. Given these limitations and other conditions apparent in Macao's courts at present, efforts are being made to reinforce human and material resources in the Legal Translation Office*

* The Legal Translation Office is a branch of the Public Administration and is responsible for planning, coordinating and carrying out the work of legal translation, and also for promoting the use of Chinese as an official language in legislative and court procedures. The Legal Translation Office has seven translation teams composed of jurists trained in the Portuguese and the Chinese systems, translators and scholars, with a total of around 40 trained staff.

which will permit this department to ensure simultaneous interpretation in hearings of criminal cases. Work has also begun on translating into Chinese various documents and judicial forms, predominantly relating to criminal procedures, and training courses have been introduced for interpreters and translating staff in the courts.

200. Sub-paragraph (g). Article 254 of the Criminal Procedure Code, establishing the norms for interrogating accused persons held in custody, stipulates that after a person has been requested to provide personal information and informed of the facts of which he stands accused, he will be notified by the judge “that he is under no obligation to answer the questions put to him concerning the relevant case or the content of any statement he gives with regard to the same”. Consequently, the accused is allowed either to reply or remain silent, to confess to or deny the facts or to indicate the circumstances under which they occurred and which could in some way justify his behaviour (art. 254, para. 4, of the Criminal Procedure Code).

Paragraph 4

201. Young people may be charged under criminal law from 16 years of age and they are consequently subject to the criminal law should they be accused of involvement in criminal activity (art. 16 of Decree 417/71 of 29 September, published in the Official Gazette of Macao No. 42 of 16 October 1971 (annex 101), approving the Statute for Legal Assistance for Minors Overseas). Despite there being no autonomous regulations on this matter, criminal law makes provision for special treatment for young people aged between 16 and 21. This special treatment is enshrined in articles 39, 69, 107 and 108 of the Criminal Code.

202. In determining the sentence for a minor, the fact of being under 18 or 21 is regarded as a relevant factor in his criminal responsibility (art. 39, para. 3, of the Criminal Code), with the corresponding sentence adjusted in the light of this. The maximum sentence may not exceed

16 years of imprisonment for minors under 21 and 8 years of prison for minors under 18.

203. Article 69 of the Criminal Code states, in the application of the sentence, that: “Young offenders aged between sixteen and twenty-one years of age shall serve their custodial sentences with the aim of educating them in a prison school or in a normal prison separated from the other offenders”.

204. In the case of more serious crimes, young offenders may only have their sentences postponed for two successive periods of two years (art. 69, para. 1, of the Criminal Code).

205. Young offenders aged over 16 and under 18 years of age with previous good behaviour, given their first custodial sentence, may be held in a young offender’s institution for the duration of the custodial sentence (art. 69, para. 2, of the Criminal Code).

206. It should be noted that article 18 of Decree 417/71 states that “if, during a custodial sentence, the young offender aged between sixteen and eighteen commits a criminal infraction, the Juvenile Court may be informed of this in order to review the sentence, if the character of the offender and the circumstances of the fact make this advisable”.

Paragraph 5

207. The right of appeal as an important safeguard of the accused’s defence is enshrined in the PC (art. 32) and is the subject of extensive regulations in the Criminal Procedure Code.

208. Except in cases provided for by law, the accused may lodge an appeal against a judicial decision in criminal proceedings finding against him (art. 647, paras. 2 and 3, of the Criminal Procedure Code, *a contrario*). The appeal should be lodged within five days from the publication of the relevant indictment or sentence (art. 651 of the Criminal

Procedure Code). Appeals against the decisions of primary courts should be lodged with the Superior Court of Justice, which shall be informed of “the fact and the law. For appeals concerning final decisions of joint courts, the SCJ shall base its decision on documents, replies to inquiries and any other information contained in the records, on its own merits or in conjunction with the rules of common experience” (art. 14, para. 3 (a), of the LJOM and art. 55, paras. 1 and 2, of Decree-Law 17/92/M).

209. In the case of the criminal law, there are very few instances in which appeals against the decisions of the Superior Court of Justice can be lodged with the Supreme Court of Justice in Portugal. These concern issues closely linked to sovereignty (for example, the judgement of high-ranking political officers).

210. The Superior Court of Justice is responsible for harmonizing jurisprudence, should it proffer a decision contrary to one it has already issued on the same subject of law (art. 668 of the Criminal Procedure Law and art. 14, para. 1 (d), of the LJOM).

Paragraph 6

211. Article 29, paragraph 6, of the PC recognizes the right, in the case of unjust convictions, to a review of the sentence and to compensation for damage caused. Should the time-limit for lodging an appeal have expired and the judgement therefore be perceived as unassailable, a review of the sentence may only be allowed in the circumstances stipulated in article 673 of the Criminal Procedure Code:

- (a) If the facts on which the accused’s sentence is based cannot be reconciled with those which appear in another sentence and if the conflict between them gives rise to serious doubts as to the justice of the conviction; or
- (b) If a sentence given in court has been based on false comments, expert’s evidence or documents which caused the final conviction; or

- (c) If an acquittal or conviction which has acquired the force of *res judicata* is found to have been handed down as the result of bribery, corruption or embezzlement by the judges or members of the jury; or
- (d) If new facts or evidence are discovered which per se or combined with other facts or evidence evaluated in the proceedings give rise to major misgivings as to the guilt of the accused; or
- (e) When medical examinations required by law and other necessary steps carried out on the accused serving his sentence indicate that his mental condition may mean that he cannot be found responsible for the crime of which he stands accused.

212. The petition for a review of sentence may be submitted by the Public Prosecutor's Department, by the accused and, in the case of an acquittal, by the prosecution, regardless of whether the criminal action has passed the statute of limitations or the sentence has been handed down or served (arts. 674 and 675 of the Criminal Procedure Code). Authorization to review sentences falls to the Superior Court of Justice which is also responsible for determining the situation of the accused when he is serving a sentence or is being sentenced (art. 684 of the Criminal Procedure Code and art. 14, para. 3 (g), of the LJOM).

213. If the accused is acquitted in a review of sentence, he shall be given compensation for material and moral harm suffered, this to be paid by the prosecution or, in the absence of this, the State (art. 690, para. 1, of the Criminal Procedure Code). If the accused has already paid a fine or the cost of proceedings, that sum shall be reimbursed.

Paragraph 7

214. Under the terms of article 29, paragraph 5 of the PC, no one may be tried more than once for the same offence. This principle - *non bis in idem* - is enshrined in articles 148 to 154 of the Criminal Procedure Code.

Article 15

215. Article 29 of the Portuguese Constitution (PC) states that no one shall be convicted under criminal law except by virtue of existing legislation making the act or omission punishable, and no one shall be subjected to a security measure involving deprivation of freedom for reasons that do not warrant such a measure under existing legislation, and also that no sentences or security measures involving deprivation of freedom shall be applied that are not expressly provided for in existing legislation (paras. 1 and 3 of the above-mentioned article). The principle of legality and non-retroactivity of criminal law are hereby established.

216. In the domain of criminal law, the principle of legality - *nullum crimen sine lege, nulla poena sine lege* - is also enshrined in articles 5 and 54 of the Criminal Code (annex 7), according to which no fact, either act or omission, may be deemed criminal unless provided for in existing legislation. This principle is also enshrined in article 15 of the same law with regard to the sources of criminal law, and in article 18 which excludes the admissibility of analogy or similarity (*paridade* and *maioria de razão*), to qualify any act as a crime, requiring that the circumstances of the criminal fact should be verified as demanded by law.

217. The principle of non-retroactivity of criminal law is regarded as so fundamental that it may not be suspended, even if a state of emergency is declared, as stated in article 19, paragraph 6, of the PC.

218. The principle of non-retroactivity of criminal law unless in the case of more favourable laws is provided for in article 29, paragraph 4, of the PC and article 6 of the Criminal Code. This last concept states the exceptions to the non-retroactive nature of criminal law.

- (a) An infraction punishable by the law in force when it was committed is no longer punishable if a new law eliminates it from the list of infractions; if the case has already been tried, then the sentence is eradicated whether or not it has been served;

- (b) If the sentence established by the law in force when the infraction was committed is different from those established in later laws, then the lighter sentence shall always be applied should the case still not have come to trial;
- (c) The provisions of the law on the effects of the sentence shall be retroactive whenever this favours the criminal, even if he has been sentenced prior to implementation of the later law, unless the rights of third parties are affected.

Article 16

219. The provisions of the Portuguese Constitution (PC) enshrine the right to recognition as a person before the law. Article 26, paragraph 1, of the PC states that “everyone shall be recognized [as having] the right to his or her personal identity [and] civil capacity”. In the same vein, article 30, paragraph 4, of the PC states that “no sentence shall involve, as a necessary effect, the loss of any civil (...) rights”.

220. As has already been mentioned with regard to articles 4 and 15 of the Covenant, article 19, paragraph 6, of the PC states that under no circumstances may the declaration of a state of emergency affect the rights to life, personal dignity and identity and civil capacity.

221. At the infra-constitutional level, this right is also protected in articles 66 to 71 of the Civil Code (annex 4). With regard to the essential features of this regime, information has already been provided by Portugal in its second periodic report (CCPR/C/42/Add.1, paras. 588-589).

Article 17

222. The protection of privacy is enshrined in several constitutional provisions in force in Macao.

223. Article 26, paragraph 1, of the PC recognizes each citizen's right to a good name and reputation, and the protection of private and family life. Paragraph 2 requires legislators to set up effective safeguards against the abuse of use, or any use that is contrary to human dignity, of information concerning persons and families.

224. Article 34 of the PC establishes some of the most relevant constitutional principles regulating this issue. In accordance with this constitutional provision:

- “1. The individual's home and the privacy of his correspondence and other means of private communication shall be inviolable.
- “2. A citizen's home shall not be entered against his will except by order of the competent judicial authority and in the cases and according to the forms laid down by law.
- “3. No one shall enter the home of any person at night without his consent.
- “4. Any interference by public authorities with correspondence or telecommunications, apart from the cases laid down by law in connection with criminal procedure, shall be prohibited.”

225. Article 32, paragraph 6, of the PC states that any evidence obtained through violation of private life in the home, correspondence or telecommunications shall be of no effect.

226. Article 35 of the PC regulates one of the most serious contemporary violations of private life. Concerning the use of databanks, paragraph 2 of this article states that “access to personal data records or files shall be forbidden for purposes of getting information relating to third parties as well as for the interconnection of these files, save in exceptional cases as provided for in the law”. Paragraph 3, states that “data-processing shall not be used in regard to information concerning a person's philosophical or political convictions, party or trade union affiliations,

religious beliefs or private life, except in the case of non-identifiable data for statistical purposes”. As a result, all citizens shall have the right of access to the data contained in automated data records and files concerning them as well as the right to be informed of the use for which they are intended; they shall be entitled to request that the contents thereof be corrected and brought up to date (art. 35, para. 1).

227. Article 36 of the PC lays the basis for, amongst other things, the right to found a family and to marry and the right of parents not to be arbitrarily separated from their children.

228. The protection of a good name and the inviolability of private life, correspondence and the home are also the subject of specific regulations in articles 70 to 72 and 75 to 80 of the Civil Code (annex 4). In accordance with article 80 of the Civil Code, no person should disclose the private life of others. In protecting the privacy of private and family life, the legal instrument of professional confidentiality and the duty of non-disclosure in relation to confidential letters and other personal papers (arts. 75-78 of the Civil Code) are particularly important. Even in the case of a non-confidential letter, the receiver may only use it in the manner in which the person who wrote it intended it to be used (art. 78 of the Civil Code).

229. In criminal law, Law 16/92/M of 28 September (annex 62) makes provision for the most serious violations of private communication and privacy to be treated as criminal acts. Under this Act, postal communications, telecommunications and other private means of communication may not be violated and are protected by the duty to observe confidentiality. The duty to observe confidentiality is the responsibility of all communications operators of public, private and concessionary telecommunications services and their employees. Interference by public authorities with postal or telecommunications is also prohibited, save for cases in which there is judicial authority allowing correspondence to be confiscated or conversations to be tapped, but this may occur only in the case of a crime punishable with a major sentence.

230. Violation of the privacy of correspondence or telecommunications is punishable under criminal law. The privacy of the private, family or sexual life of citizens is protected unless consent is given, and any violations are punishable under criminal law after a complaint has been filed. Precautionary measures are allowed to prevent or terminate any violation of private life.

231. Article 295 of the Criminal Code makes provision for and punishes the theft or violation of correspondence. With regard to correspondence and telecommunications by persons held in prison, the information pertaining to article 10 of the Covenant should be consulted. It should be noted, however, that prisoners and detainees are entitled to send and receive correspondence and those who are not able to contact their closest relatives directly shall be assisted in doing so.

232. With regard to the duty to observe professional secrecy, it should be noted that the Criminal Code (under arts. 289 and 290) makes provision for and punishes the removal of documents by lawyers and the Public Prosecutor's Department, and the violation of professional secrecy by any public employee. According to article 217 of the Criminal Procedure Code, leaders of any form of worship, lawyers, attorneys, notaries, doctors or midwives are not required to disclose or make statements concerning any information to which they have been made privy as a result of their professional duties, nor may public employees be penalized for not disclosing information which they could only reveal with authorization from their superiors.

233. Within the framework of the High Commission against Corruption and Administrative Illegality, created by Law 11/90/M of 10 September (annex 34), the High Commissioner, his advisers, support staff and assistants are bound by the duty to observe confidentiality concerning information to which they have been made privy in the course of, or as a result of, their duties.

234. Decree-Law 32/93/M of 5 July (annex 69) approving the legal framework of the financial system, establishes the duty of professional

secrecy for members of the boards of credit institutions, their employees, auditors, expert advisers, agents and other persons providing them with services. These persons are bound to keep secret the names and other relevant information pertaining to customers, their financial business and other banking operations. They may only be released from the duty to observe professional secrecy by the client himself or by judicial mandate under the terms of criminal law or the law of criminal procedure. Persons bound to observe professional secrecy are liable, in general terms, to disciplinary, civil and criminal measures.

235. Within the scope of illegal trafficking and use of narcotics, article 34 of Decree-Law 5/91/M of 28 January (annex 112) states that information provided or authorized by judicial authorities may be requested concerning property, deposits or any other assets belonging to individuals under strong suspicion or accused of being engaged in the illegal trafficking of narcotics.

236. With regard to the protection of citizens' honour and good reputation, articles 407 to 420 of the Criminal Code make provision for and punish crimes against honour, and of libel, calumny and slander.

237. No proof of the truth of the claims referred to in the preceding paragraph shall be accepted, save in cases involving public employees in circumstances related to their jobs or involving a crime for which an individual has already been sentenced, even if the sentence has not been served, or a case still pending in court.

238. With regard to the media, the legal regime established by the Press Law (Law 7/90/M of 6 August (annex 13)) and the Regime of Radio Broadcasting Activities (Law 8/89/M of 4 September (annex 28)) shall be examined in the information pertaining to article 19 of the Covenant.

239. Police records are regulated by Decree-Law 43,089 of 11 July 1960, published in the Official Gazette of Macao No. 33 of 13 August 1960 (annex 113), Administrative Regulation 6,713 of 4 March 1961,

published in the Official Gazette of Macao No. 9 of 4 March 1961 (annex 114), and Decree-Law 251/71 of 11 June, published in the Official Gazette of Macao No. 46 of 13 November 1971 (annex 115). According to this legislation the competent official authorities may only request police record certificates for academic or statistical purposes. Otherwise, a police record certificate may only be obtained by the interested party himself, his parents, the spouse, the guardians of a person absent or unable to request it on his own behalf, any person presenting a request from the absent party addressed to him and by solicitors and lawyers representing their clients. Police record certificates issued for private purposes shall not show any sentences handed down for crimes subject to amnesty, suspended sentences, sentences whose transcription has been forbidden by court and sentences prior to rehabilitation.

240. The special records for minors are secret and certificates may only be issued at the request of the Young Offenders Institution or the competent judicial authority.

241. The principle of inviolability of the home is established in article 77 of the Criminal Procedure Code.

242. Once the conditions set out in article 34 of the PC have been observed for the arrest of an accused person at night from an inhabited house, the consent of those living there must be sought; should the arrest take place during daytime and not under circumstances of *flagrante delicto*, the arrest warrant must expressly authorize it according to articles 300 to 302 of the Criminal Procedure Code. In the case of the arrest of culprits found in *flagrante delicto* engaged in a crime punishable by a prison sentence, entry to the house where the crime is being committed is allowed under the terms of article 289 of the Criminal Procedure Code, so long as the conditions stated in article 34 of the PC are respected.

243. Searches are regulated by articles 203 to 213 of the Criminal Procedure Code. Searches may only be carried out on judicial authority. Between sunset and sunrise, searches may not be carried out in inhabited

houses unless the person concerned gives his consent. Article 194 of the Criminal Code prohibits the entry of any public employee into a third party's home without permission.

244. Under the terms of the Lawyers' Statute, approved by Decree-Law 31/91/M of 6 May, amended by Decree-Law 26/92/M of 4 May (annex 42) searches and other similar measures in the office of a lawyer or any other place where he keeps files may only be permitted on the authority of a judge who should request the lawyer to be present during the search along with a member of the Lawyers' Association of Macao. Correspondence dealing with professional matters may not be confiscated except in cases in which it is connected with the crime of which the lawyer stands accused.

Article 18

245. Article 41 of the Portuguese Constitution (PC) states that freedom of conscience, religion and worship is inviolable. This principle, the corollary of the principle of equality, is stated in such express terms, particularly as far as the first two rights are concerned, that the Constitution does not allow them to be suspended, even in a state of emergency (art. 19, para. 6). A direct consequence of these principles is found in the fact that no one shall be persecuted, deprived of rights or exempted from civil obligations or duties because of his convictions or religious practices, nor shall anyone be questioned by any authority or investigated in this domain other than for statistical purposes (art. 41, paras 2 and 3; art. 35, para 3, of the PC).

246. The principle of the separation of Church and State has been enshrined in the law since 1911. This principle is embodied in the PC and has as its corollary the nondenominational nature of the State and the freedom of organization and practice of religious functions by churches and religious communities. Under the terms of this arrangement, religious influence in the organization of the public authorities is forbidden, and

consequently public education must be nondenominational, political parties may not adopt religious symbols and trade unions are not allowed to have religious connections (art. 43, paras. 2 and 3; art. 51, para. 3; art. 55, para. 4, of the PC).

247. The freedom of organizations and independence of the churches is only limited by those restrictions placed on the freedom of association.

248. The importance of freedom of conscience, religion and worship in the various sectors of society is reflected in its extensive protection in domestic law.

249. In view of its non-sovereign status, Macao has historically followed a path similar to that of Portugal, although Catholicism has only been one - and not the greatest - of various religions practised by the multicultural population. In Macao, as in Portugal, Catholicism enjoyed a privileged position until the establishment of the Portuguese Republic in 1910 when it ceased to be the official religion as a consequence of the application of the principle of the separation of State and Church. On 7 May 1940, the situation changed with the signing of a concordat by the Portuguese State and the Holy See which was extended to Macao by publication in the Official Gazette of Macao No. 37, of 14 September 1940 (annex 116).

250. Similarly, the Law concerning the Bases of Religious Freedom, Law 4/71 of 21 August 1971, published in the Official Gazette of Macao No. 5 of 2 February 1974 (annex 117), emphasizes the separation of the State and religious denominations and grants the latter equal treatment, except as regards the differences stemming from their level of representation in the population. The Act specifies that all persons are entitled to have or not have a religion, change denomination or abandon their previous denomination, act or not act in accordance with what is prescribed by their denomination, express and spread their convictions, and perform acts of worship in accordance with their religion (Base III). The right of assembly for public worship is given special protection in Base V.

251. Criminal law protects the principle of freedom of religion and worship, punishing those who disturb acts of worship or abuse a minister engaged in worship.

252. The Catholic Church has a special status in Macao as a result of its past relations with Portugal as reflected in the above-mentioned concordat.

253. The missionaries of the “*Padoado do Oriente*” are subject to the legal regime laid out in the Missionaries’ Statute approved by Decree-Law 31,207 of 4 April 1941, published in the Official Gazette of Macao No. 26 of 28 June 1952 (annex 118). This document stipulates that missionary corporations and institutions are not State organizations or departments and that missionary workers and helpers are not employees of the State. Nevertheless, the diocese of Macao maintains the right to a pension of missionary staff.

254. The guarantee of freedom of conscience and religion is also reflected in the public holidays in effect in Macao, which mirror the high degree of social and cultural pluralism in the Territory’s society.

255. Decree-Law 437/75 of 16 August, published in the Official Gazette of Macao No. 47 of 19 November 1977 (annex 93), regulating the regime for extraditions, stipulates that requests for extradition shall not be granted whenever there is good reason to believe that criminal prosecution shall ensue as a result of religious belief.

256. Prisoners are allowed to practise their faith and receive visits from religious workers of their respective faith. To facilitate this the prison offers special facilities for acts of worship.

257. Law 11/91/M of 29 August (annex 45) establishing the general framework for Macao’s education system enshrines the right of all residents to education regardless of race, belief and political or ideological convictions. Consequently, the Administration shall not arrogate to itself the right to plan education in accordance with any philosophical, aesthetic,

political, ideological or religious guidelines (arts. 2 and 3 of this Law and art. 43, para. 2, of the PC). Matriculation in schools maintained by religious organizations implies acceptance of education in the religion and morals of that religion (Base VII of Law 4/71).

258. The PC also protects freedom of intellectual, artistic and scientific creation (art. 42).

259. The Copyright Code approved by Decree-Law 46,980 of 24 April 1966, published in the Official Gazette of Macao No. 2 of 8 January 1972 (annex 119), protects the intellectual property of any creator. The author's right to dispose of, use or profit from his work is recognized regardless of whether it has been registered or undergone any other formality (arts. 1, 4 and 8). The author of intellectual property shall enjoy the right to assert his role as creator of the work and safeguard its integrity for the duration of his life (art. 55). Law 4/85/M of 25 November (annex 120) follows the same pattern in offering protection against illegal copying of records and videos.

Article 19

260. Freedom of expression and information is offered special protection in Macao's legal framework thanks to the following provisions of the Portuguese Constitution (PC): article 37 ("Freedom of expression and information"), article 38 ("Freedom of the press and mass media") and article 40 ("Right to broadcasting time, to reply and to political argument").

261. Article 37 of the PC states that:

"1. Everyone shall have the right to express and make known his or her thoughts freely by words, images or any other means, and also the right to inform, obtain information and be informed without hindrance or discrimination.

- “2. The exercise of these rights shall not be prevented or restricted by any type or form of censorship.
- “3. Offences committed in the exercise of these rights shall be punishable under the general principles of criminal law, the courts of law having jurisdiction to try them.
- “4. The right of reply and rectification and the right to compensation for losses suffered shall be equally and effectively secured to all natural and artificial persons.”

262. Moving from general to specific situations, the PC deals first of all with the freedoms of expression and information (art. 37) and then how these are used in regulating the press and other forms of the media (art. 38). It concludes by discussing the right to broadcasting time, which constitutes a special safeguard of those freedoms (art. 40).

263. Article 38, paragraph 1, of the PC enshrines the freedom of the press. The freedom of the press implies:

- (a) Freedom of expression and creation for journalists and literary contributors;
- (b) The journalists’ right to access to sources of information and to the protection of their professional independence and confidentiality in accordance with the law;
- (c) The right to found newspapers and any other publications without prior administrative authority, security or qualification (art. 38, para. 2).

264. The State guarantees the freedom and independence of the organs of the mass media from political and economic interests, invoking the principle of exclusive object for companies which own general information media, treating them and supporting them in a non-discriminatory manner and preventing their concentration through multiple or linked holdings (art. 38, para. 4, of the PC). The structure and operation of the mass media

should safeguard their independence from the Administration, and ensure that various currents of opinion can be voiced (art. 38, para. 6).

265. With regard to the right to broadcasting time and to the right of reply, article 40, paragraph 1, of the Portuguese Constitution guarantees broadcasting time on radio and television to political parties and trade unions, professional organizations and organizations representing economic activities, according to their representativeness and to objective criteria defined by law.

266. As will be discussed below in greater detail in the information pertaining to article 25 of the Covenant, candidates in elections are entitled to equal, regular broadcasting times on television and radio stations (art. 40, para. 3, of the PC).

267. In the same vein as the provisions already discussed, Law 8/89/M of 4 September (annex 28) and Law 7/90/M of 6 August (annex 13) were published, regulating the regime for radio and television broadcasting and press activities respectively. Under the terms of article 3, paragraph 1 (b), of Law 8/89/M, the aim of broadcasting is “to contribute to informing the citizen, guaranteeing him the right to inform and to be informed without hindrance or discrimination”. In order to achieve this, broadcasting activities must safeguard their immunity, pluralism, rigour and objective reporting and their independence in the face of political powers (art. 3, para. 2 (a)).

268. Under article 47, paragraph 1, “the right to expression of thought and the right to information are to be exercised without any censorship, hindrance or discrimination, respecting individual freedoms and the rights of citizens to moral integrity, good name and reputation”. Radio and television broadcasting is carried out, according to article 47, paragraph 2, “in an independent, autonomous manner as far as programming is concerned, and no public or private body may prevent or enforce the broadcasting of programmes”. This is ensured by the Broadcasting Council, a body which, under the terms of article 4, is responsible for:

- (a) Guaranteeing the independence of concessionaires and operators of broadcasting services against political and economic interests;
- (b) Safeguarding pluralism and freedom of expression and thought;
- (c) Guaranteeing the rigour and objectivity of reporting;
- (d) Ensuring the quality of programming;
- (e) Protecting the rights and complying with the obligations provided for in this law.

269. Television broadcasting may be permitted to any collective person established as a company based in Macao whose object is to engage in this activity and can offer guarantees of responsibility, technical qualifications and financial capacity. Radio broadcasting is subject to the regime governing the licensing of any collective person based in Macao which can offer guarantees of responsibility, technical qualifications and financial capacity. The granting of concessions and the awarding of licences is usually preceded by public tender (art. 13, para. 1; art. 33, para. 1, of Law 8/89/M). The right to broadcasting time is regulated in articles 59 and 60 of the same Law.

270. In accordance with these provisions, candidates, political parties, coalitions and electoral groups are entitled to exercise this right during elections for the sovereign bodies of the Portuguese Republic and the civic associations and candidacy committees which run for election to the Legislative Assembly, the Consultative Council and the Municipal Assemblies.

271. Article 61, entitled “The right of reply”, states, in paragraph 1, that “any single or collective person who believes himself to have been injured by a broadcast representing or containing material which is directly offensive or which makes reference to an untrue or mistaken fact and which could call into question his good name or reputation, may exercise the right of reply”. The right may be exercised either in or out of court, and

the law sets extremely short deadlines so that the broadcast of the reply can occur during working hours. The reply is free and, wherever possible, included in the programme in which the corresponding fact was broadcast.

272. Under the terms of article 4, paragraph 1, of Law 7/90/M “freedom of expression of thought by the press is exercised free from any kind of censorship, authorization, deposit, security or other qualification”. In turn, article 3, entitled “Right to Information”, states that:

“1. The right to information covers the right to inform, to obtain information and to be informed.

“2. The right to information is the manifestation of the freedom of expression of thought and covers:

“(a) freedom of access to the sources of information;

“(b) guarantee of professional confidentiality;

“(c) guarantee of journalists’ independence;

“(d) freedom of publication and broadcast;

“(e) freedom of the press.”

273. The provisions of this article are developed in articles 5 to 9 which carefully define the aim and extent of each of the freedoms and safeguards mentioned.

274. Similarly, under article 25, the Press Council is responsible for guaranteeing:

(a) The independence of the press against political and economic interests;

(b) Pluralism and freedom of expression or thought by the press;

(c) Protection of the public’s right to information.

275. As to the ownership of newspapers, under the terms of article 9, “newspaper, editorial and news companies may be established freely” and these should be “effectively managed in Macao and may only belong to singular or collective persons resident or based in Macao”.

276. The right to reply, disclaimer or rectification is provided for legally in articles 19 et seq. under a regime which is the same as the law governing radio and television broadcasting.

277. The right to clarification, enshrined in article 24 of the above-mentioned Law, is a new introduction intended to avoid criminal prosecution arising from abuses of press freedom and has been designed for Macao’s situation where consensus is usually sought in preference to court action. Consequently, in accordance with paragraph 1 of this article, “when a periodical publication contains equivocal references, allusions or phrases which could imply libel or slander of another person, any person who believes himself to be the target of such references, allusions or phrases may request the court to notify the editor and author if known to issue in writing an unequivocal statement indicating whether or not these references, allusion or phrases concern him or not and to clarify them”. Later, the statement and clarification should be printed in the same part of the publication and the judge shall decide whether or not the outcome has been satisfactory. Should it not be deemed satisfactory, the judge may order publication and impose a fine.

278. At present there are in Macao:

- (a) Two broadcasting operators: TDM-Teledifusão de Macao, S.A.R.L., which holds a concession for two television channels (one broadcasting in Portuguese and the other in Chinese) and two radio channels (one broadcasting in Portuguese and the other in Chinese), and Rádio Vilaverde, S.A.R.L., which holds a concession contract for one radio channel broadcasting in Chinese;
- (b) Twenty-six newspapers, of which 10 are published in Portuguese - O Clarim, Tribuna de Macao, O Comércio de Macao, Ponto

- Final, Amagao (all weeklies), Gazeta Macaense, Jornal de Macao, Macao Hoje, Jornal Novo, O Futuro de Macao (dailies) - and 16 in Chinese - Sporting Weekly, Si Si, Sino-Macanese Courier, Hou Keng, Gazette, Son Pou, The Pulse of Macao, Hou Hoi, Macao Leisure (all weeklies) and Ou Mun Iat Pou, Va Kio, Si Man, Tai Chung, Seng Pou, Cheng Pou and Macao Today (dailies);
- (c) Twenty-six correspondents from Portuguese, Chinese and Hong Kong newspapers;
- (d) Some 12 magazines, of which three are published in Portuguese-Administração, Revista de Cultura and Macao - 2 are bilingual-Face (Portuguese and Chinese) and Macao Image (Portuguese and English) -1 in English - Macao Travel Talk -and several others in Chinese;
- (e) Four news agencies, of which one is Portuguese - Lusa - one Chinese - Xinhua/New China - one French - France Presse - and one American -United Press International.

Article 20

279. The principles enshrined in the Portuguese Constitution (PC) (in arts. 7 and 46) clearly exclude any incitement to war or violence. In particular, article 46, paragraph 1, of the PC prohibits “the formation of associations intended to promote violence or whose objectives are contrary to the criminal law”.

280. Article 3, paragraph 2, of Decree-Law 3/76/M of 23 March, republished and duly rectified on 17 April (annex 121), reiterates the prohibition of “associations whose aim is to attack democratic institutions or which incite hatred or violence”.

281. Article 46, paragraph 4, of the PC also prohibits “armed, military-type, militarized or paramilitary associations and organizations which adopt Fascist ideology”.

282. The Criminal Code makes provision for this in articles 148, 179 and 180 in which the practice of acts which incite to hatred or violence is punishable under criminal law. Article 148 punishes any person exposing citizens to reprisals by a foreign power with a prison sentence of between two and eight years if the reprisals are carried out. Article 179 punishes anyone who organizes or participates in acts of sedition with prison sentences of between three months and two years or between two and eight years depending on the severity of the crime. For the purposes of this provision, sedition is regarded as grouping together in uprisings, riots or tumults, and displaying unruly behaviour, using violence, threats or insults, or attempting to invade any public building or the home of a public employee:

- (a) To prevent a law, regulation, decree, or legitimate order from the authorities from being carried out;
- (b) To constrain, prevent or disturb any entity with public authority, a magistrate, an agent of the authorities or a public employee from carrying out their duties;
- (c) To avoid complying with an obligation; or
- (d) To carry out an act of violence, revenge, or contempt against a public employee or a member of the legislative power.

Article 180 of the Criminal Code punishes organization of or participation in the crime of rioting, this being the grouping together in any public place to carry out an act of hatred, revenge or contempt against any citizen, or to prevent or disturb the free use or enjoyment of individual rights, or to commit a crime subject to a maximum prison sentence of six months.

283. The Electoral Act for the Legislative Assembly of Macao, approved by Law 4/91/M of 1 April (annex 38) states in article 64, paragraph 3, that “candidates [for the Legislative Assembly] and their supporters are responsible for damage caused directly by actions which are

the result of incitement to hatred or violence in the course of their activities during the election campaign”.

284. It is important to point out that Macao has long been a territory where people of diverse religious beliefs, races, nationalities and languages have lived together in harmony and that no discrimination whatsoever is allowed on the basis of ancestry, sex, race, language, country of birth, political or religious convictions, educational level, economic status or social standing.

Article 21

285. Under Article 45, paragraph 1, of the Portuguese Constitution (PC), “citizens shall have the right to meet peacefully and without arms, even in public places, without requiring any authorization.” Paragraph 2 of the same article states that “the right of all citizens to demonstrate shall be recognized.”

286. Article 1 of Law 2/93/M of 17 May (annex 67), regulating the right of peaceful meetings and demonstrations in the Territory of Macao, repeats these principles by providing that “the residents of Macao shall have the right to meet peacefully and without arms, in public places, places open to the public or in private, without requiring any authorization” and also that “residents of Macao are entitled to demonstrate”. Meetings and demonstrations “with aims contrary to the law” shall not be permitted, although the right to criticize is safeguarded (art. 2 of Law 2/93/M). The exercise of these rights “may only be restricted, limited or placed under conditions in the cases provided for by the law” (art. 1, para. 3).

287. In the exercise of these rights, the most salient feature and true touchstone of the rationale behind the regulations lies in the establishment of a legal regime which dispenses with any need for prior authorization, stating that it is enough merely to indicate the intention to meet or demonstrate in advance. The law states that people and bodies

intending to hold meetings or demonstrations along public thoroughfares, in public places or places open to the public should inform the president of the respective municipal council in writing at least three days and not more than two weeks beforehand (art. 5, para. 1, of Law 2/93/M). When meetings or demonstrations are motivated by political or labour reasons, the minimum prior notice required can be reduced to two working days (art. 5, para. 2, of Law 2/93/M).

288. An appeal against a decision by the authorities not to allow or to restrict any meeting or demonstration may be lodged with the Superior Court of Justice (arts. 6 and 12, para. 1, of Law 2/93/M). This appeal is dealt with under special terms owing to its urgent nature (art. 12, paras. 2 and 3, of Law 2/93/M).

289. Meetings or demonstrations may not be held by illegally occupying public places, places open to the public or private places (art. 3 of Law 2/93/M).

290. The municipal councils are obliged by law to publish in the Official Gazette of Macao a list of public places and places open to the public belonging to the Administration and other public entities which may be used for meetings and demonstrations (art. 16 of Law 2/93/M). Consequently, the *Leal Senado* Notice dated 17 November 1993 and the Islands Municipal Council Notice dated 23 December 1993 were published in the Official Gazette of Macao, both of these indicating those places which may be used for meetings or demonstrations (annexes 76 and 77).

291. There are time restrictions, which mean that a meeting or demonstration may not be held between 12.30 a.m. and 7.30 a.m., save when it occurs in a closed space, in places of public entertainment, uninhabited buildings or, if there are persons living in a building, they are the organizers or have given their written consent (art. 4 of Decree-Law 2/93/M).

292. The Commander of the Public Security Police may also require, for duly justified reasons of public security, that meetings or

demonstrations keep a distance of at least 30 metres from the seats of the Territory's government, buildings essential to its operation, the headquarters of municipalities, court buildings and police buildings, prison facilities and the headquarters of diplomatic missions or consuls, without prejudice to the public places and places open to the public which belong to the Administration and other public entities which are specially reserved for meetings and demonstrations (art. 8, paras. 3 and 4, of Law 2/93/M).

293. The Law states that police authorities may only interrupt meetings or demonstrations when the organizers have been informed through the official channels that they have not been authorized because their aim is contrary to the law or when they fail to keep within the law and cause a serious disturbance to public security or the free enjoyment of individual rights (art. 11, para. 1).

294. Counter-demonstrations are not prohibited, but police authorities should take the necessary precautions to permit meetings and demonstrations to proceed without interference from counter-demonstrations which could disturb the free exercise of participants' rights; policemen may be posted in appropriate places in order to safeguard demonstrators' safety (art. 10 of Law 2/93/M). Counter-demonstrators who interfere with demonstrations, preventing or attempting to prevent them from proceeding freely, shall be subject to the sanctions provided for the crime of physical coercion (art. 14, para. 3, of Law 2/93/M; art. 329 of the Criminal Code).

295. No agent of the authorities may be present on duty in a meeting held in a closed space unless their presence has been requested by the organizers (art. 9, para. 1, of Law 2/93/M).

296. Persons carrying arms in meetings or demonstrations, and persons holding meetings or demonstrations which are against Law 2/93/M shall be subject to punishment for the crime of qualified disobedience, regardless of other sanctions which their actions may give rise to (art. 13, para. 1; art. 14, para. 1, of this Law).

297. Organizers of meetings or demonstrations who have prior knowledge of the presence of arms and fail to take measures to disarm those carrying them shall be subject to punishment under the crime of qualified disobedience (art. 13, para. 2, of Law 2/93/M).

298. Any authority which oversteps the law in preventing or attempting to prevent the free exercise of the right to meet or demonstrate shall be subject to the punishment provided in article 291 of the Criminal Code (“Abuse of authority”) and shall be subject to disciplinary proceedings (art. 14, para. 2, of Law 2/93/M).

Article 22

299. The basic principles governing the right to free association are contained in article 46 of the Portuguese Constitution (PC) which protects:

- (a) The right of association. This is the right of individual citizens to create associations with no obstacles or impositions from the State, and the right to join already existing organizations;
- (b) The freedom of association. This is the right of associations themselves to organize and carry on their activities freely;
- (c) The freedom of non-association. This is the right of any citizen to not belong to an organization, and the right to leave any organization.

300. Paragraph 2 of this clause in the PC should also be noted, in that it states that “associations may pursue their objectives freely without interference by any public authority. They shall not be dissolved by the State and their activities shall not be suspended except by judicial decision in the cases provided by law”.

301. In Macao, freedom of association is regulated by Decree-Law 3/76/M of 23 March, republished with rectifications on 17 April (annex 121). All adult citizens, in full enjoyment of their civil rights, are

guaranteed the free exercise of the general right of association for aims which do not contravene the law or public morality without any prior authorization (art. 1, para. 1, of Decree-Law 3/76/M, in the same vein as art. 46, para. 1, of the PC). Accordingly, nobody may be forced or coerced in any way to join an association of any kind (art. 2, para. 1, of Decree-Law 3/76/M, in the same vein as art. 46, para. 3, of the PC). Anybody, whether a public or administrative authority, who forces or coerces another person to register in an association shall be subject to the sanction provided for the crime of illegal detention, punished under the terms of article 291 of the Criminal Code (art. 2, para. 2, of Decree-Law 3/76/M).

302. As has already been mentioned with regard to article 20 of the Covenant, associations advocating the removal of democratic institutions or defending hatred and violence are not permitted (art. 3, para. 2, of Decree-Law 3/76/M).

303. Organized crime, which in the region of Macao takes the form of secret societies commonly described as sects or triads, is not permitted and is subject to a specific legal regime (Law 1/78/M of 4 February (annex 122)).

304. The general regime for the organization and operation of associations is governed by the norms contained in article 157 et seq of the Civil Code and by the provisions of Decree-Law 3/76/M.

305. The regime concerning civic associations should also be noted, as these are one of the most common manifestations of freedom of association amongst the citizens of Macao. “Civic associations shall be understood to be permanent organizations of citizens which aim at the promotion of the exercise of political rights by citizens, by:

“(a) participating in elections;

“(b) defining governmental and administrative programmes;

“(c) participating in the activities of government bodies and local authorities;

“(d) criticizing the activities of the public administration;

“(e) promoting education in and the clarification of civic rights of citizens (art. 10 of Decree-Law 3/76/M).”

306. Civic associations have the right to present candidates, submitting lists of candidates for direct or indirect election as members of the Legislative Assembly and for the Municipal Assemblies (art. 20, paras. 1 and 2; art. 36 of Law 4/91/M of 1 April (annex 38); arts. 16 and 32 of Law 25/88/M of 3 October (annex 22)). These associations do not monopolize, however, the right to submit candidates for direct and indirect elections as members of the Legislative Assembly; candidacy committees may also propose candidates for direct or indirect elections to the Legislative Assembly and the Municipal Assemblies (art. 20, paras. 1 and 2, and art. 36 of Law 4/91/M of 1 April; arts. 16 and 32 of Law 25/88/M of 3 October.

307. As can be seen, civic associations constitute a particular kind of political association, of great relevance to the degree of public participation in the choice of members of the Legislative Assembly and the shaping of political attitudes in the government of the Territory.

308. Macao’s law allows the creation of political parties.

309. In order for a civic association to be formed the law requires that the application requesting the relevant registration be signed by 200 adult citizens in full enjoyment of their civic and political rights (art. 11, para. 1 (c), of Decree-Law 3/76/M).

310. The right to join a trade union is included in the right of free association enshrined in article 46 of the PC, and is also expressly guaranteed in its article 55 (trade union freedom); the rights of trade unions and collective right to bargaining are contained in article 56. There is no specific legislation in Macao concerning trade union activities. Nevertheless, there are many recognized workers’ associations in Macao which are similar to trade unions, under the terms of Decree-Law 3/76/

M. It should also be noted that ILO Convention No. 9- on the rights to organize and collective bargaining issued in 1949 was approved by Decree-Law 45,758 of 12 June 1964 and is published in the Official Gazette of Macao No. 28 of 11 July 1964 (annex 123).

311. Of equal importance is the Standing Committee on Coordinating Social Affairs, created by Decree-Law 31/87/M of 1 June (annex 15), which operates in conjunction with the Governor. The Committee is consultative in nature and consists of representatives of the Administration, employers' associations and workers' associations. The Committee should be consulted on draft legislation relating to socio-economic issues; it should issue an opinion either on request or on its own initiative on policies for socio-economic reorganization and development; and should suggest solutions conducive to the normal running of the Territory's economy, taking into account socio-labour considerations and the population's standard of living.

312. Decree-Law 13/94/M of 21 February (annex 83) created the Economic Council which functions as a consultative body of the Governor in the field of drafting the development strategies and economic policies of the Territory. The Council has the power:

- (a) To issue an opinion on the major policies for the economic development of the Territory in the field of industry, commerce and promoting investment;
- (b) To issue an opinion on strategies for socio-economic reorganization and development;
- (c) To oversee and evaluate on a regular basis the Territory's economic situation;
- (d) To oversee the negotiation of bilateral and multilateral economic agreements to which Macao is party;
- (e) To promote discussions between the various interests in the economic sector.

313. The Economic Council consists of representatives of the Administration and organizations representing economic interests to be appointed by the relevant associations, and also persons of recognized merit and standing in the economic, business and scientific sectors.

Article 23

314. The rights of the family and the inherent right to a family life are fully enshrined in Macao's legislation which offers essentially the same principles and practically the same provisions, in terms of rights, freedoms and safeguards, as are in force in Portugal. These have already been discussed in detail in Portugal's initial report (CCPR/C/6/Add.6, para. 23) and in the second periodic report (CCPR/C/42/Add.1, paras. 740-767).

315. Persons ordinarily resident in Macao are governed, at the level of ordinary legislation, by the same norms of family law as those in force in Portugal. These are contained in "Book IV - Family Law" of the Civil Code (annex 4) according to its presentation in Decree-Law 496/77 of 25 November, published in the Official Gazette of Macao No. 14 of 13 April 1978. Consequently, the regime is identical in terms of the rights and duties of spouses.

Paragraph 1

316. Article 36 of the Portuguese Constitution (PC) recognizes and safeguards the rights relating to the family, marriage and recognition of children.

Paragraph 2

317. Article 36, paragraph 1, of the PC states that "everyone shall have the right to found a family and marry on terms of complete equality". From this norm, which enshrines two fundamental yet distinct rights, it can

be seen that the right to establish a family is broader than the right to enter into matrimony.

318. Two corollaries of the principle of equality enshrined in article 36, paragraph 1, of the PC are:

- (a) Equal rights and duties of spouses as regards civil and political capacity and the maintenance and upbringing of the children (art. 36, para. 3, of the PC); and
- (b) Prohibition of discrimination against children born out of wedlock (art. 36, para. 4, of the PC).

319. Parents have the right and the duty to bring up and maintain their children and may not be separated from them unless they fail to perform their duties towards them. Such separation must always be the result of a judicial decision (art. 36, paras. 5 and 6, of the PC).

Paragraph 3

320. As far as regards consent to marry, the PC leaves the regulating of the requirements for marriage to ordinary law, in this case the Civil Code (art. 36, para. 2, of the PC). The Civil Code presumes consent between the two parties contracting marriage (art. 1,634) on the basis of *iuris tantum*. Consent cannot be subject to any conditions or prescriptive time-limits and must be personal, actual, complete and free (art. 1,617; art. 1,618, para. 2; art. 1,619 of the Civil Code).

321. Article 124, paragraph 1(c), of the Civil Registration Code approved by Decree-Law 14/87/M of 16 March (annex 124) states that in a marriage ceremony, “both the groom and the bride must declare clearly and freely their desire to marry each other”.

322. In Article 1,635 of the Civil Code, the requirements for an annulment on the basis of absence of consent are stated as follows:

- (a) when, at the moment of celebrating the marriage, one of the parties was not aware of his or her acts, due to accidental or other causes;
- (b) when one of the parties was mistaken as to the physical identity of the other party;
- (c) when the declaration of desire has been extorted by physical coercion;
- (d) when the marriage has been simulated.

323. The request for the annulment of a marriage is examined in court in an action filed by the party whose desire was absent; the same party's parents, children, inheritors or adoptive children may file the action should the party die before the matter is settled.

Paragraph 4

324. The equality of the spouses is enshrined in the PC and several provisions of civil law. Spouses have equal rights and duties concerning their civil and political capacity and maintenance of the children (art. 36, para. 3, of the PC) which follows directly from article 13 of the PC. For the duration of the marriage, the principle of equality of rights and duties is contained in several provisions.

325. Marriage is based on the equality of rights and duties of the spouses (art. 1,671, para. 1 of the Civil Code). The management of the family is the responsibility of both spouses who should agree as to the way in which their shared life is lived, taking into account the well-being of the family and each other's interests (art. 1,671, para. 2, of the Civil Code). Spouses are reciprocally bound by the duties of respect, fidelity, cohabitation, cooperation and mutual assistance (art. 1,672 of the Civil Code). Both spouses are bound by the duty to contribute to the expenses of family life, in accordance with each party's potential (art. 1,676, para. 1, of the Civil Code). The family residence is to be chosen by both spouses

by common agreement (art. 1,673, para. 1, of the Civil Code). Each spouse may engage in a profession or activity without the consent of the other (art. 1,677-D of the Civil Code). Each spouse manages his or her own property, the income from employment, and the shared property brought into the marriage or acquired freely after the marriage (art. 1,678, para. 1 (a) and (c), of the Civil Code). Each spouse may take out credit without the consent of the other (art. 1,690, para. 1, of the Civil Code). Each spouse is entitled to use the surnames of the other (art. 1,677, para. 1, of the Civil Code).

326. The equality of rights and duties of the spouses is also protected by law in certain provisions of the Civil Code, should the marriage be dissolved by divorce or legal separation. Either spouse may request a straightforward legal separation of property when there is a danger of losing his or her part due to bad management by the other spouse (art. 1,767 of the Civil Code). Divorce may be requested in court by both spouses by mutual agreement, or by one of them filing divorce proceedings against the other in the case of a contested divorce (art. 1,773 of the Civil Code). Either spouse may request divorce should the other fail to fulfil his or her marital duties whenever this failure is so serious or repeated as to place in jeopardy the continuation of a life together (art. 1,779, para. 1, of the Civil Code). Also divorce may be requested as a result of a rupture in marital life due to a de facto separation of six consecutive years, the absence of the spouse with no news of him or her for at least four years or when the mental faculties of a spouse undergo a radical change lasting for more than six years which, by its severe nature, places the marital life in jeopardy (art. 1,781 of the Civil Code).

327. The court may lease the family home to either of the spouses regardless of whether or not it is shared property or the personal property of one of them, taking into account the requirements of each spouse and the interests of the children of the marriage (art. 1,793, para. 1, of the Civil Code).

328. The law contains a series of measures intended to provide children with due protection in the case of marital breakdown. Article 1,905 of the Civil Code states:

- “1. In the case of divorce, legal separation of persons and property, declaration of annulment or cancellation of the marriage, the future of the child, his upkeep and the way in which this is to be provided shall be regulated by agreement of the parents subject to court approval; approval shall be denied should the agreement not meet the requirements of the minor.
- “2. Should there be no agreement, the court shall decide in accordance with the interests of the minor, and the minor may be entrusted to either of the parents or, in the case of any of the situations provided for in article 1,918 [danger to arsenal security, health, moral upbringing and education of the child] to a third party or educational or welfare establishment”.

329. In the cases referred to in the above-mentioned article, parental control is exercised by the parent who has custody while the parent who has no parental control shall have the power to check the education and living conditions of the child (art. 1,906, paras. 1 and 3, of the Civil Code); should the situation mentioned in article 1,905 paragraph 2, of the Civil Code arise, the bodies referred to therein shall be responsible for exercising those duties and responsibilities of the parents required to adequately fulfil their duties (art. 1,907, para. 1, of the Civil Code).

330. In addition to this, mention should be made of other legislation which contributes to shaping the legal framework governing the family and the protection it is lent.

331. Protection of motherhood and fatherhood. Macao’s legal framework protects motherhood and fatherhood, as a direct result of the constitutional protection enshrined in article 36, paragraphs 5 and 6, of the PC, mentioned above.

332. Protection of health. Article 3, paragraph 2 (c), and article 8, paragraph 1 (a), of Decree-Law 24/86/M of 15 March (annex 106) guarantee women the right to free medical treatment during and after pregnancy.

333. Protection of employment. Decree-Law 24/89/M of 3 April, which establishes the legal framework for labour relations in Macao (annex 25), states in article 37, paragraph 1, that “pregnant women who have been in employment for over one year are entitled to thirty-five days’ maternity leave without loss of remuneration or employment”; out of the 35 days, 30 must be taken after the birth and the remaining five may be used either before or after the birth. Article 37, paragraph 3, provides for the possibility of the period of 35 days to be increased in exceptional cases. The right to maternity leave without loss of remuneration is guaranteed for up to three births.

334. Article 35, paragraph 2, of the same law states that “during pregnancy and for three months following the birth, women should not engage in any tasks which could cause discomfort”.

335. With regard to employees of the Public Administration, the Statute of the Macao Public Employees Association, approved by Decree-Law 87/89/M of 21 December (annex 125), amended by Decree-Law 52/90/M of 10 September, Decree-Law 37/91/M of 8 June, Decree-Law 1/92/M of 6 January, Law 11/92/M of 17 August, Decree-Law 70/92/M of 21 December and by Decree-Law 80/92/M of 21 December, states in article 94, paragraph 1, that “employees of the Administration are entitled to take ninety days’ maternity leave”. Out of these days, 60 must be used immediately after the birth, while the remaining 30 may be used either before or after the birth. The period of 90 days may be increased in exceptional cases.

336. It should also be pointed out that mothers are allowed special working hours to permit feeding of infants (art. 94, para. 8, of the above-mentioned Law).

337. The Statute of the Macao Public Employees Association not only protects motherhood but also fatherhood: “when a child is born, the father is entitled to five consecutive days’ leave” (art. 95, para. 1). In the event of the death of the mother in the period following childbirth, the father is

entitled to leave of absence to take care of the child for a period equal to that to which the mother would have been entitled, and lasting at least 20 days (art. 95, para. 2).

338. In the case of the adoption of a new-born baby, employees are entitled to 30 days' leave (art. 96, para. 1, of the same Statute).

339. With regard to sick leave, the Statute allows for up to 15 days' leave each year to take care of relatives (parents, spouse or children) (art. 100, paras. 1 and 2).

340. Family planning. Family planning is intended to improve the health and well-being of the family and consists of providing individuals and couples with information, knowledge and the means which will allow them to decide freely and responsibly the number of children they wish to have and when. There is a family planning programme in Macao which is provided free of charge by the Territory's health centres. Article 6, paragraph 2, of Decree-Law 24/86/M states that "patients have access to the health centre in their area of residence for the purposes of family planning". Article 7 (d) of the same law enshrines the principle that all medication and appliances used in family planning are totally free of charge, provided at the expense of the Territory.

Article 24

Paragraph 1

341. In accordance with various constitutional principles, Macao's legislation embodies a high degree of protection of children both by society and by the State, with special measures existing for orphans and abandoned children.

342. Article 122 of the Civil Code (annex 4), in pursuance of the Convention on the Rights of the Child signed in New York on 26 January

1990, and article 49 of the Portuguese Constitution (PC) (dealing with the right to vote), sets the age of legal majority at 18 years.

343. On the level of legislation, the protection of children is ensured in several laws.

344. Article 1,877 et seq. of the Civil Code define and regulate the exercise of parental power - understood as both a power and duty - which, through marriage, is shared by both partners and exercised by mutual accord. Should there be disagreement over matters of particular importance, either party may have recourse to the courts to resolve the matter. In this case a child over 14 years of age shall also be entitled to a hearing unless there are strong reasons against this.

345. Article 342 to 348 of the Criminal Code punish abducting and concealing minors and also exposing or abandoning them.

346. The Statute for the Jurisdictional Assistance of Overseas Minors (SJAOM) and corresponding regulations, approved by Decree 417/71 of 29 September, published in the Official Gazette of Macao No. 42 of 16 October (annex 101) and Decree 484/71 of 8 November, published in the Official Gazette of Macao No. 47 of 20 November (annex 126), respectively, regulates the jurisdiction of minors with the goal of, firstly, assisting minors by applying protective measures, welfare or education and, secondly, adopting the appropriate civil measures to protect their rights and interests.

347. Articles 38 to 42 of Decree-Law 24/89/M of 3 April (annex 25) which establishes the legal framework for labour relations, regulates work engaged in by minors. This law contains a general principle imposing on employers the duty to provide minors in their employment with appropriate working conditions for their age, and in particular to prevent any damage to their physical, spiritual and moral development.

348. At an institutional level, the protection of minors is ensured by the combined activities of various bodies.

349. The Macao Social Welfare Institute (MSWI) is a public department charged with implementing the Administration's social welfare policy. It operates through promoting the social and family well-being of individuals and social groups and adopts measures to prevent and remedy the social or economic needs of children, young people and families. To these ends, the MSWI is responsible for running or providing technical support for structures such as crèches, kindergartens and old peoples homes. To ensure contact with the community and to promote programmes on a local level, the MSWI has local coordination and assistance centres. The MSWI is involved in cooperating with the courts with regard to orphans and abandoned children with activities ranging from helping to place the children with families to accommodating them in homes and also providing support in the process of adoption. The MSWI also provides assistance for mentally handicapped children by licensing centres for the handicapped and offering financial and technical support to centres providing full-time care and rehabilitation both for day patients and full-time resident minors with mental handicaps.

350. As has already been discussed under the information pertaining to article 10 of the Covenant, when an individual aged under 16 years is involved in a crime or breach of criminal law, he may be the object of protective measures, social welfare or education as decided by the competent court which, in this case, is the Court of General Jurisdiction (art. 28 of Decree-Law 17/92/M of 2 March (annex 56).

351. As stated earlier, should a decision be made to send the minor to an educational establishment, this shall be the Young Offenders Institution.

352. The measures decided by the court are implemented by the Department of Social Rehabilitation which is responsible for the observation and internment of individuals aged under 16. They must follow each case and cooperate in the custodial measures to be taken and the re-education of the minor through professional and educational training.

353. The public assistance service offered by the Public Prosecutor's Department should also be mentioned although this is more fully described under the information pertaining to article 25 of the Covenant. The Public Prosecutor's Department is responsible for promoting measures to protect, assist or educate minors in care and represents their rights and interests (art. 14 (a), of Decree-Law 55/92/M of 18 August (annex 61)).

Paragraph 2

354. As regards the right to a name, the right to a personal identity and personality is enshrined in civil law (art. 72 of the Civil Code).

355. Identity is safeguarded in two ways. On the one hand, every person is entitled to use a name and to impose on others the obligation to address him by this name. Both the omission of the name of a person and address by a different name are regarded as illegal. On the other hand, each person is safeguarded against the use of his name by a third party.

356. Articles 1,875 and 1,876 of the Civil Code discuss surnames, stating that the minor may use the names of his father and mother or of only one of them, the choice lying with the parents. Should there be no agreement on this, the judge shall rule in accordance with the interests of the minor. When paternity is not proven, the minor may take the surnames of the husband of the mother should either party declare before the registrar that this is their wish.

357. The Civil Registration Code, approved by Decree-Law 14/87/M of 16 March (annex 124) stipulates, in article 1, that births should be registered in the Macao Birth Registration Office. Should the birth not be registered within 30 days, proceedings shall be initiated and the Public Prosecutor's Department, having gathered the necessary information, shall request the judge to order a compulsory registration (arts. 70 and 72 of the same Code). In accordance with article 77 of the Civil Registration Code,

the complete name may not contain more than six elements of which only two may constitute the first name and four the surname.

358. On registration of birth, Portuguese nationals should be given Portuguese names or names adapted to the Portuguese language. A special regime exists for nationals of Chinese origin, allowing a name which corresponds to Chinese custom and this may be registered in Chinese characters with a compulsory standard Romanized version included. Portuguese nationals of foreign descent or non-Portuguese nationals are allowed to use foreign names in their original form so long as these names are permitted in their country of origin.

359. Abandoned children, in other words new-born babies whose parents are not known and who have been discovered abandoned anywhere in Macao, must also have their births registered (arts. 81-83 of the Civil Registration Code). In this case, the registrar shall give the abandoned child a complete name composed of a maximum of three names in common use, suggested by a feature of the child or by the place where he was found without, however, drawing attention to his status as an abandoned child (art. 84 of the Code).

Paragraph 3

360. The Universal Declaration of Human Rights states, in article 15, paragraph 1, that “everyone has the right to a nationality”. This is recognized by article 26, paragraph 1, of the PC, which states that all persons have the right to nationality.

361. The PC defines the concept of Portuguese citizenship as meaning that “all persons are Portuguese citizens who are considered as such by law or under an international convention” (art. 4). It also states that “a person may be deprived of citizenship or subjected to restrictions on his or her civil capacity only in the cases and under conditions laid down by law, and never on political grounds” (art. 26, para. 3). Contrary to prior constitutions (apart from the 1911 one), the current PC does not differentiate between Portuguese nationals by origin and by naturalization.

362. The same principle applies to those nationals who have lost and then re-acquired Portuguese citizenship.

363. The PC enshrines the principle of equivalency between aliens and stateless persons and Portuguese nationals and, apart from the exceptions provided for in article 15, paragraph 2 [which deal, predominantly, with the holding of political office] the enjoyment of fundamental rights does not depend on possession of Portuguese citizenship. There is a special regime for foreigners who are citizens of Portuguese-speaking countries (art. 15, para. 3, of the PC).

364. The Nationality Act is applied in Macao (Law 37/81 of 3 October, published in the Official Gazette of Macao, No. 46 of 16 November 1981 (annex 127)). According to this law, nationality consists of both a legal link to the Portuguese State and a genuine fundamental right of the individual. The concept of nationality is regarded as a fundamental right of the individual subject to the constitutional principles adopted in 1976: equality of the spouses, non-discrimination against children born out of wedlock, and the prohibition of the loss of nationality for political reasons. The Nationality Act also strove to achieve a balance between the criteria of *jus soli* and *jus sanguinis*, having previously emphasized links of parentage rather than territorial links.

365. The various modes of acquiring Portuguese nationality in the Nationality Act can be divided as follows:

- (a) Portuguese nationality by origin. Acquisition of Portuguese nationality by origin covers two situations: acquisition by effect of the law and acquisition by the satisfying of conditions set by law, depending ultimately on the wishes of the interested parties. The first situation covers three different possibilities:
 - (i) The child of a Portuguese father or mother born in Portuguese territory or territory under Portuguese administration;

- (ii) The child of a Portuguese father or mother born abroad if the Portuguese father or mother was resident abroad in the service of the Portuguese State;
- (iii) A child born in Portuguese territory who has no other nationality.

The law expressly establishes the presumption of birth in Portuguese territory or territory under Portuguese administration in the case of children abandoned in such territory at birth, thereby protecting them from statelessness. The second situation involves the case of children of a Portuguese father or mother, born abroad, and of children of a foreign father or mother born in Portugal. With regard to the former, the law requires that they make a statement to the effect that they wish to be Portuguese or have their birth entered in the Portuguese civil register. With regard to the latter, the law requires that the foreign parents have been living in Portuguese territory for at least six years, that they are not in the service of their State, and that they have made a declaration to the effect that they wish to be Portuguese.

- (b) Portuguese nationality by naturalization. Acquisition of Portuguese nationality by naturalization occurs when nationality has not been acquired at birth but later on in the life of the interested party. Law 37/81 makes provision for the acquisition of Portuguese nationality under three distinct categories:
 - (i) As a result of the wish of the interested party, if certain conditions are satisfied;
 - (ii) As a result of the law, as the subject of full adoption by a Portuguese national;
 - (iii) At the discretion of the Government-naturalization- which may only intervene after certain legal conditions have been satisfied.

366. The legislature has attempted to achieve two objectives: harmonizing nationality within the family, and granting the Government a certain amount of power to define who should become a Portuguese citizen.

367. The Nationality Act provides for three situations in which Portuguese nationality can be acquired as a result of the individual stating his wish:

- (a) For under-age or incapacitated children of those who have acquired Portuguese nationality, with the law providing that they may also acquire nationality by making a declaration to this effect;
- (b) In the case of marriage, so long as the person marrying the Portuguese national declares in the record of marriage that it is his or her intention to acquire this nationality;
- (c) By means of a declaration, for those who have lost their nationality while incapacitated.

368. By attributing Portuguese nationality to the subject of a full adoption the intention has been to facilitate the total integration of the adopted child into the adoptive family. Adoptions effected by Portuguese nationals abroad which can be recognized in Portugal may lead to the acquisition of Portuguese nationality.

Article 25

369. The rights provided for in article 25 of the Covenant are guaranteed in Macao's system by articles 48 to 50 of the Portuguese Constitution (PC), which have already been discussed in Portugal's second periodical report (CCPR/C/42/Add.1, paras. 480-481). Article 25 (b) of the Covenant was the object of restrictions in the case of its application to Macao, in the Assembly of the Portuguese Republic's resolution No. 41/92. The reasons for this reservation shall be discussed in greater detail

below. Nevertheless, it should be noted that a large proportion of the rights contained in subparagraph (b) of this provision of the Covenant are currently in force in Macao.

Subparagraph (a)

370. With regard to article 25 (a) of the Covenant, the principle contained in article 48, paragraph 1, of the PC is in effect in Macao, according to which “all citizens shall have the right to take part in political life and the control of public affairs, either directly or through freely-elected representatives”.

371. Mention should also be made, at a legislative level, of Law 10/88/M of 6 June (annex 18), and to Law 10/91/M of 29 August, dealing with electoral registration, Law 4/91/M of 1 April (annex 38), approving the Electoral Act for the Legislative Assembly of Macao, Decree-Law 51/91/M of 15 October (annex 47), and Law 25/88/M of 3 October (annex 22), approving the electoral regime for the Municipal Assembly.

372. There are three kinds of elected bodies in Macao: the Legislative Assembly of Macao, the Consultative Council and the Municipal Assemblies. As has already been mentioned under the information pertaining to article 1 of the Covenant, of the 23 members of the Legislative Assembly of Macao, 8 are elected by direct, universal suffrage and 8 by indirect suffrage. Five of the 10 members of the Consultative Council are elected: 2 by the municipalities and 3 by representatives of social interests within the territory (art. 44 of the OS; art. 1 of Decree-Law 51/91/M of 15 October). The Municipal Assembly of Macao has 13 members of whom 10 are elected, 5 by direct suffrage and 5 by indirect suffrage (art. 15 of Law 24/88/M of 3 October (annex 21)). The Municipal Assembly of the Islands has 9 members of whom 6 are elected, 3 by direct suffrage and 3 by indirect suffrage (art. 15 of Law 24/88/M).

373. Voting capacity and the right to suffrage. The Electoral Act for the Legislative Assembly of Macao (annex 38) grants active voting

capacity in direct elections to inhabitants of Macao aged 18 or over who have been resident in the Territory for at least seven consecutive years and are registered in the electoral roll. Inhabitants of Macao who are endowed with active voting capacity and are aged 21 or over are granted passive voting capacity (arts. 2 and 4).

374. With respect to direct elections for the Municipal Assemblies, Law 25/88/M states that individuals who have been registered in the relevant municipality are electors (art. 1).

375. In the indirect elections for the Legislative Assembly, associations or organizations representing organized social interests which are recognized by law, have been incorporated for over three years and are registered according to the electoral registration law are endowed with active voting capacity (art. 6 of the same Law). Should it not be possible to apply article 6 of the Electoral Act, recognition of an association or organization as representing organized social interests is the responsibility of the Governor, pursuant to a request submitted by the relevant association or organization, and on the opinion, depending on the case, of the following bodies:

- (a) The Standing Committee on Coordinating Social Affairs*, for associations and organizations representing business, labour and professional interests;
- (b) The Committee for Social Action, for associations and organizations representing welfare interests;
- (c) The Culture Committee, for association and organizations representing cultural interests;
- (d) The Education Committee, for associations and organizations representing educational interests;

* A body which was created by Decree-Law 31/87/M of 1 June, as mentioned under article 22 of the Covenant.

(e) The Sports Council, for associations and organizations representing sporting interests (art. 4, paras. 1 and 2, of Law 4/91/M of 1 April).

376. Appeals can be made against a refusal to recognize an association or organization, or against recognition as a representative of an interest which is different from that requested (art. 4, para. 3; art. 5 of Law 4/91/M).

377. Electoral disputes have absolute priority in relation to all judicial services, with the exception of those aimed at guaranteeing personal freedom (art. 6 of Law 4/91/M).

378. Members of the Consultative Council elected by representatives of social interests within the Territory are subject to the norms concerning voting capacity which regulate indirect elections for members of the Legislative Assembly (art. 3, para. 1, of Decree-Law 51/91/M).

379. Suffrage is a right and a civic duty to be exercised personally and in a public place (art. 88 and 89, paras. 2 and 4, of the Electoral Act for the Legislative Assembly of Macao; arts. 70 and 72, para. 1, of Law 25/88/M). Prior to a voter being permitted to vote, he must be registered in the electoral roll and have his identity checked by the election officials (art. 92, para. 1, of the Electoral Act for the Legislative Assembly of Macao; art. 83 of Law 25/88/M). Voters must not, under any circumstances, be forced to reveal their vote (art. 93, para. 1, of the Electoral Act for the Legislative Assembly of Macao; art. 73, para. 1, of Law 25/88/M).

380. Electoral registration. The electoral registration of individuals and collective persons for the direct and indirect elections to the Legislative Assembly, the Consultative Council and the municipalities is regulated by Law 10/88/M of 6 June, amended by Law 10/91/M of 29 August (annex 18). This Law provides for the organization and carrying out of electoral registration of individuals for direct elections (arts. 8-28), the registration of collective persons for indirect elections (arts. 29-34), and the rules covering breaches committed during or as a result of electoral registration (arts. 35-48). Electoral registration is not compulsory although it is the right and civic duty of all individuals and collective persons

entitled to participate to ensure that they are registered (art. 2, para. 1, of Law 10/88/M).

381. Registration of individuals for direct elections is organized by registration committees divided on a geographical basis, and whenever there is a sufficiently large number of voters, committees may set up subsidiary registration offices (arts. 8 and 9 of Law 10/88/M). The annual period during which individuals can register for direct elections must last 30 days (art. 14 of Law 10/88/M). Voters must register in the committee offices or the subsidiary registration office appropriate to their place of residence by presenting a correctly completed application form (arts. 17, para. 1, and 18, para. 1, of Law 10/88/M).

382. Registration on the electoral roll is certified by means of a numbered and authenticated polling card (art. 20 of Law 10/88/M).

383. Voters are registered on electoral rolls which are compiled sequentially by registration number and are updated annually. Within two weeks of the close of the annual registration period, the electoral rolls are put on display in the electoral registration committee office for a period of 10 days for interested parties to consult them and submit any complaint (art. 21, paras. 1 and 2 and art. 24 of Law 10/88/M).

384. Jurisdictional appeal against the decisions of the electoral registration committee is safeguarded by law and effected by means of a swift, simple procedure (art. 26 of Law 10/88/M, with the presentation conferred by Law 10/91/M, and articles 5 and 6 of Law 4/91/M and articles 29 to 31 of the Electoral Act for the Legislative Assembly of Macao, annexed to Law 4/91/M).

385. The registration of collective persons for indirect elections is organized by an electoral registration committee operating in cooperation with the Civil Service and Administration Department, the body responsible for maintaining an up-to-date list of collective persons by district and order of interests (arts. 29 and 30, para. 1, of Law 10/88/M).

Collective persons falling within the four electoral colleges established in the electoral legislation, namely moral, cultural, welfare and economic-professional, may register to vote (arts. 4 and 30 of Law 10/88/M). Collective persons with voting capacity register by presenting a correctly completed application form (art. 31, para. 1, of Law 10/88/M). Collective persons who satisfy the legal requirements are registered in electoral rolls which are updated annually (art. 33 of Law 10/88/M). The registration of collective persons for indirect elections is also subject to the provisions concerning the registration of individuals (art. 34 of Law 10/88/M) of which the guarantees of legal appeal are of particular importance.

386. Electoral system and elections. According to article 8 of the Electoral Act for the Legislative Assembly of Macao, “eight members shall be elected by universal direct, secret and periodic suffrage”. These members are elected in a single voting session which covers the city of the Name of God of Macao and the Islands of Taipa and Coloane, on plurinominal ballot lists following the system of proportional representation with each voter entitled to a single vote for each list (art. 9 of the Electoral Act for the Legislative Assembly of Macao).

387. As mentioned above, with regard to article 22 of the Covenant, civic associations and candidacy committees are entitled to propose candidates (art. 20 of the Electoral Act for the Legislative Assembly of Macao).

388. The ballot lists presented for direct elections should contain at least four candidates in the order presented on the relevant declaration of candidature, and mandates are conferred on candidates according to the same order of precedence (arts. 10 and 12 of the Electoral Act for the Legislative Assembly of Macao). The conversion of votes into mandates is done according to the following rules:

- (a) The number of votes per candidate is counted separately;
- (b) The number of votes obtained by each candidate is divided successively by 1, 2, 4, 8 and subsequent multiples of two up to

the number of mandates to be conferred, after which the quotients are aligned in decreasing order of size in a series of as many terms as there are mandates;

- (c) The mandates belong to the candidates corresponding to the terms of the series established by the preceding rule, with each candidate receiving as many mandates as it has terms of series (art. 11 (a) and (c), of the Electoral Act).

389. According to article 14 of the Electoral Act for the Legislative Assembly of Macao, “eight members shall be elected by indirect, secret and periodic suffrage to represent organized social interests”. These eight members are elected indirectly by electoral colleges according to the organized social interests which they represent, in the following manner:

- (a) The electoral college of business interests elects four members;
- (b) The electoral college of labour interests elects two members;
- (c) The electoral college of professional interests elects one member;
- (d) The electoral college of welfare, cultural, education and sporting interests elects one member (art. 15, para. 1, of the same Electoral Act).

390. Each registered association or organization is entitled to 11 votes which are cast by an equal number of voters chosen from amongst the members of the respective boards or management in control at the date when the elections were set (art. 15, para. 3, of the Electoral Act). Nobody may vote as a representative of more than one association or organization for the same or a different electoral college (art. 15, para. 4, of the Electoral Act).

391. Plurinominal lists submitted for indirect election must contain the same number of candidates as mandates conferred on the respective Electoral College (art. 16 of the Electoral Act).

392. The conversion of votes into mandates is done in accordance with the rules already described above for direct elections (art. 17, para. 1, and art. 11 of the same Electoral Act). On single-name lists, the candidate winning the greatest number of votes shall win the mandate (art. 17, para. 2, of the same Law).

393. The Electoral Act for the Legislative Assembly of Macao also provides detailed regulations on the organization of elections, electoral campaigns, suffrage, the counting of the votes, conflicts in voting and the counting of the votes, the district electoral committee and electoral breaches.

394. Elections are organized and coordinated by a District Electoral Committee consisting of five citizens of recognized merit and standing who are responsible, amongst other tasks, for:

- (a) Furthering objective clarification of voting procedure for voters;
- (b) Ensuring candidates enjoy effective equality of action and propaganda during the electoral campaign;
- (c) Proposing the distribution amongst candidates of air space on radio and television;
- (d) Evaluating the regularity of electoral income and expenditure;
- (e) Informing the Public Prosecutor's Department of any electoral breaches of which it learns (art. 133, para. 2, and art. 134 of the Electoral Act for the Legislative Assembly of Macao).

395. The members of the Committee carry out their duties independently and are irremovable. They may not present themselves as candidates for the Consultative Council (art. 137, paras. 1 and 2, of the same Electoral Act).

396. The elected members of the Consultative Council elected by the municipalities are chosen from amongst their respective members,

with one for each of the municipal councils (art. 44, para. 2 (a), of the OS; art. 2, para. 1, of Decree-Law 51/91/M). The elected members of the Consultative Council representing the social interests of the Territory are chosen according to the following electoral colleges, each one of which has one member:

- (a) The electoral college of business interests;
- (b) The electoral college of labour interests;
- (c) The electoral college of professional, welfare, cultural, educational and sporting interests (art. 3 of Decree-Law 51/91/M).

The election of the elected members of the Consultative Council is subject to the same norms as those governing the electoral system and elections for the indirect election of members of the Legislative Assembly (art. 2, para. 2, and art. 3, para. 1, of Decree-Law 51/91/M).

397. Law 24/88/M of 3 October regulates the composition of the Municipal Assemblies of the municipalities of Macao and of the Islands. According to article 15, paragraph 1, of this Law, the Municipal Assembly consists of 13 members in the municipality of Macao and of 9 members in the municipality of the Islands.

398. The Municipal Assembly of Macao is composed of:

- (a) Five members elected by direct suffrage;
- (b) Five members elected by indirect suffrage, three of whom represent moral, cultural and welfare interests and two others economic interests; and
- (c) Three members appointed by the Governor (art. 15, para. 2, of Law 24/88/M).

399. The Municipal Assembly of the Islands is composed of:

- (a) Three members elected by direct suffrage;

- (b) Three members elected by indirect suffrage, two of whom represent moral, cultural and welfare interests and one other economic interest; and
- (c) Three members appointed by the Governor (art. 15, para. 3, of Law 24/88/M).

400. The electoral regime for the Municipal Assemblies is governed by Law 25/88/M of 3 October, article 1 of which states that “voters are individuals and collective persons registered in the respective municipal district”. Article 14 of Law 25/88/M states that suffrage is universal and secret for the members elected by direct suffrage. Members of the Municipal Assemblies elected by direct suffrage are presented in Plurinominal lists submitted by civic associations or candidacy committees (arts. 15 and 16 of Law 25/88/M). Members of the Municipal Assemblies elected by indirect suffrage are elected in secret elections by means of the presentation of Plurinominal lists; collective persons with voting capacity have half the number of votes of places on the respective boards (art. 31, paras. 1 and 2, and art. 33 of Law 25/88/M).

401. Under the terms of articles 24 and 25 of Law 25/88/M of 3 October, both the Municipal Council of Macao and the Municipal Council of the Islands consist of a president, a vice-president and three councillors chosen from the members of the Municipal Assembly. In addition to the president and the vice-president, one of the three councillors is employed on an exclusive, full-time basis. The president and the full-time, exclusively employed councillor are appointed by the Governor of Macao. The two part-time councillors are chosen by the Municipal Assembly.

402. Nevertheless, the Municipal Council of the Islands is temporarily composed of a president, a vice-president and only one councillor chosen from amongst the members of the Municipal Assembly. The president and vice-president are employed on a full-time, exclusive basis and the councillor on a part-time basis, all three of them being appointed by the Governor (art. 51, paras. 1 and 2, of Law 25/88/M of 3 October).

403. The organization and coordination of the elections for the Municipal Assemblies is the responsibility of an Electoral Committee which has similar powers to the District Electoral Committee described above with regard to the elections for the Legislative Assembly (arts. 7-13 of Law 25/88/M).

404. It should be noted that the following principles are safeguarded in the election campaigns for the elected bodies of Macao:

- (a) Freedom of propaganda;
- (b) Equality of opportunity and treatment of the various candidates;
- (c) Impartiality of the public authorities vis-à-vis all candidates;
- (d) Monitoring of electoral accounts (arts. 62-87 of the Electoral Act for the Legislative Assembly of Macao; art. 3, para. 1, of Decree-Law 51/91/M; arts. 34-55 of Law 25/88/M).

405. The residents of Macao consequently display a high degree of participation in the political life of the Territory through freely elected representatives. The powers of the Legislative Assembly show that this participation has a direct influence on public affairs.

406. Of the wide range of powers enjoyed by this body, the following should be noted: the power to draft legislation in almost all domains, with the exception of some issues concerning the internal organization of the Administration; and far-reaching powers of political control over the Governor and the Administration.

407. The Legislative Assembly has legislative powers over the following matters, amongst others:

- (a) The status and capacity of persons;
- (b) Rights, freedoms and safeguards;
- (c) The definition of crimes, sentences, security measures and respective conditions and criminal procedure;

- (d) The general regime for concessions;
- (e) The essential features of tax contributions;
- (f) The basic legal framework for local administration, including local finance;
- (g) The legal framework governing the relationship between central and local administrative bodies in Macao;
- (h) Public associations, safeguards of the residents vis-à-vis the Administration and the civil liability of the Administration; and
- (i) The basic framework for the public administration of Macao.

408. In addition to these powers, the Legislative Assembly has clear powers of political control over the Governor and the Administration, including:

- (a) The power to submit legal documents issued by the Governor to the Constitutional Court to evaluate their constitutionality and legality (art. 30, para. 1 (a), of the OS);
- (b) The power to evaluate the activities of the Governor, the Under-Secretaries and the Administration. This is divided into two categories:
 - (i) The power conferred on members to submit questions in writing for the clarification of public opinion on any activities of the Governor or the Administration of the Territory (art. 10, para. 1 (h), and art. 169 of the Regulations of the Legislative Assembly (annex 14));
 - (ii) The power to consult or to request information from any public body concerning matters of public administration (art. 10, para. 1 (j), of the Regulations of the Legislative Assembly);
- (c) The power to pass a vote of no confidence in government action (art. 30, para. 2 (c), of the OS; arts. 158-161 of the Regulations of the Legislative Assembly);

- (d) The power to ratify or refuse ratification of decree-laws of the Governor (art. 15 of the OS; arts. 152-157 of the Regulations of the Legislative Assembly of Macao);
- (e) The power to approve the Finance Act, the law which permits the Administration to collect revenue and carry out public spending, which the Governor requires in order to draw up the Annual Budget (art. 30, para. 1 (g), of the OS; arts. 174-176 of the Regulations of the Legislative Assembly). When the Finance Act is under discussion, the Government Action Plan for the respective year is also discussed. This is the most important phase of political discussions between members and the representatives of the Administration on the political aims and programmes of the Governor. It gives the Governor and his Under-Secretaries an opportunity to explain to the Assembly their aims, plans and expectations in the various fields of government activity;
- (f) The power to examine the Territory's statements of account each financial year (art. 30, para. 2 (b), of the OS; arts. 177-179 of the Regulations of the Legislative Assembly);
- (g) The power to authorize the Governor to contract and offer loans and to undertake other credit activities according to the law, and to furnish guarantees (art. 30, para. 1 (h), of the OS).

409. The residents of Macao also have the right of petition, enshrined in article 52 of the PC, according to which all citizens are entitled, individually or jointly, to submit to any authority petitions, representations, demands or complaints in order to defend their rights, the Constitution, laws or the general interest. This right is reflected in Macao in several ways.

410. One of these has been to assist citizens in submitting suggestions, demands and complaints concerning the activities of the Administration (art. 3, para. 2, of Decree-Law 60/86/M of 31 December (annex 84), creating the Public Information and Assistance Centre (PIAC)). Citizens may

address the PIAC in Portuguese or Chinese, in writing or orally, requesting clarification of the Administration's activities, indicating criticism, suggestions and opinions of these activities, and submit demands and complaints concerning issues involving them personally and directly and to do with acts or omissions of public services (art. 5, paras. 1, 2 and 3, of the above-mentioned Decree-Law). The PIAC channels issues presented by citizens to the various services of the Administration, providing users with the information they require to resolve these matters (art. 7 (a), of Decree-Law 60/86/M of 31 December).

411. As has already been mentioned in relation to article 14 of the Covenant, the PIAC also cooperates with the Office for Legislative Affairs to provide information and legal advice for people without financial means through the offices of the Legal Aid Bureau (Decree-Law 14/91/M of 18 February).

412. Under the public assistance service provided by the Public Prosecutor's Department, mentioned in the information pertaining to article 24 of the Covenant, the deputies of the Public Prosecutor receive interested parties each week and, should the case fall within their responsibility, they proceed with the relevant action.

413. In an attempt to permit citizens to better understand the services of the Macao Security Forces, and how cases are dealt with, two assistance and information centres were recently opened. These information centres are open every day and are intended to receive or provide general information connected to the Macao Security Forces; clarification is provided by employees of the three corporations of which the Security Forces consist.

414. Taking into account the need to increase communication between the Administration and Macao's citizens, Governor's Order 106/GM/91 of 27 May (annex 43) states that "all activities engaged in by the services and public organizations of Macao should be guided by the principles of legality, accountability and efficiency", and that these services should

“continue to attempt to simplify internal procedures and communication between services and provide reception counters or areas with trained staff, with those in charge of services and public organizations constantly ensuring prompt and complete compliance with the legislation in force in their domain”.

Subparagraph (b)

415. The principle of regular elections for the elected bodies of the Territory has been observed since 1976 when the OS was approved. With regard to the Legislative Assembly, elections were held in 1976, 1980, 1984, 1988 and 1992. The elections for the Consultative Council were also held in 1976, 1980, 1984, 1988 and 1992. Elections for the Municipal Assemblies, created by the above-mentioned legislation of 3 October 1988, were held in 1989 and 1993.

416. The legality of election activities is effectively safeguarded in the requirements demanded by law. The legality of elections begins with compliance with the principles regulating election campaigns mentioned above and scrupulously fulfilled and safeguarded by the District Electoral Committee and the Electoral Committee which ensure that candidates receive effective equality of treatment and propaganda.

417. The boards of the voting sessions consist of more than one member, and members are chosen from amongst the delegates of the different lists submitted for election (arts. 44 and 45 of the Electoral Act for the Legislative Assembly of Macao; arts. 57-59 of Law 25/88/M).

418. Voting ballots display the identity of all the lists submitted for election and are printed on plain non-transparent white paper (art. 58, para.1, of the Electoral Act for the Legislative Assembly of Macao; art. 82, para.1, of Law 25/88/M).

419. When each voting session is opened, the president of the respective board inspects the voting booths and exhibits the ballot box

to the voters to prove to them all that it is empty (art. 95, para. 2, of the Electoral Act for the Legislative Assembly of Macao; art. 74, para. 1, of Law 25/88/M). Each voter must present himself to the respective board of the voting session, indicating his registration number in the electoral roll and identifying himself to the president of the board (art. 104, para. 1, of the Electoral Act for the Legislative Assembly of Macao; art. 83, para. 1, of Law 25/88/M). Once the voter's identity has been checked, the president states his registration number in the electoral roll and his name aloud and once his registration has been verified, he is handed a ballot slip (art. 104, para. 3, of the Electoral Act for the Legislative Assembly of Macao; art. 83, para. 3, of Law 25/88/M). The voter immediately goes to the voting booth and, once inside, writes a cross or the letter V in the square corresponding to the candidate of his choice, or can choose not to indicate any candidate. He folds the slip in four and hands it to the president of the board of the voting session who places it in the ballot box while the overseers mark the electoral roll in the appropriate column and in the line corresponding to the voter to indicate the vote has been used (art. 104, paras. 4 and 5, of the Electoral Act for the Legislative Assembly of Macao; art. 83, paras. 4 and 5, of Law 25/88/M).

420. When voting has closed, the president of the board of the voting session proceeds with counting the unused slips and seals them with wax in an appropriately marked envelope for them to be returned to the president of the municipal chamber or the Electoral Committee (art. 110 of the Electoral Act for the Legislative Assembly of Macao; art. 87 of Law 25/88/M). The counting of the votes is done by various members of the board of the voting session after checking that the number of voters coincides with the number of voting slips in the ballot box, as regulated by article 112 of the Electoral Act for the Legislative Assembly of Macao and article 89 of Law 25/88/M. Those ballot slips subject to complaint or contestation are initialled and then submitted to the count committee with the relevant documents (art. 116 of the Electoral Act for the Legislative Assembly of Macao; art. 90 of Law 25/88/M). Ballot slips are placed in packages, sealed with wax and entrusted to the court security guards (in

elections for the Legislative Assembly) or the District Committee security guards (in elections for the Municipal Assemblies) (art. 117, para. 1, of the Electoral Act for the Legislative Assembly of Macao; art. 91, para. 1, of Law 25/88/M).

421. The right to complain, contest or counter-contest eventual irregularities in all or part of the voting or counting procedures and to appeal against the decisions concerning any complaint, contestation or counter-contestation is safeguarded by law (arts. 106 and 129-132 of the Electoral Act for the Legislative Assembly of Macao; arts. 86 and 103-105 of Law 25/88/M).

422. As can be seen, the elections for elected bodies in Macao also respect the principle of secret suffrage (arts. 8 and 14 of the Electoral Act for the Legislative Assembly of Macao; arts. 14 and 33 of Law 25/88/M; art. 2, para. 3, and art. 3, para. 1, of Decree-Law 51/91/M). The principle of universal suffrage is also observed.

423. For elections by direct suffrage, this rule is explained in article 8 of the Electoral Act for the Legislative Assembly of Macao and article 14 of Law 25/88/M. For elections by indirect suffrage, all associations or organizations representing the social interests in question are entitled to vote according to article 15 of the Electoral Act for the Legislative Assembly and article 31 of Law 25/88/M. Nevertheless, elections carried out in the exercise of this right are not usually described as being universal suffrage.

424. This was one of the reasons which moved the Assembly of the Republic to apply a reservation in the case of Macao to the application of article 25 (b) of the Covenant (art. 3 of the Assembly of the Republic's resolution 41/92).

425. To be more specific, this clause stipulates that "article 25, subparagraph (b) of the International Covenant on Civil and Political Rights shall not be applied to Macao as far as concerns the composition of elected bodies and the method of choosing and electing office-holders,

defined in accordance with the Constitution of the Portuguese Republic, the Organic Statute of Macao and the provisions of the Sino-Portuguese Joint Declaration on the Question of Macao”. It was understood that this reservation should be made in order to avoid any doubts arising from the existence of members appointed by the Governor or elected by indirect suffrage to the Legislative Assembly, the Consultative Council or the Municipal Assemblies.

426. As can be seen from the electoral systems described above, the elections by indirect suffrage also respect the principles of periodic, fair and secret elections, thereby ensuring the free expression of the will of the voters, in this case, organized social interests.

427. Similarly, as far as elections by indirect suffrage of the members of the Legislative Assembly are concerned, each association or organization representing organized social interests is entitled to 11 votes (art. 15, para. 3, of the Electoral Act for the Legislative Assembly of Macao). In the elections by indirect suffrage of the members of the Municipal Assemblies, the number of votes for each association or organization depends on the number of members on the board of management (art. 31, para. 2, of Law 25/88/M).

Subparagraph (c)

428. Article 25 (c) of the Covenant is applied in Macao, namely the general rule of equal access to public service, as expressed in article 50, paragraph 1, of the Portuguese Constitution: “All citizens shall have the right of access to public office under conditions of equality and freedom.” Constitutional protection is not limited to this, however. Article 47, paragraph 2, of the PC states that “all citizens shall have the right to enter the civil service, under conditions of equality and freedom, generally through public competitions”.

429. In Macao’s ordinary legislation, the rules of access to public service are defined in the Statute of Employees of the Civil Service of

Macao. In accordance with article 10, requirements for public service include Portuguese or Chinese nationality and residence in Macao. Under the terms of article 46 of the Statute, equality of conditions and opportunities for all candidates is a general principle for the recruitment and selection of staff. Furthermore, article 47, paragraph 1, of the Statute states another general principle which has been enshrined in the PC: “Competitive examination is the normal procedure and compulsory for the recruitment and selection of staff into the civil service.”

430. Recruitment and selection procedures are duly publicized by publishing a notice of competition in the Official Gazette of Macao.

431. Also in accordance with article 46 of the Statute, there is an opportunity to appeal against acts during the recruitment and selection procedure, either to hierarchical superiors or through the courts, thereby ensuring that individuals’ interests are protected by the law.

Article 26

432. As has already been stated with regard to article 2 of the Covenant, article 13 of the Portuguese Constitution (PC) is applicable in Macao dealing with the absolute guarantee of the right to equal treatment; all residents are equal before the law and shall not be subject to discrimination. In practice, as is discussed under the information pertaining to article 14, paragraph 3, of the Covenant, Chinese has already been made an official language and all efforts are being made to overcome the difficulties resulting from the fact that some sectors of the Administration and the judicial system still function solely or partially in Portuguese.

433. The important work being effected in implementing Chinese as an official language in the administrative, legislative and judicial spheres should be highlighted. As far as the officialization of Chinese on an administrative level is concerned, the right of any resident to communicate with the various public services of the Administration in Chinese has been

ensured since 1989 (art.2, para. 1, of Decree-Law 11/89/M of 20 February (annex 24)). Similarly, all forms connected with the relationship between the Administration and residents should be printed in both Chinese and Portuguese (art. 2, para. 2, of Decree-Law 11/89/M).

434. With regard to making Chinese an official language on a legislative level, it should be pointed out that since 1991, all normative acts issued by the Government of Macao have been published in Portuguese accompanied by the relevant Chinese translation, in accordance with the provisions of article 1 of Decree-Law 11/89/M of 20 February. All drafts and proposals of normative acts are now translated prior to being passed and are published together with the relevant Chinese version.

435. As far as the officialization of Chinese on a judicial level is concerned, the information pertaining to article 14, paragraph 3 (f), of the Covenant should be consulted.

436. As has already been mentioned in the information pertaining to article 14 of the Covenant, the officialization of Chinese on a legislative and judicial level is the responsibility of the Legal Translation Office.

Article 27

437. Macao is a territory where many different groups of various nationalities live together harmoniously with a wide variety of ethnic, religious, linguistic and cultural differences.

438. In terms of nationalities, according to the data collected in the latest (XIIIth) General Population Census carried out in 1991 (Census '91), 67.6 per cent of the residents of Macao are of Chinese nationality, 28.5 per cent have Portuguese nationality, 1.8 per cent have British nationality, 0.6 per cent have Philippine nationality, 0.2 per cent are of Thai nationality while 1.3 per cent have another nationality (annex 1, table 2.3).

439. Regarding place of birth, and taking into account the population present in Macao on the date the census was taken (30 August 1991),

40 per cent were born in Macao, 50.5 per cent were born in the People's Republic of China, 3.6 per cent were born in Hong Kong, 0.7 per cent were born in Portugal, 0.6 per cent were born in the Philippines, 0.6 per cent were born in Thailand and 4 per cent were born in another country or territory (table 1.2, Census '91).

440. Profession of a religious faith is as follows: 16.8 per cent of Macao's residents are Buddhists, 6.7 per cent are Catholics, 1.7 per cent are Protestants, 14 per cent profess another religion and 60.8 per cent declared that they had no religion (tables 2.4 and 2.5, Census '91). There are around 43 Buddhist temples in Macao, 16 Catholic places of worship (8 churches, 7 chapels and 1 hermitage), 2 protestant churches, 1 Lutheran chapel, 1 Evangelical church and 1 Mosque.

441. The mother tongue of most of Macao's population is Chinese, spoken in the dialect known as standard Cantonese (Yue). Other dialects of Chinese are spoken in Macao, although by smaller numbers and not as widely as standard Cantonese. The most important of these are Fuquienese (Min) and Shanghainese as well as other dialects from Jiangsu and Zhejiang of the Wu family of dialects. Mandarin/Putonghua (Beifang) is spoken by a reasonable proportion of the Chinese population, particularly younger people and those who came to Macao in the 1980s. The Chinese schools in Macao, the mass media (namely the television stations in Macao and Hong Kong) and close contact with people from Canton (Guangdong) Province and Hong Kong have all made a marked contribution to the generalization of standard Cantonese (Yue) as the common language of Macao's Chinese population.

442. Portuguese is spoken by a small percentage of the population. For historical and cultural reasons, it is still the language commonly used in various areas of the Administration and in the courts.

443. Portuguese and Chinese are the official languages of Macao. English is the usual language of communication between the various linguistic communities living in Macao.

444. Government educational establishments may teach only in Portuguese or in Chinese. Government educational establishments teaching in Portuguese adopt Chinese as their second language and government educational establishments teaching in Chinese adopt Portuguese as their second language.

445. There are 4 government schools teaching in Portuguese, and 13 teaching in Chinese at primary and secondary level. Because they are autonomous, private educational establishments are absolutely free to choose the language of instruction and the second language, which must be included in the relevant prospectus. As far as private establishments are concerned, 8 teach in Portuguese, 133 in Chinese and 15 in English.

446. Every group within the population is entitled to share, with the other members of its group, its own cultural life, to profess and practise its own religion and to use its own language.

447. In Macao there is a general belief that the diversity of cultures, races, religious beliefs and languages spoken represents one of the Territory's greatest assets and that its harmonious way of life is one of the rocks on which the lifestyle of its population, protected in the Sino-Portuguese Joint Declaration is founded.

List of annexes*

Annex 1 XIIIth Population Census/IIIrd Housing Census - Global Results, Macao, Census and Statistics Department, 1993 [English translation].

Annex 2 Portuguese Constitution, approved by Decree 1/76 of 10 April, published in the Supplement to the *Boletim Oficial de Macau* [Official Gazette of Macao, as referred to hereinafter], No. 17 of 24 April 1976, with the amendments

* Available for consultation in the files of the Secretariat.

of Law 1/82 of 30 September, published in the 2nd Supplement to the Official Gazette of Macao No. 42 of 20 October 1982, of Law 1/89 of 18 July, published in the 2nd Supplement to the Official Gazette of Macao No. 33 of 18 August 1989, and of Law 1/92 of 25 November, published in the Official Gazette of Macao No. 50 of 14 December 1992 [English translation].

Annex 3 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, published in the 3rd Supplement to the Official Gazette of Macao No. 23 of 7 June 1988 [English translation].

Annex 4 Civil Code, approved by Decree-Law 47,344 of 25 November 1966, published in the 2nd Supplement to the Official Gazette of Macao No. 46 of 23 November 1967, extended to Macao by Administrative Regulation 22,869 of 4 September 1967, published in the Official Gazette of Macao No. 46 of 23 November 1967 and changed by Administrative Regulation 318/74 of 24 April 1974, published in the Official Gazette of Macao No. 19 of 11 May 1974 with the amendments contained in the following legislation:

Decree-Law 261/75 of 27 May, published in the Official Gazette of Macao No. 13 of 27 March 1976, extended to Macao by Administrative Regulation 141/76 of 15 March, published in the Official Gazette of Macao No. 13 of 27 March 1976;

Decree-Law 605/76 of 24 July, published in the Official Gazette of Macao No. 40 of 6 October 1987;

Decree-Law 496/77 of 25 November, published in the Supplement to the Official Gazette of Macao No. 14

of 13 April 1978, extended to Macao by Normative Order 79/78, published in the Supplement to the Official Gazette of Macao No. 14 of 13 April 1978;

Decree-Law 32/91 of 6 May.

Annex 5 Commercial Code, approved by the Law of 28 June 1888, published in the *Diário do Governo* No. 203 of 6 September, extended to Macao by the Decree of 20 June 1894, with the amendments contained in the following legislation:

Law 1,505 of 7 December 1923, published in the Official Gazette of Macao No. 29 of 20 July 1946, extended to Macao by Administrative Regulation 10,887 of 5 March 1945, published in the above-mentioned Official Gazette of Macao;

Decree-Law 48,744 of 5 December 1968, published in the Official Gazette of Macao No. 51 of 21 December 1968;

Decree-Law 154/72 of 15 September, published in the Official Gazette of Macao No. 40 of 30 September 1972, extended to Macao by Administrative Regulation 534/72 of 14 September 1972, published in the above-mentioned Official Gazette of Macao;

Decree-Law 679/73 of 21 December, published in the Official Gazette of Macao No. 6 of 9 September 1974, extended to Macao by Administrative Regulation 49/74 of 26 January 1974, published in the above-mentioned Official Gazette of Macao;

Decree-Law 51/89/M of 21 August.

Annex 6 Civil Procedure Code, approved by Decree-Law 44,129 of 28 December 1961, published in the Supplement to the

Official Gazette of Macao No. 40 of 9 October 1962 with the amendments contained in the following legislation:

Decree-Law 47,690 of 11 May 1967, published in the 4th Supplement to the Official Gazette of Macao No. 52 of 30 December 1967;

Decree-Law 323/70 of 11 July, published in the Official Gazette of Macao No. 35 of 29 August 1970;

Decree 89/73 of 7 March, published in the Official Gazette of Macao No. 11 of 17 March 1973;

Administrative Regulation 642/73 of 27 September, published in the Official Gazette of Macao No. 42 of 20 October 1973;

Administrative Regulation 439/74 of 10 July, published in the Official Gazette of Macao No. 31 of 3 August 1974;

Decree-Law 366/76 of 15 May, published in the Official Gazette of Macao No. 22 of 29 May 1976;

Decree-Law 457/80, of 10 October, published in the Official Gazette of Macao No. 45 of 8 November 1980;

Decree-Law 221/87 of 29 May, published in the Official Gazette of Macao No. 40 of 6 October 1987, ordering that Decree-Law 121/76 of 11 February, Decree-Law 605/76 of 24 July, Decree-Law 165/76 of 1 March, Decree-Law 738/76 of 16 October, Decree-Law 513-X/79 of 27 December, Decree-Law 207/80 of 1 July and Decree-Law 381-A/85 of 28 September, all of which were published in the Official Gazette of Macao No. 40 of 6 October 1987, should be applied to the territory of Macao;

Law 74/88 of 18 June 1988, published in the Official Gazette of Macao No. 32 of 8 August 1988,

authorizing the extension to Macao of Decree-Law 368/77 of 3 September, Law 21/78 of 3 May, Decree-Law 242/85 of 9 July ordered to be applied to Macao by Decree-Law 437/88 of 28 November, all of which were published in the Official Gazette of Macao No. 15 of 10 April 1989.

Annex 7 Criminal Code, approved by the Decree of 16 September 1886, published in the Supplement to the Official Gazette of Macao No. 49 of 14 December 1886 with the amendments contained in the following legislation:

Decree-Law 20,146 of 1 August 1931, published in the Supplement to the Official Gazette of Macao No. 21 of 31 May 1933;

Decree-Law 32,832 of 7 June 1943, published in the Official Gazette of Macao No. 4 of 26 January 1946;

Decree-Law 35,015 of 15 October 1945, published in the Official Gazette of Macao No. 31 of 3 August 1946;

Decree-Law 36,090 of 28 March 1947, published in the Official Gazette of Macao No. 47 of 22 November 1947;

Decree-Law 18,588 of 11 July 1930, published in the Official Gazette of Macao No. 48 of 29 November 1947;

Decree-Law 39,688 of 5 June 1954, published in the 4th Supplement to the Official Gazette of Macao No. 52 of 31 December 1954;

Decree-Law 41,074 of 17 April 1957, published in the Official Gazette of Macao No. 26 of 29 June 1957;

Decree-Law 43,440 of 27 December 1960, published in the Official Gazette of Macao No. 12 of 25 March 1961;

Decree-Law 34,540 of 27 April 1945, published in the Official Gazette of Macao No. 36 of 9 September 1961;

Decree-Law 44,202 of 21 February 1962, published in the Official Gazette of Macao No. 20 of 19 May 1962;

Law 2,138 of 14 March 1969, published in the Official Gazette of Macao No. 20 of 17 May 1969;

Decree-Law 184/72 of 31 May, published in the Official Gazette of Macao No. 25 of 22 June 1974;

Decree-Law 262/75 of 27 May, published in the Official Gazette of Macao No. 13 of 27 March 1976;

Decree-Law 145-B/77 of 9 April, published in the Official Gazette of Macao No. 24 of 11 June 1977;

Decree-Law 371/77 of 5 September, published in the Official Gazette of Macao No. 47 of 19 November 1977;

Law 27/81 of 22 August, published in the Official Gazette of Macao No. 44 of 31 October 1981.

Annex 8 Criminal Procedure Code, approved by Decree 16,489 of 15 February 1929, extended to Macao by Decree 19,271 of 24 January 1931, published in the Official Gazette of Macao No. 10 of 7 February 1931, with the amendments contained in the following legislation:

Decree 20,891 of 16 February 1932, published in the Official Gazette of Macao No. 21 of 31 May 1933, extended to Macao by Decree 19,341 of 12 February 1931, Decree 20,146 of 1 August 1931 and Decree 20,147 of 1 August 1931, all of which were published in the Official Gazette of Macao No. 21 of 31 May 1933;

Law 2,000 of 16 May 1944, published in the Official Gazette of Macao No. 27 of 6 July 1946;

Decree-Law 31,843 of 8 January 1942, published in the Official Gazette of Macao No. 48 of 29 November 1947;

Decree-Law 35,007 of 13 October 1945, published in the Official Gazette of Macao No. 14 of 4 March 1959;

Decree-Law 36,387 of 1 July 1947, published in the Official Gazette of Macao No. 19 of 7 May 1960;

Decree-Law 39,157 of 10 April 1953, published in the Official Gazette of Macao No. 31 of 1 August 1953;

Decree 39,455 of 3 December 1953, published in the Official Gazette of Macao No. 51 of 19 December 1953;

Decree-Law 40,033 of 15 January 1955, published in the Official Gazette of Macao No. 9 of 26 February 1955;

Decree-Law 41,075 of 17 April 1957, published in the Official Gazette of Macao No. 26 of 29 June 1957;

Decree-Law 42,756 of 23 December 1959, published in the Official Gazette of Macao No. 49 of 9 December 1961;

Decree-Law 43,460 of 31 December 1960, published in the Official Gazette of Macao No. 13 of 1 April 1961;

Law 2,138 of 14 March 1969, published in the Official Gazette of Macao No. 20 of 17 May 1969;

Law 2,139 of 14 March, published in the Official Gazette of Macao No. 20 of 17 May 1969;

Law 2,140 of 14 March 1969, published in the Official Gazette of Macao No. 20 of 17 May 1969;

Decree-Law 40,550 of 12 March 1956, published in the Official Gazette of Macao No. 36 of 9 September 1961;

Decree-Law 185/72 of 31 May, published in the Official Gazette of Macao No. 24 of 15 June 1974;

Decree-Law 292/74 of 28 June, published in the Official Gazette of Macao No. 28 of 13 July 1974;

Decree-Law 320/76 of 4 May, published in the Official Gazette of Macao No. 21 of 22 May 1976, rectified by the Declaration published in the Official Gazette of Macao No. 27 of 3 July 1976;

Decree-Law 352/76 of 15 May, published in the Official Gazette of Macao No. 22 of 29 May 1976;

Decree-Law 591/76 of 23 July, published in the Official Gazette of Macao No. 32 of 7 August 1976;

Decree-Law 605/75 of 3 November, published in the Official Gazette of Macao No. 47 of 19 November 1977;

Decree-Law 377/77 of 6 September, published in the Official Gazette of Macao No. 47 of 19 November 1977;

Decree-Law 437/75 of 16 August, published in the Official Gazette of Macao No. 47 of 19 November 1977;

Decree-Law 493/77 of 25 November, published in the Official Gazette of Macao No. 9 of 4 March 1978;

Decree-Law 425/85 of 25 October, published in the Official Gazette of Macao No. 13 of 30 March 1987;

Decree-Law 121/76 of 11 February, published in the Official Gazette of Macao No. 40 of 6 October 1987.

Annex 9 Basic Law of the Macao Special Administrative Region of the People's Republic of China, approved by the First Session of the Eighth National People's Congress of the People's Republic of China on 31 March 1993 [English translation].

- Annex 10 The Assembly of the Portuguese Republic's resolution No. 41/92 of 31 December, published in the 3rd Supplement to the Official Gazette of Macao No. 52 of 31 December 1992 approving the Declaration applying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to Macao.
- Annex 11 Announcement No. 123/93 published in the *Diário da República* No. 123 of 27 May, publicizing the fact that the Permanent Representative of Portugal to the United Nations had deposited with the Secretary-General of the United Nations the Declaration extending the application of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to Macao, approved by the Assembly of the Portuguese Republic's resolution No. 41/92 of 31 December.
- Annex 12 Organic Statute of Macao approved in Law 1/76 of 17 February, published in a Supplement to the Official Gazette of Macao No. 9 of 1 March, with the amendments introduced by Law 53/79 of 14 September, published in the Official Gazette of Macao No. 39 of 29 September 1979 and Law 13/90 of 10 May, published in, in a rectified version, the 2nd Supplement to the Official Gazette of Macao No. 10 of 12 March 1991.
- Annex 13 Law 7/90/M of 6 August, approving the Press Law.
- Annex 14 Resolution of the Legislative Assembly 1/93/M of 12 March, published in the Official Gazette of Macao No. 23 of 7 June, approving the regulations of the Legislative Assembly of Macao.

- Annex 15 Decree-Law 31/87/M of 1 June, creating the Standing Committee on Coordinating Social Affairs.
- Annex 16 Law 14/87/M of 7 December, approving the criminal law on corruption.
- Annex 17 Governor's Orders 12/GM/88 of 26 January, and 49/GM/88 of 10 May concerning the importation of labour.
- Annex 18 Law 10/88/M of 6 June, regulating electoral registration, altered by Law 10/91/M of 29 August.
- Annex 19 Law 12/88/M of 13 June, defining the general regime for protecting consumer rights and creating the Consumer Council.
- Annex 20 Law 21/88/M of 15 August, regulating access to the law and courts.
- Annex 21 Law 24/88/M of 3 October, approving the legal framework of the municipal councils, altered by Law 4/93/M of 5 July.
- Annex 22 Law 25/88/M of 3 October, approving the electoral system for the Municipal Assembly.
- Annex 23 Law 26/88/M of 3 October, approving the status of office-bearers in the municipalities.
- Annex 24 Decree-Law 11/89/M of 20 February, establishing the use of Chinese in government documents.
- Annex 25 Decree-Law 24/89/M of 3 April, approving the legal framework for labour relations in Macao, altered by Decree-Law 32/90/M of 9 July.
- Annex 26 Decree-Law 128/89 of 15 April, published in the Official Gazette of Macao No. 20 of 15 May 1989, governing the validity of identity documents issued in Macao.

- Annex 27 Law 7/89/M of 4 September, establishing the general framework for the regulation of advertising.
- Annex 28 Law 8/89/M of 4 September, establishing the legal framework for television and radio broadcasting.
- Annex 29 Decree-Law 59/89/M of 11 September, creating the Environment Committee.
- Annex 30 Decree-Law 2/90/M of 31 January, regulating the entry, length of stay and establishment of residence in the territory of Macao.
- Annex 31 Law 2/90/M of 3 May, establishing measures concerning illegal immigration, altered by Decree-Law 39/92/M of 20 July.
- Annex 32 Decree-Law 47/90/M of 20 August, approving the norms for publishing, identifying and formulating legal documents, altered by Decree-Law 23/93/M of 24 May.
- Annex 33 Decree-Law 49/90/M of 27 August, regulating the issuing of Macao temporary residence permits and defining the legal implications, altered by Decree-Law 16/91/M of 25 February and Decree-Law 55/93/M of 11 October.
- Annex 34 Law 11/90/M of 10 September, creating the High Commission against Corruption and Administrative Illegality.
- Annex 35 Decree-Law 61/90/M of 24 September, defining the Organic Law of the Directorate of the Judicial Police of Macao.
- Annex 36 Decree-Law 76/90/M of 26 December, defining and establishing the guiding principles and aims of domestic security activities, and the bodies, forces and intervention services involved.

- Annex 37 Administrative Regulation 11/91/M of 28 January, regulating press registration.
- Annex 38 Law 4/91/M of 1 April, approving the electoral systems for the Legislative Assembly of Macao.
- Annex 39 Governor's Order 92/GM/91 of 25 March, approving the operating norms for the Security Council.
- Annex 40 Decree-Law 112/91 of 20 March, published in the Official Gazette of Macao No. 14 of 8 April 1991, unifying Macao's identification system by issuing a compulsory identity document for all residents, altered by Decree-Law 133/92 of 10 July, published in the Official Gazette of Macao No. 29 of 20 July 1992.
- Annex 41 Decree-Law 28/91/M of 22 April, establishing the framework of extra-contractual civil liability of the Administration of Macao, public corporations, their office-bearers and agents in acts of public management.
- Annex 42 Decree-Law 31/91/M of 6 May, approving the Lawyers' Statute, altered by Decree-Law 26/92/M of 4 May.
- Annex 43 Governor's Order 106/GM/91 of 27 May, institutionalizing improved communication systems between the Administration and Macao's citizens.
- Annex 44 Governor's Order 128/GM/91 of 5 August, approving the operating norms for the Security Coordination Bureau.
- Annex 45 Law 11/91/M of 29 August, establishing the general framework for education in Macao.
- Annex 46 Law 112/91 of 29 August, published in the Official Gazette of Macao No. 36 of 9 September 1991, establishing the basic organization of the judiciary of Macao, altered by

Law 4-A/93 of 26 February, published in the Official Gazette of Macao No. 9 of 1 March 1993.

Annex 47 Decree-Law 51/91/M of 15 October, approving the status and electoral regime for members of the Consultative Council.

Annex 48 Decision of the Consultative Council of 2 October 1991, approving the regulations of the Consultative Council, published in the Official Gazette of Macao No. 41 of 15 October 1991.

Annex 49 Decree-Law 54/91/M of 21 October, establishing the rules for authorizing, practising and regulating the activities of private insurance companies.

Annex 50 Decree-Law 455/91 of 31 December, published in the Official Gazette of Macao No. 2 of 13 January 1992, elevating Chinese to the status of an official language alongside Portuguese.

Annex 51 Decree-Law 6/92/M of 27 January, regulating the issue of the new Macao resident identity card.

Annex 52 Decree-Law 7/92/M of 29 January, approving the composition, organic structure and regime of the High Commission against Corruption and Administrative Illegality.

Annex 53 Decree-Law 438/88 of 29 November, published in the Official Gazette of Macao No. 8 of 24 February 1992, approving the legal regime for passports.

Annex 54 Decree-Law 11/92/M of 24 February, approving the regulations for the award and issue of passports in Macao.

Annex 55 Governor's Order 16/GM/92 of 17 February, creating the Committee for Overseeing the Language Situation in Macao.

- Annex 56 Decree-Law 17/92/M of 2 March, approving Macao's judicial system.
- Annex 57 Decree-Law 18/92/M of 2 March, regulating the organization powers, operations and procedures of the Court of Audit.
- Annex 58 Decree-Law 24/92/M of 22 April, regulating the installation, operation and maintenance of security alarms.
- Annex 59 Decree-Law 37/92/M of 13 July, regulating proof of residence for obtaining a resident's identity card in special cases.
- Annex 60 Decree-Law 51/92/M of 17 August, altering Decree-Law 79/84/M of 21 July, regulating the issuing of the national citizen's identity card in Macao.
- Annex 61 Decree-Law 55/92/M of 18 August, approving the statute of magistrates of Macao's courts and the statute of members of the Macao High Council of Justice and the Macao Judicial Council and their organic structure.
- Annex 62 Law 16/92/M of 28 September, defining the rules governing confidentiality in communication and the right to privacy.
- Annex 63 Decree-Law 72/92/M of 28 September, reformulating and updating the norms concerning civil protection.
- Annex 64 Regulations for admission to the legal profession, approved by the Macao Lawyers' Association on 19 November 1992 and published in the Official Gazette of Macao No. 48 of 30 November 1992.
- Annex 65 Governor's Order 121/GM/92 of 31 December, ratifying the Code of Ethics submitted by the Macao Lawyers' Association.

- Annex 66 Decree-Law 11/93/M of 15 March, reviewing sanctions for the use, possession and carrying of arms.
- Annex 67 Law 2/93/M of 17 May, regulating the right to meet and demonstrate in public places.
- Annex 68 Decree-Law 30/93/M of 21 June, reorganizing the organic structure of the Legal Translation Office.
- Annex 69 Decree-Law 32/93/M of 5 July approving the legal framework for Macao's financial system.
- Annex 70 Resolution 1/TC/M-93 of 25 May 1993, published in the Official Gazette of Macao, 1st Series, No. 30 of 26 July, approving the Administrative Rule of the Court of Audit.
- Annex 71 Law 7/93/M of 9 August, approving the [Legislative Assembly] Members' Statute, altered by Law 10/93/M of 27 December.
- Annex 72 Law 8/93/M of 9 August, approving the Organic Law for the Legislative Assembly.
- Annex 73 Law 64/93/M of 26 August, published in the Official Gazette of Macao, 1st Series, No. 36 of 6 September 1993, establishing the legal framework governing conflict of duties and incompatibilities for holders of political office and high-ranking public officials.
- Annex 74 Decree-Law 60/93/M of 18 October, partially altering the norms regulating employment in Territorial Security.
- Annex 75 Decree-Law 357/93 of 14 October, published in the Official Gazette of Macao No. 43 of 25 October, defining the terms under which civil servants of Macao can be integrated into the Portuguese civil services.
- Annex 76 Announcement by the Urban Council (*Leal Senado*), published in the Official Gazette of Macao, 2nd Series, No.

46 of 12 November 1993, on places which can be used for meetings or demonstrations.

Annex 77 Announcement by the Islands Municipal Council, published in the Official Gazette of Macao, 2nd Series, No. 51 of 23 December 1993, on places which can be used for meetings or demonstrations.

Annex 78 Decree-Law 72/93/M of 27 December, regulating the activities of Parent-Teacher Associations.

Annex 79 Decree-Law 6/94/M of 24 January, establishing the training regime for magistrates and creating the Macao Magistrates' Training Centre.

Annex 80 Decree-Law 7/94/M of 24 January, defining the status of the post of judicial auditor.

Annex 81 Decree-Law 9/94/M of 31 January, establishing the regime for forensic and medical examinations required by law.

Annex 82 Decree-Law 14/94/M of 23 February, rectified by a declaration published in the Official Gazette of Macao, 1st Series, No. 9 of 28 February 1994 regulating the application in Macao of Decree-Law 357/93 of 14 October, recognizing the right to integration into the Portuguese civil services.

Annex 83 Decree-Law 13/94/M of 21 February, creating the Economic Council.

Annex 84 Decree-Law 60/86/M of 31 December, creating the Public Information and Assistance Centre.

Annex 85 Decree-Law 23/85/M of 23 March, establishing the legal framework for administrative actions.

Annex 86 Law 28/82 of 15 November, published in the *Diário da República* No. 264, establishing the organization, operation and procedures of the Constitutional Court.

- Annex 87 Law 34/87 of 16 July, published in the *Diário da República* No. 161, defining crimes of abuse of responsibility by holders of public office.
- Annex 88 Decree-Law 251/74 of 12 June, published in the Official Gazette of Macao No. 29 of 20 July 1974, providing citizens with free access, regardless of sex, to judicial posts or to the Public Prosecutor's Department, and to a career within the court system.
- Annex 89 Decree-Law 47,302 of 4 November 1966, published in the Official Gazette of Macao No. 50 of 10 December 1966, approving Convention No. 100 of the International Labour Organization dealing with equal pay for men and women performing work of equal value.
- Annex 90 Decree-Law 41,204 of 28 November 1960, published in the Official Gazette of Macao No. 17 of 29 April 1961, establishing the legal framework concerning anti-economic infractions and violations of public health.
- Annex 91 Decree of 28 October 1868, published in the Official Gazette of Macao No. 2 of 11 January 1869, declaring that the law of 1 July 1867 concerning the application of the death penalty was thereby in force.
- Annex 92 Decree of 9 June 1870, published in the Official Gazette of Macao No. 34 of 22 August 1870, abolishing the death penalty for civil crimes in all overseas territories.
- Annex 93 Decree-Law 437/75 of 16 August, published in the Official Gazette of Macao No. 47 of 19 November 1977, regulating extradition.
- Annex 94 Decree-Law 84/84/M of 11 August, approving the Code of Discipline of the Macao Security Forces.

- Annex 95 Decree-Law 13/86/M of 8 February, approving the Public Security Police Administrative Rule, altered by Decree-Law 78/88/M of 15 August, creating the Immigration Department.
- Annex 96 Decree-Law 14/86/M of 8 February, approving the Maritime and Customs Police Administrative Rule.
- Annex 97 Supplementary Convention on the Abolition of Slavery, the Slave Trade Institutions and Practices Similar to Slavery, signed in Geneva on 7 September 1956, published in the Official Gazette of Macao No. 32 of 8 August 1959.
- Annex 98 Convention No. 29 of the International Labour Organization on forced or compulsory labour, published in the Official Gazette of Macao No. 42 of 20 October 1956.
- Annex 99 Decree-Law 39,997 of 29 December 1954, published in the Official Gazette of Macao No. 52 of 31 December 1954, extending this to the overseas provinces, with the modifications contained in Decree-Laws Nos. 26,643 and 39,688, governing the reorganization of prison services and replacing several provisions of the Criminal Code, respectively.
- Annex 100 Decree-Law 34/85/M of 20 April, establishing the Territorial Security Service.
- Annex 101 Decree-Law 417/71 of 29 September, published in the Official Gazette of Macao No. 42 of 16 October 1971, approving the Statute for Legal Assistance for Minors Overseas.
- Annex 102 Decree-Law 1/90/M of 18 January, creating the Justice Department.
- Annex 103 Decree-Law 78/88/M of 15 August, creating the Immigration Department, altering Decree-Law 13/86/M

of 8 February, approving the Regulations of the Public Security Police.

Annex 104 Administrative Regulation 65/86/M of 22 March, regulating the regime of safe-conduct.

Annex 105 Decree-Law 79/84/M of 21 July, regulating the issue of the identity card, altered by Decree-Law 126/84/M of 29 December, Decree-Law 27/86/M of 22 March, Decree-Law 2/88/M of 14 January, Decree-Law 6/92/M of 27 January and Decree-Law 52/92/M of 17 August.

Annex 106 Decree-Law 24/86/M of 15 March, regulating the population's access to health care.

Annex 107 Decree-Law 43,201 of 1 October 1960, published in the Official Gazette of Macao No. 44 of 29 October 1960, approving the Convention relating to the Status of Refugees.

Annex 108 Decree-Law 33,548 of 23 February 1944 and Administrative Regulation 11,502 of 2 October 1946, published in the Official Gazette of Macao No. 13 of 29 May 1947, regulating the right to legal assistance.

Annex 109 Decree-Law 45,610 of 12 March 1964, published in the Official Gazette of Macao No. 13 of 28 March 1964, with new versions of several clauses from Decree-Law 26,643 governing the reorganization of the prison services.

Annex 110 Decree-Law 43,809 of 20 July 1961, published in the Official Gazette of Macao No. 33 of 19 August 1961, approving the Overseas Code of Judicial Expenses.

Annex 111 Decree-Law 35,007 of 13 October 1945, extended to Macao in Administrative Regulation 17,076, published in the Official Gazette of Macao No. 14 of 4 April 1959, updating some basic principles of criminal procedure.

- Annex 112 Decree-Law 5/91/M of 28 January, establishing the regime for fighting illegal trafficking and consumption of drugs.
- Annex 113 Decree-Law 43,089 of 11 July 1960, published in the Official Gazette of Macao No. 33 of 13 August 1960, reorganizing the police records departments.
- Annex 114 Administrative Regulation 6,713 of 4 March 1961, published in the Official Gazette of Macao No. 9 of 4 March 1961, approving the regulations for the provincial archives of police records departments.
- Annex 115 Decree-Law 251/71 of 11 June, published in the Official Gazette of Macao No. 46 of 13 November 1971, adapting some of the regulations of the identification services connected with issuing police record certificates.
- Annex 116 Concordat between the Portuguese State and the Holy See, signed on 7 May 1940, extended to Macao by publication in the Official Gazette of Macao No. 37 of 14 September 1940.
- Annex 117 Law 4/71 concerning the Bases of Religious Freedom of 21 August, published in the Official Gazette of Macao No. 5 of 2 February 1974.
- Annex 118 Decree-Law 31,207 of 4 April 1941, published in the Official Gazette of Macao No. 26 of 28 June 1952, approving the Missionaries' Statute.
- Annex 119 Decree-Law 46,980 of 24 April 1966, published in the Official Gazette of Macao No. 2 of 8 January 1972, approving the Code of Copyright.
- Annex 120 Law 4/85/M of 25 November, enshrining protection against the illegal copying of records and videos.

- Annex 121 Decree-Law 3/76/M of 23 March, regulating the right of free association, republished and duly rectified on 17 April 1976.
- Annex 122 Law 1/78/M of 4 February, approving the criminal regime for secret societies.
- Annex 123 ILO Convention No. 98 of 1949 on the right to organize and collective bargaining, published in the Official Gazette of Macao No. 28 of 11 July 1964.
- Annex 124 Decree-Law 14/87/M of 16 March, approving the Civil Registration Code.
- Annex 125 Decree-Law 87/89/M of 21 December, approving the Statute of the Macao Public Employees Association, altered by Decree-Law 52/90/M of 10 September, Decree-Law 37/91/M of 8 June, Decree-Law 1/92/M of 6 January, Law 11/92/M of 17 August, Decree-Law 70/92/M of 21 September and by Decree-Law 80/92/M of 21 December.
- Annex 126 Decree-Law 484/71 of 8 November, published in the Official Gazette of Macao No. 47 of 20 November, regulating jurisdiction over minors.
- Annex 127 Law 37/81 of 3 October, published in the Official Gazette of Macao No. 46 of 16 November 1981, establishing the legal framework for Portuguese nationality.

1999 PORTUGAL'S REPORT UNDER ARTICLE 40 OF THE COVENANT CONCERNING THE APPLICATION OF THE ICCPR TO MACAO *

Introduction

1. In mid-1994 the first Appendix on the Territory of Macao was prepared for inclusion in Portugal's periodic report on the application of the International Covenant on Civil and Political Rights (ICCPR). In March 1996 the report was updated (CCPR/C/70/Add.9), taking into account legislative changes that had taken place aimed at complying with the principles and norms contained in the ICCPR. On 10 December 1997, the United Nations High Commissioner for Human Rights requested Portugal to submit its fourth period report (Appendix on Macao) in June 1998, updating information on each of the articles of the Covenant.

2. The present report is submitted in accordance with that request.

I. General Information

3. According to the last thirteenth General Population Census taken in 1991 (*Censos'91*), the total resident population stood at 355,693, with an estimated increase to 422,000 inhabitants by the end of 1997.

II. Information on Special Articles of the Covenant

Article 2

4. Since the report on Macao was last updated, there have been changes in the legislation on fundamental rights, of which the most significant follow:

- (a) Decree Law 59/97/M of 29 December approved and improved the new basic law for the "Standing Committee on Coordinating

* CCPR/C/POR/99/4, 14 May 1999

Social Affairs”, extending its scope to allow Macao residents to participate, and increasing its representativeness, thereby revoking Decree Law 31/87/M of 1 June;

- (b) The Macao Criminal Code, approved by Decree Law 58/95/M of 14 November, criminalized passive engagement in corruption involving licit acts in article 337, passive corruption involving illicit acts in article 338, and active engagement in corruption in article 339, thereby revoking Law 14/87/M of 7 December containing the criminal law on corruption;
- (c) Law 4/95/M of 12 June restructured the Consumer Council and revoked articles 12 to 25 of Law 12/88/M of 13 June;
- (d) Decree Law 41/94/M of 1 August revoked articles 10 and 11 of Law 21/88/M of 15 August and, in conjunction with Administrative Ruling 168/94/M of 1 August, revised and regulated the system for judicial support;
- (e) Law 3/97/M of 14 April altered Law 25/88/M of 3 October approving the electoral system for the Municipal Assembly;
- (f) Decree Law 43/90/M of 30 July altered articles 2 and 8 of Decree Law 59/89/M of 11 September which created an Environment Committee, in order to broaden its composition and create a structure that could provide technical and administrative support within its scope;
- (g) Decree Law 55/95/M of 31 October reviewed and updated the general regime regulating the entry, length of stay and establishment of residence in Macao, thereby revoking Decree Law 2/90/M of 31 January;
- (h) Law 2/97/M of 31 March changed Law 11/90/M of 10 September creating the High Commission Against Corruption and Administrative Illegality, improving and enhancing its powers;
- (i) Decree Law 27/9/M of 29 June revised the organic structure of the judicial Police, thereby revoking Decree Law 61/90/M of 24 September;

- (j) Law 1/96/M of 4 March altered the regime governing electoral registration and the electoral system, resulting in amendments to Law 4/91/M of 1 April;
- (k) Decree Law 42/95/M of 21 August contained a new draft of several articles of the Lawyers' Statute approved by Decree Law 31/91/M of 6 May;
- (l) Law 112/91 of 29 August establishing the basic judicial organization of Macao, published in the Official Gazette of Macao No. 36 of 9 September, was amended by Law 4-A/93 of 26 February which added article 40 to Law 112/92 making provisions for the transitional composition of the High Court of Justice until the Macao courts were given all encompassing exclusive powers by Decree Law 28/97/M of 30 June which made slight modifications to the magistracy;
- (m) Decree Law 65/96/M of 21 October changed article 10 of Decree Law 54/91/M of 21 October establishing the rules for authorizing, operating and regulating the activities of private insurance companies
- (n) Decree Law 267/89 of 18 August, published in the Official Gazette of Macao No. 25 of 28 August, changed the legal regime for passports contained in Decree Law 438/88 of 29 November, published in the Official Gazette of Macao No. 8 of 24 February 1992, by anticipating and regulating the Governor's power to issue special passports for figures in the Territory and passports for foreigners;
- (o) Decree Law 17/92/M of 2 March approving Macao's judiciary system was changed by Decree Law 45/96/M of 14 August and by Decree Law 28/97/M of 30 June;
- (p) Decree Law 8/98/M of 27 February adopted measures for replacing the judges in the Court of Audit, thereby altering Decree Law 18/92/M of 2 March;

- (q) Decree Law 63/95/M of 4 December approving the new model for the resident's identity card changed Decree Law 6/92/M of 27 January regulating the issuance of the resident's identity card and revoking Decree Law 37/92/M of 13 July;
- (r) Decree Law 28/97/M of 30 June changed Decree Law 55/92/M of 18 August approving the Statute of the Magistrates of Macao's Courts and the statute of members of the Macao High Council of Justice and the Macao Judiciary Council and their organic structure;
- (s) Decree Law 58/95/M of 14 November revoked articles 5 to 14, 21 and 22 of Law 16/92/M of 28 September defining the rules governing confidentiality in communication and the right to privacy;
- (t) Decree Law 58/95/M of 14 November revoked articles 1 and 2 of Decree Law 11/93/M of 15 March reviewing sanctions for the possession, use and carrying of arms;
- (u) Law 7/96/M of 22 July changed article 14 of Law 2/93/M of 17 May so as to establish that authorities impeding or attempting to impede the free right of assembly and demonstration other than as provided for by law shall be subject to the sanctions described in article 347 of the Criminal Code concerning the crime of abuse of power, and that they shall be subject to disciplinary proceedings, and that counter demonstrators interfering in meetings or demonstrations, obstructing their free progress, shall be liable to the sanctions described for the crime of coercion;
- (v) Law 10/93/M of 27 December changed articles 14, 20 and 21 of Law 7/93/M of 9 August concerning labour safeguards and social benefits of [Legislative Assembly] members and the remuneration of the President of the Legislative Assembly and members. Law 1/95/M of 13 March introduced articles 19•A, 19B and 19C concerning conflicts of direct, immediate, personal or material

interests preventing members from participating in the debate and vote on certain related subjects if they have not made a prior declaration on declaring and invoking conflict of interests and its effects;

- (w) Law 10/96/M of 29 July changed articles 23, 31, 37, 38 and 48 of Law 8/93/M of 9 August concerning the personal statute for interpreter translators, administrative staff, associate specialists and advisers to the Macao Legislative Assembly. Article 30 of Law 8/93/M dealing with the staff structure for staff providing support to the Legislative Assembly was altered by Law 1/97/M of 31 March;
- (x) Law 28/95, published in the Official Gazette of Macao, 1st Series, changed articles 1, 2, 4, 5, 6 and 8 of Law 64/93 of 26 August, published in the Official Gazette of Macao, 1st Series, No. 36 of 6 September 1993, establishing the legal framework governing conflict of duties and incompatibilities for holders of political office and high ranking public officers, and also introduced article 7A;
- (y) Decree Law 357/93 of 14 October, published in the Official Gazette of Macao, No. 43 of 25 October, defined the terms under which civil servants of Macao could be integrated into the Portuguese civil service. Subsequently, Decree Law 89C/98 of 13 April established the terms under which employees in the Justice Department would be integrated. Decree Law 89D/98 of 13 April made an identical provision for employees from the Registration and Notary Department, and Decree Law 89F/98 of 13 April, published in the Official Gazette of Macao, No. 16 of 20 April, guaranteed all civil service employees working for the Administration of the Territory of Macao on 1 March 1998 the right to integration in the Portuguese Public Administration;
- (z) Law 5/94/M of 1 August regulates and safeguards the exercise of petition in defence of people's rights, legality or the interest of the community;

- (aa) Decree Law 18/97/M of 19 May changed articles 7, 11, 17, 18, 19 and 21 concerning the statute of trainees and various aspects of their activities contained in Decree Law 6/94/M of 27 January establishing the training regime for magistrates and creating the Macao Magistrates' Training Centre;
- (bb) Law 6/97/M of 30 July established the legal regime against organized crime;
- (cc) Law 4/98/M of 27 July defined the basis of employment policy and labour rights;
- (dd) Law 5/98/M of 3 August regulates freedom of religious belief and worship of religious organizations in general.

Article 8

5. The increase in obviously illicit activities of secret associations or societies in early 1997 caused the Government to strengthen existing measures for combating these organizations. In this respect, Law 1/78/M of 4 February containing the criminal regime governing secret societies was revoked by Law 6/97/M of 30 July which created an improved legal regime while a Criminal Investigation Unit was set up through Decree Law 25/98/M of 1 June.

6. Law 6/97/M of 30 July established the legal regime against organized crime, both by punishing certain types of illicit acts which are usually related to these organizations' activities and by establishing specific mechanisms to combat this kind of organization. Under the terms of article 1 of this Law:

“A secret association or society shall be understood to be any organization established to obtain illegal advantages or benefits and whose existence is demonstrated by agreement, pact or other means, namely engaging in one or more of the following crimes:(a) homicides and physical assault; (b) kidnapping, snatching and international traffic in human beings; (c) threatening, coercing

and extorting under the pretext of protection; (d) exploiting prostitution, soliciting and pimping of minors; (e) criminal money lending; (f) theft, robbery and damage; (g) offering and assisting illegal immigration; (h) illegal gaming operations, lotteries or mutual bets, and illegal gambling cartels; (i) illicit acts relating to animal races; (j) money lending for the purpose of gambling; [(k) does not exist in Portuguese]; (l) importing, exporting, purchasing, selling, manufacturing, using, carrying and holding prohibited weapons and ammunition and explosives or incendiary substances or any devices or articles in carrying out the crimes referred to in articles 264 and 265 of the Criminal Code; (m) illicit acts relating to electoral rolls and polling; (n) speculation involving transportation documents; (o) falsification of currency, credit documents, credit cards and identity and travel documents; (p) active engagement in corruption; (q) extorting documents; (r) undue retention of identity or travel documents; (s) abuse of debit or credit cards; (t) foreign trade transactions outside authorized premises; (u) conversion, transfer or concealment of assets or illicit products; (v) illegal possession of technical equipment that could interfere actively or passively in communication between the police forces and services of the security forces.”

7. Thus, any person who promotes, founds or supports a secret association or society shall be punished with imprisonment lasting between 5 and 12 years (art. 2). These sentences are more severe in the case of persons carrying out the duties of director or head at any level in a secret association or society, criminal activities involving a civil servant, or involvement by minors (paragraphs 3, 4 and 5 of the same article). The Law also punishes specific illicit acts arising directly from the fact that these organizations exist, namely extortion under the pretext of protection (art. 3) and invoking membership of a secret association or society (art. 4). Similarly, the Law acknowledges the fact that there are various crimes which are usually committed as a result of organized criminal activities. Consequently, there are punishments for improper retention of documents (art. 6), international traffic in people (art. 7), exploitation of prostitution

(art. 8), punishable conduct in public places (art. 9), conversion, transfer or concealment of illicit goods or products (art. 10) and illegal gambling cartel (art. 11).

8. Nevertheless, the special nature of certain kinds of crimes requires additional mechanisms in order to bring the perpetrators to justice. In this respect, exceptions have been made to the principle of the power of criminal law depending on where the crime is committed and the principle of personal criminal liability in the case of crimes involving the conversion, transfer or concealment of illicit goods or products (art. 10), making allowance on the one hand for the criminal liability of corporations (art. 14) and, on the other hand, punishing crimes which have generated the said goods or products even when such crimes have been committed outside the territory of Macao (art. 10, para. 2).

9. There has also been an attempt to overcome the difficulties encountered in gathering evidence in investigations concerning the crimes described in this law by creating specific mechanisms. Consequently, when a person accused of committing the crime of secret association or society, or of invoking membership of a secret association or society, is willing to cooperate with the authorities by providing information that will enable them to prevent the continuation of such societies and thwart their respective illicit activities, the relevant sentence may, exceptionally, be decreased or replaced with a sentence not involving imprisonment, or sentencing may be dispensed with (art.5). When the perpetrator is already in prison, the authorities shall take the appropriate measures to protect him (art. 40), in which case there may be an extraordinary review of the sentence (art. 38).

10. Court confidentiality is given special protection and any violations are punished with a more severe sentence (from one to five years, or two to eight years) than that required by general law which is a prison sentence of up to two years (art. 13). Similarly, the identity of those parties involved in the proceedings shall remain under court confidentiality for a period of 10 years (art. 13, para. 4).

11. Under the terms of article 15, the conduct of a public employee or a third party who infiltrates a secret association or society and accepts, holds, keeps, transports or hands over weapons, ammunition or instruments of crime shall not be punishable so long as he is acting under the control of a criminal police authority and has been authorized by the relevant judiciary authorities.

12. Specific procedural methods to assist investigations have been introduced. Consequently, certain procedural acts may be held without publicity (art. 25), while the accused must be held in detention in the case of certain crimes (art. 29). Under the terms of article 27, declarations by the victim, an assistant, a witness, expert or civilian party may be read in the hearings and accepted as admissible evidence.

13. The circumstances under which bail or a suspended prison sentence are allowed are restricted (arts. 16 and 17) and these measures cannot be applied in the case of crimes involving a secret association or society, extortion under the pretext of protection, international traffic in people, conversion, transfer or concealment of illicit goods or products and violation of court confidentiality.

14. In the case of a prison sentence handed down for committing the crime of secret association or society, the sentence shall be extended for two further successive periods of up to three years if the author has previously been imprisoned for committing the same crime and when “there is reason, given the circumstances of the case, the previous life of the author, his personality and behaviour during imprisonment and indications of continuing membership or links with a secret association or society, to expect that once he has been released he will not lead a socially responsible lifestyle without committing any crimes” (art. 21).

15. Decree-Law 25/98/M of 1 June established the Criminal Investigation Unit (CIU) within the scope of the Public Prosecutor’s Office and under the Assistant Public Prosecutor, in order to direct investigations of organized crime, violent crimes or particularly complex

crimes. The CIU consists of magistrates of the Public Prosecutor's Office and is responsible for investigating the crimes of secret association or society, extortion under the pretext of protection, international traffic in people, conversion, transfer or concealment of illicit goods or products, and violation of court confidentiality. The CIU is also responsible for investigating other criminal cases it receives from the Public Prosecutor in view of the particularly complex investigation required.

16. Under the terms of article 2 [of Decree-Law 25/98/M], the Assistant Public Prosecutor may request the Governor to second employees of the criminal police force and other specialized staff to the CIU if this is required for the investigation it is coordinating and directing.

Article 18

17. Law 4/71 of 21 August passed by the Assembly of the Portuguese Republic stipulating the basic law concerning freedom of religious belief and extended to Macao by Administrative Ruling 14/74 of 10 January, was revoked by Law 5/98/M of 3 August passed by the Macao Legislative Assembly regulating freedom of religious belief and worship and of profession of faith in general.

18. Article 1 of this law stated its scope of application clearly: "this law shall regulate freedom of religious belief and worship and the profession of faith in general". Article 2 recognizes and safeguards the freedom of religious belief and worship, ensuring that professions of religious faith and religious entities are given the appropriate legal protection. Also, the inviolability of religious belief is established. Article 2, paragraph 3, states that "no person may be the object of prejudice, persecution or be deprived of his or her rights or be exempted from obligations or civic duties, for not professing a religious faith, or because of his or her religious beliefs or practices, except the right to conscientious objection, under the terms of the law."

19. The principles of non-profession of faith and of separation are recognized in article 3 which states that the Territory of Macao does not profess any religious faith, and its relations with religious faiths are based on the principle of separation and neutrality. To this effect, article 3, paragraph 3, states that “the Territory of Macao does not interfere in the organization of religious faiths or the exercise of their activities and worship and does not make any comments on religious issues”. Similarly, paragraph 2 of the same article mentions that “religious faiths are free to organize themselves as they wish, and to carry out their activities and worship”. Article 4 reasserts the principle of equality of religious organizations before the law.

20. Article 5 gives a broad description of the content of freedom of religious belief mentioning the related rights: to have a religion or not, to change faith or to abandon a faith, to act or not in accordance with the precepts of the faith to which an individual belongs, to express one’s beliefs, to demonstrate one’s beliefs either individually or in a group, in public or in private, to spread the doctrine of the faith he or she professes by any means, and to engage in the acts of worship and the rites pertaining to the professed religion.

21. A further aspect that should be mentioned concerns the establishment of privacy as to religious belief which is contained in article 6, according to which “no person may be asked about his or her religious beliefs or practices, other than for gathering statistical data which are not individually identifiable, nor may any person be penalized for refusing to answer”.

22. Article 9 enshrines the right of congregation and demonstration, declaring that meetings to engage in worship or for other specific goals of religious life and demonstrations of a similar nature do not require prior authorization.

23. Freedom of religious education is regulated in article 10 which safeguards the freedom to learn and to teach any religion in educational

establishments under the following terms: “any religion and its morals may be taught in appropriate establishments to pupils whose parents or guardians so request” (para. 2); “pupils aged sixteen years old and over may exercise the right referred to in the preceding paragraph in their own right” (para. 3); “matriculation in educational establishments maintained by religious faiths implies presumed acceptance of education in the religion and morals adopted by this faith, unless the persons referred to in paragraphs 2 and 3 of this article declare otherwise” (para. 4). It should also be noted that the training of believers and ministers is recognized in article 21, and that religious organizations are thus entitled to establish and manage the appropriate facilities for this purpose.

24. Article 11 discusses the scope and meaning of freedom of worship, stating in paragraph 1 that “no person may invoke freedom of worship to practice acts which threaten life, physical and moral integrity, the dignity of persons or other acts which are expressly forbidden by law”. Paragraph 2 of the same article states that “there can be no restrictions on freedom of worship other than in those cases provided for by law”.

25. Article 15 of this law enshrines the internal autonomy of religious faiths, stating that they may organize themselves in harmony with their internal norms and shall manage themselves freely within the limits of the law, that they are allowed to form, within each one and amongst themselves, associations, institutes or foundations which may or may not have legal personality and aimed at promoting worship or pursuing other specific aims.

26. Another point which should be highlighted is the creation of broadcasting periods on public television and telecommunications services. In effect, according to article 17 “religious faiths may request broadcasting periods on public television and telecommunications services for propagating their respective doctrine, irrespective of the medium used” (para. 1); “the decision as to whether to grant the facility referred to in the preceding paragraph and aspects relating to the duration and time tabling of

broadcasts shall be the exclusive responsibility of the officers in charge of the television and telecommunications companies” (para. 2); “the provision of spots or broadcasting periods as referred to in paragraph 1 above shall be done respecting the principle of equality and the other provisions in this Law” (para. 3); “the contents of these spots and broadcasts shall be the exclusive responsibility of the religious faiths” (para. 4).

27. Concerning foreign relations, article 18 states that “religious faiths may, without affecting their autonomy, maintain and promote relations with believers and other religious bodies based outside Macao, including religious faiths and organizations endowed with international legal personality”.

28. Article 19 discusses the acquisition, assignment and sale of assets, stating in paragraph 1, that “the acquisition by religious faiths, either free or for a price, of the assets required for their aims, and the assignment or sale of any assets, shall be done according to general law, without any requirement for prior authorization”. Paragraph 2 of the same article establishes the condition that “income generating assets shall not be classified as necessary for pursuing the aims of religious faiths, and their acquisition, either free or for a price, assignment and sale shall be subject to the provisions of the law”.

29. Article 22, paragraph 1, enshrines the right to religious confidentiality, binding ministers of religious faiths to keep secret all facts with which they have been entrusted or of which they have learned by reason and in the course of their duties, and that they may not be investigated about them. Paragraph 2 clarifies the obligation to maintain confidentiality even when the minister is no longer engaged in his duties. Violation of religious confidentiality is, in accordance with article 24, punished with the sentence described in article 189 of the Macao Criminal Code unless another, heavier sentence can be applied on the basis of another legal provision.

Article 22

30. Law 1/78/M of 4 February was revoked by Law 6/97/M of 30 July which establishes the legal regime for combating organized crime.

31. Law 4/98/M of 27 July, which defines the basic policy governing employment and labour rights, enshrines, in article 5, paragraph 2 (f) “affiliation to an association representing their interests” as a labour right of all workers. The foundations laid down by the legislator will subsequently be developed, drafted and promulgated in measures to be taken by the Governor.

Article 25

32. Law 5/94/M of 1 August, issued by the Legislative Assembly of Macao, regulates and safeguards the right of petition. This right allows citizens to participate in political life, and is enshrined as one of the rights, freedoms and safeguards in article 52 of the Constitution of the Portuguese Republic. Under the terms of the Law, petitions are used in defending the rights of persons and the legal or other interests of members of the community, and the fact that it is a right of political participation • and not a personal right means that it can be exercised regardless of whether there is any personal grievance or damage to personal interests; in other words, it can be exercised in defence of legality or the public interest.

33. Although it is a political right, it can still be exercised by foreigners in defence of their legally protected rights and interests. This is a universal, free right and cannot under any circumstance whatsoever be subject to payment of any taxes or fees.

34. Petitions may be either individual or collective, depending on whether they are submitted by one or more persons. A petition is collective when it is submitted by a group of persons in the form of a single instrument. Petitions can be submitted on behalf of a group. The right of petition covers not only individuals but also extends to organizations, associations or any collective person that is legally established.

35. Under the terms of article 1, paragraph 1, of Law 5/94, the right of petitions shall be exercised “through the submission of petitions, representations, protests or complaints to the government authorities or any other public authorities”, as defined in article 2, paragraph 1 as follows:

“Petition in general the submission of a request or a proposal to a government organ or any public authority requesting that it take, adopt or propose certain measures; Representation-exposure intended to demonstrate an opinion contrary to that adopted by anybody, or to call the attention of public authorities to a certain situation or act in order to have it reviewed, or its effects considered; Protest • opposition to an act addressed to the organ, employee or agent who carried it out, or to its or his hierarchical superior; Complaint-accusation concerning any illegality, or the anomalous operation of any service, in order for measures to be taken against those responsible.

According to article 2, paragraph 3, for the purposes of this law, the term “petition” used alone is understood to refer to all the above-mentioned modes of protest.

36. Article 1, paragraph 2, contains various exclusions to the application of this law, and thus to exercising the right of petition, namely the protection of rights and interests in the courts, opposing administrative acts by means of protest or recourse to higher bodies, the right to submit a complaint to the High Commission Against Corruption and Administrative Illegality (which has since been replaced by the High Authority Against Corruption and Administrative Illegality), the collective petitioning of military and militia members of the Macao Security Forces.

37. Article 6 states that “no public or private body may prohibit or in any manner prevent or hinder the exercise of the right of petition, namely collecting signatures freely and engaging in any other necessary acts, unless this involves violating other laws and regulations”. Article 7 stipulates that “no person can be placed at a disadvantage, privileged or deprived of any right as a result of exercising the right of petition”.

38. The entity to which the petition, representation, protest or complaint is addressed is bound to receive the same and also to examine it and communicate any decisions taken.

39. The right of petition can be exercised without being subject to any specific form or procedure, the only requirement being that it should be done in writing. However, all means of telecommunication are also acceptable. Nevertheless, under the terms of article 9, paragraph 3, “the addressee must invite the petitioner to complete the written document submitted whenever: (a) the petitioner is not correctly identified and there is no mention of his place of residence; or (b) the text is unintelligible or does not specify the object of the petition”. For these cases, article 9, paragraph 4, states “that the addressee shall set a deadline of no more than twenty days with a warning that failure to provide the information indicated shall lead to the case being rejected summarily”.

40. The fact that the right of petition is enshrined in these broad terms does not mean that every petition is acceptable. Consequently, article 11 indicates which situations, in addition to those described in article 4, and shall give rise to summary rejection of a petition. Article 11, paragraph 1, describes three situations: (i) when the intended goal is illegal; (ii) when it involves reassessing court decisions or decisions concerning administrative acts for which there is no appeal; and (iii) when it involves the reassessment by the same entity of cases which have previously been assessed pursuant to the exercise of the right of petition, unless new aspects for assessment are invoked or have occurred. It should be noted, however, that the lawmaker requires these cases to be obvious, in other words there has to be no doubt as to their unsuitability. Paragraph 2 describes a further two instances in which a petition may be summarily rejected: (i) if it is submitted anonymously or if, on examination, it is not possible to identify the person or persons who sent it; (ii) if there are no grounds whatsoever.

41. Unless there is a summary rejection, any entity which receives a petition is bound to reach a decision as to its content in as brief a period of

time as possible taking into account the complexity of the matter addressed. If the same entity deems itself unable to deal with the matter addressed in the petition, it shall submit it to the relevant entity, and inform the petitioner of this fact. In assessing the reasons invoked by the petitioner(s), the relevant entity is free to carry out the investigations it deems necessary and, depending on the case, it may reach one of two decisions; to take the appropriate steps to satisfy the request or to file the case.

42. Petitions addressed to the Legislative Assembly of Macao are the subject of specific regulations contained in this law. The institutional importance and powers of this organ of government place it in a privileged position as a recipient of petitions. In this respect, article 13 enshrines a system by which petitions directed to the local parliament are, depending on the matter involved, channelled by its President as follows: submitted for assessment by the relevant committees, or by a committee specially established for the purpose if the petition concerns a matter restricted to the powers of the Legislative Assembly, or if the President believes the petition is related to the relevant interest of the Territory; presented to the Governor in order to be dealt with by the relevant entity; submitted to the Assistant Public Prosecutor, if there are indications that criminal proceedings can be instigated; submitted to the Judiciary Police, if there are indications that justify a criminal investigation; submitted to the High Commission Against Corruption and Administrative Illegality for the purposes of the provisions of Law No. 11/90/M of 10 September.

43. The President of the Legislative Assembly may inform the petitioner of the need to complete the written documents submitted, or to provide additional details in the cases already mentioned in article 9. If any of the circumstances in article 11 arise, the petition will be summarily rejected and the petitioner informed of the decision. Other measures that the President of the Legislative Assembly may adopt are as follows: to inform the petitioner of rights of which he appears to be unaware, paths he may pursue, or stances he may adopt in order to have a right recognized, an interest safeguarded or reparation made for damage which has occurred;

or to clarify to the petitioner, or to the public in general, any act of the Territory or any other public authorities concerning the management of public affairs which the petition may have questioned or doubted. The President of the Legislative Assembly is also responsible for filing the petition, and informing the petitioner of the same.

44. The above-mentioned decisions are taken by the President of the Legislative Assembly within 30 days counted from the date on which the petition was submitted and the petitioner is notified of the decision.

45. The relevant committee, or special commission must evaluate petitions submitted via the President of the Legislative Assembly within a 30-day period counted from the date on which it was received by the same body, and which can be extended. Once the committee has concluded its examination, a final report is drafted and sent to the President of the Legislative Assembly with a proposal for any necessary measures deemed appropriate.

46. An examination of the petitions and the respective indications produced by the committee can result in the following: (a) evaluation in the plenary of the Legislative Assembly under the terms of article 18; (b) submission, with appropriate suggestions, to the relevant body for evaluating the same; (c) drafting legislative measures deemed justified which can be subscribed by any member of the Assembly; (d) submitting a proposal to the Governor for eventual legislative or administrative measures; or (e) filing the case informing the petitioner or petitioners of the same.

47. The Legislative Assembly committee can interview petitioners, request statements from any persons and request and obtain information and documents from the Government or any other public or private bodies without affecting the legal provisions concerning court confidentiality and professional confidentiality, and it may request the Public Administration to take any necessary measures. Unjustified failure to appear before the committee, refusing to make a statement or failure to comply with

these steps constitute the crime of disobedience, without affecting any applicable disciplinary proceedings. Unjustified failure to appear before the committee by petitioners may result in the case being shelved.

48. Following examination of the issue raised by the petitioner, the committee may, on a proposal by the reporter, request the relevant bodies to provide the necessary clarifications on the matter. After receiving a request from the committee, the relevant bodies must take measures and respond to the Legislative Assembly as quickly as possible. Whenever the measures requested by the committee are refused without justification by a public body, the committee should inform the entity ranked above the same body in the hierarchy and the relevant authorities so that the appropriate measures can be taken in restoring procedures.

49. Once the refusal has been resolved, the committee may, in accordance with the established procedures: (a) continue to evaluate the matter in question; (b) request once again the necessary cooperation from the respective bodies; (c) suggest directly to these bodies how to correct the situation or make reparation for the reasons which led to the petition.

50. Once the petition has been examined by the committee, it shall decide whether it is to be evaluated by the plenary, depending on the scope of the matter, its social, economic or cultural importance and the seriousness of the situation relating to the petition. Petitions which meet the conditions for evaluation by the plenary shall be sent, along with the supporting reports and any other information, to the President of the Legislative Assembly to be put on the agenda.

51. The matter contained in the petition is not subject to a vote; however, a vote may be requested by any member exercising the right of initiative under the regulations and, when this is evaluated, the petition shall be arrogated.

52. The first signatory identified on the petition shall be informed of what is happening, and he shall be sent a copy of the issue of the *Diário da*

Assembleia Legislativa [Diary of the Legislative Assembly] reproducing the debate, the eventual presentation of any proposal connected to it, and the results of the respective vote. Law 5/94/M of 1 August also makes provisions for the publication of petitions in full in the *Diário da Assembleia Legislativa*, along with the relevant reports.

**2001 ‘CORE DOCUMENT’ OF THE PEOPLE’S
REPUBLIC OF CHINA *
(PART III)
MACAO SPECIAL ADMINISTRATIVE REGION**

I. LAND AND PEOPLE

A. Geography and climate

1. The Macao Special Administrative Region of the People’s Republic of China (hereinafter referred to as the MSAR) lies on the south-eastern coast of China, in the Pearl River delta. It consists of the Peninsula of Macao and the Islands of Taipa and Coloane, covering a total surface area of 23.8 km² (approximately 5.8 km² is land reclaimed from the sea). The total length of Macao’s coastline is 37,489 m (Peninsula: 11,350 m; Islands: 26,139 m).

2. The minimum and maximum latitudes are: 22° 06’ 39” N - 22° 13’ 06” N. The minimum and maximum longitudes are: 113° 31’ 36” E - 113° 35’ 43” E. Macao’s climate is subtropical tending towards temperate, with an annual average temperature of 21° C and a rainfall of 2,160 mm, more than half of which falls between June and August. Winters are dry and sunny and summers are humid and rainy. The typhoon season is from May to October.

B. Demographic data and population

3. On 31 December 1999 the population of MSAR was 437,455 - 206,563 men (47.2 per cent) and 230,892 women (52.8 per cent). The distribution of the population according to age group and as a percentage of the total population was the following: 101,338 between 0 and 14 years

* HRI/CORE/1/Add.21/Rev.2, 11 June 2001.

old (23.2 per cent), 302,402 between 15 and 64 years old (69.1 per cent) and 33,715 aged 65 years or more (7.7 per cent).

4. The population density is 18,380 inhabitants per km². The majority of the population (more than 95 per cent) lives in urban areas. The annual growth of the population was 0.2 per cent in 1996, 1.5 per cent in 1997, 2 per cent in 1998 and 1.6 per cent in 1999. The average annual growth was 1.5 per cent for the period 1996-1999. This population growth is a result of natural increase, i.e. a higher rate of birth than death. Immigration is also a factor due to the constant rise in the number of people coming from Inland China.

5. Regarding place of birth, according to the last by-census taken in 1996 (“Intercensus 96”), 44.1 per cent of the people were born in Macao, 47.1 per cent in the Inland, 3 per cent in Hong Kong, 1.2 per cent in the Philippines, 0.9 per cent in Portugal, 0.2 per cent in Thailand, and 3.5 per cent in other countries.

6. In the final quarter of 1999 there were 32,183 non-resident workers in the MSAR, the vast majority of whom, 24,895 came from the Inland, 3,779 from the Philippines, 1,194 from Thailand and 2,315 from other countries and territories.

Languages

7. According to the results of the “Intercensus 96”, the usual language spoken by 87.1 per cent of the population was Cantonese, 7.8 per cent other Chinese dialects, 1.8 per cent Portuguese, 1.2 per cent Mandarin, 0.8 per cent English and 1.3 per cent other languages.

Life expectancy (crude birth and crude mortality rates)

8. Life expectancy in 1994-1997 was 75.3 years for men and 79.9 years for women. In 1994-1997 the average life expectancy was 76.8 years. The crude birth rate (live births per 1,000 inhabitants) was 13.2 in 1996, 12 in 1997, 10.4 in 1998 and 9.6 in 1999. The crude mortality rate (deaths per 1,000 inhabitants) was 3.4 in 1996, 3.1 in 1997, 3.2 in 1998 and 3.2 in 1999.

Infant mortality

9. In 1999 infant mortality (deaths under one year old) reached 4.1 per 1,000 live births. The infant mortality rate has maintained a low level in recent years and has developed thus: 4.8 per 1,000 live births in 1996, 5.4 in 1997 and 6.1 in 1998.

Fertility rate

10. In 1996 and in 1997 the fertility rate was 1.7 per cent per woman of childbearing age, excluding the female foreign population. The 1998 rate was lower at 1.6 per cent, while in 1999 it reached 1.2 per cent.

Literacy rate

11. According to the “Employment Survey” conducted in 1999, more than 90 per cent of the adult population could perform daily reading and writing tasks.

12. The MSAR has 151 schools for regular education (including nursery, primary, secondary and higher education) and 124 schools for special education (12 schools covering special needs and 112 for adult education). During 1997/98, government subsidies for education amounted to 356,258,436 MOP.

Religion

13. According to the last General Population Census taken in 1991 (“Census 91”) 16.8 per cent of the population were Buddhists, 6.7 per cent Roman Catholics, 1.7 per cent Protestants, 13.9 per cent of other religions and 60.8 per cent expressed no religious belief.

C. Economy***Gross domestic product (GDP)***

14. The GDP per capita was US\$ 16,705 in 1996, US\$ 16,729 in 1997 and US\$ 15,311 in 1998. The MSAR government has not incurred any external debt.

Employment and unemployment

15. The proportion of active population in the population aged 14 and over was 66.7 per cent in 1996, 65.8 per cent in 1997, 65.3 per cent in 1998 and 64.7 per cent in 1999. The female labour force participation rate was 55.4 per cent in 1996, 54.8 per cent in 1997, 54.6 per cent in 1998 and 55.6 per cent in 1999. The proportion of women among employed people was 44.5 per cent in 1996, 44.7 per cent in 1997, 45.4 per cent in 1998 and 47.5 per cent in 1999. The proportion of unemployed people within the active population was 4.3 per cent in 1996, 3.2 per cent in 1997, 4.6 per cent in 1998 and 6.4 per cent in 1999.

Inflation rate

16. The inflation rate continued to decrease: +4.8 per cent in 1996, +3.5 per cent in 1997 and +0.2 per cent in 1998 leading to 3.2 per cent deflation in 1999.

II. GENERAL POLITICAL STRUCTURE

A. The Basic Law

17. The MSAR was established on 20 December 1999 in accordance with the provisions of articles 31 and 62 (13) of the Constitution of the People's Republic of China by decision adopted by the first session of the eighth National People's Congress of the People's Republic of China (NPC) on 31 March 1993. At the same time and at the same session, complying with the above-mentioned article 31 of the Constitution, the NPC also adopted the MSAR Basic Law. According to the NPC decisions, the Basic Law was put into effect on the date of the establishment of the MSAR.

18. The Basic Law has constitutional value and therefore takes precedence over all the other laws. Its main focus is to set forth the general principles and the explicit rules regarding the MSAR. Consistent with this aim, it stipulates a scale of norms necessary for determining not only the autonomy enjoyed by the MSAR, but also the extent of that autonomy.

19. The Basic Law enshrines several principles, policies and provisions under the principle of “One country, Two systems”. According to this principle, the socialist system and policies will not be practised in the MSAR, and the previous social and economic systems and way of life will remain unchanged for 50 years.

20. Another significant principle enshrined in the Basic Law is that the MSAR shall exercise a high degree of autonomy except in defence and foreign affairs and enjoy executive, legislative and independent judicial power, including that of final adjudication (article 2 of the Basic Law).

21. It also guarantees that “Macao shall be ruled by its own people” by stipulating that the executive authorities and legislature of the Region shall be composed of MSAR permanent residents (article 3 of the Basic Law).

22. Article 4 of the Basic Law stipulates that the rights and freedoms of the local residents and of other persons in the Region shall be safeguarded in accordance with law.

23. Local laws and other normative acts previously in force shall be maintained, except for any that contravenes the Basic Law, or subject to any amendment by the legislature or other relevant MSAR organs in accordance with legal procedures (articles 8, 18 and 145 of the Basic Law).

24. National laws shall not be applied in the MSAR except for those listed in annex III to the Basic Law and the Region shall apply the laws listed therein locally by way of promulgation or legislation. The Standing Committee of the NPC may add to or delete from the list of laws in annex III after consulting the Committee for the Basic Law of the MSAR and the government of the Region. In any case, laws listed in annex III shall be confined to matters outside the limits of the autonomy of the MSAR (article 18 (3) of the Basic Law).

25. The Basic Law starts by defining the relationship between the Central People’s Government and the MSAR. Then it expressly guarantees

the fundamental rights and duties of MSAR residents and sets out the political structure and the institutional framework of the Region.

26. It goes on to underline the Region's autonomy in a wide range of fields, such as economic, cultural and social affairs. The MSAR is entitled to decide and pursue its own economic and free trade policies safeguarding the free movement of capital, goods, intangible assets and convertible currency. It also formulates its own monetary and financial policies, issuing and managing its own currency and maintaining the free flow of capital. The MSAR remains a separate customs territory and a free port, determining its own taxation policy.

27. The Basic Law determines when and how the Region can negotiate and conclude certain international agreements on its own, or participate in certain international organizations. It allows the establishment of MSAR official and semi-official economic and trade missions in foreign countries and sets up a special procedure for consultation with the Region's government regarding the application of international agreements to which the People's Republic of China is or will become a party. It authorizes the Region to issue, in accordance with the law, passports and other travel documents. Furthermore, it also establishes the procedure for its own interpretation and amendment. Finally, it includes three annexes concerning, respectively, the method for the selection of the Chief Executive (annex I), the method for the formation of the Legislative Assembly (annex II), and the list of national laws applicable in the Region (annex III).

B. Political and institutional structure

General structure

28. The Chief Executive is simultaneously the highest-ranking officer of the MSAR and the head of the government of the Region. An Executive Council assists him in policy-making (articles 45 and 61 of the Basic Law).

29. The government is the executive body of the MSAR. The government must abide by the law and is accountable to the Legislative Assembly of the Region, implementing laws passed by the Assembly and already in force, presenting regular policy addresses to the Assembly and answering questions raised by members of the Assembly (article 65 of the Basic Law).

30. The Legislative Assembly of the MSAR is the legislature of the Region - it enacts laws, controls public expenditure and raises questions on the work of the government. The method for the formation of the Legislative Assembly is stipulated in the Basic Law and the “Decision of the National People’s Congress on the Method for the Formation of the First Government, the First Legislative Assembly and the First Judiciary of the Macao Special Administrative Region” adopted at the first session of the eighth NPC on 31 March 1993. Law prescribes the method for the formation of the municipal organs.

31. The judicial power is exercised independently by the MSAR courts. They are subordinated to nothing but the law and are free from any interference. Functions and powers structure the system of courts by levels. There are primary courts, intermediate courts and a Court of Final Appeal, which is vested with the power of final adjudication. The appointment, removal from office, immunity from legal action in respect of judicial functions and other guarantees of the independence of the members of the judiciary are exhaustively established by the Basic Law (articles 82 to 94 of the Basic Law) and other specific ordinary law provisions.

The Chief Executive of the MSAR

32. The Basic Law provides that the Chief Executive shall be selected by election or through consultations held locally and appointed by the Central People’s Government.

33. Annex I to the Basic Law contains a specific method for the selection of the Chief Executive, which stipulates that the Chief Executive

shall be elected by a broadly representative Election Committee in accordance with the Basic Law.

34. Under the terms of the above-mentioned 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. That law will be enacted by the MSAR in accordance with the principles of democracy and openness.

35. The Election Committee, comprising 300 members, shall, on the basis of the list of nominees, elect the Chief Executive-designate by secret ballot on a one-person-one-vote basis. Members of the Election Committee shall vote in their individual capacities. The electoral law shall prescribe the specific election method.

36. Amendments to the relevant method for selecting the Chief Executive for the terms subsequent to the year 2009 may be made with the endorsement of a two thirds majority of all the members of the Legislative Assembly and the Chief Executive's consent. Any such amendment is to be reported to the Standing Committee of the NPC for approval (annex I (7) to the Basic Law).

37. The first Chief Executive was selected in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government, the First Legislative Assembly and the First Judiciary of the Macao Special Administrative Region". A Selection Committee was formed to recommend a candidate to the Central People's Government for appointment. The Selection Committee comprised 200 members from various sectors of the community.

The Executive Council of the MSAR

38. Members of the Executive Council are appointed and removed by the Chief Executive. They are chosen from among the principal officials of the executive authorities, members of the Legislative Assembly and public

figures. The Executive Council shall be composed of 7 to 11 persons. At present, there are 10 appointed members.

39. The Chief Executive consults the Executive Council before making important policy decisions, introducing bills to the Legislative Assembly, formulating administrative regulations, or dissolving the Legislative Assembly (article 58 of the Basic Law). Members tender their advice on an individual basis, but the Council's conclusions are presented as collective decisions. The Chief Executive presides over the meetings of the Executive Council, which generally are held once a week.

The Government and the structure of the Administration of the MSAR

40. The government of the MSAR is the executive authority of the Region (article 61 of the Basic Law).

41. Notwithstanding other legislation, the government formulates and implements policies; conducts administrative affairs and external affairs as authorized by the Central People's Government; draws up and introduces budgets and final accounts; introduces bills and motions and drafts of administrative regulations; appoints officials to sit in on the meetings of the Legislative Assembly to hear opinions or speak on its behalf (article 64 of the Basic Law).

42. The Chief Executive is the head of the MSAR government, which comprises general secretariats, directorates of services, departments and divisions.

43. The main posts of government are the Secretaries, the Commissioner against Corruption, the Commissioner of Audit and the heads of the Police Services and the Customs Services.

44. The Committee against Corruption and the Committee of Audit are independent bodies. They pursue their duties in strict accordance with the law with no interference from any person or entity. Their directors are accountable to the Chief Executive.

45. There are five Secretaries: the Secretary for Administration and Justice, the Secretary for Economy and Finance, the Secretary for Security, the Secretary for Social Affairs and Culture and the Secretary for Transport and Public Works.

46. If the Chief Executive is unable to discharge his duties for a short period, such duties will temporarily be assumed by the Secretary for Administration and Justice, the Secretary for Economy and Finance or the Secretary for Security, in that order of precedence.

47. The heads of government services and other administrative units answer to the Secretary of the relevant policy area.

The Legislative Assembly of the MSAR

48. The Legislative Assembly is composed of MSAR permanent residents, the majority of its members being elected. The method for forming the Legislative Assembly is prescribed in the “Method for the Formation of the Legislative Assembly of the Macao Special Administrative Region” (annex II to the Basic Law).

49. The composition of the Legislative Assembly in its present and coming terms is as follows:

<i>Membership</i>	<i>A. First term 20/12/99- 15/10/2001</i>	<i>B. Second term 2001-2005</i>	<i>C. Third and subsequent terms 2005-2009</i>
Directly elected	8	10	12
Indirectly elected by functional constituencies	8	10	10
Appointed by the Chief Executive	7	7	7
Total	23	27	29

50. If there is a need to change the method for forming the MSAR Legislative Assembly in or after 2009, such amendments must be made

with the endorsement of a two-thirds majority of all its members and the consent of the Chief Executive. Any amendment has to be reported to the Standing Committee of the NPC for the record (annex II (3) to the Basic Law).

51. The Legislative Assembly exercises the powers and functions of enactment, amendment, suspension or repeal of laws in accordance with the provisions of the Basic Law and legal procedures; examining and approving budgets introduced by the government; examining the report on audit introduced by the government; deciding on taxation according to government motions and approving debts to be undertaken by the government; receiving and debating the policy addresses of the Chief Executive; debating any issue concerning public interests; receiving and handling complaints from Macao residents. The Legislative Assembly is also empowered to impeach the Chief Executive under certain prescribed circumstances (article 71 of the Basic Law).

Municipal organizations of the MSAR

52. The Basic Law stipulates that municipal organizations, which are not organs of political power, may be established in the MSAR. Entrusted by the MSAR government, they shall provide services in such fields as culture, recreation and environmental sanitation, and shall be consulted by the government on those affairs (article 95 of the Basic Law).

53. The functions, powers and structure of the municipal organizations shall be prescribed by law (article 96 of the Basic Law).

54. The MSAR presently has two municipalities: the Macao Municipality and the Islands' Municipality.

55. Each of the Municipalities comprises two organs: a Municipal Assembly and a Municipal Council. The Municipal Assembly is the deliberative representative body and the Municipal Council is the executive body, and is financially autonomous.

Provisional Municipal Councils and Provisional Municipal Assemblies

56. In preparation for the establishment of the MSAR, on 29 August 1999, the MSAR Preparatory Committee decided that, prior to the establishment of municipal organizations without political power, the existing municipal organs should be reorganized into provisional municipal organs of the MSAR.

57. The provisional municipal organs exercise their functions through delegation from the Chief Executive and are answerable to him or, if he so delegates, to the Secretary for Administration and Justice.

58. The elected members of the municipal organs who expressly stated to the Chief Executive their willingness to remain in office were confirmed in the same posts in the provisional municipal organs. The Chief Executive also retained the appointed members of the provisional municipal organs (Executive Order 6/1999 of 20 December). The term of office of all the members of municipal organs will end no later than 31 December 2001.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Judicial, administrative and other bodies with jurisdiction over human rights

1) The judicial system of the MSAR

1.a) The courts

59. The Basic Law vests the MSAR with independent judicial power, including that of final adjudication. It also establishes the independence of the courts, their submission only to the law and their jurisdiction over all cases in the Region. There are exceptions to their jurisdiction imposed by the legal system and by the principles previously in force in Macao, which the Basic Law maintained. The courts of the MSAR also have no jurisdiction over acts of State such as defence and foreign affairs (articles 19 and 82 to 94 of the Basic Law).

60. Article 84 (3) of the Basic Law stipulates that the structure, powers and functions of the courts shall be prescribed by law. Pursuant to this, on 20 December 1999, Law 9/1999 approved the basis of the organization of the judiciary and Law 10/1999 stipulated the legal “status” of the members of the judiciary.

61. Article 4 of Law 9/1999 states that the MSAR courts are responsible for assuring the legally protected rights and interests, preventing any breaches of legality and resolving conflicts between public and private interests.

62. The following courts are established in the MSAR: the Primary Court (with general jurisdiction at first instance, including the Criminal Instruction Tribunal), the Administrative Court (with jurisdiction at first instance in administrative disputes), the Court of Second Instance and the Court of Final Appeal (articles 27 to 54 of Law 9/1999).

1.b) The judges

63. The judges of the MSAR courts at all levels are appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, lawyers and eminent persons from other sectors (article 87 (1) of the Basic Law and article 15 of Law 10/1999).

64. The judges are chosen on the basis of their professional qualifications (a law degree legally recognized in Macao and substantial knowledge of the Macao legal system being required in all cases) and must also meet the general requirements for public employees.

65. The independence of the courts is safeguarded by the irremovability of the judges and their non-subjection to any orders or guidance other than the duty to respect decisions made following appeal to higher courts (article 87 (2) and article 89 of the Basic Law, article 5 (1) and (2) of Law 9/1999 and article 4 of Law 10/1999).

66. Judges cannot be transferred, suspended, retired, dismissed or undergo a change in their situation of any kind unless provided for by the law (article 5 (1) of Law 10/1999).

67. Judges are immune from legal action for discharging their judicial functions, which means that they may only be subject, in the exercise of their duties, to civil, criminal or disciplinary responsibility in cases stipulated by law (article 89 (2) of the Basic Law and article 6 of Law 10/1999).

68. Thus, all the conditions required for the independence of the judges are satisfied in the judicial organization of the MSAR: irremovability, freedom from responsibility and non subjection to orders or guidance.

2) The Procuratorate of the MSAR

69. In the MSAR the Procurator, the assistant procurators and the deputies of the Procurator exercise the procuratorial functions. These functions, as vested by law, are carried out independently and free from any interference (article 90 (1) of the Basic Law).

70. The Procurator is nominated by the Chief Executive and appointed by the Central People's Government. The assistant procurators and the deputies of the Procurator are nominated by the Procurator and appointed by the Chief Executive (article 90 (2) and (3) of the Basic Law).

71. The Basic Law also states that the structure, powers and functions of the MSAR Procuratorate shall be prescribed by law. Pursuant to this, the above-mentioned Law 9/1999 defines the MSAR Procuratorate, in itself, as an independent autonomous judiciary organ, establishing that it carries out its powers and functions autonomously, and free from any kind of interference. Law 10/1999 regulates in detail the legal status of its officers.

72. The autonomy of the MSAR Procuratorate is characterized by its subjection to the criteria of legality and objectivity and by the exclusive submission of the Procurator, the assistant procurators and the deputies of the Procurator to the law.

3) The Committee against Corruption of the MSAR

73. The Committee against Corruption (CAC) is a public entity endowed with total independence. It is not subordinate to any kind of

administrative orders or instructions, fulfilling its mission according to the law (article 2 of Law 11/90/M, of 10 September, as modified by Law 2/97/M, of 31 March, and article 14 of Law 1/1999, of 20 December).

74. The CAC has the following tasks:

- (a) To promote all acts aimed at preventing corruption and fraud;
- (b) To conduct preliminary investigations, which are not directly connected with fundamental rights, involving crimes of corruption and fraud, committed by employees of the public administration and its agencies, under the law of criminal procedure, and without prejudice to the powers conferred on other entities by this law;
- (c) To conduct preliminary investigations, which are not directly connected with fundamental rights, involving crimes of electoral fraud committed by any person, under the law of criminal procedure, and without prejudice to the powers conferred on other entities by this law;
- (d) To promote the protection of rights, freedoms, safeguards and the legitimate interests of individuals assuring, through informal means, justice, legality and the efficiency of the public administration.

75. The Commissioner against Corruption is the head of the CAC and is nominated by the Chief Executive for appointment by the Central People's Government (articles 50 (6) and 59 of the Basic Law).

76. In view of its complete independence from other organs of power in supervising the activities of the public authorities, and given its investigative powers in protecting the rights, freedoms, safeguards and the legitimate interests of the residents, the CAC Commissioner acts as MSAR's "Ombudsman".

4) The legal aid system

77. In the MSAR everyone is entitled to have access to the law, to the courts, to legal advice in protecting their lawful rights and interests, and to

judicial remedies. Justice cannot be denied on any grounds, namely lack of financial resources (article 36 of the Basic Law and article 6 (1) of Law 9/1999).

78. Legal aid is the joint responsibility of the government and the members of the legal profession.

B. Remedies available to individuals claiming a violation of their rights and systems of compensation and rehabilitation for victims

1) Remedies

79. It falls essentially to the courts to monitor respect for human rights and punish any violations. There are, nevertheless, non-judicial procedures for the protection of human rights and freedoms.

1.a) Non-judicial remedies

80. The following describes the methods for reacting in the event of any breach of rights or freedoms by administrative bodies:

i) A complaint lodged with the Public Information and Assistance Centre

81. The MSAR residents have the right to submit complaints to the Public Information and Assistance Centre concerning acts or omissions by public services relating to affairs affecting them directly, as well as the right to be informed of the result of the respective consideration (Decree Law 23/91/M, of 9 May).

ii) A complaint lodged with the Committee against Corruption

82. One of the powers of the CAC is that of defending the rights, freedoms, safeguards and legitimate interests of people, ensuring justice, legality and the efficiency of the public administration through informal means. It can address recommendations directly to the relevant organs with a view to correcting illegal or unfair administrative acts pertaining to facts of which it learns by any means whatsoever.

iii) A complaint to the Legislative Assembly

83. Article 71 (6) of the Basic Law enshrines the Legislative Assembly's power to receive and handle complaints submitted by MSAR residents. Article 9 (f) of the Legislative Assembly Regulations endows the Legislative Assembly Chairperson with the power to receive and forward to the relevant committees, petitions, submissions or complaints addressed to the Legislative Assembly.

iv) An administrative complaint

84. Under the Code of Administrative Procedure, if subjective rights or legally protected interests are damaged by an administrative act, a complaint against it can be filed to those responsible by the interested person, requesting its revocation or modification.

v) Appeal for an administrative review

85. An administrative appeal can be made against any administrative act engaged in by organs subject to the hierarchical powers of another organ. Appeals can be made on the basis of illegality, failure to observe the principles of equality, proportionality, justice, impartiality or inconvenience of the act, according to the Code of Administrative Procedure.

1.b) Judicial remedies

i) Appeal for a judicial review of an administrative action

86. Administrative actions giving rise to litigation may be reviewed in the competent courts.

87. The Administrative Court is empowered with general jurisdiction to hear appeals against administrative acts of entities, organs and services, up to the level of Director (Law 9/1999). For lodging an appeal against acts of entities above the level of Director, the Court of Second Instance is competent.

ii) Declaration of illegality

88. Norms inserted in administrative regulations may be declared illegal by the courts in accordance with the Code of Procedure in Contentious Administrative Matters (arts. 88 *ff.*). Following three illegality cases concerning the same norm, the decision of illegality may be declared with universal application and with effect from the date that the relevant administrative regulations entered into force.

2) Compensation and rehabilitation for victims

89. Whosoever intentionally or culpably illicitly violates a right of another person or any legal provision intended to protect another person's interests, shall have to compensate the damage arising from such violation (article 477 of the Civil Code).

90. In criminal procedure, requests for civil liability shall, as a rule, be included in the relevant case. However, if the request is not made, the judge can award an amount as compensation for damages if the plaintiff does not oppose this and there is sufficient evidence of the causes and amount to be awarded according to the general criteria of civil law.

91. Any defendant found guilty shall pay the victim compensation. Whenever he is unable to do so or cannot be located there are alternative mechanisms for compensation. Victims of violent crime enjoy protection in requesting various kinds of subsidies from the MSAR government in order to alleviate the effects of physical injury, inability to work or the right to family support in the event of death (Law 6/98/M).

92. Special law regulates the extra-contractual civil liability of the Administration, heads of government services and other civil servants, arising from acts of public management (article 36 (2) of the Basic Law and Decree-Law 28/91/M, of 22 April).

3) Extent to which decisions and jurisdictional appeals are binding and implemented

93. In the MSAR legal system there is no doctrine of binding precedent. The court decisions are compulsory for all public and private

entities and prevail upon the decisions taken by any other authorities. Laws of procedure regulate the terms under which court decisions affecting any authority are implemented, and specify the sanctions that should be applied in the event of non-compliance.

94. It should be noted that it is a fundamental principle of the MSAR legal system that a court cannot abstain from reaching a decision by invoking a default or obscurity of the law, or alleging an unresolvable doubt about the facts in question (article 7 of the Civil Code).

C. Protection of rights guaranteed under international human rights instruments

1) Fundamental rights guaranteed under the Basic Law

95. The fundamental rights contained in chapter III of the Basic Law are primarily rights to freedom, but some of the social and cultural rights also feature therein. Chapter III enumerates a list of fundamental rights and freedoms, also protected under various international instruments, but its provisions are not exclusive. Therefore, the enumeration of chapter III is not exhaustive. Other chapters of the Basic Law comprehend fundamental rights. For instance, basic economic rights are accommodated in chapter V, which refers to the economy.

96. All persons, in addition to MSAR residents, enjoy the fundamental rights contained in the Basic Law, in accordance with the law (article 43 of the Basic Law).

1.a) Rights to freedom

97. The Basic Law guarantees the freedom of the person and the inviolability of human dignity (arts. 28 and 30).

98. Its article 30 (1), apart from establishing the inviolability of human dignity, enshrines the prohibition of humiliation, slander and false accusation against anyone in any form and the right to personal reputation and the privacy of private and family life.

99. Article 25 of the MSAR Basic Law stipulates the right to equal treatment before the law, and freedom from discrimination, irrespective of nationality, descent, race, sex, language, religion, political or ideological beliefs, educational level, economic status or social conditions.

100. Article 27 enshrines the freedom of speech, of the press and publication, freedom of association, of assembly and procession and of demonstration.

101. Article 38 establishes the freedom of marriage and the right to form and raise a family.

102. Article 34 (1) and (2) assures the freedom of conscience, the freedom of religious belief, the freedom to preach and to conduct and participate in religious activities in public.

103. Consistent with the principle of religious freedom, article 128 (1) states that the MSAR government shall not interfere in the internal affairs of religious organizations or in the efforts of the religious organizations and believers in Macao to maintain and develop relations with their counterparts outside Macao, or restrict religious activities which do not contravene the laws of the Region. Furthermore article 128 (2) establishes that religious organizations may, in accordance with the law, run seminaries and other schools, hospitals and welfare institutions and provide other social services. Schools run by religious organizations may continue to provide religious education, including courses in religion. Religious organizations shall, in accordance with the law, enjoy the rights to acquire, use, dispose of and inherit property and the right to receive donations. Their previous property rights and interests shall be protected by law (paragraph 3 of the same article).

104. The inviolability of the home and other premises, as well as the prohibition of arbitrary and unlawful search of, or intrusion into, anyone's home or other premises is established in article 31. Freedom and privacy of communications is ensured in article 32.

105. Article 28 (2) guarantees that no one shall be subjected to arbitrary or unlawful arrest, detention or imprisonment and assures, in the event of arbitrary or unlawful arrest, detention or imprisonment, the right to apply to the court for the issuance of a writ of habeas corpus. Paragraph 3 of the same article establishes the prohibition of unlawful search of the body or deprivation or restriction of freedom of the person and paragraph 4 forbids torture or inhumane treatment.

106. According to article 29 (1) no one can be punished except for acts that constitute a crime under existing law and they shall be punished as expressly prescribed by law at that time. Paragraph 2 affirms that anyone charged with a criminal offence shall enjoy the right to an early court trial and shall be presumed innocent until convicted.

107. The right of abode of MSAR residents is specified in article 24.

108. Article 33 guarantees freedom of movement within the MSAR and the freedom of emigration to other countries and regions. Article 35 ensures the freedom of choice of occupation and work.

109. Article 36 assures the right to resort to law and to have access to the courts, to legal counsel, to judicial remedies and the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.

1.b) Economic, social and cultural rights

110. Article 6 ensures that the right of private ownership of property shall be protected by law and article 103 states that the MSAR shall, in accordance with the law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property.

111. The right and freedom to form and join trade unions and to strike is granted in article 27.

112. Article 38 (2) and (3) affirms, respectively, the protection of the legitimate rights and interests of women and of minors, the aged and the disabled.

113. Article 39 enshrines the right to social welfare in accordance with the law.

114. Article 37 assures the freedom to engage in education, academic research, literary and artistic creation, and other cultural activities and article 122 (1) attests that all educational institutions in the MSAR shall enjoy their autonomy and teaching and academic freedom in accordance with the law. Article 122 (2) stipulates that educational institutions of all kinds may continue to recruit staff and use materials from outside the MSAR and that students enjoy freedom of choice of educational institutions and freedom to pursue their education outside the Region.

115. Article 125 (2) declares that the MSAR government shall protect by law the achievements and the lawful rights and interests of authors in their literary, artistic and other creations.

2) Fundamental rights guaranteed under ordinary law

116. The fundamental rights enshrined by the Basic Law and the human rights instruments are protected, developed and strengthened by the laws in force in the MSAR.

117. Article 39 (1) of the Criminal Code of Macao forbids the death penalty and imprisonment for life, or for an unlimited or unspecified period of time. The protection of life, the most important legal asset in the set of values enshrined by the MSAR criminal law, is provided by means of several norms, which expressly punish violations against human life. The rights to liberty and security and also the right not to be deprived thereof except in accordance with the principles of fundamental justice are also guaranteed by the Criminal Code.

118. Under article 237 (a) of the Code of Criminal Procedure, an individual held in detention by an organ of the criminal police for a maximum period of 48 hours shall be presented before the judge of criminal instruction for a summary hearing or for interrogation, or for a coercive measure to be applied. Furthermore, any person who is held on remand custody is entitled to be judged within the shortest time possible

compatible with the rights of defence. Once the maximum periods for remand have expired, this measure can no longer be applied and the accused must be freed at once (article 201 of the same Code). Various other rights, including the right to be secure against unreasonable search and seizure, rights on arrest or on being charged with an offence, the right not to be subjected to cruel or unusual treatment or punishment, and the right against self-incrimination are protected under the Code of Criminal Procedure.

119. Law 5/98/M of 3 August regulates freedom of religious belief and worship and of profession of faith. This law recognizes and safeguards the freedom of religious belief and worship, ensuring that professions of religious faith and other religious entities are given the appropriate legal protection. It also establishes the inviolability of religious belief. It stipulates that no one can be the object of prejudice, persecution, or be deprived of his rights, exempted from obligations or civic duties for not professing a religious faith, or because of his religious beliefs or practices, except for the right to conscientious objection, under the terms of the law.

120. According to the same law, the MSAR does not profess any religious faith, and its relations with religious faiths are based on the principle of separation and neutrality. To this effect, article 3 (3) states that the MSAR “does not interfere in the organization of religious faiths or the exercise of their activities and worship and does not make any comments on religious issues”. Similarly, paragraph 2 of the same article mentions that religious faiths are free to organize themselves as they wish, and to carry out their activities and worship. Article 4 reasserts the principle of equality of religious organizations before the law.

D. Manner in which human rights instruments are made part of the MSAR legal system

1) Application of treaties in the MSAR

121. The MSAR enjoys a high degree of autonomy except for defence and foreign affairs, which are the responsibilities of the Central People’s

Government. Notwithstanding the MSAR's non-sovereign status, the Basic Law stipulates that the Central People's Government can authorize the Region to conduct some external affairs. Furthermore, the MSAR can exercise, by itself, considerable powers regarding certain appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural, science and technology and sports fields.

122. The application to the MSAR of international treaties to which the People's Republic of China is a party is decided by the Central People's Government upon seeking the views of the MSAR government and according to the circumstances and the MSAR's needs (article 138 (1) of the Basic Law). Previous treaties in force in Macao to which the People's Republic of China is not a party may continue to apply in the MSAR (article 138 (2) of the Basic Law).

123. In fact, one of the fundamental pillars of the Macao legal system, which is based on the continental Roman-Germanic family of law, is precisely that international and domestic laws are part of the same general legal order operating simultaneously in regard to the same subject matter.

124. Another cornerstone of the Macao legal system is the principle of publication of laws. Pursuant to this, articles 3 (6) and 5 (1) of Law 3/1999, of 20 December, established that international agreements applicable in the MSAR shall be published in the Official Gazette.

125. Once international treaties duly ratified or approved by the People's Republic of China, which are applicable in the MSAR, or in the case of the above-mentioned appropriate fields by the Chief Executive, are published in the Official Gazette, they immediately and automatically become part of the MSAR legal order.

126. There is no need to incorporate international law into domestic law in order to effect its application. Nevertheless, reservations and declarations made at the time of the assumption of the international obligation or the wording of an international instrument may imply that one or more of its clauses cannot be self-executing. In those cases, though

the international provisions are still entirely and directly effective, they must be implemented by means of domestic legislation. This is what happens, for example, with the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions (article 40 of the Basic Law).

127. In the event of a conflict between international and domestic law, international agreements applicable in the MSAR take precedence over domestic ordinary law (article 1 (3) of the Civil Code).

2) Can human rights instruments be directly invoked or enforced through the courts and administrative machinery?

128. As explained above, once the necessary requirements have been fulfilled, the international law automatically becomes a part of the MSAR legal order, and therefore it is enforced in exactly the same manner as all the other laws. The available remedies, either non judicial or judicial, are the same. All persons, natural or legal, are equally subject to the law. The administrative authorities, within the sphere of their own powers, are responsible for enforcing the law, and like anyone else, they can be liable for any eventual breaches. When someone has the necessary “locus standi” and invokes a provision of the law (international or domestic), it is ultimately for the courts to decide how and whether that law is enforced.

IV. INFORMATION AND PUBLICITY

A. Government measures to promote the dissemination of human rights

129. In recent years, the international human rights treaties in force in Macao have been extensively publicized. The government and its departments have taken several measures to promote the information and dissemination of human rights in the local community. This has been done mainly through the media but also using contests, inquiries and interactive means as well as through the distribution of specially focused brochures

and leaflets. Fundamental rights are also incorporated in the school curriculum in several disciplines.

130. Many of the actions undertaken to promote awareness of fundamental rights and duties are specially targeted, in close connection with neighbourhood associations, to workers' unions and educational centres. The Legal Translation Office also provides a service offering legal information on a daily basis in some of the largest Macao newspapers.

B. Report writing

131. The Central People's Government is responsible for the submission of reports in respect of the MSAR under various human rights treaties. Continuing the practice followed prior to the establishment of the MSAR concerning the local application of the international Covenants, the draft reports are prepared by the MSAR government.

**2010 ‘CORE DOCUMENT’ OF THE PEOPLE’S
REPUBLIC OF CHINA *
MACAO SPECIAL ADMINISTRATIVE REGION**

I. Introduction

1. The present document is an update 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.

II. General information about the MSAR

A. Geographical, demographic, social, economic and cultural characteristics

1. Geographical indicators

2. 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 km² in 2000 to 29.5 km² in the end of 2009.

2. Demographic indicators

(a) General information

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

* HRI/CORE/CHN.MAC/2010, 24 August 2012

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.

4. 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.

5. At the end of 2009, the estimated population density was 18,400 per km².

(b) Place of birth, ethnicity and usual language

6. 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.

7. 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

8. 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.

9. 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.

10. 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.

11. 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

12. 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.

13. 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.

14. 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%.

15. 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).

16. 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

17. 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.

18. 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

19. 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

20. 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

21. 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 multihousehold per living quarter became a rare scenario; in fact, the majority of the living quarters (96.8%) comprised only one household.

22. 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.

23. 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

24. The household's biweekly 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

25. 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 5 years of age

26. 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

27. 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

28. 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

29. Cases of major communicable diseases are relatively low and immunization coverage rates are high, as shown 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>
A06.0	Acute amoebic dysentery	0.00	0.19	0.00	0.36	0.00
B17.0	Acute delta infection of hep B carrier	0.00	0.19	0.00	0.00	0.00
B.15.0.9	Acute hepatitis A	0.83	0.39	1.49	0.91	1.66
B16.1-9	Acute hepatitis B	4.75	2.53	2.97	2.55	4.06
B17.1	Acute hepatitis C(4)	7.23	5.65	3.35	4.37	1.11
B17.2	Acute hepatitis E	1.86	0.19	0.19	0.55	1.84
A80	Acute poliomyelitis	0.00	0.00	0.00	0.00	0.00
A60	Anogenital herpes viral	1.45	0.19	0.00	2.55	0.37
Z21	Asymptomatic HIV infection	4.75	5.06	3.53	4.01	3.14
A05.0-9	Bacterial food-borne intoxication	12.80	7.40	6.88	2.37	15.49

<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>
A00	Cholera	0.00	0.00	0.00	0.00	0.00
P35.0	Congenital rubella syndrome	0.00	0.00	0.00	0.00	0.00
A90	Dengue fever	0.00	0.39	1.49	0.55	0.74
A91	Dengue haemorrhagic fever	0.00	0.00	0.00	0.00	0.00
A36	Diphtheria	0.00	0.00	0.00	0.00	0.00
B08.4-5	Enteroviral infections	45.01	199.26	26.76	149.67	309.48
A54	Gonococcal infections	6.61	6.43	3.90	5.10	1.66
G00.0	Haemophilus meningitis	0.00	0.00	0.00	0.00	0.00
B20-B24	HIV	0.00	0.39	0.74	1.09	0.92
A83.0	Japanese encephalitis	0.00	0.00	0.00	0.00	0.00
A48.1	Legionnaires disease	0.00	0.00	0.00	0.00	0.00
A30	Leprosy	0.00	0.00	0.00	0.18	0.00
B50-B54	Malaria	0.00	0.00	0.00	0.00	0.00
B05	Measles	0.00	0.39	0.00	0.73	0.00
A39.0	Meningococcal meningitis	0.00	0.00	0.00	0.00	0.00
B26	Mumps	17.55	12.86	10.04	18.03	13.09
A34	Obstetrical tetanus	0.00	0.00	0.00	0.00	0.00
A06.1-9	Other amoebiasis	0.00	0.19	0.19	0.00	0.18
A55-A64	Other sexually transmitted disease (not include A59, A60)	0.00	0.00	0.00	0.55	0.37
A35	Other tetanus	0.00	0.00	0.00	0.00	0.00
A17-19	Other tuberculosis	6.81	5.84	3.53	6.37	7.93
J10x	Pandemic influenza 2009	0.00	0.00	0.00	0.00	646.26
A01.1-4	Paratyphoid fever	0.62	0.19	0.19	0.00	0.92
A20	Plague	0.00	0.00	0.00	0.00	0.00
A15-A16	Pulmonary tuberculosis	78.46	79.86	70.99	69.74	60.68

<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>
A82	Rabies	0.00	0.00	0.00	0.00	0.00
A08.0	Rotaviral enteritis	0.00	0.00	8.18	50.07	42.97
B06	Rubella (german measles)	0.21	1.36	0.74	1.64	2.95
A02.0-9	Salmonella infections	15.49	22.40	4.65	7.10	8.67
B97.2	SARS	0.00	0.00	0.00	0.00	0.00
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>(%)</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
BCG 1 st dose	98.0	99.0	99.7	99.6	99.8
Diphtheria, tetanus, pertusis 3 rd dose	88.9	90.1	90.2	91.3	91.8
Polio 3 rd dose	88.8	90.1	90.0	90.8	91.8
Hepatitis B 3 rd dose	87.2	89.7	90.0	91.3	92.0
Measles containing vaccine 1 st dose	90.9	90.3	89.9	89.7	90.8
Measles containing vaccine 2 nd dose	82.8	84.9	87.2	87.2	88.1
Haemophilus influenza type b 3 rd dose	-	-	-	80.6	90.4
Varicella 1 st dose					89.5

Source: Health Bureau.

(g) Ten major underlying causes of death

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

<i>Underlying causes of death</i>	<i>(No.)</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 ⁽¹⁾	168 ⁽¹⁾	143 ⁽¹⁾	175 ⁽¹⁾	166 ⁽¹⁾
Malignant neoplasm of trachea, bronchus and lung	119 ⁽²⁾	124 ⁽²⁾	117 ⁽²⁾	143 ⁽²⁾	142 ⁽²⁾
Pneumonia, organism unspecified	95 ⁽³⁾	85 ⁽³⁾	93 ⁽³⁾	110 ⁽³⁾	109 ⁽³⁾
Malignant neoplasm of liver and intrahepatic bile ducts	58 ⁽⁵⁾	62 ⁽⁵⁾	62 ⁽⁴⁾	62 ⁽⁵⁾	70 ⁽⁴⁾
Chronic airways obstruction, not elsewhere classified	46 ⁽⁶⁾	49 ⁽⁶⁾			
Non-insulin-dependent diabetes mellitus	77 ⁽⁴⁾	66 ⁽⁴⁾	48 ⁽⁶⁾	68 ⁽⁴⁾	56 ⁽⁵⁾
Chronic ischaemic heart disease	39 ⁽⁸⁾		29 ⁽¹⁰⁾	46 ⁽⁹⁾	55 ⁽⁶⁾
Hypertensive heart disease			34 ⁽⁹⁾	44 ⁽¹⁰⁾	49 ⁽⁷⁾
Heart failure	46 ⁽⁶⁾				
Other chronic obstructive pulmonary disease			47 ⁽⁷⁾	54 ⁽⁶⁾	47 ⁽⁸⁾
Malignant neoplasm of colon	32 ⁽¹⁰⁾	44 ⁽⁷⁾	48 ⁽⁶⁾	51 ⁽⁷⁾	40 ⁽⁹⁾
Acute myocardial infection		30 ⁽¹⁰⁾			
Chronic renal failure		36 ⁽⁸⁾	46 ⁽⁸⁾	48 ⁽⁸⁾	32 ⁽¹⁰⁾
Malignant neoplasm of nasopharynx		31 ⁽⁹⁾			
Bacterial pneumonia, not elsewhere classified			55 ⁽⁵⁾		
Other diseases of endocardium	37 ⁽⁹⁾				

Source: Statistics and Census Bureau, Demographic Statistics.

(h) Net enrolment ratio, attendance and dropout rates

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

<i>Net enrolment ratio</i>	<i>Academic years (%)</i>					
	<i>G</i>	<i>2004/05</i>	<i>2005/06</i>	<i>2006/07</i>	<i>2007/08</i>	<i>2008/09</i>
Primary education	MF	89.5	90.8	87.4	88.2	89.3
	M	89.2	90.1	87.1	88.5	88.8
	F	89.9	91.5	87.8	87.9	89.8
Secondary education	MF	74.7	74.9	73.2	73.3	73.3
	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.

<i>Dropout rate</i>	<i>Academic years (%)</i>					
	<i>G</i>	<i>2004/05</i>	<i>2005/06</i>	<i>2006/07</i>	<i>2007/08</i>	<i>2008/09</i>
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*

32. 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*

33. 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*

34. 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.

Years	(<i>%</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>
2005	63.4	70.9	56.8	4.1	4.4	3.8	1.4	1.6	1.2
2006	68.5	76.7	61.0	3.8	3.8	3.8	1.0	1.2	0.7
2007	71.7	78.8	64.8	3.1	3.4	2.7	1.0	1.3	0.7
2008	72.9	79.9	66.3	3.0	3.2	2.8	1.6	2.4	0.6
2009	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*

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

<i>Sectors of economic activity</i>	<i>No. (10³)</i>					
	<i>G</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Total	MF	205.4	265.1	300.4	323.0	317.5
	M	108.3	141.6	160.5	172.3	164.0
Agriculture, farming of animals, hunting, forestry, fishing, mining and quarrying	MF	1.5	0.5	0.2	0.5	1.1
	M	0.4	0.3	0.1	0.2	0.6

<i>Sectors of economic activity</i>	<i>No. (10³)</i>					
	<i>G</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Manufacturing	MF	37.7	29.5	24.0	24.6	17.0
	M	11.8	10.5	8.7	11.5	8.3
Textiles	MF	3.8	2.5	2.5	2.7	1.4
	M	1.3	0.9	0.9	1.5	0.5
Wearing apparel; dressing and dyeing of fur	MF	25.5	20.1	14.9	14.8	8.8
	M	5.2	4.7	3.4	4.8	2.5
Other manufacturing	MF	8.4	6.9	6.6	7.1	6.8
	M	5.3	4.9	4.3	5.2	5.5
Electricity, gas and water supply	MF	1.3	0.9	1.2	0.9	1.0
	M	1.0	0.8	1.0	0.6	0.7
Construction	MF	16.4	31.1	38.6	38.4	32.7
	M	14.8	27.8	33.9	33.7	28.9
Wholesale and retail trade, repair of motor vehicles, motorcycles, and personal and household goods	MF	33.2	36.4	38.4	39.6	41.5
	M	17.4	17.8	19.3	19.3	19.8
Hotels, restaurants and similar activities	MF	22.4	30.0	34.7	41.3	43.7
	M	11.8	14.6	16.7	20.5	21.0
Transport, storage and communications	MF	14.4	16.8	16.4	16.0	16.7
	M	10.6	12.0	11.8	11.8	12.4
Financial intermediation	MF	6.3	6.9	7.9	7.5	7.5
	M	2,6	2.9	3.1	2.8	2.9
Real estate, renting and business activities	MF	12.0	16.3	20.1	23.8	25.6
	M	7.7	9.9	11.7	14.5	16.0
Public administration, defence and compulsory social security	MF	18.1	20.3	22.0	20.2	20.3
	M	12.5	14.0	14.2	13.0	12.9
Education	MF	9.8	11.3	11.9	11.5	12.3
	M	3.1	3.7	3.8	3.5	3.9
Health and social welfare	MF	4.7	5.4	6.0	6.5	7.3
	M	1.5	1.4	1.7	2.0	2.0
Other community social and personal services	MF	23.9	52.5	69.1	78.9	75.2
	M	12.8	25.6	33.9	38.3	34.1

<i>Sectors of economic activity</i>	<i>No. (10³)</i>					
	<i>G</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Gaming	MF	15.4	42.6	58.7	66.6	62.7
	M	8.8	21.3	28.9	33.3	28.7
Others	MF	8.5	9.9	10.4	12.3	12.5
	M	4.0	4.3	5.0	5.0	5.4
Households with employed persons	MF	4.3	6.9	9.6	13.3	15.7
	M	0.2	0.3	0.5	0.3	0.5
Others and unknown	MF	0.3	0.2	0.1	0	0
	M	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

36. 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.

<i>Item</i>	<i>GDP indicators</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
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

37. 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)

38. 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

39. 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

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

B. The political and legal framework of the MSAR

41. With respect to the MSAR political and legal framework, the information contained in Part Three of China's core document (HRI/CORE/1/Add.21/Rev.2) 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

42. As mentioned in the said Part Three 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.

43. 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.

44. 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.

45. 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

46. As to the Legislative Assembly, which formation method is stipulated in Annex II to the Basic Law (also described in Part Three of

China's core document (HRI/CORE/1/Add.21/Rev.2)), 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).

47. 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.

48. 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.

49. 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 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

50. 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

51. 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 in 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 Procuratorate 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

52. 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

53. 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.

54. 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.

55. 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).

56. 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 Bureau.

(e) Percentage of women in the Legislative Assembly

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

(f) Average turnout

58. 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

59. 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)

60. 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 Services

61. 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

62. 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

63. 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 pretrial detention

64. 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 8.2 months and 10.1 months, respectively (*Courts' information*).

(d) Prison population

65. 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>Types of offences/ Age groups</i>	<i>Offences committed by the prison population</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>
Drug trafficking										
Age 16–20	14	0	11	1	17	1	42	4	35	3
Age 21–30	97	11	92	10	83	12	99	14	94	12
Age 31–50	156	30	146	25	138	22	134	22	117	18
Age >50	21	0	22	1	14	2	17	3	13	3
Subtotal/gender	288	41	271	37	252	37	292	43	259	36
Subtotal/offence	329		308		289		335		295	
Burglary										
Age 16–20	15	0	6	0	6	0	8	0	5	0
Age 21–30	71	7	69	6	56	3	43	2	33	2
Age 31–50	118	4	121	4	90	3	87	3	76	1
Age >50	1	0	3	0	4	0	4	0	3	0
Subtotal/gender	205	11	199	10	156	6	142	5	117	3
Subtotal/offence	216		209		162		147		120	
Larceny										
Age 16–20	4	0	4	0	3	0	1	0	0	0
Age 21–30	47	5	45	3	49	2	49	4	39	5
Age 31–50	96	6	105	8	101	8	113	7	92	6
Age >50	7	0	11	0	9	0	9	0	6	0

<i>Types of offences/ Age groups</i>	<i>Offences committed by the prison population</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>
Subtotal/gender	154	11	165	11	162	10	172	11	137	11
Subtotal/offence	165		176		172		183		148	
Fraud										
Age 16–20	0	0	1	1	1	1	1	0	1	0
Age 21–30	11	4	11	5	9	4	6	3	4	0
Age 31–50	35	8	35	6	33	12	47	16	41	15
Age >50	9	0	13	1	15	1	16	3	11	3
Subtotal/gender	55	12	60	13	58	18	70	22	57	18
Subtotal/offence	67		73		76		92		75	
Homicide										
Age 16–20	0	0	0	0	0	0	0	0	0	0
Age 21–30	21	0	16	0	12	0	14	0	13	0
Age 31–50	31	3	36	4	35	5	36	5	29	5
Age >50	6	0	5	0	6	0	12	0	11	0
Subtotal/gender	58	3	57	4	53	5	62	5	53	5
Subtotal/offence	61		61		58		67		58	
Others										
Age 16–20	33	0	20	8	16	4	13	0	24	0
Age 21–30	107	5	110	4	104	9	67	13	71	11
Age 31–50	173	9	184	14	167	22	136	23	131	26
Age >50	13	0	18	0	15	0	22	2	20	2
Subtotal/gender	326	14	332	26	302	35	238	38	246	39
Subtotal/offence	340		358		337		276		285	
Total	1 178		1 185		1 094		1 100		981	

Source: Macao Prison Establishment.

<i>Length of sentence</i>	<i>(No.)</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
1 year or below	79	108	139	261	278
1 to 5 years	429	294	264	463	519
6 to 10 years	359	273	312	281	261
11 to 15 years	103	87	96	94	81
16 to 20 years	27	25	25	28	23
21 years or above	9	16	8	12	12
Total	1 006	803	844	1 193	1 174

Source: Macao Prison Establishment.

(e) Incidence of death in custody and death penalty

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

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

(f) Average backlog of cases per judge

68. 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

69. 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

70. 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

71. 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.

III. General framework for the protection and promotion of human rights

72. 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.

A. Acceptance of international human rights norms

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

1. Main international human rights conventions and protocols

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/content</i>
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	27/4/1993; China’s notifications with respect to the MSAR: 1. dated 2/12/1999; registered with the Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-14531, p. 158–161); 2. dated 28/2/2001, registered with the Secretary-General on 27/3/2001 (UNTS, vol. 2142, No. A-14531, p. 185–187).	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. 2. 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>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/content</i>
		<p>In 2001, China further stated with respect to the MSAR that “(...) 2. 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 (...).</p>
<p>International Covenant on Civil and Political Rights (ICCPR), 1966</p>	<p>27/4/1993; China’s notifications with respect to the MSAR: dated 2/12/1999; registered with the Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-14668, p. 169–173).</p>	<p>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.</p> <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>

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/content</i>
		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 (...)."
International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD), 1966	27/4/1999; China's notification with respect to the MSAR: dated 19/10/1999; registered with the Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-9464, p. 24–26).	China's reservation to Article 22 of the Convention also applies to the MSAR.
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979	27/4/1999; China's notification with respect to the MSAR: dated 19/10/1999; registered with the Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-20378, p. 116–118).	China's reservation to Article 29(1) of the Convention also applies to the MSAR.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984	15/6/1999; China's notification with respect to the MSAR: dated 19/10/1999; registered with the UN Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-24841, p. 124–127).	China's reservation to Article 20 and Article 30(1) of the Convention also apply to the MSAR.

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/content</i>
Convention on the Rights of the Child (CRC), 1989	27/4/1999; China's notification with respect to the MSAR: dated 19/10/1999; registered with the UN Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. A-27531, p. 139–142).	
Optional Protocol to the CRC on the involvement of children in armed conflict, 2000	Same as China, i.e., 20/3/2008; China's communication with respect to the MSAR: Depositary C.N.165.2008. TREATIES-4, of 11/3/2008.	
Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography, 2000	Same as China, i.e., 3/1/2003 China's communication with respect to the MSAR: Depositary C.N.1328. 2002. TREATIES-50, of 19/12/2002.	

2. Other United Nations human rights and related conventions

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
Convention on the Prevention and Punishment of the Crime of Genocide, 1948	16/9/1999; China's notification with respect to the MSAR: dated 16/12/1999; registered with the UN Secretary-General on 17/12/1999 (UNTS, vol. 2095, No. A-1021, p. 51–53).	China's reservation to Article 9 of the Convention also applies to the MSAR.

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
Slavery Convention, 1926	4/10/1927 (declaration of extension repeated on 20/10/1999);	China made a reservation to Article 8 of the Convention in relation to its application to the MSAR.
	China's notification with respect to the MSAR: dated 19/10/1999; registered with the Secretary-General on 19/10/1999 (UNTS, vol. 2086, No. C-1414, p. 267–270).	
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950	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);	
	China's notification with respect to the MSAR: dated 2/12/1999; registered with the Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-1342, p. 55–57).	
Convention relating to the Status of Refugees, 1951, and its 1967 Protocol	13/7/1996 (declaration of extension repeated on 27/4/1999); China's notification with respect to the MSAR: dated 2/12/1999; registered with the Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-2545, p. 64–66 and vol. 2095, No. A-8791, p. 133–134).	The reservation made by China to Article 4 of the Protocol also applies to the MSAR.

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	10/8/1959 (declaration of extension repeated on 27/4/1999); China's notification with respect to the MSAR: dated 2/12/1999; registered with the Secretary-General on 3/12/1999 (UNTS, vol. 2095, No. A-3822, p. 73–75).	
United Nations Convention against Transnational Organized Crime, 2000	Same as China, i.e., 23/10/2003; China's communication with respect to the MSAR: dated 23/9/2003; registered with the Secretary-General on 23/9/2003 (UNTS, vol. 2226, No. A-39574, p. 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.
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000	Same as China, i.e., 10/3/2010; China's notification with respect to the MSAR: dated 4/2/2010; registered with the 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.

3. Conventions of the International Labour Organization

74. 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/declarations content</i>
Weekly Rest (Industry) Convention, 1921 (No. 14)	11/11/1964 (declaration of extension repeated on 20/10/1999); China's notification with respect to the MSAR: dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-597, p. 342).	
Forced Labour Convention, 1930 (No. 29)	26/6/1957; China's notification with respect to the MSAR: dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-612, p. 351).	
Labour Inspection Convention, 1947 (No. 81)	12/2/1963 (declaration of extension repeated on 29/11/1999); China's notification with respect to the MSAR: dated 14/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-792, p. 355).	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	14/10/1978 (declaration of extension repeated on 6/9/1999); China's notification with respect to the MSAR: dated 3/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-881, p. 358).	
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	1/7/1965 (declaration of extension repeated on 1999); China's notification with respect to the MSAR: dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-1341, p. 362).	
Equal Remuneration Convention 1951 (No. 100)	20/2/1968 (declaration of extension repeated on 1999); China's notification with respect to the MSAR: dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-2181, p. 367).	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
Abolition of Forced Labour Convention, 1957 (No. 105)	23/11/1960 (declaration of extension repeated on 4/10/1999); China's notification with respect to the MSAR: dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-4648, p. 374).	
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	24/10/1961 (declaration of extension repeated on 1999); China's notification with respect to the MSAR: dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-4704, p. 375); and reaffirmed on 6/1/2006.	
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	19/11/1960 (declaration of extension repeated on 1999); China's notification with respect to the MSAR: dated 20/10/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-5181, p. 383).	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
Employment Policy Convention, 1964 (No. 122)	9/1/1983 (declaration of extension repeated on 9/8/1999); China's notification with respect to the MSAR: dated 3/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-8279, p. 387).	
Minimum Age Convention, 1973 (No. 138)	20/5/1959 (declaration of extension repeated on 29/11/1999 – not valid); 10/10/2001; China's notification with respect to the MSAR: dated 5/10/2000; registered with the Director-General of ILO on 6/10/2000 and with the Secretary-General on 20/2/2001 (UNTS, vol. 2138, No. A-14862, p. 213).	China's notification in respect to the MSAR also refers to the specific modalities of application of the Convention in the MSAR: “(…) 1. The minimum age for admission to employment or work in the Public Service is 18 years old; 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; 3. Schooling is compulsory for all the persons from 5 to 15 years of age. (...)”
Occupational Safety and Health Convention, 1981 (No. 155)	28/5/1985 (declaration of extension repeated on 6/8/1999 not valid); 20/12/1999; China's notification with respect to the MSAR:	

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
	dated 3/12/1999; registered with the Director-General of ILO on 20/12/1999 and with the Secretary-General on 23/3/2000 (UNTS, vol. 2102, No. A-22345, p.431) reaffirmed by China on 25/1/2007.	
Worst Forms of Child Labour Convention, 1999 (No. 182)	Same as China, i.e., 9/8/2003; China's communication with respect to the MSAR: dated 7/8/2002; registered with the Director-General of ILO on 8/8/2002 and with the Secretary- General on 6/3/2003 (UNTS, vol. 2210, No. A-37245, p. 265).	

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

75. 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/declarations content</i>
Convention against Discrimination in Education, 1960	8/4/1981 (declaration of extension repeated on 31/4/1999); China's notification with respect to the MSAR:	

<i>Convention/ Protocol</i>	<i>Entry into force continuance in force</i>	<i>Reservations/declarations content</i>
	dated 17/10/1999; registered with the Director-General of UNESCO on 21/10/1999 and with the Secretary- General on 13/4/2000 (UNTS, vol. 2105, No. A-6193, p. 591)	

5. Conventions of the Hague Conference on Private International Law

76. 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/declarations content</i>
Convention on the law applicable to maintenance obligations towards children, 1956	23/4/1968 (declaration of extension repeated in 1999); China's notification with respect to the MSAR: dated 30/9/1999; received by the MFA of the Netherlands on 30/9/1999, and registered with the Secretary-General on 27/12/1999 (UNTS, vol. 2095, No. A-7412, p. 118–120).	
Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, 1958	24/2/1974 (declaration of extension repeated in 1999); China's notification with respect to the MSAR: 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 entities of China, for the purpose of the application of the Convention in the MSAR).

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
Convention concerning the powers of authorities and the law applicable in respect of the protection of minors, 1961	4/2/1969 (declaration of extension repeated in 1999); China's notification with respect to the MSAR: dated 30/9/1999; received by the MFA of the Netherlands on 30/9/1999; and registered with the Secretary-General on 28/12/1999 (UNTS, vol. 2095, No. A-9431, p. 139–141).	
Convention on the Civil Aspects of International Child Abduction, 1980	1/3/1999; China's notification with respect to the MSAR: dated 10/12/1999; received by the MFA of the Netherlands on 10/12/1999 and registered with the Secretary-General on 23/2/2000 (UNTS, vol. 2100, No. A-22514, p. 160).	
Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, 1993	Same as China, i.e., 1/1/2006; China's communication with respect to the MSAR:	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 entities of China, for the purpose of the application of the Convention in the MSAR).

<i>Convention/ Protocol</i>	<i>Entry into force/ continuance in force</i>	<i>Reservations/declarations content</i>
	dated 7/9/2005; received by the MFA of the Netherlands on 10/12/1999 and registered with the Secretary-General on 23/2/2000 (UNTS, vol. 2100, No. A-22514, p. 160).	

6. Geneva Conventions and other treaties on international humanitarian law

77. 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.

B. Legal framework for the protection of human rights at the internal level

1. Structure of protection of human rights within the MSAR legal system

78. As detailed in Part Three of China's core document (HRI/CORE/1/Add.21/Rev.2), 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.

79. 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.

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

2. Further legislative developments

81. 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 refugee's 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 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 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.

3. New measures of a restrictive nature

82. 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.

83. 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.

4. New bodies for the protection of human rights

84. 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).

85. 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.

C. Framework within which human rights are promoted at the internal level

1. Interconnection between promotion of human rights and their full exercise

86. 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.

2. The general principle of law of publicity

87. 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.

3. Other types of promotion of law and human rights

88. 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 explanative 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 *Macao 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.

89. 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 school activities, etc, are considered important means to raise human rights awareness and enlarge public access to information on fundamental rights.

90. 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.

91. 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.

92. 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.

93. 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 the UNESCO 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.

4. Budget allocations and trends

94. 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.

D. Reporting process

95. 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.

96. Within the MSAR Government, the drafting of reports to be submitted to the Central People's Government are prepared by the MSAR 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.

97. 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.

98. 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.

IV. Information on non-discrimination and equality and effective remedies

99. 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.

100. Article 223 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.

101. 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.

102. 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.

103. 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.

104. 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.

2011 PEOPLE'S REPUBLIC OF CHINA'S INITIAL REPORT UNDER ARTICLES 40 OF THE COVENANT CONCERNING THE APPLICATION OF THE ICCPR TO MACAO * **

I. Introduction

1. The present report is the first to be submitted by the Macao Special Administrative Region (MSAR) of the People's Republic of China (China) to the United Nations Human Rights Committee through the Central People's Government. It covers the period from 20 December 1999 to 31 July 2010.

2. This report has been prepared in accordance with the guidelines adopted by the Human Rights Committee regarding initial reports as consolidated in the compilation of guidelines on the form and content of reports to be submitted by State parties to the international human rights treaty bodies (HRI/GEN/2/Rev.6).

3. As regards general information about the MSAR, including geographical, demographic, social and cultural characteristics and main correlative indicators, the political system and legal structure and their main indicators, the general legal framework for the protection of human rights and the status of international human rights norms in the MSAR, as well as the reporting process and other related human rights information in what concerns the MSAR, reference is made to part III of China's core document (HRI/CORE/1/Add.21/Rev.2) and to its latest addendum related to the MSAR (HRI/CORE/CHN/2010, part. III), which was submitted

* CCPR/C/CHN.MAC/1, 30 May 2011

** 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.

to the United Nations in 2010. These aspects remain unchanged if no particular observations are made to the contrary herein.

4. Likewise, on the issues of racial discrimination, torture, rights of the child, of women and of persons with disabilities, to the extent that no changes have occurred in legislation and legal practice, reference is also made to the pertinent parts that relate to the MSAR of the latest reports submitted by China on the application of the relevant Conventions.

II. General information

5. The International Covenant on Civil and Political Rights was extended to Macao on 27 April 1993. It was published in the Macao Official Gazette, No. 52, 3rd Supplement, of 31 December 1992.

6. On 2 December 1999, China notified the Secretary-General of the United Nations of its assumption of responsibility for the international rights and obligations placed on a party to the International Covenant on Civil and Political Rights in regard to its continuing application to the MSAR. Upon that notification, China also made the following declaration:

“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 signed on 13 April 1987 (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 defense affairs which are the responsibilities of the Central People’s Government of the People’s Republic of China.

It is provided both in Section VIII of Elaboration by the Government of the People’s Republic of China of its Basic Policies Regarding Macao, which is Annex I to the Joint Declaration, and Article 138 of the Basic Law of the Macao Special Administrative Region

of the People's Republic of China (hereinafter referred to as the Basic Law), which was adopted on 31 March 1993 by the National People's Congress of the People's Republic of China, that international agreements to which the People's Republic of China is not yet a party but which are implemented in Macao may continue to be implemented in the Macao Special Administrative Region.

In accordance with the above provisions, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to inform Your Excellency of the following:

The International Covenant on Civil and Political Rights, adopted at New York on 16 December 1966 (hereinafter referred to as the "Covenant"), which applies to Macao at present, will continue to 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:

- (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;
- (ii) 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;
- (iii) 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 the Joint Declaration and the Basic Law;
- (iv) 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 Macao Special Administrative Region.

Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Covenant."

7. The rationale behind the first paragraph of this declaration is obviously linked to the historical-political background underlying the non-sovereign status of the MSAR. On 20 December 1999, as China resumed the exercise of sovereignty over Macao, the MSAR was established and its Basic Law (BL) entered into force.

8. The BL has constitutional value, and consequently it prevails over all other laws. It sets out the general principles and fundamental norms underpinning the MSAR legal system. One of its specific features is the principle of "one country, two systems", according to which the socialist system and policies are not applicable in the MSAR, and the capitalist system and the way of life shall remain unchanged for 50 years.

9. An important corollary of the principle of "one country, two systems" is the principle of the continuity of the legal system, also expressly safeguarded by the BL (arts. 8, 11, 18 and 145 of the BL). The MSAR is endowed with a civil law system.

10. The BL not only provides for the maintenance of local laws and other normative acts previously in force (except for those that contravene it, or are subject to amendments by the legislature or other competent organs of the MSAR), but also for the continuous application in the MSAR of international treaties, including those which China is not a party thereto (art. 138(2)), as is the case of the Covenant on Civil and Political Rights.

11. In the past, the Committee expressed great concern in respect to which laws, including human rights laws, would be rendered incompatible

with the BL and therefore become inapplicable after 1999. As regards this concern, the following should be taken into consideration.

12. The Reunification Law (Law 1/1999), reaffirming the continuity of the legal system, revoked all Portuguese enacted legislation previously in force in Macao and established three types of situations regarding local legislation that contravenes the BL.

13. The affected laws are listed in annexes I, II and III of the Reunification Law. The laws deemed, and declared as, incompatible with the BL, listed in annexes I and II, were declared to be “not adopted as legislation of the MSAR”, with immediate effect. The only difference consists in the fact that, until new legislation on the subject-matter of the laws listed out in annex II is enacted, the issues therein regulated may be dealt with in accordance with the principles contained in the BL and taking as reference previous practices. Annex III refers to specific provisions of several laws (and not to the laws per se) that were also declared to be incompatible with the BL, and thus not adopted, with immediate effect, as legislation of the MSAR (art. 3 (2), (3) and (4) of Law 1/1999). The Reunification Law also determines the principles of substitution to which the necessary adaptation of other laws or parts thereof should obey.

14. It is important to stress that none of the revoked laws or legal provisions are related to or connected with human rights.

III. Information relating to each of the articles of the Covenant

Article 1

Autonomy and freedom to pursue economic, social and cultural development

The MSAR’s autonomy and the freedom of its people to pursue its own economic, social and cultural development

15. The MSAR political and institutional structure is described in detail in the relevant parts of China’s core document and of its latest

addendum. Additional information on the judicial power is provided in relation to article 14 of the Covenant.

16. The MSAR is authorized to exercise a high degree of autonomy and to enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the BL. The high degree of autonomy must be understood within the framework of the unitary State and the indivisible sovereignty of China of which the MSAR is an inalienable part.

17. The essential programmatic aspects of the MSAR's autonomy, reflecting the normative scope and purpose of the principle of "one country, two systems", are the gradual democratisation of its political system and the freedom of its residents to pursue their own collective economic, social and cultural development.

18. The preservation of the previous social system and way of life, allied to the self-governing powers and independent decision-making capacity of the MSAR in the areas that are laid-down in the BL, within its sphere of competence, are key factors of autonomy.

19. Autonomy is also safeguarded under the double assurance that the MSAR shall be ruled by its own people ("the executive authorities and legislature of the MSAR shall be composed of permanent residents of the MSAR") and that the MSAR shall come directly under the Central People's Government (CPG) (arts. 3 and 12 of the BL).

20. The MSAR enjoys as well certain competences regarding external affairs. Indeed, while the BL stipulates that the CPG is responsible for the foreign affairs relating to the MSAR, it also establishes that the CPG authorizes the MSAR to conduct relevant external affairs, on its own, in accordance with its provisions (art. 13 (1) and (3)). This authorization ranges from the maintenance and development of relations and the conclusion and implementation of agreements with foreign states and regions, or relevant international organizations in the appropriate fields, using the name "*Macao, China*", and also the establishment of official

or semi-official economic and trade missions, to the issue of travel documents, *etc.*

21. Article 18 of the BL prescribes that national laws shall not be applied in the MSAR except for those listed in annex III to the BL. The laws listed therein shall be applied locally by way of promulgation or legislation by the MSAR. The Standing Committee of the National People's Congress may add to or delete from the list of laws in annex III after consulting its Committee for the BL of the MSAR and the Government of the MSAR. Laws listed in annex III shall be confined to those relating to defence and foreign affairs, as well as other matters which fall outside the limits of the autonomy of the MSAR as specified by the BL.

22. The BL recognizes and guarantees, *inter alia*, the right of private ownership of property (including the ownership of land, insofar as the exception referred to in the subsequent paragraph applies), as well as the right of individuals and legal persons to acquire, use, dispose of and inherit property and the right to fair and speedy compensation for expropriation. There are no restrictions to the exercise of property rights by non-residents, the protection of which, along with the rights of ownership of business enterprises and of foreign investment, is assured (arts. 6 and 103). The legal framework for property rights is contained in the Civil Code of Macao (CC).

23. However, land and natural resources in the MSAR are State property: the MSAR Government is solely responsible for its management, use and development, as well as for its lease or grant. The revenue derived thereof is at the exclusive disposal of the MSAR. An exception to the principle of public ownership of land is made for cases of private property rights previously acquired and legally recognized as such before the establishment of the MSAR (art. 7 of the BL).

24. Furthermore, the MSAR maintains its own totally independent monetary, financial and fiscal systems, which are defined by law (arts.

104, 106 and 107 of the BL). The MSAR formulates its monetary and financial policy, and guarantees the free operation of financial markets and of financial institutions, and also regulates and supervises their activities in conformity with the law. It is also vested with the power to issue currency, to manage and control the foreign exchange reserve according to the law, and to safeguard the free flow of capital within, into and out of the MSAR.

25. In accordance with article 104 (2) and (3) of the BL, the financial revenues of the MSAR are managed and controlled by the Region itself and shall not be handed over to the CPG, and the CPG shall not levy taxes in the MSAR.

26. The MSAR is obligated to keep balanced budgets, thereby striving to achieve equilibrium between expenditure and revenue, to avoid deficits and to keep the budget commensurate with the growth rate of its gross domestic product (art. 105 of the BL).

27. Recognizing that the MSAR has always practised a policy of low taxation, article 106 of the BL stipulates that the MSAR enacts laws, on its own, concerning types of taxes, tax rates, tax reductions and exemptions. The taxation system for concessionaire enterprises is prescribed by special legislation.

28. Along the same lines, the MSAR remains a free port and a separate customs territory.

Articles 2 and 26

Rights to equal protection before the law and to non-discrimination

Guarantees of full and non-discriminatory enjoyment of the rights enshrined in the Covenant

29. It is important to highlight first that article 4 of the BL explicitly establishes that the MSAR shall safeguard the rights and freedoms of its residents and of other persons in the Region in accordance with law.

30. The fundamental rights and duties of the MSAR residents are enshrined in Chapter III of the BL. Yet, other fundamental rights, such as those of an economic and social nature, are provided in other Chapters of the BL. Within Chapter III, article 41 specifies that the MSAR residents shall enjoy the other rights and freedoms safeguarded by the laws of the MSAR.

31. Equality and non-discrimination are explicitly guaranteed under article 25 of the BL, which stipulates that “all MSAR residents 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”.

32. Notwithstanding, in order to correct de facto inequalities stemming from qualitatively diverse situations, article 38 of the BL establishes the special protection of the legitimate rights and interests of women, children, elderly and persons with disabilities. Positive discrimination is therefore not only admissible under the law, but it is actually a required measure, as a corollary of equality in its full substantive understanding.

33. On the other hand, article 40 (1) of the BL determines that the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Macao shall remain in force and shall be implemented through the laws of the MSAR. In addition, paragraph 2 of the same article 40 ascertains that the rights and freedoms enjoyed by Macao residents shall not be restricted unless as prescribed by law, and that such restrictions shall not contravene the provisions of the first paragraph.

34. Also, as expounded in the relevant part of China’s core document, in the MSAR legal system, applicable international law — i.e., to which China or the MSAR, as may be the case, is bound — integrates directly and automatically into the MSAR legal order (following official publication), prevailing over ordinary internal law in case of conflict. Adoption of internal legislation is required in instances of non-self-

executing provisions of a treaty. This is what occurs with some of the provisions of the Covenant.

35. Article 43 of the BL clearly states that all persons in the MSAR, other than its residents, enjoy, in accordance with the law, the rights and freedoms accorded to MSAR residents, as prescribed in Chapter III of the BL.

36. Likewise, the CC expressly incorporates the principle of equality between non-residents and residents with respect to the enjoyment of civil rights, except when otherwise provided for under the law (art. 13).

37. The right to equality under, before and through the law is at the very top of the array of rights provided for in Chapter III of the BL. In addition, as in other civil law systems, equality and non-discrimination are held to signify much more than mere individual rights; they are recognized as general principles of law underlying the overall of the legal order. Thus, the normative scope of universal equality encapsulates, as a general principle of law, the principle of universality and the principle of equality.

38. According to the principle of universality, any and all individuals, for the simple fact of being natural persons, have rights and duties or, in other words, are subjects of, and to, law with the same dignity.

39. As to the principle of equality, it essentially establishes the equal status of all natural persons in what relates to the entitlement to, and the enjoyment of, rights and duties, but is not limited to a merely formal equality. This principle entails both the prohibition of arbitrary distinctions and discrimination, rendering inadmissible to treat similar situations differently (prohibition of negative discrimination), and the proscription of similar treatment of manifestly different situations, while remedially requiring the dissimilar treatment of such different situations whenever and insofar as differentiation is objectively justified and measured (imposition of positive discrimination). It means that categories, factors or situations such as nationality, descent, race, sex, language, religion, political or ideological beliefs, educational level, economic status or social condition are illegitimate categories for differentiation.

40. The substantive principle of equality, as an imperative legal norm, offers protection against negative discrimination in the enjoyment of all rights, constituting a guiding stricture at the legislative, administrative and judicial levels.

41. At the legislative level, such principle finds primary expression in the double perspective of equality before the law and equality through the law. In furtherance of and in pursuance of the foregoing, both the BL and ordinary legislation recognise this classic formulation, along with the protection of several specific fundamental rights of, and to, equality, and prohibit illegitimate advantages obtained from the granting of rights, or unfair disadvantages incurred in the imposition of duties or burdens.

42. The social-ethical reproach of discrimination based on illegitimate categories or factors is quite clear-cut in the Criminal Code of Macao (CCM), wherein several crimes related to hatred and discrimination based on nationality, ethnicity, race or religion are established and severely punished. Such are the cases of genocide, incitement to genocide, conspiracy to practice genocide and racial discrimination.

43. In a positive dimension, the CC expressly states that 'personal' rights are recognized to all individuals and shall be protected without any type of unjustified discrimination, in particular by reasons of nationality, place of residence, descent, race, ethnicity, colour, sex, language, religion, political or ideological beliefs, educational level or social condition (art. 67 (1)).

44. Several other laws reinforce this principle either in a positive way, or in a negative dimension, i.e., by means of repression of discriminatory conduct. For instance, the Law on the Protection of Human Rights and Human Dignity on Biological and Medical Applications (Decree-Law 111/99) forbids discrimination on grounds of genetic ancestry, and the Law on the Freedom of Religion, Worship and Profession of Faith (Law 5/98/M) establishes that no one may be harmed, persecuted, deprived of rights or exempt from responsibilities or civic duties by reason of not professing any religion, or due to their convictions or religious practices.

45. The principle of equality is also a general principle of Administrative Law and a criterion of, and limit to, administrative legality. The Administrative Procedure Code (APC) expressly sets forth that the Public Administration shall be governed under the principle of equality, and is not allowed to privilege, benefit, prejudice, deprive of any right or exempt from any duty, a person by reason of descent, sex, race, language, place of origin, religion, political or ideological belief, educational level, economic status or social condition (art. 5 (1)).

46. The principle of equality therefore prohibits administrative measures that carry unequal negative impact on the legal position or status of persons, and requires the adoption of substantively identical criteria for the resolution of identical cases, the right to compensation as a result of qualified burdens imposed on grounds of public interest, *etc.*

Measures to give effect to Covenant rights

47. As regards measures to give effect to Covenant rights in the MSAR, reference is made to the relevant part of China's core document and of its latest addendum, which information remains accurate. A short summary of the main issues is provided below.

48. Human rights have long been protected by the fundamental principles of the MSAR legal order, and the majority of the rights contained in the Covenant have exact or analogous correspondence in the BL and in ordinary legislation, most of which was already in place prior to the application of the Covenant in the MSAR.

49. Furthermore, as previously mentioned, in accordance with the aforementioned system of reception of international law, self executing treaty provisions, such as those that attribute individual rights, may be directly invoked before, and given effect to by, the administrative authorities and the courts. Apart from judicial remedies, in terms of ordinary law, the safeguard and enforcement of individual rights is also ensured through quasi-judicial and non-judicial remedies.

50. In step with the principle of publicity present in other civil law systems, official publication of laws, as a prerequisite for their effectiveness, is an essential requirement of the MSAR legal system.

51. The MSAR Government has continued to undertake effective measures to promote adequate education on issues of tolerance and anti-bias, in particular through the teaching of, and the conducting of public awareness campaigns on, equality and fundamental rights under the BL.

52. The Covenant has been widely disseminated to the general population. Special shelves were designed and placed in government departments, community centres, libraries and book stores for the free distribution of brochures and leaflets on human rights. The promotion and dissemination of MSAR legislation to the general public is the responsibility of the Legal Affairs Bureau.

53. Besides, special editions of the “Macao Law Journal” should be highlighted. These editions cover the implementation of the main applicable international human rights treaties in a systematic manner, in the Chinese, Portuguese and English languages, with the aim of producing a groundbreaking compilation with user-friendly material accessible to both legal practitioners and the general public.

54. Since 2001, the Legislative Assembly of the MSAR (LA) has also compiled and published the more important laws regarding fundamental rights such as freedom of religion, of association and of press, right of petition, right of abode, refugees’ and family rights. Most of these publications are also available online (www.al.gov.mo).

55. Other measures have been carried out by the MSAR Government, aimed at promoting information and public awareness of the Covenant and of fundamental rights, such as through the websites of the Government and a compilation of legislation on CD-ROM, in both official languages and sometimes in English (www.gov.mo). On these websites, one can find the full texts of all laws of the MSAR.

56. The promotion of interactive programmes, awareness campaigns, contests and inquiries through the media, fun fairs, and schools activities, etc, also contributes significantly to enlarge public access to information on fundamental rights.

57. It is worth mentioning that, since 2003, the Legal and Judicial Training Centre (LJTC) has been organizing seminars and workshops focussed on the field of human rights protection, in both official languages and in English.

Available remedies

58. Human rights, often formulated as rights of the individual, are strengthened and safeguarded through access to judicial, quasi-judicial and non-judicial remedies.

59. The BL expressly guarantees the right to resort to law and to have access to the courts, to lawyer's help for protection of their lawful rights and interests, and to judicial remedies, as well as the right to institute proceedings in the courts against the acts of the executive authorities and their personnel (art. 36 (1) and (2)).

60. As mentioned above, the principles of universality and equality are decisive not only due to their normative content, but also as safeguards ensuring the effectiveness of all rights. From the first of these principles, it follows that no government authority or official entity, or any other person, is above the law. All persons have the right to institute legal proceedings in the courts to defend their rights and legally protected interests, regardless of whoever violates them. From the second principle derives the equality of access of all persons to the law, before the law and in the application of law by the courts. Access to law encompasses particularly the right of access to the courts. A common corollary is obviously that justice cannot be denied to a person for lack of financial resources or other discriminatory reasons.

61. Access to law also covers the right to legal advice and information, as well as to legal aid. On the other hand, access to the courts includes not

only the right of action, but also the right to fair and equitable proceedings, the right to effective enforcement of judgements and the right of appeal to a higher court. Equality before the law is, in this context, enunciable as equality of and between the parties in a proceeding, and the right to representation by a lawyer. Equality in the application of law means that the administrative bodies and the courts are bound to observe all principles of law, including the principle of equality.

62. It is a general rule of MSAR procedural law that every substantive right is mirrored by its procedural guarantee. The exercise of each and all rights has correspondence in the proper action or proceeding to effectuate its recognition before and by the courts, to prevent or to repair its violation and to enforce it, as well as in the writs, injunctions, relief orders and other remedial measures necessary to ensure the effectiveness of the action or proceeding (art. 1 (2) of the Civil Procedure Code (CPC), also applicable to all other types of judicial procedures). This issue is addressed with further detail in relation to article 14 of the Covenant.

63. Any administrative act that violates individually-held rights or legally protected interests may be non-judicially challenged by means of a complaint or a request for review by a higher administrative body. When the unlawful administrative act is issued by the highest *in casu* competent administrative body, or whenever it directly harms or violates fundamental rights of the individual, judicial review is immediately available.

64. Under the Administrative Judicial Review Procedure Code (AJRPC), there are two main types of administrative judicial proceedings: judicial review per se and the declaration of illegality. The Administrative Court is empowered with general jurisdiction to adjudicate in matters of judicial review of administrative acts issued by entities, bodies and government department heads up to the level of Director. The Court of Second Instance is competent for the lodging of actions against administrative acts issued by entities above the level of Director (Law 9/1999).

65. Under the APC, the claimant may either request the repeal or the modification of the act in question by its issuing entity, or apply, to the administrative body or authority exercising higher hierarchical competence over it, for an administrative review of such act. Administrative review may be grounded on illegality, especially non-compliance with the principles of equality, impartiality, proportionality, and/or on the inconvenience, inopportunity or material demerits of the act.

66. Civil liability of the Administration, heads of Government departments and other civil servants arising from administrative acts or even from informal actions within the sphere of public administration is guaranteed under Decree-Law 28/91/M. Civil liability stemming from private relationships or non-administrative contracts entered into by the Administration is governed by the CC and actionable under the CPC, whereas liability for breach of administrative contracts is the object of specific remedial action under the AJRPC.

67. Of further relevance to the protection and enforcement of human rights are the Administrative Law provisions granting the right to submit applications for reconsideration, petitions, representations and complaints to any administrative body or authority. All persons (natural or legal) are entitled to such submissions and to be informed of the respective outcome.

68. The safeguarding of human rights is also ensured through quasi-judicial and non-judicial remedies other than administrative ones. It should be noted that a growing body of norms presently exists for the protection of fundamental rights in this context, such as the right to lodge complaints to the LA, expressly recognized at the constitutional level (art. 71 (6) of the BL), and the right to petition the Chief Executive and the LA under Law 5/94/M.

69. Law 10/2000 establishes the New Legal Framework for the Commission Against Corruption (CAC). Under this law, the CAC retains its “Ombudsman” functions, with its powers and competences reinforced, for instance, by conferring the CAC with autonomous powers of criminal

investigation within its scope of activity. Headed by a Commissioner, which is accountable solely to the Chief Executive, the CAC is an independent public body.

70. The CAC's main purposes, in this respect, are to promote the protection of rights and freedoms and to safeguard the legally protected interests of individuals, and to ensure that the exercise of public powers abides by the criteria of justice, legality and efficiency. It can directly propose to the Chief Executive the enactment of normative acts to improve and enhance the respect for legality. It also has the power to address direct recommendations to the relevant administrative bodies and organs with a view to correcting illegal or unfair administrative acts.

71. In addition, a number of monitoring mechanisms, several composed by prominent members of the civil society and representatives of NGOs, have also been created in order to promote and safeguard human rights, such as the Commission for the Protection of Victims of Violent Crimes (1998), the Refugees Commission (2004), the Consultative Commission for Women's Affairs (2005), the Commission for Disciplinary Control of the Security Forces and Services of Macao (2005), the Commission on the Fight against 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's Citizens Affairs (2007), the Commission on the Fight Against Drugs (2008), the Commission for the Rehabilitation of Persons with Disabilities (2008), the Commission for the Prevention and Control of Chronic Diseases (2009).

72. The Public Information and Assistance Centre (PIAC) of the Public Administration and Civil Service Bureau is another public body which was maintained and modernised. The PIAC takes on complaints concerning acts or omissions by public services directly affecting individuals. Such complaints may be filed in person or by any other means, including online. The PIAC also provides free legal counselling. A meeting with a legal adviser is provided within five days of the filing.

73. According the PIAC data, in 2001, there were 1,335 meetings on legal counselling, 1,152 in 2002, 1,034 in 2003, 1,355 in 2004, 2,254 in 2005, 2,230 in 2006, 1,985 in 2007, 2,377 in 2008, 2,652 in 2009 and 1,360 in 2010 (until June).

Article 3

Equality of rights between women and men

74. As at 31 December 2009, the MSAR had an estimated resident population of 542,200, of which 51.8 per cent were female and 48.2 per cent were male.

75. As indicated earlier, the rights to equality and non-discrimination, including gender equality, are explicitly enshrined in article 25 of the BL and article 38 (2) of the BL also explicitly provides for the special protection of the legitimate rights and interests of women, in pursuance of the objective of eradicating such inequalities.

76. Besides the two Covenants, several treaties that provide for the legal protection of women are applicable to the MSAR (please refer to the list of main international human rights conventions and protocols, contained in the part related to the MSAR of the latest Addendum of China's core document, paragraphs 73 to 76 (hereinafter referred to as "list of treaties").

77. The rights to equality and non-discrimination, as general principles, are necessarily reflected at all levels of the MSAR legal system and expressly restated in several ordinary laws. Although the concept of gender mainstreaming has not been expressly incorporated into the legal system, it is, nevertheless, taken as implicit in reason of the constitutional provisions, namely of the above-referred article 38(2) of the BL.

78. There are no restrictions on equal rights vis-à-vis women, whether in public and political life, family life or in working life.

79. Under Law 8/1999, Law on Permanent Residency and the Right of Abode, women have the same rights as men with regard to residency, as well as to the status of their children as residents. Equally, under Law 6/2004, Law on Illegal Immigration and Expulsion, the restrictions to the entry, stay and exit from the MSAR are equally applicable to any and all persons, regardless of gender.

80. The civil law makes no distinction between men and women insofar as legal personality and capacity are concerned. Women and men are equal, *inter alia*, in terms of marriage and marital status, parental authority, capacity to own and administer property, right to enter into contracts and right of inheritance. All natural persons have the same legal personality and enjoy the same legal capacity, irrespective of gender.

81. Gender equality is also one of the key principles of the MSAR education system, to which women and men are guaranteed access on an equal footing. Disparity at all levels of education was eliminated. The right of everyone to education, which comprises equal opportunities in school access and school achievement, is guaranteed. Universal primary education is ensured to all children, boys and girls alike, free of charge (in 2008/2009, the net enrolment ratio in primary education was of 89.3 per cent (88.8 per cent male and 89.8 per cent female) and of 73.3 per cent in secondary education (71.4 per cent male and 75.6 per cent female); in 2009, the overall literacy rate of 15–24 year-olds was of 95.2 per cent (49.3 per cent male and 50.7 per cent female)).

82. However, it will take some time for gender equality and women empowerment to be a reality in factual terms. In fact, technically agreed indicators, *i.e.*, the share of women in wage employment and the proportion of seats held by women in the parliament, show, nevertheless, a steady favourable progression of women's role in society.

83. In 2009, the MSAR female population accounted for 66.5 per cent of the total labour force (for updated indicators on labour force participation, unemployment and underemployment rates in the MSAR,

please refer to the relevant part of the latest addendum to China's core document, paragraphs 34 and 35).

84. It should be stressed that in the private sector the proportion of men and women in top positions is more symmetrical than in unskilled jobs. In June 2010, women represented around 40 per cent of the total labour force in the Public Administration (including the Macao Security Forces). Women represent 60.9 per cent of the professional groups, which also include senior officers, officers and teachers.

85. Women have the same political rights as men, in particular, the right to vote and to be elected, to hold any public office and to perform any function at all levels. As of 31 December 2009, there were 250,268 registered electors, 128,091 being women, which corresponded to 51.2 per cent of all voters. Some women hold high-rank positions in the legislative, executive and judicial bodies.

86. In what concerns reduction of infant mortality and the improvement of maternal health, the indicators demonstrate that both ratios have been constantly reduced (in 2009, the infant mortality rate was of 2.1 per cent per live births; the maternal mortality ratio was of 0 per cent; and the proportion of births attended by skilled personnel was of 100 per cent).

87. The MSAR health system offers specific health services to women, such as family planning programmes and primary health care services free of charge, as well as medication and devices used in family planning (e.g., pre-marital and genetic issues counselling, birth control methods, breastfeeding, treatment of infertility and prevention of genetic and sexually transmitted diseases).

88. In regard to monitoring mechanisms, one of the major achievements was the creation of a high-level body in 2005, the Consultative Commission for Women's Affairs (CCWA), covering all spectrums of women's issues (Administrative Regulation 6/2005). The aims of the CCWA are: (a) to promote women's rights and interests and the

improvement of their life conditions; (b) to promote the effective sharing of responsibility at the family, professional, social, cultural, economical and political levels; (c) to effectively contribute to women's opportunities, rights and dignity; and (d) to encourage the full participation of women in the development of the MSAR.

89. The implementation of policies and strategies are possible at the CCWA level as it is headed by the Chief Executive and comprises representatives of five government members and of 25 NGOs. The participation of NGOs in the CCWA enhances the policy process on the promotion and protection of gender equality, ensures transparency on allocation of resources and quality of services.

90. Further information on gender-related issues can be found in Addendum 2 of the last periodic report of China (CEDAW/C/CHN/5-6) on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women as well as in the present report under the relevant articles of the Covenant.

Article 4

Restrictions to the derogation of rights

91. Under article 14 of the BL, the CPG is responsible for defence (external security), whereas the MSAR Government is responsible for maintaining public order (internal security) in Macao.

92. The power to declare a state of emergency in the MSAR is conferred upon the Standing Committee of the National People's Congress. Article 18 (4) of the BL establishes that 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 MSAR 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 CPG may issue an order applying the relevant national laws in the Region.

93. These norms must be read in tandem with article 40 (2) of the BL, which expressly stipulates that the rights and freedoms enjoyed by the MSAR residents shall not be restricted unless if and as established by law, and that such restrictions shall not contravene, *inter alia*, the applicable provisions of both Covenants therein referred to. Thus, any measure that may restrict, compress or derogate fundamental rights and freedoms are subject to these limits.

94. International humanitarian treaties to which China is bound are applicable to the entire national territory of China, including, therefore, the MSAR.

95. Law 9/2002 establishes the Legal Framework for the Internal Security of the MSAR. Under article 8, the Chief Executive may, in case of emergency arising from a serious threat to the internal security of the MSAR, determine, subject to article 40 of the BL, temporary measures involving restrictions to fundamental rights, provided that such measures are necessary, suitable and proportional to the end of maintaining or restoring said security. The temporal limit for such measures is 48 hours. Any extension requires prior consultation with the Executive Council and must be immediately communicated to the Head of the LA.

96. Decree-Law 72/92/M regulates Civil Protection. Its rationale is to prevent potential collective risks arising from serious accidents, catastrophes or disasters, to limit their effects and to rescue persons in danger. The law lays down the principles, means of execution and the limits to civil protection, understood as an activity which involves not only the MSAR Government but also MSAR residents. Any restrictive measures must comply with the criteria of necessity, suitability and proportionality, in strict pursuance of the aims to be achieved by civil protection. In addition, such measures shall respect the general principles of law, particularly those related to civil liability. The abovementioned legislation also guarantees the right to compensation for damages incurred.

97. Law 2/2004 on the Prevention, Control and Treatment of Contagious Diseases sets up a list of diseases and a number of preventive measures in order to avoid the risk of propagation of contagious diseases, such as the duty of any person who enters the MSAR to declare his/her health condition, or, in case of danger to public health, to declare specific health information, to present medical certificates or declarations, or to be subject to a medical exam. The entry of animals, goods or other products may also be subject to control or restrictions. Such actions will be conducted by the Health Bureau (HB) and other sanitary authorities. The mechanism that sets up the mandatory declaration on contagious diseases and respective administrative sanctions is regulated in Administrative Regulation 15/2008.

98. In case of infected persons or those suspected of having contracted the disease or those with a high risk of contracting a contagious disease may be subject to medical exams or restrictions to the exercise of certain activities (e.g. work) or to compulsory isolation (in such case, the spouse or relative will be informed, within 24 hours, of the decision). The decision of compulsory isolation is confirmed by the Court of First Instance within 72 hours of isolation. The decision from this Court may be appealed to the Court of Second Instance (arts. 14 and 15).

99. Moreover, restrictive measures of an exceptional, urgent and temporary nature may be applied, in case of emergency, to prevent the propagation of contagious diseases in the MSAR, such as the spread, existence or risk of contagious disease, whether the respective disease is included in the list of Law 2/2004.

100. The above measures are ordered by the Chief Executive and published in the Official Gazette and they may include, inter alia, restrictions to the freedoms of movement, of participation in cultural activities or gatherings, or to the exercise of certain activities or the possession of certain animals or the sale or use of certain goods or products (art. 25).

Article 5

Prohibition of restrictive interpretation

101. It should be highlighted, once again, that fundamental rights may only be subject to limitations in such cases as provided for in law (art. 40 of the BL).

102. In the MSAR, neither legal doctrine nor the jurisprudence has ever interpreted any provision of the Covenant as implying the possibility of derogating the rights and freedoms therein recognized.

Article 6

Right to life

103. The right to life is fully protected in the MSAR legal order. Within the recognized interests and ethical values protected by the civil and criminal laws, life is of primary importance.

104. Apart from treaties on human rights and international humanitarian law, in particular the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, several other international treaties relevant to the protection of the right to life are also applicable to the MSAR (please refer to the list of treaties).

105. The protection of the right to life in terms of the civil law will be detailed in the present report in relation to article 17 of the Covenant. As to the protection in terms of criminal law, the CCM prohibits death penalty, life imprisonment and imprisonment for an unlimited or an undefined period of time. These prohibitions are shaped as substantive general principles of criminal law, which transcend the scope of the CCM per se; as such, they apply to crimes as well as to all and any punitive measures not therein codified. As a general rule, the maximum duration of imprisonment is 25 years (the punishment for aggravated homicide). Exceptionally, such ceiling may reach 30 years (normally this occurs as a

result of a multiple commission of crimes). This last limit is final and may not be exceeded under any circumstance (arts. 39 and 41 of the CCM).

106. Book II, Title III of the CCM on “Crimes against Peace and Humanity”, includes the crimes of genocide, incitement to genocide, agreement to commit genocide and racial discrimination, and also the crimes of incitation to war, torture and other cruel, inhuman or degrading treatment. This subject is addressed in detail in relation to article 20 of the Covenant.

107. Book II, Title I of the CCM dedicated to “Crimes against Persons” includes crimes against life, intrauterine life, physical integrity, personal freedom, freedom and sexual self-determination, etc.

108. Logically, homicide heads this list, being punishable with imprisonment from 10 to 20 years and, if committed with aggravating circumstances, i.e., if perpetrated in circumstances that reveal a particular censurability or perversity of the offender, the penalty ranges from 15 to 25 years’ imprisonment. Homicide at the request of the victim, incitement or help to commit suicide and forced abortion also constitute criminal offences. However, the interruption of pregnancy is not punishable under certain circumstances established by special law, in particular as a result of rape or for eugenic reasons (Decree-Law 59/95/M).

Main crimes against the person (life and physical integrity)

<i>Crimes</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Homicide	16	3	13	10	7	11	11	8	10
Offences against physical integrity	1 310	1 485	1 684	1 697	1 707	1 825	1 945	1 998	1 879
Total	1 326	1 488	1 697	1 707	1 714	1 836	1 956	2 006	1 889

Source: Yearbooks of Statistics 2001–2009.

109. In relation to the protection of victims of violent crimes, Law 6/98/M should be pointed out. A victim may apply for a special compensation when serious harm to such victim’s physical integrity results

from a violent act. In case of death, the victim's relatives who are entitled under civil law to alimony may also apply for such compensation. This monetary compensation is granted even if the offender's identity is not known or if, for any reason, the offender cannot be accused or convicted.

Article 7

Prohibition of torture

110. Article 28 (4) of the BL expressly prohibits torture or inhuman treatment.

111. In addition, the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as amended is applicable to the MSAR, and as mentioned, torture and other cruel, degrading or inhuman acts are criminalized under articles 234 to 237 of the CCM. For further detail on the criminal framework, please refer to the Addendum relating to the MSAR of China's latest report on the implementation of the said Convention (CAT/C/MAC/4). An update of available data is provided in the following table.

Complaints on the use of violence by agents of the police forces

<i>Criminal offences</i>	2006	2007	2008	2009
Homicide	0	0	0	0
Offences against physical integrity	14*	17*	6*	12*
Threat	5	7	4	2
Breaking and entering	0	0	0	0
Unlawful opening of correspondence or breach of telecommunications privacy	0	0	0	0
Unlawful detention	0	0	0	0
Death in police custody or in prison	0	1 ^a	1 ^b	1 ^c
Others	8	15	5	1
Total	27	40	16	16

Source: Security Forces Coordination Office, 2009.

* Data on offences against physical integrity committed off-duty.

^a One case of alleged torture by a police officer inside the police station that led to the death of the victim.

^b One case of physical integrity injuries committed by two prisoners that led to the death of one of them.

^c The case referred to a female prisoner who committed suicide in the Macao Prison Establishment.

112. From 2006 to 2009 there were 9, 8, 18 and 11 complaints lodged with CAC on the violation of human rights by agents of the police forces, mainly for offences against personal freedom and physical integrity. From these, one case was filed each year.

Protection of minors and patients in educational and medical institutions

113. A medical act may be performed only if the person concerned freely gives his/her informed consent. In cases involving surgery, consent must be given in writing. This consent is freely revocable until the moment the medical act is performed. If the patient is a minor, or lacks or has been deprived of legal capacity (due to mental illness or similar motive) to consent to medical intervention, no such act may be performed without the authorization of the patient's legal representative, that not being possible, of the competent court. For this purpose, the law requires the court to take into consideration the opinion of the minor, in accordance with his/her age and level of maturity (art. 5 (1), (3) and (4) and art. 6 (2) (3) of Decree-Law 111/99/M).

114. Performing a medical intervention or treatment without the consent of the patient constitutes a criminal offence, punishable with imprisonment up to three years or a fine (art. 150 of the CCM). The exceptions expressly specified in the law determine that the fact shall not be punishable whenever the obtaining of such consent might endanger the patient's life or health.

115. The CCM also punishes — by imprisonment of one to eight years — whoever performs sexually relevant acts with a person confined

and entrusted to him/her, or under his/her care, by taking advantage of his/her position, office or authority in a hospital, nursing home, health clinic or other establishment specialized in assistance, treatment, education, correction or detention (art. 160).

Protection of persons deprived of their liberty

116. Prison officers have the special duty of maintaining a relationship in terms of justice, correction and humanity with the prisoners (art. 22 of Law 7/2006).

117. The use of security measures inside the MSAR Prison Establishment is subject to strict requirements prescribed by law. The use of physical force against prisoners may only take place as a measure of last resort, in case of: (a) self-defence; (b) attempt to escape; (c) resistance through the use of force; or (d) disregard of a legitimate order. Of all the measures, the one that causes the least harm to the prisoner must be chosen and must be preceded, whenever possible, by a warning, except when aggression is imminent or is actually taking place (art. 72 (2), (3) and (4) of Decree-Law 40/94/M).

118. The use of firearms is permitted only in situations of necessity, duress or self-defence (art. 73 of Decree-Law 40/94/M). The use of firearms must always be preceded by a warning shot fired into the air, except when aggression by a prisoner is imminent or is actually taking place, and should cause the least possible harm. A prison officer may only use firearms when ordered to do so by a superior officer or, as seen above, in case of necessity in order to ward off an aggression, and also if an escape attempt is imminent, having first to make sure that the proper precautions are taken (art. 22 (15) of Law 7/2006).

119. When the use of physical force or of firearms is deemed warranted, the Director of the facility is immediately informed and must order, without delay, the necessary medical examinations of the prisoner(s) in question, in order to produce a written report regarding

the circumstances that may or may not have legitimized the use of such measures (art. 73 of Decree-Law 40/94/M).

120. Without prejudice to criminal responsibility, a prison officer who assaults, injures or disrespects another person at the workplace or when performing his duties also incurs in disciplinary sanctions. For the most serious offences, the corresponding disciplinary punishment is forced retirement or dismissal (art. 13 (1), (2) (a) of Decree-Law 60/94/M).

121. In relation to confinement in a disciplinary cell with the deprivation of the right to open space, it is important to note that the maximum period for the application of such measure is one month, and it is subject to other prerequisites that will be referred to below (art. 75 (1) (g) of Decree-Law 40/94/M).

122. The law expressly establishes that no prisoner may be submitted to medical or scientific experiments capable of causing harm to his/her health, even if his/her consent has been given (art. 45 (1) of Decree-Law 40/94/M).

123. Nevertheless, prisoners may be compelled to undergo medical examinations, treatments or forced feeding, provided, cumulatively, that: (a) the prisoner is in a situation which threatens his/her life or seriously endangers his/her health; (b) the measures do not pose a serious danger to his/her life or health; (c) the measures are decided upon and performed under medical supervision, without prejudice to the possibility of rendering first aid care whenever a doctor cannot be immediately reached; and (d) all reasonable efforts have been exhausted in order to obtain the prisoner's consent (art. 45 (2) of Decree-Law 40/94/M).

Prohibition of forced abortion/forced sterilization

124. Interruption of pregnancy is a criminal offence under article 136 of the CCM (the penalty ranges from two to eight years' imprisonment), except in the following circumstances: (a) under life-threatening circumstances pertaining to the woman; (b) to protect the pregnant woman's health (i.e. if

serious or permanent injury may arise); (c) foetal defect or high probability of foetal impairment; or (d) under serious indicia the pregnancy resulted from a crime against sexual freedom or self-determination. Interruption of pregnancy in the mentioned circumstances is only possible until the first 24 weeks of gestation (art. 3 of Decree-Law 59/95).

125. The verification of the circumstances that may render the interruption of pregnancy not punishable is certified in writing and prior to any intervention by a doctor. A different doctor shall perform or guide the medical intervention (art. 3 (2) of Decree-Law 59/95).

126. Any doctor who, due to negligence, is not in possession of the documents certifying such circumstances, and does not obtain them after the intervention, is punishable with imprisonment of up to 1 year (art. 4 of Decree-Law 59/95).

127. Pregnant women, or their legal representatives, ascendants or descendants or, in their absence, any close family members, in cases of minors under 16 or of mentally impaired persons, must give their consent in writing, whenever possible up to three days prior to the date of the medical intervention. If consent is unobtainable and if the pregnancy's interruption is deemed urgent, the doctor may decide according to the situation and must be supported, whenever possible, by the opinion of other doctor(s) (art. 3 (3), (4) of Decree-Law 59/95).

128. In the MSAR, there are no restrictions on the freedom of procreation. Therefore, there is neither a government policy nor any regulation for forced abortion and/or sterilization, either for men or for women. There is also no cultural tradition of forced abortion or sterilization.

129. No adult of either gender is prohibited from having voluntary sterilization surgery. In such case, the person in question must sign a document for purposes of torts liability. No authorization from or acknowledgement by anyone, including the spouse, is required.

Provisions that govern medical and scientific experimentation, and the donation, removal and transplant of human organs and tissues

130. Aiming at the protection of the dignity, integrity and identity of the person, Law 2/96/M was enacted to regulate the Donation, Removal and Transplant of Human Organs and Tissues. On the other hand, Law 4/96/M governs the Dissection of Human Cadavers and the Removal of Organs or Tissues for Teaching and Investigation Purposes.

131. The removal or transplant of human organs and tissues may be performed only pursuant to the freely given and clearly written consent of both the donor and the recipient. The donor has the right to medical assistance until he/she is fully recovered. The donor also has the right to be compensated for any injuries caused by the surgery.

132. The donation of organs and tissues by a minor is also subject to the authorization of the minor's legal representative. In addition, it also depends on the non-opposition of the minor or, if the minor has the capacity to understand and to express his/her free will, on his/her express consent (arts. 7 and 8 of Law 2/96/M).

133. Homicide committed with the aim of taking the victim's organs or tissues is considered homicide with aggravating circumstances (the penalty ranges from 15 to 25 years' imprisonment) and is punishable under article 16 of Law 2/96/M. The buying and selling of human organs or tissues is also a criminal offence under article 17 of the same Law, punishable up to three years of imprisonment. The same penalty incurs whoever performs illegal removal or transplant of human organs (art. 19). Whoever illegally removes organs or tissues from human cadavers is punishable with imprisonment up to two years or a fine up to 240 days (art. 20). In all cases, attempt is punishable.

134. Under article 11 of Law 2/96/M, the Committee of Ethics for Life Sciences was established, being competent, inter alia, to analyse and approve investigation projects, to define the criteria to certify cerebral

death, to issue recommendations on ethics issues related to the scientific developments in the domains of biology, medical sciences and health.

Article 8

Prohibition of slavery and forced labour

135. Although there is no specific constitutional prohibition of slavery, servitude or of forced or compulsory labour, such conducts are implicitly proscribed under a purposive interpretation of the BL, as being offensive to human dignity, which constitutes a fundamental and inviolable legally protected value of the MSAR legal order, expressly recognized in the BL (arts. 28 and 30).

136. On this subject-matter, it is important to recall that all main international treaties on slavery, forced labour, prohibition of worst forms of labour, and trafficking in persons are applicable in the MSAR (please refer to the list of treaties).

137. Moreover, article 72 (2) of the CC stipulates that no one shall be subject to the condition of slavery or servitude, notwithstanding one's agreement. Article 273 of the CC further establishes that any act or contract contrary to law and to public order — such as those involving elements of servitude or forced labour — is null and void.

138. On the other hand, the CCM provides for and punishes several crimes that are specifically related to the protection of personal freedom, sexual freedom and self-determination. In the domain of crimes against personal freedom, the most noted is slavery, established under article 153 of the CCM and punished by 10 to 20 years of imprisonment. Slavery is committed whenever the sale, transfer or acquisition of a person is made with the intention of reducing such person to the status or condition of a slave. Such crime does not imply economic or sexual exploitation, and covers all situations of diminishing a person to a “thing” used by the offender as his/her property.

139. Although prostitution *per se* is not a crime in the MSAR, the exploitation of prostitution is proscribed. An example is the crime of procurement, which is characterized as the instigation, favouring or facilitation of the practice of prostitution or of relevant sexual acts by another person, by taking advantage of the victim's abandonment or situation of necessity, either for the purposes of obtaining profit or as a way of life for the offender. Such crime is punishable by one to five years' imprisonment (art. 163 of the CCM). If the offender applies violence, a serious threat, trickery or a fraudulent scheme, or knowingly takes advantage of the mental incapacity of the victim, another crime is committed — aggravated procurement — punishable by two to eight years' imprisonment (art. 164 of the CCM).

140. The exploitation of prostitution is also punishable under the context of organized crime as provided for in article 8 of Law 6/97/M (Law against Organized Crime).

Trafficking in persons

141. In the field of the fight against trafficking in persons, it should be highlighted the adoption of Law 6/2008 that criminalizes autonomously trafficking in persons and establishes a comprehensive victim assistance and protection regime.

142. This law introduces a new provision in the CCM – article 153-A, under the title 'trafficking in persons', within the category of 'offences against personal freedom', immediately after 'slavery'. It is worth mentioning in this context that its scope of application is very broad. Extraterritorial jurisdiction and criminal liability of legal persons are established (art. 5(1)(b) of the CCM as amended by Law 6/2008 and art. 5 of Law 6/2008, respectively) and criminal liability is provided for regardless of whether the perpetrators are involved in an organized criminal group or are individual traffickers.

143. Furthermore, in what concerns the constitutive elements of the definition of the crime, this law reinforces child protection by establishing, in accordance with modern international concepts, that whenever the victim of the crime is a child, the element of means is not required (the elements of action and purpose being sufficient), as well as by imposing more severe penalties in case of trafficking in children and a specific aggravation when children under 14 years old are involved. This legal option recognizes the special need to protect children, taking into account their greater exposure to risk due to their vulnerable condition.

144. A Commission to follow up the Implementation of Dissuasive Measures against Trafficking in Persons, under the supervision of the Secretary for Security, was set up in September 2007 (Order of the Chief Executive 266/2007). This Commission is an inter-departmental public body with a multidisciplinary nature with a mandate to diagnose, evaluate and study the social aspects of trafficking in persons in the MSAR, to promote its sociological research and analysis, to issue recommendations and to monitor the activities of the departments which fight against trafficking in persons in the perspective of its prevention and of protection and social reintegration of the victims.

145. The Commission operates as a coordination forum, so as to improve mutual understanding and to help each department to fulfil its responsibilities. It has been actively involved in most of the actions carried out in connection with trafficking in persons, together with other government departments. For instance, in the running of awareness campaigns on trafficking in persons, in the setting up of 24-hour hotlines, shelter and assistance programmes for victims of trafficking and sexual exploitation, in the promotion of seminars and training, in particular those for law enforcement agents, in the planning/preparation of police forces and Health Bureau operational guidelines, etc. In this respect, the Commission has also been fostering partnership with other public entities, institutions and local NGOs in order to enhance mutual understanding of trafficking issues and the sharing of information.

Complaints regarding main crimes against the person (personal freedom, sexual freedom and sexual auto-determination and trafficking in persons)

<i>Crimes</i>	2001	2002	2003	2004	2005	2006	2007	2008	2009
Offences against personal freedom	348	347	400	382	378	385	412	323	261
Sex offences	49	48	53	51	80	67	75	96	95
Trafficking in persons*	-	-	-	-	-	-	-	6	14

Source: Yearbooks of Statistics 2001–2009 and Commission to Follow up the Implementation of Dissuasive Measures against Trafficking in Persons.

* Disaggregated data on trafficking in persons is only available since 2008.

Forced labour

146. Law 7/2008 that revoked the former Decree-Law 24/89/M, and which governs labour relations in the private sector, restates that labour relations are based on the principles of contractual freedom, good faith and equality. Its article 57 establishes the general principle of a fair wage; therefore, contractual freedom is circumscribed by the definition and calculation of what constitutes a “fair wage” and by compliance with standards of good faith without prejudice of the conditions prescribed by law to certain activity sectors.

147. Law 7/2008 also defines the duties of the employer in article 9, establishing among others the duty to respect the employee and to treat him/her with dignity, to provide good working conditions and to compensation in case of work-related accidents or disease. Child labour is not permitted unless the minor is 16 years old and it is limited to working activities which do not endanger (or create a potential risk of endangering) the physical, spiritual and moral development of minors. Exceptionally, minors under 14 years old may work with an authorization of the Labour Affairs Bureau (LAB) after consultation with the Education and Youth Affairs Bureau (EYAB) and under the prerequisite that the minor has

concluded the compulsory education programme. The rules concerning minors work are set forth in articles 26 to 32 of Law 7/2008.

148. The LAB is responsible for the implementation of the MSAR employment policies. Its Labour Inspection Division conducts on-site visits in order to detect irregularities as well as complaints from workers. During 2008, there were no reports of forced or compulsory labour.

Community service

149. Article 46 of the CCM provides for community service in lieu of criminal fines. This entails rendering free services, outside of normal working hours, at establishments, workshops or activities of the MSAR, or at public or private entities that the sentencing court considers to be of interest to the community. The court order shall be delivered at the request of the convicted person. Substitution of fines by work may be either total or partial, and ranges between 36 and 380 hours, including weekends and public holidays.

Prisoners' labour

150. Convicted persons are required to engage in labour in order to facilitate social rehabilitation. Prisoners' work is always remunerated and complies with the standard working hours established under general labour law; weekly rest and holidays are guaranteed (arts. 51 to 56 of Decree-Law 40/94/M). Further details on prisoners' work are given in this report in relation to article 10 of the Covenant.

Civil protection

151. As seen above, in exceptional circumstances requiring civil protection, such as dangerous situations and serious accidents, catastrophes or disasters, emergency measures may be adopted (Decree-Law 72/92/M). Any eventual restrictive measures on residents' rights should observe the criteria of necessity, proportionality and suitability for the intended objective and abide by the general principles of law.

Article 9

Right to freedom and security

General framework

152. The right to freedom and to the security of persons is a fundamental right at the very core of the principle – right of inviolability of human dignity, expressly enshrined under articles 28 and 30 of the BL.

153. Article 28 (2) of the BL guarantees that no one shall be subject to arbitrary or unlawful arrest, detention or imprisonment. Paragraph 3 of the same article prohibits unlawful search of the body and deprivation or restriction of personal freedom. Article 29 (1) of the BL establishes that “*Macao residents shall not be punished, unless their acts constitute a crime and they shall be punished for it as expressly prescribed by law at that time.*”

154. It should be stressed that the principles of legality, subsidiarity and necessity constitute key principles of the MSAR criminal justice system, whereby any measures which might deprive a person’s freedom may only be applied if expressly provided for in the law and only if deemed necessary and adequate to the circumstances of the case (art. 1 of the CCM).

155. The principle of legality is also expressly recognized in article 176 of the CPC, which affirms that any measure that totally or partially restricts the freedom of a person for procedural purposes must be applied in accordance with law. The application of such measures must also be in compliance with the principles of adequacy and proportionality as stated in article 178 of the CPC. They must be adequate for the purpose of crime prevention, according to the circumstances of the case, and proportional to the seriousness of the 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.

156. The qualification of a suspect as a defendant must precede the application of any procedural measure of a coercive nature, be it a measure which may restrain personal freedom or a pecuniary obligation — e.g. payment of bail — (art. 177 (1) of the CPC); from the moment of such qualification, the defendant is assured the exercise of a host of procedural rights and duties (art. 49 (1) of the CPC). Furthermore, the principle of the presumption of innocence enshrined in article 29 (2) of the BL is also enshrined in article 49 (2) of the CPC.

157. In accordance with article 179 of the CPC, the application of any procedural measure of a coercive nature may be ordered only by a judge and must, whenever possible and appropriate, be preceded by a hearing of the defendant. The defendant is informed of the consequences of non-compliance with the applied measures. Court orders imposing pretrial detention must be, with the defendant's consent, immediately communicated to a relative or to a trustworthy person named by the defendant, or to his/her lawyer.

158. The procedural measures admissible under the CPC are the following: declaration of identity and residence (art. 181); bail (art. 182); obligation to appear regularly before a judicial authority or a criminal police authority (art. 183); restrictive residence, prohibition of absence and contacts (art. 184); suspension of occupation, duties and rights (art. 185) and pretrial detention (art. 186). Article 188 sets forth the general prerequisites for the application of such measures. With the exception of the declaration of identity and residence, the application of procedural measures is limited to the following cases: (a) escape from prosecution or risk of such escape; (b) risk of disturbance of the investigation proceedings, particularly with regards to the obtaining of evidence; (c) risk of disturbance of the public order or of further criminal activity, such risk being, pondered on the basis of the nature or circumstances of the offence or of the defendant's personality.

159. Article 186 of the CPC establishes the exceptional or ultima ratio applicability of pretrial detention. The subsidiary nature of pretrial

detention means that it may only be applied if other procedural measures prove to be manifestly inadequate or insufficient. According to this article, pretrial detention may be applied if there is credible preliminary evidence pointing to a person having wilfully committed a crime punishable by a term of imprisonment exceeding three years, or if a crime has been committed by a person who has entered and remained illegally in Macao, or against whom surrender or expulsion proceedings have been instituted.

160. Furthermore, under article 196 of the CPC, procedural measures shall be revoked by a court order if they have been illegally applied — i.e. in contravention of the admissible cases prescribed by law — or if the circumstances that lawfully justified their application cease to exist, thereby rendering unwarrantable the application of the measure. The proceedings for revocation or modification of procedural measures may be initiated *ex officio* or at the request of the Procuratorate or the defendant. The termination of procedural measures of a coercive nature is governed under article 198 of the CPC.

161. Specifically in relation to pretrial detention, the judge re-examines on a quarterly basis the conditions which may, or may not, justify the continuation of such a measure (art. 197 of the CPC). The total length of pretrial detention pending a trial is established in article 199. The pretrial detention must be discontinued: (a) after six months without the detainee having been accused; (b) after 10 months, if pretrial investigation ends without a decision for committal to trial; (c) after 18 months, if no conviction has been delivered by a court of first instance; and (d) after two years, if no *res judicata* conviction has been delivered.

162. Detention *per se*, on the other hand, is a measure of a merely preventive nature, as opposed to procedural measures of a coercive nature, and especially pretrial detention. According to article 237 of the CPC, detention is possible under the following situations: (a) to ensure that the detainee, within a maximum period of 48 hours, is brought before the court for summary trial or to be presented to a competent judge for a preliminary hearing or a hearing for the application of procedural measures

of a coercive nature; (b) to ensure that the detainee is promptly presented before a judge; (c) to notify the detainee of a judgement delivered in absentia; or (d) to ensure execution of a conviction.

163. Detention in cases of *flagrante delicto* may occur whenever an offence, punishable by imprisonment, is being committed or has just been committed, irrespective of the alternative applicability of a fine. A detention may be ordered and carried out by a judiciary authority, by the police or by any person (citizen's arrest), in the latter case, only if detention by the authorities is not immediately feasible and if the authorities cannot intervene in a timely fashion (arts. 238 and 239 of the CPC). The grounds for *flagrante delicto* are enumerated in article 239 of the CPC.

164. In situations other than *flagrante delicto*, detention is only possible with a detention warrant issued by a judge or by the Procurator's Office, but only in cases where pretrial detention is admissible. Exceptionally, criminal police authorities may also issue detention warrants whenever pretrial detention is *in casu* admissible and there are justified grounds for fearing that the suspect poses a risk of escape, provided that such issuance is urgent in view of the impossibility of timely intervention by the competent judiciary authorities (art. 240 of the CPC).

165. Detention warrants are issued in triplicate and must contain the suspect's identification, a succinct indication of the facts that motivate the detention, and the respective legal grounds. Detention warrants must be validated with the signature of the issuing authority. Warrants not validated as prescribed are null and void (art. 241 of the CPC). Under article 242 of the CPC, any criminal police authority which has placed a person under detention is duty-bound to immediately inform the judge or the Procurator's Office, whichever is appropriate.

166. In the event of mistaken identity, in situations not covered by the law, or in cases where custody has become unnecessary, the competent entity must order the immediate release of the detainee (art. 244 of the CPC).

Minors

167. The age of criminal responsibility in the MSAR is 16 (art. 18 of the CCM). Child offenders aged between 12 and 15 are subject to an educational regime and may be deprived of liberty, by means of compulsory commitment at the Young Offenders Institute (YOI), if they have committed a criminal offence carrying a sentence of a maximum term of over three years of imprisonment or if they have repeatedly committed criminal offences or misdemeanours punishable by imprisonment terms, or if other educational measures prove to be inadequate (arts. 4(1)(8), 25(2)(1) and (2) of Law 2/2007). The social protection regime is applicable to children aged under 12 who have committed a criminal offence (Decree-Law 65/99/M).

168. The juvenile justice system regulated under Decree-Law 65/99/M was partially revoked by Law 2/2007. It should be highlighted that the measures provided for in Law 2/2007 are of a solely educational nature, aimed at minors' socio-educational needs and social integration. This Law stresses that the execution of commitment measures should respect a minor's personality and be impartial, without any discrimination in terms of descent, sex, race, language, religion, political persuasion, ideological belief, educational level, economic status or social condition. Furthermore, the Law details the procedures for dealing with the minors in the YOI and the most serious disciplinary action is placing them into an individual bedroom during the night period for at the most a month, without prejudice to counselling concerning their education and normal activities.

169. This new law introduced the concept of restorative justice. To this end, police cautioning can be applied to child offenders as an alternative to prosecution. Moreover, many community-based measures were adapted to serve the purpose of youth correction, such as community service order, restorative order, probation order and youth halfway homes. Judges must consider all the above measures prior to compulsory commitment, which is always used as the last resource.

170. Under Law 2/2007, each minor is given an assessment, with the purpose of appraising if it is necessary to review the measure imposed on

that minor, and the judicial decisions that have ordered the application of commitment measures require a regular mandatory review at the end of the period of half a year, counting from the day the last decision was rendered by the judge. Also, the interval for periodic review was shortened from a year to half a year. Furthermore, such a review may take place at any time if: (a) the minor has once again committed a criminal offence or misdemeanour or the minor's commission of such offence is recognized after the last decision; (b) it is needed in terms of the education of the minor; or (c) the measure applied cannot be carried out.

171. Minors of 16 and 17 years old under the custody of the Prison Establishment are placed separately according to gender and age. Prisoners aged 21 or under do not come into contact with those aged over 21 (art. 7(1)(2) of Decree-Law 40/94/M). This establishment, according to young offender's educational level and interest, organizes courses and vocational training activities for all prisoners to participate voluntarily, in order to facilitate their physical and mental well-being and social reintegration. Pursuant to article 58 of Decree-Law 40/94/M, all prisoners are entitled to courses of compulsory education and other educational activities.

172. The subject-matter of children deprived of their liberty is exhaustively addressed in part II of China's report on the application of the International Convention on the Rights of the Child to the MSAR.

Compulsory internment of persons suffering from a mental illness

173. According to article 186 (2) of the CPC, if a person subject to pretrial detention appears to be suffering from a mental illness, the court may order the affected person to be placed in a psychiatric establishment or a similar health care establishment for the duration of the disorder. Before the decision is delivered, the judge shall hear the defendant and, whenever possible, a relative. This measure is applied in order to prevent risks of escape and the continuation of criminal activity. The Legal Framework for Compulsory Internment of Persons with Severe Mental Illness is governed by Decree-Law 31/99/M.

The right of appeal

174. All defendants enjoy the fundamental right of appeal against the decision to apply or to maintain procedural measures of a coercive nature. The appeal must be adjudicated within 30 days of filing (art. 203 of the CPC).

Habeas corpus

175. The right to apply to the court for the issuance of a writ of habeas corpus in the event of arbitrary or unlawful detention or imprisonment is expressly guaranteed under article 28 (2) of the BL. This general remedy available to all and any person subject to an unlawful restriction of one's freedom is covered under articles 204 to 208 of the CPC. Through this writ, a judicial hearing on the legality of the arrest, detention or imprisonment must be held immediately, followed by an order for release, if appropriate.

176. According to article 204 of the CPC, a person unlawfully detained by order of an authority may apply to the Court of Final Appeal for an immediate judicial hearing on grounds of: (a) expiration of the time for a suspect to be presented to a judicial authority; (b) continuation of detention/custody in a situation other than those permitted by law; (c) the detention being conducted or ordered by an incompetent authority; and (d) the person being detained for reasons not permitted by law.

177. The petition for habeas corpus may be submitted directly by the detainee or prisoner, or by another person. Hindering the exercise of the fundamental right of habeas corpus is punishable by imprisonment up to three years or by a fine (arts. 204 (3) and 206 (2) of the CPC in conjunction with article 347 of the CCM).

178. The right to petition for habeas corpus due to unlawful imprisonment (arrest) is established in article 206 of the CPC. The grounds for such an application are: (a) the arrest having been conducted or ordered by an incompetent authority; (b) the arrest having been ordered for reasons not recognized by law; or (c) the arrest being in effect beyond the limits

established by law or by the court order. The petition is submitted to the Court of Final Appeal. The decision must be delivered within eight days of filing (art. 207 of the CPC).

179. Article 208 of the CPC in conjunction with article 333 (3) and (4) of the CCM punishes with imprisonment from one to eight years whomever wilfully fails to comply with the judgements of the Court of Final Appeal concerning treatment of a petitioner of habeas corpus. In situations of gross negligence, the punishment is two years' imprisonment or a fine.

180. According to data from the Court of Final Appeal, between 2001 and 2008, there was a total of 10 habeas corpus petitions (2001 – 1; 2003 – 1, 2004 – 1, 2005 – 3, 2006 – 2 and 2007 – 1 and 2008 – 1). From these petitions, two were adjudicated favourably.

The right to compensation for unlawful arrest or detention

181. The right to compensation for unlawful arrest or detention is fully recognized under articles 209 and 210 of the CPC.

182. These provisions also apply if the pretrial detention, though not unlawful, has been proven to be unjustified due to serious error of fact and the deprivation of freedom has caused the detainee serious harm and anomalous damage. However, it does not apply if the detainee contributed to the error, namely through deceit, fraud or misrepresentation, or by way of negligence.

Article 10

Right to dignity and humane treatment of persons deprived of their freedom

Principle of human dignity and humane treatment of all persons deprived of their freedom

183. In the MSAR, the application of measures depriving personal freedom abides by general principles of law enshrined in the BL (art. 30) and in the Prison Establishment Law, Decree-Law 40/94/M.

184. As mentioned before, the respect for human dignity and its corollary, the humane treatment of persons deprived of their freedom constitute fundamental values of the MSAR criminal justice system. For this reason, prisoners cannot be subject to inhuman or degrading treatment or punishment, including medical or scientific experimentation, nor to hardship or to constraint other than those which result directly from the deprivation of freedom.

185. The respect for the principle of non-discrimination on the grounds of descent, gender, race, language, territory of origin, religion, political or ideological beliefs, educational level, economic status or social condition of the prisoner is also guaranteed. A prisoner's personality shall be respected and all prisoners shall be treated with absolute impartiality (art. 2 (1) of Decree-Law 40/94/M).

186. Persons who are subject to a conviction or any other restrictive measure involving the deprivation of freedom shall continue to enjoy their fundamental rights, except with respect to those restrictions to rights inherent from such deprivation and from the requirements of enforcement (art. 3 of Decree-Law 40/94/M).

Prison system

General description

187. The main aim of the Prison Law is the social rehabilitation of the prisoner. Prisoners shall have the freedom to enjoy fundamental rights, except those derived from the nature of the prison system.

188. The MSAR Prison system is regulated under the: (a) Prison Law (Decree-Law 40/94/M); (b) Regime on the Enforcement of the Imprisonment and Security Measures of Internment (Decree-Law 86/99/M); (c) Prison Establishment Regulation (Order 8/GM/96); (d) Organic Structure of the Prison Establishment (Administrative Regulation 25/2000); (e) Rules governing the Status of Prison Officers (Law 7/2006) and (f) Disciplinary Regime of the Prison Officers (Decree-Law 60/94/M).

189. Prison officers are responsible for surveillance at the Prison Establishment, in particular for ensuring security and order, and shall maintain a just, firm and humane relationship with the prisoners (arts. 2 and 22 of Law 7/2006).

190. The MSAR sole existing Prison Establishment comprises a prison complex with a special security detention area. The latter area houses prisoners belonging to the high security category: prisoners who are subject to the regime of absolute non-communication or restricted communication with the outside world, and prisoners to whom a special security measure of solitary confinement has been applied (art. 2 (3) of Administrative Regulation 25/2000).

191. Different types of cells are provided for prisoners, who are separated based on gender and age, so that young prisoners aged between 16 and 21 may not enter into contact with adults, as previously mentioned. Prison Establishment facilities must also guarantee the segregation of detained persons (i.e. those subject to pretrial detention) from convicted prisoners (art. 7 of Decree-Law 40/94/M and article 2 (2) of Administrative Regulation 25/2000). The former enjoys the right of presumption of innocence, being therefore treated accordingly.

192. Prisoners are divided into the following categories: defensive type (high security), semi-trustworthy type (medium security) and trustworthy type (low security). To determine such classification, some factors are taken into account, particularly age, primary delinquency or recidivism, duration of the measure, prisoner's physical and mental health, disciplinary record, previous attempts to escape, drug addiction, sexual orientation, relation with the outside world, type of crime committed and its violent nature (art. 8 (1) and (2) of Decree-Law 40/94/M).

193. Other aspects for consideration are the specific needs of the prisoner, security reasons, and academic or employment reasons that might be relevant for the prisoner's social rehabilitation, as well as the possibility of carrying out a common treatment programme and the need to avoid

harmful influences (art. 8 (3) of Decree-Law 40/94/M). In this context, it should be noted that all prisoners benefit from an individual rehabilitation programme, tailored to each prisoner's specific needs (art. 9 of Decree-Law 40/94/M).

194. The housing of prisoners also reflects these distinctions: high security prisoners are confined in single cells located in the special security detention area; medium security ones are held in cells for three individuals, and low security prisoners are accommodated in dormitories shared by eight prisoners (art. 11 of Decree-Law 40/94/M and article 9 (1) of Order 8/GM/96).

Number of prisoners and persons on pretrial detention

<i>Years</i>	<i>Prisoners</i>		<i>Prisoners on pretrial detention</i>		<i>Total</i>
	<i>M/F</i>	<i>F</i>	<i>M/F</i>	<i>F</i>	
2000	672	51	175	20	847
2001	688	64	198	30	886
2002	794	92	134	23	928
2003	786	90	127	10	913
2004	766	70	101	9	867
2005	704	73	193	13	897
2006	665	70	194	16	859
2007	604	60	208	28	812
2008	592	59	320	49	912
2009	623	64	307	63	930

Source: Yearbook of Statistics 2009.

195. Adequate facilities, clothing, food and basic hygienic conditions, health services and care are guaranteed to all prisoners. Prisoners have

the right to receive primary health care free of charge, as well as further medical treatment. Prisoners are also subject to frequent and periodical medical examinations to trace any physical or mental problem (art. 41 et seq. of Decree-Law 40/94/M and art. 40 et seq. of Order 8/GM/96). Medical care is also provided in health care establishments whenever necessary (arts. 86 (1) and 90 of Decree-Law 40/94/M). Psychological support services are also provided in accordance with prisoners' needs, including adequate examinations and therapies, either individual or group oriented (art. 42 of Decree-Law 40/94/M).

196. Drug addicts are assisted and treated, being housed, whenever possible, in specially designated areas (art. 44 of Decree-Law 40/94/M).

197. In relation to pregnant prisoners and those having experienced abortion, specialized assistance and treatment are provided by doctors. A mother has the right to keep custody of her child until the age of 3 and the right to be housed in a separate cell. Medical and social assistance for the child is also provided (arts. 43 (1) and 84 (2) of Decree-Law 40/94/M and art. 43 (1) (2) of Order 8/GM/96).

198. Prisoners are free to profess religious beliefs and have the right to religious worship. Prison facilities must assure the necessary means for assistance by ministers of the prisoners' professed faith (art. 37 of Decree-Law 40/94/M and art. 44 of Order 8/GM/96).

199. Prisoners have access to cultural activities, recreation and sports, aimed at their psychological well-being and social rehabilitation. They also have access to a library, newspapers, radio and television. Assistance from social workers is regularly provided.

200. Depending on their sentence and category, prisoners may be entitled to special permits to leave temporarily the Prison Establishment. This regime as well as the rules related to prisoners on parole is established in Decree-Law 86/99/M, on the Enforcement of the Imprisonment and Security Measures of Internment.

Numbers of prisoners released on parole

<i>Gender</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
M	138	126	94	131	110	140	156	162	136	133
F	8	15	14	33	29	15	23	31	28	23
MF	146	141	108	164	139	155	179	193	164	156

Source: Yearbook of Statistics 2009.

Contacts with the outside world

201. Prisoners have the right of visitation during normal visiting hours, which should never be less than one per week. Visits by lawyers or by other persons, when deemed to be of an urgent nature or when a legitimate interest is invoked, may be authorized outside normal visiting hours. In order to guarantee the right to privacy, visits by lawyers and notaries occur in private rooms. Visits to prisoners are regulated under articles 21 to 29 of Decree-Law 40/94/M and articles 16 to 21 of Order 8/GM/96.

202. Visitors, including lawyers, may be subject to searches for security reasons. A lawyer may only be searched if there are credible reasons to suspect that the former may handover potentially dangerous objects that the prisoner is not supposed to receive. However, no control may be carried out over written materials and documents, or the contents thereof that the lawyer may bring along (art. 25 of Decree-Law 40/94/M).

203. Prisoners also have the right to send and to receive correspondence, subject to inspection or censorship as provided by law. The withholding of correspondence is always communicated to the prisoner (arts. 30 and 31 of Decree-Law 40/94/M and article 22 of Order 8/GM/96). Censors must keep the content of all prisoners' correspondence secret, with the exception of information pertaining to the order and security of the Prison Establishment, the prisoners' social rehabilitation, and the prevention and repression of criminal activity (art. 32 of Decree-Law 40/94/M).

204. Prisoners are allowed to make phone calls and send telegrams, if such are deemed to be essential by social workers. This right is subject, with the necessary adjustments, to the restrictions applicable to visits and correspondence, respectively (art. 35 of Decree-Law 40/94/M).

205. The rights and duties of detainees are the same as those of convicted prisoners, except to the extent that the former do not have to wear uniforms, their correspondence is not inspected or censored and they are not under the obligation to take part in prison work. Moreover, by an order of the competent judiciary authority, detainees may be subject to absolute or strict non-communication, the latter only prohibiting them from communicating with certain persons. These confinement measures take place in the special security detention area (art. 85 of Decree-Law 40/94/M and art. 2 (2) and (3) of Administrative Regulation 25/2000).

Measures to provide education, vocational guidance and training, and work programmes for prisoners

206. Illiterate prisoners under 25 years of age or who have not finished compulsory education have the right to attend classes of the respective educational programme either in Chinese or Portuguese, as well as to participate in other educational activities organized by the Prison Establishment. The Prison Establishment also provides for prisoners' access to remote educational courses, taught through correspondence, radio or television (art. 58 of Decree-Law 40/94/M).

207. On the other hand, the Prison Establishment promotes adequate training and professional improvement programmes aimed at creating, maintaining and developing prisoners' capacities to carry out an activity that might facilitate their social rehabilitation (arts. 51 and 56 of Decree-Law 40/94/M). Thus, prisoners enjoy work and professional training, together with teaching, education and re-education.

208. The educational activities include primary and secondary education as well as language courses, whereas the professional training activities comprise professional qualification certificate programmes, such

as library management, professional make-up, magazine editing and varied workshops, for instance, on handicrafts, carpentry, hardware, manufacture of garment and shoes, laundry, maintenance of cars, etc.

**Numbers of prisoners who attended activities
in the MSAR Prison Establishment**

<i>Type of activities</i>	<i>Gender</i>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Educational	M	118	132	170	169	183	149	151	142	160	156
	F	39	25	21	35	33	44	43	39	82	31
Professional training	M	146	129	103	126	125	130	158	115	97	228
	F	35	30	36	33	43	35	45	18	20	38

Source: MSAR Prison Establishment, 2009.

209. As previously stated in relation to work, all convicted prisoners are under the obligation to engage in labour inside or outside the Prison Establishment facilities. However, such obligation shall respect prisoners' dignity and physical integrity and shall be performed in a healthy and safe working environment, with protection from work-related accidents and diseases. Prison Establishment facilities shall follow the standard conditions of occupational health and safety, as well as the protection of accidents at workplaces as provided by law (arts. 51 and 53 of Decree-Law 40/94/M).

210. Prisoners above 65 years of age and pregnant prisoners or those who are about to deliver are exempt from the duty to work (art. 52 (4) of Decree-Law 40/94/M).

211. Regarding work placement, several factors are considered, such as prisoners' physical and intellectual capabilities, professional qualifications and personal expectations, as well as the duration of imprisonment and previous work experience. The choice of work envisages the creation of conditions for future employment after release and to promote social rehabilitation (art. 51 (4) of Decree-Law 40/94/M).

212. The social rehabilitation of released prisoners is the responsibility of the Division of Social Rehabilitation (DSR) of the Legal Affairs Bureau, which provides for the creation of temporary shelters and for labour, education and rehabilitation of ex-convicts (art. 3 (1) of Administrative Regulation 36/2000). This Division is responsible for studying, proposing and implementing policies of re-education and social rehabilitation.

213. Ex-convicts benefit from temporary accommodation services in “Macao Sin-Tou Half Way Home”, a temporary shelter financially supported by the Legal Affairs Bureau and managed by the NGO Macao Caritas. Several activities are provided to them by the DSR in cooperation with local NGOs aimed at their social and community reintegration, such as vocational training, Employment Arrangement, Family Relationship Enhancement, Adaptation to life, Family Relationship Enhancement, drug treatment.

Application of disciplinary and special security measures within Prison Establishment facilities

214. Prisoners shall abide by certain rules of conduct aimed at creating a sense of responsibility among them and at maintaining order and security. In case of disobedience or violation of such rules, prisoners shall be subject to disciplinary or special security measures. The regime of the disciplinary and special security measures at Prison Establishment facilities is established in Decree-Law 40/94/M.

215. The disciplinary measures are listed below according to their degree of seriousness: (a) private or public reprimand; (b) partial or total loss of privileges for a period not exceeding three months; (c) loss of the right to engage in recreational and sports activities for a period not exceeding two months; (d) prohibition of use of money or of keeping objects of personal gain for a period not exceeding three months; (e) solitary confinement in an ordinary cell for up to a month, without authorization to leave such cell from one to seven days, and (f) internment in a disciplinary cell for a period not exceeding one month, without access to the outdoors (art. 75 (1) of Decree-Law 40/94/M).

216. The choice of disciplinary measures, the application of which is decided by the Director of the Prison Establishment, shall be determined according to the seriousness of the offence, the prisoner's behaviour and his/her personality and is always preceded by an inquiry, during the course of which the prisoner and all other persons, who might supply useful information, shall be heard. The decision and the respective grounds are communicated in writing to the prisoner by the Director (arts. 75 (3), 77 and 79 of Decree-Law 40/94/M).

217. Before the application of a disciplinary measure, and depending on its nature, a doctor must examine the prisoner in question. The disciplinary cells must be habitable and certified by the doctor of the facility, in particular with respect to furniture, area, ventilation and illumination for reading (art. 76 of Decree-Law 40/94/M).

218. Prisoners subject to internment in a disciplinary cell 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 authorization has been given to that effect by the Director (art. 78 (3) and (4) of Decree-Law 40/94/M).

219. Special security measures may only be authorized under exceptional circumstances, provided that other less onerous measures are considered to be insufficient to prevent the risk of serious disturbances to the order and security of the Prison Establishment. These measures may only be applied if there is a serious risk of escape or of the commitment of violent acts by or against the prisoner (art. 66 of Decree-Law 40/94/M). The measures chosen shall be proportional to the risk posed by the situation in hand and shall be maintained as long as the corresponding risk persists.

220. The following special security measures may be applied at Prison Establishment facilities: (a) search; (b) prohibition of use or seizure of certain objects; (c) solitary confinement; (d) use of handcuffs; (e) use of physical force; and (f) use of firearms (art. 65 of Decree-Law 40/94/M).

221. The Director is the competent authority for the application of these measures. However, in cases of imminent danger, the application of said measures may be ordered by prison officers carrying out duties within a specific area of the correctional Prison Establishment, such order being subject to the immediate confirmation by the Director (art. 67 of Decree-Law 40/94/M).

222. Moreover, prisoners may be deprived of the right to receive visits and/or correspondence, if the exercise of such rights constitutes a risk or a potential risk to the order and security of the Prison Establishment, or may have a negative influence on the prisoner or on his/her social rehabilitation.

223. Solitary confinement may only be applied for reasons intrinsic to the person of the prisoner and if, and only if, other special security measures are revealed to be inoperative or inadequate to tackle the seriousness or nature of the situation (art. 70 (1) of Decree-Law 40/94/M).

224. The application of the measure of solitary confinement for a period exceeding 30 days requires the confirmation of the entity supervising the Prison Establishment (art. 70 (2) of Decree-Law 40/94/M).

225. Prisoners subject to solitary confinement must be frequently visited by the doctor of the facility, who in turn must inform and if necessary propose the substitution of the enforced measure on grounds of the prisoner's health or physical or mental integrity (art. 70 (3) of Decree-Law 40/94/M).

226. It is worth mentioning that special security measures may never be applied as disciplinary measures (art. 66 (4) of Decree-Law 40/94/M).

Type of incidents occurred in the MSAR Prison Establishment

<i>Incidents</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Possession of unauthorized objects	37	73	19	52	46	81	37	26
Destruction or damage of prison property	15	51	30	34	22	7	3	1

<i>Incidents</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Physical assault	3	0	0	1	1	27	19	23
Unauthorized correspondence	46	53	42	4	20	52	22	19
Extortion/threat	4	0	0	1	0	2	0	3
Bad behaviour	101	63	79	95	52	77	37	22
Total	206	240	170	187	141	246	118	94

Source: MSAR Prison Establishment, 2009.

Number of prisoners subject to disciplinary measures

<i>Categories</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Isolation in disciplinary cells and deprivation of right to leave their cells for exercise or relief	60	82	63	57	35	38	63	32
Isolation in ordinary cells and deprivation of right to leave their cells for exercise or relief	76	51	59	53	14	13	42	51
Prohibition of visits	0	1	0	0	2	0	0	1
Individual reprimand	63	98	56	6	2	2	52	4
Prohibition of communication	2	0	0	0	0	0	0	0
Deprivation of right to participate in entertainment or group activities	7	8	0	0	0	0	0	0
Global reprimand	0	0	2	0	0	0	1	2
Total	208	240	180	116	53	53	158	90

Source: MSAR Prison Establishment, 2009.

Effective means to ensure prisoners' rights

227. Effective legal means are provided to prisoners enabling them to ensure that both their fundamental rights and that the rules applicable

to the Prison Establishment are respected. Prisoners are informed of their rights, in particular the right to complain and to petition, and of the Prison Establishment rules (art. 92 of Decree-Law 40/94/M and art. 3 of Order 8/GM/96). Prisoners may complain of an unlawful order or bring any matter before the Director of the Prison Establishment, prison officers and prison inspectors (art. 80 of Decree-Law 40/94/M). This right is reinforced under article 6 (2) of Order 8/GM/96: prisoners may complain or file a petition to judicial authorities, to the Board of the Prison Establishment, and to prison officers, prison inspectors and other entities who are legally entitled to address the subject of the petition.

228. All complaints and petitions must be immediately forwarded to the Secretary for Security, which has the duty to deliver a decision promptly. Prisoners must be notified in writing of the decision as well as their respective grounds, within eight days (art. 81 of Decree-Law 40/94/M and art. 6 (3) of Order 8/GM/96).

229. Prisoners subject to the measure of internment in a disciplinary cell for a period exceeding eight days may, within two days of the notification of such measure, present an appeal in writing to the competent court. The appeal suspends the application of the measure from the eighth day of internment, if the appellate decision is still pending at that time (art. 82 (1) and (2) of Decree-Law 40/94/M). The judge shall hear the prisoner at least 48 hours before delivering the decision of maintaining, reducing or substituting the measure.

230. According to data from the Prison Establishment, there is no record of prisoners' complaints until 2005. In 2006, three prisoners (male) complained of physical aggression by prison officers. After an inquiry, the cases were dismissed for lack of evidence. There is no record of prisoners' complaints in relation to the years 2007 and 2008.

231. The Commission for Disciplinary Control of the Security Forces and Services of Macao (CFD), composed of five persons, three LA deputies and two citizens of recognized merit, has the main task of

analysing individual's complaints, inter alia, related to police misconduct, including excessive use of force and abuse of powers and procedures, monitoring and issuing recommendations, accordingly (Order of the Chief Executive 14/2005).

232. From 2005 to 2008, there is no record of complaints related to misconduct of prison officers.

Juvenile justice system

233. As mentioned in paragraphs 165 et seq., minors who have committed an act qualified as a criminal offence under the law are subject to an educational regime.

Overview of juvenile offenders of YOI

	Gender	2004	2007	2008	2009
As at 1 January	MF	72	80	46	50
	M	60	62	42	39
	F	12	18	4	11
Entered during the year	MF	30	30	34	29
	M	17	27	23	23
	F	13	3	11	6
Released during the year	MF	29	64	30	28
	M	24	47	26	23
	F	5	17	4	5
As at 31 December	MF	73	46	50	51
	M	53	42	39	39
	F	20	4	11	12

Source: Yearbook of Statistics 2009.

234. The YOI is the entity under the Legal Affairs Bureau responsible for the teaching, education and re-education, vocational guidance and training of juvenile offenders. The EYAB assists the YOI in providing basic education.

235. The DSR also participates in the educational activities and contributes to juvenile offenders' dignified reintegration into community life, by providing assistance to minors not under internment measures (arts. 3 (1) and 12 of Administrative Regulation 36/2000). To this end, the DSR acts in close collaboration with the YOI and the MSAR Prison Establishment. The DSR organizes, individually or in co-operation with other associations, leisure initiatives for the minors, such as visits to museums and exhibitions, summer camps and field trips, among other activities. These initiatives reinforce friendship ties between the participating minors and broaden their interests.

236. As mentioned above, young prisoners aged between 16 and 21 are segregated from adults, both groups being housed in separate blocks (art. 7 (2) of Decree-Law 40/94/M).

**Adolescent prisoners and those on pretrial detention
in the MSAR Prison Establishment**

<i>Years</i>	<i>Prisoners</i>		<i>Pretrial detention</i>		<i>Total</i>
	<i>MF</i>	<i>F</i>	<i>MF</i>	<i>F</i>	
2002	114	10	28	4	142
2003	123	9	13	2	136
2004	115	6	17	1	132
2005	96	6	37	0	133
2006	90	8	14	2	104
2007	63	5	23	2	86
2008	56	3	63	9	119
2009	79	3	59	11	138

Source: MSAR Prison Establishment, 2009.

237. Detailed information is provided in part II of China's report on the application of the International Convention on the Rights of the Child, as previously mentioned.

Psychiatric compulsory internment

238. As previously mentioned, Decree-Law 31/99/M establishes the Legal Framework for Compulsory Internment of Persons with Severe Mental Disorders.

239. A court may order the compulsory psychiatric internment of a prisoner suffering from a severe mental disorder, if such condition, without proper treatment, may put himself/herself and/or others at risk. The period of internment in the health establishment shall be limited to the necessary time for treatment and may not exceed the term of imprisonment (art. 10 of Decree-Law 40/94/M). The court may also order the compulsory internment of a person not liable to criminal responsibility, under the circumstances provided for in article 83 of the CCM (art. 18 of Decree-Law 31/99/M).

240. An interned person must be informed of his/her rights, inter alia, of the reasons for his/her internment and of his/her right to be assisted by a lawyer. The interned person shall attend, whenever possible, hearings and proceedings (arts. 9 and 10 of Decree-Law 31/99/M). The right to judicial appeal, the order for compulsory internment or its maintenance is established under article 10 of Decree-Law 31/99/M.

241. Anyone deprived of his/her freedom due to compulsory internment shall be treated in a manner respectful for his/her individuality, dignity and privacy. Rights such as the right to adequate accommodation and food, to communicate with the outside world and to be visited or to vote, are guaranteed under articles 4 and 10 of the said Decree-Law. When receiving medical treatment, the person suffering from a mental disorder shall be informed of the proposed therapy, the respective predictable effects and other possible treatments.

242. The review of the decision to intern is mandatory, irrespective of any request to that effect, two months after commencement of the internment or the decision that maintained its application, whichever the

case (art. 17 (2) of Decree-Law 31/99/M). As soon as the reasons for the psychiatric compulsory internment have ceased to exist, such measure ceases, and the competent court is immediately informed of the fact (art. 16 of Decree-Law 31/99/M).

Article 11

Prohibition of imprisonment for the non-fulfilment of a contractual obligation

243. In the MSAR, there is no imprisonment or any other criminal penalty for the non-fulfilment of a contractual obligation. Article 72 (4) of the CC states that no one may be detained or imprisoned for the non-fulfilment of a contractual obligation. As such, any penalties resulting from breach of contract or non-compliance with contractual obligations fall exclusively under civil law.

Article 12

Freedom of movement

Freedom of movement, freedom to choose residence and freedom to leave any country or territory, including the MSAR

General framework

244. According to article 33 of the BL, MSAR residents shall enjoy, without discrimination, freedom of movement within the MSAR and freedom of emigration to other countries and regions, as well as freedom to travel, to enter and leave Macao, and shall have the right to obtain travel documents in accordance with law. Residents of Macao shall not be subject to limitations to these rights unless prescribed by law.

245. Due to its constitutional and autonomic status, the MSAR adopted the residency criterion, in lieu of nationality, for the enjoyment of such

rights. Accordingly, the BL distinguishes between permanent and non-permanent residents (art. 24). Political rights (the right to vote and to stand for election) are enjoyed only by permanent residents (art. 26 of the BL).

246. All MSAR permanent residents enjoy the right of abode, which includes the right to freely enter and leave the MSAR, to stay in the MSAR without being subject to any condition or expulsion order. This right is enunciated in Law 8/1999. These residents shall be qualified to obtain permanent resident identity cards.

247. Permanent residents of the MSAR shall be: (a) Chinese citizens born in Macao before or after the establishment of the MSAR and their children of Chinese nationality born outside Macao; (b) Chinese citizens who have ordinarily lived in Macao for a continuous period of not less than seven years before or after the establishment of the MSAR and their children of Chinese nationality born outside Macao after the former have become permanent residents; (c) Portuguese who were born in Macao and have taken Macao as their place of permanent residence before or after the establishment of the MSAR; (d) Portuguese who have ordinarily lived in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the MSAR; (e) Other persons who have ordinarily lived in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the MSAR; (f) Persons under 18 years of age born in Macao of those residents listed in category (e) before or after the establishment of the MSAR (art. 24 of the BL and art. 1 of Law 8/1999).

248. Non-permanent residents of the MSAR are those who are authorized to live in Macao and shall be qualified to obtain Macao identity cards in accordance with the laws of the MSAR, but have no right of abode (art. 24 (4) of the BL and art. 3 of Law 8/1999).

249. Article 4 (2) of Law 8/1999 determines that the following persons are not considered MSAR residents: (a) those who illegally enter

into Macao; (b) those who illegally stay in Macao; (c) those who only have a stay permit; (d) those who stay in Macao as a refugee; (e) those who stay in Macao as non-resident workers; (f) those who are members of a consular mission, not locally employed; (g) those who, after the issue of Law 8/1999, were subject to a conviction with force of *res judicata* or to pretrial detention (unless if later acquitted).

250. As a result, MSAR residents shall be those that legally live in Macao and have in Macao their usual place of residence. The regime governing the entry, stay and residence in Macao is established in Law 4/2003 and Administrative Regulation 5/2003.

251. Applications for residence permits are addressed to the Chief Executive and must state, inter alia, the applicant's professional occupation or the one that he/she wishes to engage in Macao, aims and feasibility of stay, means of subsistence, nuclear family (if any) and should also include, among other documents, a valid travel document, a former residency certificate, a criminal record, and a formal declaration that he/she shall abide by the laws of the MSAR (art. 9 of Law 4/2003 and arts. 14 and 15 of Administrative Regulation 5/2003).

252. The applicant for residency shall have to name a reliable sponsor, who must be a MSAR permanent resident, or provide a bank or other acceptable guarantee (art. 18 of Administrative Regulation 5/2003). The residence permit is subject to periodic renovation as provided by law.

253. The above requisites may be exceptionally waived by the Chief Executive for humanitarian reasons or other justifiably exceptional cases (art. 11 of Law 4/2003).

254. In 2009, the number of non-resident workers was of 74,905, a year-on-year decrease of 18.7 per cent, (equivalent to 17,256 persons). Male and female non-resident workers shared equally of the total.

Number of non-resident workers

<i>Item</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Entrance	7 542	7 720	10 746	15 553	27 160	52 409	62 206	65 905	33 250
Exit	8 838	10 185	9 236	12 787	15 485	27 147	41 672	58 951	50 506
Balance	25 925	23 460	24 970	27 736	39 411	64 673	85 207	92 161	74 905
%	-4.8	-9.5	6.4	11.0	42.1	64.1	31.8	8.2	-18.7

Source: Demographic Statistics 2001 to 2009.

255. Without prejudice to the law or to any instrument of international law, non-residents can freely enter into (and depart from) Macao as long as they hold a valid passport and an authorization of entry or a valid visa (art. 3 of Law 4/2003). Those that do not hold an authorization of entry or a valid visa may be permitted to enter into the MSAR up to 30 days by the Migration Service (MS) of the Public Security Police (PSP) (art. 7 (4) of Administrative Regulation 5/2003).

256. The Chief Executive may waive the need for a valid visa or an authorization for entry of nationals or residents of any countries or territories and, in justifiably exceptional cases, may authorize the entry into, and a period of stay in Macao, of individuals who do not fulfil all the legal requirements (art. 8 of Administrative Regulation 5/2003).

257. As a rule, the duration of a visit/stay period may not exceed 30 days. However, it may be extended to a maximum period of 90 days at the discretion of the Head of the MS, who decides upon the merits of the reasons invoked in the application. The Chief Executive may grant further exceptional permission of stay for longer periods (arts. 9 (1), 11 and 12 of Administrative Regulation 5/2003, respectively).

258. In accordance with law, special periods of stay may be authorized. The maximum period of stay in the MSAR for those who hold the “Hong Kong Permanent Identity Card” or the “Hong Kong Re-entry Permit” is one year. Nationals of countries or residents of territories that have agreements on mutual waiver of visas with the MSAR are entitled to

stay in the MSAR for the period established in the relevant agreement (art. 10 of Administrative Regulation 5/2003).

259. Nevertheless, the authorization for entry/stay in the MSAR is always limited to a certain period of time and those who overstay without authorization are considered illegal immigrants (art. 7 of Law 4/2003).

260. A special stay permit may be granted, *inter alia*, for purposes of higher education studies, family reunion or other situations with justifiable grounds (art. 8 of Law 4/2003).

261. The entry of non-residents into the MSAR is refused on the following grounds: (a) whenever the person has been expelled as provided by law; (b) whenever, due to an instrument of international law applicable to the MSAR, entry, stay or transit of a person is forbidden; and (c) whenever a person has been interdicted to enter into the MSAR in accordance with law. Entry may also be refused: (a) whenever a person tries to elude the application of the MSAR entry and departure rules, namely through frequent and unexplained multiple entries; (b) whenever a person has been sentenced to a measure depriving him/her of personal freedom in the MSAR or abroad; (c) whenever there is strong preliminary evidence that a person has committed or intends to commit any crime; (d) whenever there is no guarantee that the person will return to his/her place of origin, or whenever there are doubts about the authenticity of the travel documents; or (e) finally, whenever a person does not show adequate subsistence means for the period of stay (art. 4 of Law 4/2003).

262. A person whose entry has been refused has the right to communicate with his/her country's diplomatic representation or consulate or with a person of his/her choosing and to be assisted by an interpreter and a lawyer (art. 5 of Law 4/2003).

263. The entry of non-residents into Macao may also be denied whenever such persons are deemed to constitute a threat to the internal security of the MSAR or are referenced as suspects with connections to

transnational crime, including international terrorism (art. 17 (4) of the Legal Framework on Internal Security, Law 9/2002).

Issue of travel documents

264. As referred, the freedom of movement of MSAR residents is guaranteed under article 33 of the BL.

265. Furthermore, article 139 of the BL establishes that the CPG shall authorize the Government of the MSAR to issue, in accordance with law, passports of the MSAR to all Chinese citizens who hold permanent identity cards of the Region, and travel documents of the MSAR to all other persons lawfully residing in the Region. The above passports and travel documents shall be valid for all states and regions and shall record the holder's right to return to the Region. The Government of the MSAR may apply immigration controls on entry into, stay in and departure from the Region by persons from foreign states or regions.

266. Indeed, the MSAR Government may, with the assistance or authorization of the CPG, negotiate and conclude visa abolition agreements with relevant foreign States or regions (art. 140 of the BL). As of June 2010, there are 87 of such agreements.

267. Administrative Regulation 9/1999 governs the issue of passports and travel documents. In this regard, it should be pointed out that there is no discrimination as concerns the issuing of travel documents on the grounds of gender.

268. If a person is not in the MSAR, he/she may request the issue of his/her passport or travel document, through any embassy or consulate of China or other semi-official missions in foreign countries or directly, by mail, to the Identification Bureau (IB) (art. 15 (4) of Administrative Regulation 9/1999).

Restrictions

269. As mentioned, in the event of a state of emergency, civil protection or public health threat, certain restrictions on the freedom of

movement may occur as provided for in law. However, such restrictions must abide by the general principles of law, particularly the principles of equality, proportionality and non-discrimination.

270. Equally, as seen above, coercive measures provided for in the CPC include measures that may restrict such right, such as prohibition of changing of residence without notice (art. 181), prohibition of travel, without authorization, or of gathering in certain circles or to frequent certain places (art. 184).

Article 13

Prohibition of expulsion except as provided by law

271. The requisites to expel a person are established in law. It should be recalled that permanent residents may not be subject to any expulsion order. Non-residents may, however, be expelled whenever they may pose a threat to the internal security of the MSAR, or are referenced as suspects with connections with transnational crime, including international terrorism (art. 17 (1) of the Legal Framework on Internal Security). About this subject, see also information provided in relation to article 12 of the Covenant.

Illegal immigration

272. Illegal immigration has become a significant issue in the MSAR, considering the fact that the Region is subject to a high migration flow. Law 6/2004 establishes the Legal Framework for Illegal Immigration and Expulsion.

273. Illegal immigrants are considered to be all those who are not authorized to stay or live in the MSAR, i.e., all those who entered into the MSAR (a) outside border control posts; (b) under a false identity or with false identification or travel documents; (c) and stay in the MSAR during a period of interdiction of entry; and (d) and stay in the MSAR beyond the

legally authorized period or if such authorization has been revoked (art. 2 of Law 6/2004).

274. Individuals found to be illegal immigrants are expelled from the MSAR, without prejudice to criminal responsibility and other sanctions determined by law. Expelled illegal immigrants are interdicted from re-entering the MSAR. Once illegal immigrants are detected, the PSP drafts the expulsion order to be submitted to the Chief Executive who has the authority to expel them. The expulsion order must indicate the deadline for its execution and state the period of interdiction for re-entry into the MSAR (art. 4 (1), 8 (2), 9, 10 and 12 of Law 6/2004).

275. For the purpose of processing the execution of the expulsion order, illegal immigrants are remanded in custody pending their expulsion. Custody for more than 48 hours requires confirmation by a judge and takes place in special detention centres. Such detention may not exceed a period of 60 days and is allowed solely as a measure deemed necessary to ensure the processing of an expulsion order or for security reasons. It does not entail any legal effect or consequence for the detainee; in other words, the detainee is not, inter alia, held as a criminal suspect (arts. 4, 5 and 7 of Law 6/2004).

276. The said law also establishes several crimes that are associated with illegal immigration, inter alia, procurement, extortion, blackmail and forgery of documents. Moreover, whoever provides assistance, shelter or employs illegal immigrants also incurs in criminal responsibility (Chapter V of Law 6/2004).

Data on illegal immigrants and overstayers

<i>Years</i>	<i>Illegal immigrants from the Mainland of China</i>		<i>Overstayers from the Mainland of China</i>		<i>Other overstayers</i>	
	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>
2002	120	1 078	3 502	8 860	239	420

<i>Years</i>	<i>Illegal immigrants from the Mainland of China</i>		<i>Overstayers from the Mainland of China</i>		<i>Other overstayers</i>	
	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>
2003	141	355	1 612	4 507	196	391
2004	170	233	2 362	4 052	230	462
2005	237	279	3 931	4 748	276	494
2006	443	642	7 862	6 966	348	752
2007	697	878	20 233	15 454	478	980
2008	700	724	61 837	36 491	1 036	1 571
2009	796	728	79 458	40 921	4 769	7 120

Source: Yearbook of Statistics 2009 and Security Forces Coordination Office, 2009.

Illegal immigrants repatriated by gender

<i>Gender</i>	<i>2004</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
M	170	697	700	796
F	233	878	724	728
MF	403	1 575	1 424	1 524

Source: Yearbook of Statistics 2009.

Surrender of fugitive offenders and transfer of sentenced persons

277. Article 94 of the BL allows the MSAR, with the assistance or authorization of the CPG, to make the appropriate arrangements with foreign States and territories for reciprocal judicial assistance.

278. Under article 213 of the CPC, the surrender of fugitives, the effects of sentences rendered outside the MSAR or any other relations with the authorities from outside Macao regarding the administration of criminal justice shall be governed by international conventions applicable to the MSAR or by any other agreements, including inter-regional ones with other regions of China, within the scope of judicial assistance and co-operation.

279. Law 6/2006, on the Legal Co-operation Law in Criminal Matters between the MSAR and other States or Territories, establishes provisions in relation to the surrender of fugitive offenders, transfer of criminal proceedings, execution of criminal sentences, transfer of sentenced persons, surveillance of sentenced persons or persons on parole, as well as other forms of legal assistance. Principles such as the primacy of international conventions, reciprocity, dual punishment, speciality and *non bis in idem* are cornerstone principles of the said law. Law 3/2002 sets up the notification procedure regime to the CPG in order to notify any request addressed to or to be submitted by the MSAR within the legal cooperation framework.

280. The MSAR has signed agreements on the Transfer of Sentenced Persons with Portugal (7 Dec. 1999) and the Hong Kong SAR (25 May 2005).

Refugee status

281. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are both applicable to the MSAR. As to the Protocol, China has notified, on 3 December 1999, the depositary entity about a reservation concerning the application of article 4 to the MSAR.

282. Law 1/2004 establishes the internal procedures for the recognition and declaration of loss of refugee status. This law also establishes a multidisciplinary commission responsible for analysing corresponding applications and for submitting them to the Chief Executive, on whom the final decision lies.

283. The Commission for Refugees is composed of five members (one magistrate, one legal adviser, one person from the area of social welfare and two persons from the area of security, one being from the MS (Order of the Chief Executive 202/2004).

284. Applications from persons seeking to be recognized as a refugee are assessed by the Commission for Refugees, in cooperation with the UNHCR, in accordance with international law's criteria to which the internal law directly refers. It is important to stress 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 (art. 4 of Law 1/2004). If the application is denied, the applicant has the right to appeal, in 15 days from the notification date, to the Court of Second Instance.

285. While the decision is pending, an applicant is entitled to be informed of his/her rights, to contact the UNHCR, to an interpreter, to legal protection, to confidentiality, to free legal advice, to extend his/her application to the spouse and children, to have basic human living conditions (e.g. food and accommodation) and to additional support in case of need.

286. A person who is recognized as a refugee and granted refugee status shall be entitled to identification and travel documents, and shall be treated in the same manner as any other person legally authorized to live in the MSAR.

287. From 15 applications from 20 December 1999 until June 2010, two of the requests were considered inadmissible, seven have been denied since they did not meet the necessary legal requisites for the status of refugee to be granted, in one case the person died and the remaining are pending under analysis. One of the said decisions was appealed.

Article 14

Equality before the courts and the right to a fair and public hearing by an independent court established by law

Equality before the law and access to the courts

288. As mentioned above, articles 36 and 43 of the BL guarantee to both residents and non-residents 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. The right to institute legal proceedings before the courts against the acts of the executive authorities and their personnel is also guaranteed. Everyone is equally subject to the law and has the right to a fair trial (art. 6 (1) (3) of Law 9/1999). This fundamental right and guarantee is a corollary of the effective application of the principles of universality and equality.

289. Equality before the law means that the justice system shall ensure, throughout the entire proceedings, a status of substantial equality between litigants, specifically in the exercise of their procedural rights, in the use of adequate means of defence and in the application of procedural sanctions (art. 4 of the CPC). Equality in the application of law is an obligation which binds the authorities and the courts, which must follow the general principles of law. The justice system is thus anchored on the rule of law and operates through the due process of law. Moreover, judges, lawyers and other parties involved are obliged to cooperate with each other when taking part in the proceedings, so as to contribute to an expeditious, fair and efficient trial (art. 8 (1) of the CPC).

290. The legal framework ensuring access to law and to the courts is established under Law 21/88/M, as supplemented by Law 1/2009. Access to law includes the access to legal information, to legal protection, to legal consultation and to legal aid. No one shall be restrained or obstructed from seeking justice, and no one shall be discriminated against in the pursuit of the right of access to the courts based on social or cultural conditions. Moreover, the protection of rights and legally protected interests, and the respective judicial remedies, may not be denied on the grounds of insufficient economic resources or other discriminatory reasons.

291. Access to the courts not only comprises the right of action, but also the right to fair and equitable proceedings, the right to the effective enforcement of court decisions and the right of appeal.

292. The guarantee of universal and equal access to law and to the courts is a joint responsibility of the Government and the members of the legal professions (art. 3 of Law 21/88/M).

Judicial system

Judiciary structure

293. As mentioned, the BL determines that the MSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the MSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Macao shall be maintained. And they shall have no jurisdiction over acts of state such as defence and foreign affairs (art. 19 of the BL).

294. The courts are, therefore, independent, subordinated only to law, and not subject to any interference from, nor are they answerable or accountable to, other powers, orders or instructions. Nonetheless, courts shall respect the exceptions established in the BL and the appellate decisions delivered by higher courts (art. 83 of the BL and art. 5 (1) (2) of Law 9/1999 as last amended by Law 9/2009, Law on the Basis of the Organization of the Judiciary).

295. Within their scope of jurisdiction, the MSAR courts may also interpret the provisions of the BL on their own, within the limits of the autonomy of the MSAR (art. 143 (2) and (3) of the BL and art. 16 (2) of Law 9/1999 as amended).

296. The main rules concerning the exercise of the judicial function are established in articles 82 to 94 of the BL, in Law 9/1999, and in Law 10/1999, which approves the Legal Statute of the Members of the Judiciary).

297. The courts' independence entails the irremovability, unaccountability and independence of the judges, who are subject solely to law. Judges may not be transferred, suspended, retired, discharged,

dismissed or removed, except as provided by law. When they are appointed for a certain period of time, their irremovability is guaranteed for the whole duration of their term in office. Judges also enjoy judicial immunity, i.e., they are not subject to civil liability arising from the performance of their judicial duties (art. 89 (2) of the BL and arts. 4, 5 and 6 of Law 10/1999).

298. The Judicial Council is an independent body responsible, *inter alia*, for the assignment, transfer and promotion of judges, as well as for the supervision and initiation of disciplinary proceedings. Such Council is composed of the President of the Court of Final Appeal, two selected judges and two persons designated by the Chief Executive (arts. 93, 94 and 95 of Law 10/1999).

299. In the MSAR, there are three levels of courts: Courts of First Instance (Primary Courts), a Court of Second Instance (Intermediate Court) and a Court of Final Appeal. There are two Courts of First Instance: the Judicial Court, with general jurisdiction, and the Administrative Court, with jurisdiction over administrative, tax and customs and excise cases. The Judicial Court comprises the following sections with subject-matter jurisdiction: Civil Sections, Criminal Investigation Sections, Small Claims Sections, Criminal Sections, Labour Sections, and Family and Minors Sections. The Court of Second Instance has general appellate jurisdiction and the Court of Final Appeal is vested with the power of final adjudication (arts. 10 and 27 to 54 of Law 9/1999, as amended).

300. Judges are appointed by the Chief Executive upon recommendation of an independent commission composed of 1 judge, 1 lawyer and 5 eminent persons from other sectors (art. 87 (1) of the BL and arts. 15 (1) and 91 (3) of Law 10/1999). The Presidents of the courts are chosen from the respective comprising judges and appointed by the Chief Executive (art. 88 (1) of the BL).

301. The removal of the judges of the Court of Final Appeal is decided by the Chief Executive upon the recommendation of a review committee

consisting of members of the LA. The appointment and removal of the President and of the judges of the Court of Final Appeal shall be reported to the Standing Committee of the National People's Congress for record (arts. 88 (3) and 87 (4) of the BL, respectively, and art. 18 (2) of Law 10/1999). 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 fewer than three local judges (art. 87 (2) of the BL).

302. The President of the Court of Final Appeal and the Procurator of the MSAR must be Chinese citizens who are permanent residents of the MSAR (arts. 88 (2) and 90 (2) of the BL and art. 18 (1) of Law 10/1999).

303. In the MSAR, the Procuratorate is an independent and autonomous judiciary organ that carries out its powers and functions independently and free from any interference, as provided for in law. Such autonomy and independence of the Procuratorate are guaranteed by its strict observance of law and obedience to objectivity in handling cases (art. 90 of the BL and article 55 of Law 9/1999). In other words, there is no room for the exercise of discretionary powers in the application of law. Procurators are magistrates, like judges: they form two different parallel bodies of the professional Magistracy, with separate governing councils.

304. The Procuratorate magistracy is divided into a three-tiered hierarchy: the Procurator, the Assistant Procurators and the Deputies of the Procurator (art. 12 of Law 10/1999).

305. The Procurator is appointed, upon nomination by the Chief Executive, and removed, by the CPG. The Assistant Procurators and the Deputies of the Procurator are nominated by the Procurator and appointed by the Chief Executive (art. 90 (2) and (3) of the BL, art. 62 (2) of Law 9/1999 and art. 15 (2) and (3) of Law 10/1999), and they may be compulsively retired or dismissed only by the Chief Executive (art. 84 (1) of Law 10/1999).

306. Article 11 of Law 10/1999 enshrines the principle of responsibility of the Procurators, which means that they may be held liable, in accordance with law, for the performance of their duties and for the compliance with instructions given by their superiors. With the exception of cases from which criminal responsibility may arise, the MSAR may be found liable for the actionable conduct of these magistrates, though civil liability proceedings against Procurators may only be pursued by the MSAR. Moreover, Procurators 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 (art. 10 of Law 10/1999).

307. Judges and Procurators are held accountable under disciplinary rules. The law classifies as a disciplinary infraction any conduct by judges or Procurators, 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 (art. 65 of Law 10/1999). The disciplinary action is carried out by the *Judicial Council* and by the *Council of Magistrates of the Procuratorate* exclusively, and respectively, for members of each Magistracy. The following penalties are applicable in accordance with the seriousness of the offence: (a) reprimand; (b) fine; (c) suspension; (d) inactivity; (e) compulsory retirement; and (f) dismissal (art. 64 et seq. of Law 10/1999).

308. During their term of office, judges and Procurators may not concurrently assume other public or private posts, nor may they assume any post in organizations of a political nature (art. 89 (3) of the BL and art. 24 of Law 10/1999). Also, they may not perform any other public or private duties, except teaching or scientific research, and may not be appointed to public commissions, unless exceptionally authorized by the Judicial Council or by the Procurator, respectively (art. 22 of Law 10/1999).

309. The selection of judges and Procurators is made according to their professional qualifications, while qualified judges and Procurators may also be recruited from abroad. They may be appointed on a permanent basis or for a tenure of three years (after having attended a training course and traineeship, in the case of local judges or Procurators), or hired for a period of two years (in the case of foreign judges and Procurators) (arts. 13 and 14 of Law 10/1999).

310. As at December 2009, there was a total of 35 judges and 29 Procurators in Macao.

311. In order to be permanently appointed as a judge of a Court of First Instance or as a Procurator, one shall, among other prerequisites: (a) have at least three years of residence in the MSAR; (b) speak and write Chinese and Portuguese; and (c) attend successfully one training course and traineeship. Special legal training is not mandatory to candidates who: (a) are residents of the MSAR for at least seven years; (b) speak and write Chinese and Portuguese; and (c) have at least five years of professional experience in a field of work that requires a law degree (art. 16 of Law 10/1999).

312. The training course and traineeship last for two years and all students follow a common programme (art. 17 of Law 10/1999). Each one of these courses has a theoretical and a practical component. Up to the present, 5 training courses were organized for both legal professions by the LJTC.

313. The LJTC is responsible for organizing pedagogical updating and improvement courses, seminars and workshops for the Judicial and Procuratorate Magistracies; furthermore, the Center also organizes courses for other legal professionals, in co-operation with various entities.

314. As a general rule, legal representation is exclusively conferred to lawyers (art. 67 of Law 9/1999). Moreover, under lawyers' professional status, only lawyers or trainee lawyers, as such duly enrolled as members of the Macao Lawyers Association, are authorized to practise law in the MSAR, before any court, entity or authority, whether public or private, especially to undertake legal representation and legal counsel (art. 11 of

the Lawyers Statute, approved by Decree-Law 31/91/M, as last amended by Decree-Law 42/95/M).

315. In order to become a member of the Macao Lawyers Association, the candidate is required to have a degree in law and to complete a training course, as provided for in the Association's Regulations or in accordance with protocols established with professional societies or bar associations of other jurisdictions. Furthermore, the candidate shall not have any incompatibilities that may conflict with the practice of law, as duly attested by a sworn written statement, or other restrictions to the right of enrolment as referred to under the Association's Regulations. Holders of law degree granted by institutions outside Macao must attend an adaptation course to the MSAR legal system, provided by the Faculty of Law of the University of Macao.

316. There are no restrictions or exclusions based upon gender, race or religious beliefs to the practice of this legal profession. In 2009, there were 182 lawyers in Macao. Among these, 38 speak and write Chinese and 144 speak and write Portuguese.

Number of lawyers in the MSAR

<i>Gender</i>	2001	2002	2003	2004	2005	2006	2007	2008	2009
M	72	74	81	86	88	93	111	119	120
F	28	22	24	30	36	40	57	60	62
MF	100	96	105	116	124	133	168	179	182

Source: Macao Lawyers Association, 2009.

317. The Faculties of Law of the University of Macao and of the Macao University of Science and Technology offer undergraduate and postgraduate law programmes in Portuguese and Chinese.

Effectiveness of the judicial system

318. The average waiting period between filing a civil case and scheduling its hearing depends on the type of action and claims, which set out different proceedings and deadlines under the CPC.

319. In relation to the average length of pretrial detention, the court's statistical system shows, in 2008, an average length of 8.2 months. The average time needed by the Court of First Instance for adjudicating criminal cases was of 10.1 months.

320. The Macao Lawyers Association has regularly addressed the issue of time delays within judicial proceedings and has pointed out that the current number of magistrates is insufficient. The issue has also been addressed at the LA by some of its members, namely during the discussion of the Annual Government Policy Guidelines.

321. The courts' statistics shows that in the judicial year 2008/2009 the number of new cases filed in the Court of First Instance was 12,261 whilst civil/labour and criminal cases filed in the Court of Second Instance and in the Court of Final Appeal totalled 861 cases and 24 cases, respectively. The number of cases filed in the Court of Second Instance has been increasing in recent judiciary years. The following tables illustrate the situation in the MSAR courts.

Number and type of cases in the Court of First Instance

<i>Years/cases</i>		<i>Civil</i>	<i>Criminal</i>	<i>Minors</i>	<i>Labour</i>	<i>Total</i>
2001	PP*	2 428	1 087	369	163	4 047
	C**	1 661	3 672	432	270	6 035
2002	PP	2 735	899	472	131	4 237
	C	2 272	3 867	459	253	6 851
2003	PP	2 663	715	487	169	4 034
	C	1 913	4 373	429	553	7 268
2004	PP	2 981	1 527	622	471	5 601
	C	2 113	4 982	686	249	8 030
2005	PP	3 496	2 089	331	553	6 469
	C	2 820	3 677	630	338	7 465

<i>Years/cases</i>		<i>Civil</i>	<i>Criminal</i>	<i>Minors</i>	<i>Labour</i>	<i>Total</i>
2006	PP	2 849	4 486	282	532	8 149
	C	2 505	5 745	512	506	9 268
2007	PP	2 390	5 309	265	705	8 669
	C	2 095	5 890	575	875	9 435
2008	PP	2 231	6 807	272	1 306	10 616
	C	2 022	6 299	491	1 060	9 872
2009	PP	2 249	8 884	249	1 125	12 507
	C	2 237	7 829	453	1 208	11 727

Source: Yearbooks of Statistics 2001 to 2009.

*PP: Pending previously.

**C: Concluded.

Number and type of cases in the Court of Second Instance

<i>Years/cases</i>		<i>Civil/labour</i>	<i>Criminal</i>	<i>Total</i>
2001	PP*	17	15	32
	C**	43	86	129
2002	PP	25	18	43
	C	48	92	140
2003	PP	27	26	53
	C	57	147	207
2004	PP	31	21	52
	C	88	195	283
2005	PP	11	10	21
	C	57	130	187
2006	PP	49	26	75
	C	216	183	399
2007	PP	83	106	189
	C	212	300	512

<i>Years/cases</i>		<i>Civil/labour</i>	<i>Criminal</i>	<i>Total</i>
2008	PP	283	101	384
	C	188	317	505
2009	PP	502	45	547
	C	597	219	816

Source: Yearbooks of Statistics 2001 to 2009.

*PP: Pending previously.

**C: Concluded.

Number and type of cases in the Court of Final Appeal

<i>Years/cases</i>		<i>Civil/labour</i>	<i>Criminal</i>	<i>Total</i>
2001	PP*	-	2	2
	C**	2	6	8
2002	PP	-	3	3
	C	3	7	10
2003	PP	-	2	2
	C	3	11	14
2004	PP	1	9	10
	C	4	20	24
2005	PP	2	1	3
	C	3	12	15
2006	PP	2	-	2
	C	14	6	20
2007	PP	3	-	3
	C	9	13	22
2008	PP	18	1	19
	C	39	15	54
2009	PP	2	3	5
	C	11	13	24

Source: Yearbooks of Statistics 2001 to 2009.

*PP: Pending previously.

**C: Concluded.

Procedural guarantees of the defendant

322. A person in respect of whom criminal charges are formally brought or the opening of a judicial fact-finding is requested within criminal proceedings becomes a defendant until the closure of such proceedings. The status of defendant is also attributed to a person as soon as: he/she is the subject of an inquiry and makes statements before any judiciary authority or organ of the criminal police; a coercive measure or bail is applied to him/her; he/she is a suspect detained in the act of committing a crime or having just committed it; an order stating that he/she is the agent of a crime is notified to him/her (arts. 46 and 47 of the CPC). This status confers a number of rights and obligations on the defendant, which are laid out in articles 49 and 50 of the CPC.

323. The defendant is entitled, at any stage of the proceedings, *inter alia*, to the following rights: (a) to be present during procedural acts that directly involve him/her; (b) to be heard by the judge whenever decisions that affect him/her personally are taken; (c) to be silent, i.e. not to answer questions posed by any entity on facts that he/she is accused of and on the content of any statement he/she made regarding those facts; (d) to freely choose a defence lawyer or to request the judge to appoint one; (e) to be assisted by a lawyer in all proceedings acts in which he/she takes part and, when detained, to communicate with him in private; (f) to intervene in the inquiry and in the judicial fact-finding, offering evidence and demanding for discovery of evidence that he/she considers necessary; (g) to be informed, by the judiciary authority or by the criminal police authorities before whom he/she is obliged to appear, of the rights that assist him/her; and (h) to appeal against, under the terms of law, unfavourable decisions.

Right to the presumption of innocence and the principle in dubio pro reo

324. As pointed out earlier, the presumption of innocence is one of the fundamental rights of the MSAR residents expressly enshrined in the BL (art. 29 (2)) and one of the key principles of the MSAR criminal procedure (art. 49 (2) of the CPC). One is presumed innocent and treated as such until a *res judicata* conviction has been delivered.

325. A defendant does not need to prove his/her innocence. The Procurator and the judge in charge of a given case shall assess the truth and shall abide by the principles of legality, objectivity and impartiality towards a fair trial. In the event of lack of, or insufficient, evidence, the court must acquit in accordance with the principle in *dubio pro reo*. Inquiry proceedings fall within the scope of the Procuratorate; in other words, the Procuratorate is solely responsible for collecting evidence at the inquiry stage and for accusing the defendant. The Procuratorate has the burden of proof relative to the facts contained in the accusation and any reversal of such *onus probandi* to the detriment of the defendant is forbidden (arts. 245, 246 and 249 of the CPC).

The right to information and to be assisted by an interpreter

326. At the moment that a person becomes a defendant, he/she must be immediately informed of his/her criminal procedural rights and duties.

327. Proceedings, be they written or oral, have to be performed in either one of the official languages of the MSAR, otherwise they are null. If a person does not understand or speak any of those languages, a suitable interpreter is appointed free of charge. A translator is also appointed in case it becomes necessary to translate documents into an official language (art. 82 of the CPC).

Right to assistance by a lawyer and to defence

328. Article 53 of the CPC requires the mandatory assistance by a lawyer: in the first judicial examination after arrest; in the examining debate and hearing; in the case of judgment hearing in absentia; in any proceedings whenever the defendant has hearing or speech impediments or the issue of his/her diminished criminal responsibility arises; in ordinary or extraordinary appeals; and in other cases as determined by law. In addition to the above-mentioned situations, the judge may always assign legal representation to the defendant whenever necessary or convenient.

329. The right of communication in private between the defendant and a lawyer is guaranteed (art. 50 (1) (e) and (2) of the CPC). All

communications between the defendant and a lawyer are confidential and privileged, and the lawyer is bound by professional secrecy.

330. As seen above, the defendant has the right to remain silent; as such, he/she is not obliged to answer any questions about the facts that he/she is accused of, nor about the contents of any statements that he/she has made about such facts. The defendant is entitled to make, or to refrain from making, any statements during the criminal proceedings. The exercise of the right to silence may not be held against the defendant (arts. 50 (1) (c), 324 (1) and 326 (2) of the CPC).

331. Moreover, under no circumstances shall the defendant be required to take an oath (art. 127 (3) of the CPC).

332. Criminal proceedings are subject to the principle that both the Procurator, as the Prosecutor, and the defendant shall always be heard (arts. 268 (3) and 308 of the CPC).

333. In this respect, it should be noted that the fact-finding debate is an oral and adversarial discussion before an investigating judge to determine whether sufficient *de facto* and legal evidence has been found during the inquiry and fact-finding to justify the remand of the defendant to trial (art. 280 of the CPC). Judicial fact-finding is an optional stage of the criminal proceedings, which takes place after the inquiry (only if requested by a defendant wishing to overturn a decision to indict or by the Procurator to reverse the decision not to indict). Its aim is judicial corroboration of the decision to indict or not to indict, determining whether or not the case should be sent to trial. It is presided over by an investigating judge assisted by the police.

334. Evidence presented at trial must always be subject to adversarial examination (arts. 304 (f) and 308 (2) of the CPC). It is incumbent upon the trial judge to ensure the effective application of the adversarial system. The defendant is entitled to produce evidence and to request the evidentiary proceedings that he/she deems to be necessary with a view of contradicting the Prosecutor's case.

335. Evidence obtained through torture, coercion or in violation of the physical or moral integrity of the individual is inadmissible. Such evidence is null and void, and may not be used in a court of law (arts. 112 and 113 of the CPC). Evidence obtained by means of arbitrary or unlawful interference in, or in violation of, private life, home, correspondence or telecommunications, without the consent of the person in question, is equally null and void (art. 113 (3) of the CPC).

Right to a trial without undue delay

336. As pointed out previously, article 29 (2) of the BL states that anyone charged with a criminal offence shall benefit, without discrimination, from the right to an early court trial. Likewise, article 49 (2) of the CPC establishes that the defendant shall be tried within the shortest period of time insofar as compatible with the exercise of the right of defence.

337. The CPC establishes a number of provisions concerning procedural deadlines, while guaranteeing an effective access to justice. The general rule is that “unless otherwise provided for by law, any procedural act shall be performed within five days” (arts. 95 (1) of the CPC).

338. Specific deadlines are established in order to speed up procedures (especially for pretrial detention). For instance, the inquiry stage ends with an accusation or the dismissal of the case, within a maximum period of six months when there are detained defendants, or eight months if there are no detained defendants. The fact-finding stage must be concluded within two months whenever there are detained defendants, or four months, if there are no detained defendants (arts. 258 and 288 (1) of the CPC).

339. Exceptionally, procedural acts relative to detained defendants or that are indispensable to guarantee personal freedom may take place at any moment (other than weekdays and working hours), including judicial holidays, and take precedence over any other procedure or act (arts. 93 (2) and 96 (2) of the CPC).

340. After the fact-finding debate, the ruling on dismissal or indictment is delivered immediately or, when that is not possible due to the complexity of the case, within five days (arts. 289 and 290 of the CPC). In summary trial proceedings, the sentence may be delivered immediately at the conclusion of the hearing (art. 370 (7) of the CPC).

341. The trial hearing shall take place within two months of filing at court and, whenever there are detained defendants, the date of the hearing shall be set with due priority (art. 294 of the CPC).

342. Other manifestations of the expeditious nature of criminal proceedings are, inter alia: the structuring of the hearing and its development in terms of continuity and concentration of evidence, the exceptional nature of adjournments, and the existence of two especially expeditious trial proceedings (summary and very summary).

Trials in absentia

343. In the MSAR, trials in absentia require that the defendant be served by means of public notices, containing: (a) his/her identification; (b) the identification of offence that he/she has been accused of; (c) the applicable legal provisions; and (d) the warning that he/she shall be tried *in absentia* in case he/she is not present on the date of the hearing. In these cases, the defendant shall be represented by a lawyer. In case of conviction, an order shall be issued for the detention of the convicted defendant, who shall be notified of such sentence, as soon as he/she is detained or presents him/herself voluntarily before the court (arts. 316 and 317 of the CPC).

Right to legal aid

344. All MSAR residents (individuals and legal persons) who demonstrate that they do not possess sufficient financial means to support legal fees or to support, in full or in part, court costs, are entitled, without discrimination, to legal assistance, which can either take the form of legal advice or legal aid.

345. The legal aid system is enshrined in Decree-Law 41/94/M. It comprises the full or partial exemption of the payment of court costs and/or legal expenses, or its deferment, and the appointment of *pro bono* lawyers.

Right to public trial hearings

346. Trial hearings must be public, unless the court rules otherwise in order to safeguard the dignity of persons, public morality or to ensure the normal functioning of the court (art. 77 (1) and (3) of the CPC and art. 9 of Law 9/1999). In criminal proceedings involving trafficking in persons or sexual offences where the victim is a minor under the age of 16, proceedings are conducted, as a general rule, in camera (art. 77 (4) of the CPC). However, the delivery of judgments and sentencing always take place at a public hearing (arts. 77 (6) and 353 (3) of the CPC).

347. During the inquiry stage, criminal proceedings are subject to the secrecy rule. Proceedings become public from the moment of delivery of the investigating judge's confirmation of an accusation or, if such procedural stage has not taken place, from the moment a trial date has been set.

Right of appeal

348. The right of appeal is an important feature of a defendant's right to defence. A defendant may always lodge an appeal against any unfavourable ruling, judgment or sentence (arts. 389 and 390 of the CPC).

349. The prohibition of *reformatio in pejus* is established under article 399 of the CPC. If an appeal against the final decision is lodged, the appellate court may not aggravate the penalties to which all or any of the defendants or co-defendants were *in casu* sentenced. This rule does not apply to the aggravation of fines, if the economic and financial situation of the defendant has improved significantly, or if the court decides to apply the security measure of internment.

Extraordinary appeals and the right to compensation

350. Besides the ordinary appeals, the criminal procedural law also recognizes the right to the review of a sentence in case of wrongful or unjust conviction. If a conviction is reversed and the defendant acquitted, he/she is entitled to be indemnified for any losses sustained and to be compensated of all expenses, as well as of costs or fines incurred (arts. 443 and 444 of the CPC).

351. Sentences under review must be *res judicata*. The petition for the review of a sentence may be submitted, inter alia, by the Procuratorate, by the convicted or his/her lawyer.

352. An extraordinary appeal is allowed solely under strict circumstances expressly stipulated, i.e., when: (a) another *res judicata* sentence has considered as false the evidence deemed essential to the rendering of the sentence under appeal; (b) another *res judicata* sentence has proven that a crime was committed by a trial judge while performing his/her duties; (c) the facts on which the conviction under appeal are grounded are at variance with facts proven by another sentence (i.e. conflicting evidence), if serious doubts thereby arise as to the fairness of the conviction under appeal; or (d) new facts or newly discovered evidence come to light, thereby creating serious doubts about the fairness of the conviction under appeal. The review is still admissible if the respective criminal proceedings have been concluded, the limitation period for execution of the penalty has been reached, or the sentence has been executed (art. 431 of the CPC).

Non bis in idem

353. The *non bis in idem* principle is a general principle of criminal procedure guaranteed under the MSAR legal order. This principle, as enshrined in the Covenant, is self-executing, and may be directly invoked before the MSAR courts.

354. Article 6 of the CCM reflects such principle by stipulating that the MSAR criminal law is only applicable to acts committed outside Macao when the offender has not been tried in the place where the act was committed.

Minimum guarantees for juvenile persons

355. This subject is exhaustively addressed in part II of China's report on the application of the Convention on the Rights of the Child to the MSAR.

Article 15

The principle of *nullum crimen sine lege, nulla poena sine lege*

356. The principles of legality and of non-retroactivity are core principles with constitutional value under the MSAR legal system. Article 29 (1) of the BL guarantees that no one shall be punished by law unless their acts constitute a criminal offence as provided for in law at the time of the offence.

357. These principles are also enshrined in the CCM, which article 1, on the principle of legality, explicitly entails (a) the principle of *nullum crimen sine lege, nulla poena sine lege* in its both aspects of ex post fact prohibition: no fact, either by action or by omission, may be deemed to constitute a criminal offence unless provided for and punished by a pre-existing law; and no security measure shall be applied to cases of perilousness, unless its conditions were determined by law previous to its fulfilment, as well as (b) its corollary principle, i.e., the prohibition of using analogy to qualify an act as criminal, to define a case of perilousness, or to determine a penalty or a corresponding security measure. Furthermore, article 2 of the same CCM, on the temporal scope of application, includes the principle of non-retroactive application of criminal laws and sanctions, except for when a posterior law establishes a regime more favourable to the agent and he/she has not yet been condemned by a final sentence.

Article 16

The right to recognition as a person before the law

358. All individuals are holders of rights and obligations as a co-natural characteristic of legally protected human life, and entitled, as such, to the recognition of their legal status. As mentioned, legal personality and capacity are recognized under article 63 et seq. of the CC. Legal personality is acquired when a person is fully born and alive, and ceases with death. No person is allowed to renounce, in whole or in part, his/her legal capacity.

359. The CC sets legal majority at the age of 18. However, emancipation of a minor is automatic through marriage. Every individual has the capacity to exercise rights and to enter into contractual obligations, except for those who have diminished capacity by reasons of minority or other legal incapability, such as suffering from severe impairments that prevent them from taking care of themselves or of their assets. The impairments are exhaustively determined in the law and a person can only be declared incapable by a judicial decision (arts. 118, 120, 112, 122 and 135 of the CC, respectively).

Article 17

Rights of a person

360. The rights of a person are at the very heart of the MSAR legal system, being, therefore, enshrined and safeguarded under the fundamental law.

361. The inviolability of human dignity and the protection of personal reputation, privacy of private and family life, as well as the protection against all forms of discrimination of MSAR residents, are guaranteed under articles 30 and 25 of the BL, respectively. The BL also forbids the unlawful search of the body of any resident or deprivation or restriction of the freedom of the person (art. 28 (3)) as well as arbitrary or unlawful search of, or intrusion into, a resident's home or other premises (art. 31).

362. Equally protected are both the freedom and the privacy of communications by, from and between MSAR residents. Indeed, as stated in article 32 of the BL “(...) No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with the provisions of the law to meet the needs of public security or of investigation into criminal offences.”

363. Furthermore, fundamental rights intrinsically related to the aspects of personhood are also formulated as personal rights in terms of civil law. Recognized to all human beings without discrimination, being as a general rule non-renounceable and some of them even inalienable, they are the object of supplementary protection (arts. 67 to 82 of the CC). These rights are also protected by criminal law.

364. Under civil law, personal rights comprise the rights to life, to personal freedom, to physical and psychological integrity, to honour, to the intimacy of one’s private life, to the inviolability of one’s correspondence and home, to the protection of personal data, to one’s image and wording, to one’s personal truth, to one’s name and personal identification.

365. Under criminal law, besides the referred criminal offences against life, physical and psychological integrity, sexual freedom and sexual auto-determination, an array of conducts which violate other personal rights are provided for and punished.

366. In regard to a person’s honour, such is the case of defamation, slander and calumny (arts. 174, 175 and 177 of the CCM). Due to their nature of semi-public crimes and private crimes, criminal proceedings depend, respectively, on the lodging of a complaint or on a private accusation to press charges against the perpetrator. The corresponding penalties range from three to six months’ imprisonment, to a fine of up to 240 days. All penalties may be aggravated by one third in its minimum and maximum limits, whenever committed through means that facilitate its disclosure, and up to two years of imprisonment or with a fine of not less than 120 days, whenever it is committed through the media.

Crimes against honour

<i>Types of crime</i>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Defamation	10	10	11	10	17	24	17	16	15	10
Slander	74	80	64	78	81	63	75	121	80	83
Publicity/calumny	2	1	2	0	0	1	0	17	24	3
Other crimes	0	1	0	10	0	0	0	0	0	0
Total	86	92	77	98	98	88	92	154	119	96

Source: Security Forces Coordination Office, 2009.

367. Offences against the intimacy of private life are established under articles 184 to 193 of the CCM. Criminal proceedings depend on the lodging of a complaint, with the exception of those offences relative to interference in private life by means of computer technology.

368. The disclosure of facts relative to the intimacy of family or sex life, with the intention of breaching a person's private life, is punishable under article 186 – interception, listening to, recording, use, transmission or dissemination of a private conversation or communication without the consent of the participants; recording, capturing or dissemination of people's images without their consent. Hidden observation of or listening to persons in private premises, as well as the dissemination of any facts concerning the private life or a serious illness of a person are all punishable.

369. According to article 187, it is an offence to create, maintain or use a computerized file of individually identifiable data concerning the political, religious or philosophical beliefs of people, their private life or their ethnic origin.

370. Another offence is the recording of words spoken by a third party that are not intended to be heard in public, or the use thereof, as well as photographing, filming or recording in any way the private life of people, or the use thereof without proper justification and without the consent of the persons concerned (art. 191).

371. The penalties for the mentioned offences are two years' imprisonment or a fine of up to 240 days, which may be aggravated by one third in its minimum and maximum limits, whenever such offences are committed through the media, or if their commission reveals the intent of obtaining a reward or gain, or of harming a third person or the MSAR.

Crimes against private life

<i>Types of crimes</i>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Violation of a person's home	35	52	62	99	84	90	68	62	47	58
Disclosure of private life	3	8	11	8	3	22	57	89	95	91
Other crimes	2	1	0	2	3	2	4	0	5	8
Total	40	61	73	109	90	114	129	151	147	157

Source: Security Forces Coordination Office, 2009.

372. As mentioned, restrictions to the rights of a person are admissible by reasons of internal security, health security reasons and for criminal investigation purposes, but only as expressly provided by law. On the other hand, any evidence obtained as a result of the interference or violation of private life, home, correspondence or telecommunications without a person's consent, except in cases strictly provided by law, is null and void (art. 113 (3) of the CPC).

373. A Personal Data Protection Law has also been adopted, Law 8/2005. This law covers the processing of personal data wholly or partly by automatic means, and the processing other than by automatic means which form or are intended to form part of a manual filing systems. It also covers the use of video surveillance and other forms of capture, processing and dissemination of sound and images allowing persons to be identified. This law is also applicable to the processing of personal data within the context of public security, without prejudice of special rules contained in applicable international law instruments or inter-regional agreements.

374. Moreover, the processing of personal data must be carried out with transparency and in strict respect for the intimacy of private life and other fundamental rights, freedoms and guarantees enshrined in the BL, in the international law instruments and in the legislation in force. Article 7 (1) forbids the processing of personal data related to ideological, political or religious beliefs, affiliation in a political or labour association, private life, ethnic or racial descent, as well as processing of data related to health and sexual life including genetic data. Only in exceptional cases, as explicitly enumerated in the law, may the above data be processed or disclosed.

375. A Data Protection Office (DPO) was created by Order of the Chief Executive 83/2007. The DPO is a public authority operating independently under the supervision of the Chief Executive. It is responsible for supervising and coordinating the implementation of and compliance with the referred law and devising confidentiality regulations as well as supervising their implementation. It is also competent to receive and register notices on personal data processing, screening and handling applications for authorizations, accepting, inquiring into and processing complaints on the violation of protected data and applying the corresponding administrative penalties. All private and public entities are obligated to cooperate with the DPO upon its request.

376. The violation of some of the obligations set out in the law, such as the unlawful access to personal data, and the deletion, destruction, banning or modification of processed data, constitute crimes (penalties range from one year imprisonment to fines).

377. The CPC deals with the means of obtaining evidence, establishing, *inter alia*, that the competent authorities may carry out body searches with a view to determine whether the perpetrator has left any vestiges or any material evidence concerning the crime. Personal searches may also be ordered if a person tries to avoid or prevent a body search or refuses to give up any object that needs to be examined or which may constitute material evidence. Searches must respect the dignity and, as far as possible, the

sense of propriety of the person searched, who may, whenever possible, be accompanied by a trusted person, and must be informed of such right (arts. 156 and 157 of the CPC).

378. Searches are authorized or ordered by a judiciary authority, who shall supervise the operation whenever possible (art. 159 of the CPC). However, criminal police authorities may also conduct these types of searches without prior authorization in the event of imminent danger or in situations of *flagrante delicto* (but only if the crime is punishable by imprisonment), or with the searched person's consent. Such searches are carried out if there are grounds for believing that objects connected with an offence that may provide significant evidence and/or may disappear are located in the premises. Searches in the event of imminent danger must be immediately communicated to the judge for confirmation, otherwise they are deemed null and void.

379. With respect to the principle of inviolability of a person's home and/or premises, it should be noted that it is also protected under article 184 (1) of the CCM, which punishes any person who, without consent, enters the home and/or premises of another person or remains there after being ordered to leave. Criminal proceedings depend on the lodging of a complaint (art. 193 of the CCM).

380. The concept of "home" under article 83 of the CC refers to the usual place of residence, whereas the concept of the CCM has a broader meaning, since it comprehends all and any places where a person's private life is carried out.

381. As far as interference into private life is concerned, no one may disturb another's private life or enter into another person's home at night without the latter's consent. Both offences are punishable by up to one year's imprisonment or a fine of up to 240 days. If the offence is committed during the night, with violence or under the threat thereof, through housebreaking or by three or more persons, it is punishable by up to three years' imprisonment or a fine (art. 184 (2) and (3) of the CCM).

382. The search of someone's home is possible under an order or authorization of a judge and cannot be carried out before dawn or after sunset, except with the searched person's consent. However, the Procuratorate and the criminal police authorities may order a home search in the event of imminent and serious danger, or with the searched person's consent. The latter modality of searches must be immediately communicated to a judge for confirmation (art. 162 of the CPC).

383. In relation to searches carried out in a lawyer's office, a physician's office or a public health care establishment, article 162 (3) and (4) of the CPC stipulates that they must be personally supervised by a judge and conducted in the presence of the representative of the respective professional body or of the Director of the public health care establishment, and preceded by a notification to that effect. Evidence obtained through an illegal search is null and void.

384. Any civil servant who, while abusively performing his/her duties, enters the home of another person without his/her consent is punished by up to three years' imprisonment or by a fine penalty under the terms of article 343 of the CCM.

385. Freedom and privacy of communications is also protected by law, and may not be infringed upon, on any grounds, except in cases expressly foreseen in law. The CCM considers all and any conducts that violate the confidentiality of telecommunications and postal communication as illegal.

386. Professional confidentiality and the duty of non-disclosure of correspondence and of other personal writings are particularly important, since both are constitutive elements of the right to the intimacy of private and family life. Even in the case of a non-confidential letter, the addressee may only use it in as far as such utilization shall not go against the author's expectations (art. 75 et seq. of the CC).

387. Violation of correspondence or telecommunications is considered an offence under article 188 of the CCM. Any person who, without consent, opens a parcel, a letter or a closed writing which is not

addressed to him/her; whoever by way of technical processes, discovers their contents, or by any means impedes reception thereof, or, without consent, tampers with or acquires knowledge of the contents of a telecommunication, is punishable by up to 1 year's imprisonment or by a fine up to 240 days. Identical penalty is applicable if the contents of correspondence or telecommunications are divulged. Criminal proceedings depend on the lodging of a complaint (art. 193 of the CCM).

388. The violation of confidentiality by someone duty-bound, due to his/her legal position, occupation, job, profession or art, to safeguard a third party's secret and who, without such party's consent, reveals or derives gain from such information, thereby causing harm to the said party or to the MSAR, shall be punished by imprisonment up to one year or by a fine of up to 240 days (arts. 189 and 190 of the CCM).

389. The duty to keep postal communication and telecommunication confidential and inviolable falls on all who operate in the field of postal, telegraph, telephone or telecommunications services as prescribed under article 349 of the CCM.

390. However, under article 30 (2) (c) of the CCM, such acts cease to be illegal if the secret is revealed in the performance of a legal duty imposed by law or by a legitimate order. If any conflict arises between the performance of legal duties or legal orders, the duty with the greater value must take precedence (art. 35). Accordingly, the conflict of duties must be assessed according to actual circumstances, in order to determine whether the breach of confidentiality is justified or not.

391. Article 164 of the CPC stipulates that the seizure of correspondence may only be carried out if authorized or ordered by a judge, whenever there are justifiable reasons, such as uncovering the truth and/or obtaining material evidence. Illegal seizure of correspondence is deemed null and void.

392. The judge who orders or authorizes the seizure of correspondence shall be the first to take cognisance of its contents and shall determine

whether such contents are materially relevant as evidence. If not, he/she shall arrange for the correspondence to be returned to the rightful owner. The judge is bound to the duty of confidentiality in respect of any material of which he has taken cognisance and which is not relevant as evidence (art. 164 (3) of the CPC).

393. Under articles 165 (1) and 166 of the CPC, seizures conducted in a lawyer's office or medical office or banking institution follow the same procedural formalities established under article 162 (3) and (4) referred to above.

394. The respect for professional privilege between lawyers and their clients and between physicians and patients is safeguarded, notably, against the seizure of privileged documents, except whenever a judge has strong reasons to believe that the files to be searched or seized may constitute the object or the element of a crime (art. 165 (2) of the CPC). This criterion is also applicable to the seizure of bank documents. Evidence obtained by means of searches in violation of professional privilege is deemed null and void.

395. The seizure of bank documents is regulated under article 166 of the CPC. A judiciary authority may conduct the seizure of such documents, whenever there are justifiable reasons, such as uncovering the truth and/or obtaining material evidence. However, the examination of the seized bank correspondence or documents must be performed personally by the judge, who may be assisted, when necessary, by qualified persons or by the criminal police authorities.

396. Judges are equally bound to the duty of confidentiality with respect to searches and seizures (art. 164 (3) of the CPC). This duty extends to all and any officials who assist a judge, including those who conduct the searches and seizures.

397. Article 172 (1) of the CPC forbids the interception and recording of conversations or telephone calls, except if authorized under a court

order, and only if there are reasons to believe that such action may help to uncover the truth or supply material evidence for the following offences: (a) those punishable with imprisonment of up to three years; (b) those related to drug trafficking; (c) those involving the use of firearms, explosives or similar substances or devices; (d) contraband; or (e) slander, threats, coercion and interference in private life, whenever committed by telephone. Evidence obtained by means of illegal interception and/or recording of telephone conversations is deemed null and void.

398. The interception and recording of conversations or communications between a defendant and his/her lawyer are also forbidden, except if the judge has strong reasons to believe that they may constitute the object or element of a crime (art. 172 (2) of the CPC). The judges and officials remain subject to the duty of confidentiality in relation to all the facts and elements pertaining to the communications, while those that are not relevant to the purpose of criminal investigation are destroyed. This criterion is also applicable for the seizure of correspondence between a defendant and his/her lawyer (art. 164 (2) of the CPC).

399. Additionally, article 173 guarantees the access of the defendant and his/her lawyer to the relevant evidentiary elements obtained, except if the judge deems that knowledge of such documents may undermine the inquiry or judicial fact-finding proceedings.

400. A court order may also be requested to control communications, particularly correspondence, telecommunications, computer databases or other means, whenever there are serious *de facto* indicia of disturbance of MSAR internal security as a result of criminal activities (art. 18 of Law 9/2002).

401. With respect to violent or highly organized crime, a court order may relieve the duty of professional privilege to members of financial institutions and their respective employees and any other persons to which they are bound. In such cases, exemption from the duty of confidentiality or the seizure of objects or documents in banks or other financial

institutions must be authorized by a court order based on substantial grounds for believing that the seizure may yield objects or documents resulting from criminal activities, such as gains or profits, or which are used for the continuous commitment of such activities (e.g. art. 31 of Law 6/97/M).

Professional privilege

402. As far as professional privilege is concerned, lawyers, physicians, journalists, members of financial institutions, ministers of religion or cult and other persons bound by law to professional privilege may request to be excused from making depositions over facts covered by their vow of secrecy. Even so, the judiciary authority may conduct an inquiry whenever there are doubts regarding the legitimacy of requests for excuse, and a court may order the relief of such duty, except in cases of religious privilege (arts. 122 and 167 of the CPC).

403. Law 16/92/M on the Confidentiality of Communications and Protection of Intimacy of the Private Life establishes in its article 20 the civil liability of the offender.

404. The conditions of professional privilege to which journalists are bound will be analysed in relation to article 19 of the Covenant.

405. Bank privilege is established under articles 78 et seq. of Decree-Law 32/93/M on the Legal Framework of the Banking and Financial Sectors. Members of administrative or monitoring bodies of financial institutions, their employees, auditors, experts, representatives or other persons providing them with services on a permanent or occasional basis may not reveal or use any information for their own benefit or for the benefit of others, regarding facts or elements related to the activities of the institution or its relations with customers, which they may access solely for and in the performance of their duties or services.

406. The identity of, and other information pertaining to, clients as well as to deposits, accounts, their movements and other banking

operations, are subject to confidentiality. The exemption of that duty can only be given through the authorization of the client or by means of a court order, under the terms of criminal law or criminal procedure law (art. 80 of Decree-Law 32/93/M). The persons with an impending duty of professional confidentiality are subject to disciplinary, civil and criminal responsibility in the event of breach of such duty (art. 81 of Decree-Law 32/93/M).

407. Equally bound to the duty of professional privilege are the members of the Monetary Authority of Macao, and their personnel and other persons who work (or have worked) with it. Non-compliance with this duty shall render the offender subject to civil and criminal responsibility (art. 35 (1) and (4) of Decree-Law 14/96/M).

408. It is worth mentioning the rules regarding the duty of confidentiality that govern the Commission of Audit and the CAC, established by Law 11/1999 and Law 10/2000, respectively. Both of these statutes enshrine the duty of absolute confidentiality of their staff. The duty of confidentiality of all individual or legal persons, when not expressly protected or imposed by law, shall yield before the duty of co-operation with these entities.

409. Finally, the violation of the obligation of keeping professional privilege, except in cases duly authorized, is punished under articles 333, 334, 348 and 349 of the CCM. The violation of the secrecy in judicial proceedings is likewise punished under Article 335 of the same Code.

410. The restrictions to these fundamental rights, when exercised by prisoners, are addressed in this report with respect to article 11 of the Covenant.

Article 18

Freedom of thought, conscience and religion

411. Freedom of conscience, religion and worship are safeguarded under article 34 of the BL. Such protection is also ensured under Law 5/98/M, on the Freedom of Religion and Worship.

412. The said Law, stating that freedom of religion and worship are recognized and protected, explicitly establishes the inviolability of freedom of religion and, as mentioned before, determines that no one may be persecuted, deprived of rights or exempt from obligations or civic duties on the grounds of not professing any religion or of his/her religious beliefs or practices, except as regards the right to conscientious objection, under the terms of the law. In addition, it provides for the privacy of religious beliefs, the freedom of religious assembly, the freedom to hold religious processions and the freedom of religious education.

413. The content of freedom of religion is detailed in very broad terms as it encompasses, inter alia, the right: to profess, or not to profess, any religion; to change religion or recant a religion previously professed; to act, or not to act, in accordance with one's convictions; to express one's convictions either individually or in community and in private or public; to disseminate by any means one's religious doctrine (without prejudice to other prescriptions of the same law related to the use of adequate means of communication and time tables); and to practise acts and rites of worship of one's religion.

414. It should be stressed that freedom of religion *stricto sensu* is protected unconditionally.

415. As to freedom of religion in the broader sense of freedom to manifest one's religion in worship, the law specifies that freedom of cult cannot be invoked as a justification to commit acts which are incompatible with the life, physical and moral integrity, or the dignity of persons, as well as other acts expressly forbidden by law (art. 11 of Law 5/98/M). In this latter sense, it may be subject to temporary, proportional and non-discriminatory restrictions as expressly provided by law, as for example in case of a state of public emergency. Furthermore, such restrictions cannot contravene the relevant provisions of the Covenant.

416. It is also noteworthy that criminal law protects freedom of religion and worship, punishing those who offend religious feelings, or

damage or steal religious/cult objects (arts. 282, 207 (1) (e) and 198 (1) (c) of the CCM, respectively).

417. As stated, under article 128 (1) of the BL, the MSAR Government shall not interfere in the internal affairs of religious organizations or restrict religious activities that do not contravene the laws of the MSAR. Likewise, Law 5/98/M explicitly affirms that the MSAR does not endorse any religion and, as regard the relationship between the MSAR and the religious organizations and their believers, conveys the same principles of separation and neutrality (arts. 3 and 4 of Law 5/98/M).

418. The MSAR Government works closely with churches and religious communities in an attitude of cooperation and tolerance. An example of respect is the two mortuary chapels of the MSAR public hospital for the practice of Christian and Buddhist rites, respectively. Another example that illustrates the protection of freedom of conscience and reflects the socio-cultural diversity of Macao is the calendar of the MSAR's public holidays, which includes commemorative days of different faiths.

419. All confessions are free to organize themselves independently within the limits of law. They are also free to create, within each organization, other associations, institutes or foundations, with or without legal personality, in order to exercise their own rites or for other specific ends (art. 15 of Law 5/98/M).

420. In fact, religious organizations may, in accordance with law, run seminaries and other schools, hospitals and welfare institutions and provide other social services. Schools run by religious organizations may provide religious education, including courses in religion (art. 128 (2) of the BL).

421. Religious confessions may maintain and develop relations with believers and other religious bodies outside the MSAR, as well

as confessions and religious organizations that have international legal personality (art. 18 of Law 5/98/M).

422. In the MSAR, freedom of religion is illustrated in the number of existing religious associations. According to the 2009 data from the IB, there are 333 religious associations in the MSAR, including Confucian, Taoist, Buddhist, Christian (Catholic and Protestant), Muslim and Baha'is.

423. Freedom to learn and to teach any religion in educational establishments is established under article 10 of Law 5/98/M. The teaching of any religion is ministered with pedagogic autonomy within the appropriate institutions. Public schools may also teach the general history of religions and ethics in a neutral and objective way.

424. In the MSAR, parents or legal guardians are free to have their children educated in lay or in religious schools. Parents also have the right to bring up their children in accordance with their own religious beliefs. At the age of 16, minors have the right to make their own free choices with regards to the exercise of freedom of conscience, religion and worship.

425. Ministers of religion or cult have access to hospitals, the Prison Establishment, YOI centres or shelters, and other similar establishments, in order to provide religious assistance (art. 8 of Law 5/98/M).

426. As mentioned, religious privilege is a modality of professional privilege. As such, ministers of any religion may never be compelled to make statements about facts that have been entrusted to them, or known to them, during the performance of their duties, notwithstanding the issuance of a court order to that effect, as already stated in relation to article 17 of the Covenant. This obligation persists even after the minister ceases his/her functions. Violation of religious privilege is punished by a imprisonment up to 1 year or a fine up to 240 days (arts. 22 and 24 of Law 5/98/M and art. 189 of the CCM).

427. The subject-matter of conscientious objection is not relevant, since there is no compulsory military service in the MSAR.

Article 19

Freedom of expression

428. Freedom of expression (opinion and speech) is expressly safeguarded under the fundamental law of the MSAR as well as under ordinary law.

429. Article 27 of the BL stipulates, *inter alia*, that Macao residents shall have the freedom of speech, of the press and of publication. The right to form and to hold an opinion without interference, and to freely express it orally, or through art or academic work, is also guaranteed under the BL (art. 37).

430. Freedom of expression also comprehends the right to inform, to obtain information and to be informed without discrimination. Access to all and any kind of information is free through the media, such as printed press, radio and television, public libraries, cinemas, theatres and, of course, the Internet.

431. The MSAR Government encourages the exercise of freedom of the press and supports, on a non-discriminatory basis, media operators, by providing, for instance, an annual and renewable system of incentives to increase the competitiveness of the local press. This system of incentives includes the financing of projects relative to technological modernization and to training and professional qualification (Order of the Chief Executive 145/2002).

432. There are presently in the MSAR several daily and weekly local newspapers (in Chinese Portuguese and English languages) and regional and international newspapers are freely available. Some of those newspapers may also be accessed via the Internet. Local TV and Radios broadcast a number of programmes addressing to different communities that live in Macao, in the Chinese, Portuguese and English languages. Besides the local newspapers and broadcasting networks, there were 16 regional and international media organizations working in Macao. There are six press associations in Macao.

Press Law

433. The exercise of freedom of expression through the press and of the right to inform and to be informed as well as press activity are regulated by Law 7/90/M, the Press Law.

434. The Press Law guarantees the enjoyment of a set of fundamental rights and freedoms to journalists, such as the freedom of expression and creativity, freedom of access to sources of information and professional privilege. Freedom of the press also encompasses the right to found newspapers and other publications, without censorship and independent of any authorization, deposit or prior qualification, and the right to free and unopposed, unless by means provided for in law, printing and circulation of publications.

435. The aims and range of these rights are developed under the Press Law. The basic principle is that such rights must be exercised within the limits set forth in the Press Law as well as those established in general law in regard to the safeguard of the moral and physical integrity of persons. Assessment and application of such limits fall exclusively within the competence of the courts.

436. Journalists have the right to professional privilege regarding their sources of information. This duty may only be breached under the terms of a court order, when disclosure might reveal facts that are criminally relevant, and that involve organized crime or criminal associations. Journalists may not be pressured or penalized, directly or indirectly, in order to reveal their sources of information.

437. Publishing and news agencies may be freely established. However, management must be located in the MSAR and its owners/holders, whether individuals or legal persons, must reside or be based respectively in the MSAR. The correspondents of foreign media agencies are allowed to work in Macao as long as they are accredited in the MSAR.

438. The right to be informed includes the right of response and of clarification, which are expressly recognized in the Press Law.

439. Any person or entity that feels aggrieved or misrepresented by a written text or image which constitutes or contains a direct insult or a wrongful or untrue reference to a fact likely to affect such person's public standing or reputation has the right to respond, disclaim and/or rectify such text or image. Likewise, when a publication contains equivocal references, allusions or phrases which could imply defamation or slander, anyone who believes him/herself to be the target of such references, allusions or phrases may apply for a court order notifying the editor and author (if identifiable) to issue, in writing, an unequivocal statement indicating whether or not these references, allusions or phrases do concern him/her, and to clarify them. Such statement and clarification must be printed in the same section of the publication and the judge shall decide whether or not the statement and clarification have been satisfactorily issued and published; should they be deemed unsatisfactory, the judge may order the correct publication of such statement and clarification and impose a fine. The rules governing these rights are laid down under articles 19 to 24 of the Press Law.

440. The Press Law also covers civil and criminal liability of press agents, including the right to compensation for damages caused through the Press, irrespective of criminal proceedings. The publication of written texts or images that are harmful to the rights or interests protected under criminal law may constitute the crime of abuse of freedom of the press (arts. 28 and 29 of the Press Law, respectively).

Television and radio broadcasting

441. Law 8/89/M establishes the Legal Framework of Radio and TV Broadcasting. In accordance with its article 3, the aims of this activity are: to guarantee the right to inform and to be informed without limitation or discrimination, to educate and entertain the public, to promote social and cultural progress with respect for ethic and cultural values, to encourage social development and cultural diversity, and to help create a civic and social conscience of residents.

442. To achieve such objectives, radio and TV broadcasting must respect and observe the values of impartiality, pluralism, objectivity of all information and independence from the Government and pressure groups. It shall promote a balanced broadcast programme (educational, cultural and entertainment), and shall not diffuse untruthful or inaccurate information or facts that might mislead or induce the general public into error.

443. Freedom of expression and opinion includes the fundamental rights of persons to have access to free and pluralistic information based on the principle of free programming. Both the freedom of expression of thought and the right to information are exercised without any form of censorship, impediment or discrimination, within the boundaries of the respect for individual freedoms and the right of all persons to their moral integrity, public standing and reputation.

444. Limits to free programming entail certain prohibitions. It is forbidden to air programmes that: (a) violate fundamental rights and freedoms of persons; (b) incite the commission of crimes or promote intolerance, violence or hatred; (c) are considered by law to be of a pornographic or obscene nature; or (d) incite totalitarian behaviour or aggression towards social, racial or religious minorities.

445. In the MSAR, radio and television broadcasting are public services, and may operate solely under a licence or subject to an administrative concession contract. A public tender usually precedes the granting of concessions and licences. Radio and TV broadcasting licences and concessions can only be granted to companies registered in the MSAR, whose object is to engage in this activity, and that offer guarantees of competence, technical qualification, viability of projects and financial capacity.

446. The Macao Television Broadcasting Company Ltd. has one television station and a radio station, each with one Chinese (Cantonese) and one Portuguese language channels. Some of the programmes are

also in English language. Macao Cable Television and a host of Macao-based satellite television channels also provide a wide-range of television services in the MSAR. Televisions broadcasts are received free-to-air from the Mainland of China and Hong Kong and widely watched by Macao residents, Mainland of China and Hong Kong radio stations are also widely heard.

447. The right of response is also recognized under Law 8/89/M in a manner similar to that of the Press Law. The exercise of such right is independent of the civil and/or criminal proceedings that may arise. Such response must be included free of charge in the same programme or, if that is not possible, at an equivalent time of broadcasting. The response must not be preceded or followed by any comments, except those necessary to draw attention to some inaccuracy or error of fact.

448. With respect to political associations, broadcasting time is governed under article 83 of Law 3/2001. Candidates running for election are entitled to broadcast time on radio and TV stations, on a free basis, for the purposes of campaigning. Broadcast time ceases 48 hours prior to the Election Day (art. 75 of Law 3/2001). All radio and television broadcasts must give equal treatment to all candidates during the campaign.

449. The Chief Executive establishes by Executive Order the time to be used on television and radio for such purpose. The suspension of this right is only permitted under the exceptional situations established by law, one of these being the use of expressions or images that constitute criminal offences, defamation or slander, insult to the MSAR Government bodies, incitement of public disorder, of insurrection or of hatred or violence (art. 85 of Law 3/2001). Until today, there has been no need to adopt the said measure.

Internet

450. Administrative Regulation 24/2002 regulates the Licensing of Internet Service Providers and the services so provided. There are no

imposed limits or restrictions on Internet access. In the MSAR, there are seven Internet service providers.

Restrictions to the freedom of expression

451. The exercise of freedom of expression also entails panoply of corresponding special duties and responsibilities. Indeed, as mentioned above, the exercise of such freedom may be subject to certain restrictions provided for in the law, in order to protect individual freedoms and rights (e.g. right of privacy), or to protect the community (e.g. incitement to hatred) or the MSAR (e.g. public order).

452. Nonetheless, it should be noted that such restrictions may not jeopardize the existence of such freedom per se and must be expressly established in law, and applied solely for the purposes laid down by law. In other words, restrictions to freedom of expression must conform to the triple criteria of necessity, adequacy and proportionality.

453. There are also certain restrictions established in the MSAR legislation in order to protect the national and regional flags and emblems as symbols of China and of the MSAR, respectively, which should be taken into consideration. Article 18 (2) of the Basic Law provides that national laws listed in annex III of the Basic Law shall be applied to the MSAR. Such laws shall be applied locally by way of promulgation or legislation by the MSAR, as it is the case of the Law of the People's Republic of China on the National Flag and the Law of the People's Republic of China on the National Emblem, both enacted locally in Law 5/1999, of 20 December.

454. If a person publicly offends or disrespects the national symbols through words, gestures, writing or any other means of communication with the public, such person is criminally responsible under article 9 of Law 5/1999. The disrespect for the national symbols includes, inter alia, the acts of burning, damaging, painting, defiling or trampling upon the national flag or national emblem. The applicable penalty is imprisonment of up to three years or a fine of up to 360 days. Also punishable is whoever

publicly disrespects the MSAR flag or MSAR emblem through any of the acts described above. Such crime is punishable by imprisonment of up to two years or a fine of up to 240 days (art. 7 of Law 6/1999, of 20 December). Until today, there was no prosecution based on the violation of such provisions.

455. In relation to pornographic material, Law 10/78/M sets out Measures Regarding the Sale, Exhibition and Dissemination of Pornographic and Obscene Material. It should be emphasised, within this context, that the 2000 Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography is applicable to the MSAR. Furthermore, it should also be mentioned that Law 8/89/M, which establishes the Legal Framework on Radio and Television Broadcasting, prohibits the broadcast of any programme of a pornographic or obscene nature.

Article 20

Prohibition of propaganda for war and inciting national, racial or religious hatred

456. A detail account relating to the MSAR legal framework on the prohibition of propaganda for war and inciting national, racial or religious hatred can be found on the relevant part of China's latest report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/MAC/13). The paragraphs below summarize the main issues on the subject.

457. As seen above, associations that promote violence or violate the criminal law or are contrary to public order are not permitted. Armed, military or paramilitary associations and racist organizations are expressly forbidden.

458. Incitement to war and violence, as well as incitement to genocide, genocide and agreement to commit genocide and racial or

religious discrimination are criminal offences, provided for in articles 229 to 233 of the CCM, respectively. Penalties range from 6 months to 25 years' imprisonment.

459. Furthermore, homicide motivated by racial, religious or political hatred is qualified as aggravated homicide (art. 129 (1) (d) of the CCM).

460. Advertisements that incite or encourage violence, or use national or religious symbols in a depreciative manner are not permitted (arts. 4 and 7 of Law 7/89/M) and, as previously mentioned, during election campaigns, candidates are forbidden to (and shall be responsible for damages thereby caused) incite hatred or violence in the course of their campaigns (arts. 71 (3) and 85 of Law 3/2001).

Article 21

Right to peaceful assembly

461. All MSAR residents enjoy freedom of assembly and demonstration in accordance with article 27 of the BL. The right to hold public meetings and to demonstrate is regulated under Law 2/93/M, as amended by Law 16/2008. The touchstone of this law lies in the possibility of exercising the right to meet peacefully and demonstrate in public spaces, places open to the public or in private without prior authorization. All that is required is a simple notice, in advance, of the intention to meet or demonstrate.

462. Written notice, however, is required when meetings or demonstrations are to be held in public thoroughfares, in public places or in places open to the public. This notice must be submitted in writing at least three working days and not more than 15 days in advance to the Head of the Civic and Municipal Affairs Bureau (CMAB), with the indication of the purpose of the meeting, date, place, time and route. If the meeting or demonstration is of a political nature or labour related, prior notice is reduced to a minimum of two working days.

463. The enjoyment of the above rights, as corollaries of the freedom of expression as described in relation to article 18 of the present Covenant, may only be restricted, limited or conditioned in the cases especially provided for by law. Accordingly, meetings or demonstrations for purposes contrary to those allowed by law are prohibited.

464. One of the restrictions established under the law is that meetings or demonstrations may not be carried out through illegal occupation of places. There are also temporal restrictions, since meetings or demonstrations are not allowed between 00:30 and 07:30 except whenever held indoors, e.g. in closed premises, halls, unoccupied buildings or, in case of occupied ones, when the people involved are themselves the occupants, or after having obtained written consent from the latter.

465. The Head of the PSP may, until 24 hours prior to the beginning of the meeting or demonstration, on grounds of traffic management, change or restrict the route. The Head of the PSP may also require, for duly justified reasons of public security, that the meeting or demonstration be kept at a distance of 30 meters from government, court or police buildings, diplomatic or consular missions or prison facilities.

466. Decisions prohibiting or restricting the holding of any meeting or gathering must be duly justified and must be communicated 48 hours before the beginning of the meeting or demonstration. The right to a special expeditious appeal against such decisions to the Court of Final Appeal is explicitly ensured.

467. Police authorities may only interrupt meetings or demonstrations when: (a) the organizers have been informed through official channels that they have not been allowed to carry out those gatherings on the grounds exhaustively enumerated in law, i.e., the demonstration is contrary to law; or (b) the demonstration, different from its aim or without previous notice, turns out to be contrary to law; or (c) the organizers fail to keep the demonstration within its aims through the practice of acts against the law causing serious and effective disturbance to public security or to the free enjoyment of other persons' individual rights.

468. Counter-demonstrations are not prohibited but counter-demonstrators who interfere with meetings or demonstrations, prevent their occurrence or attempt to prevent them from proceeding freely incur in the crime of coercion. Furthermore, police authorities must take the necessary precautions to avoid any interference that could disturb the free exercise of the demonstrators' rights.

469. Persons carrying arms in meetings and demonstrations, and persons holding meetings and demonstrations that are against the law may be subject to the penalty provided for the crime of aggravated disobedience, regardless of other applicable penalties arising from their specific actions.

470. It should be stressed that any authority that oversteps legal boundaries and prevents or attempts to prevent the free exercise of the right to meet or demonstrate may be liable for the crime of abuse of authority provided for in article 347 of the CCM, without prejudice to disciplinary proceedings (art. 14 (2) of Law 2/93/M).

471. During 2008, there was no objection from the police regarding requests for demonstrations. The number of public meetings and protests in 2007 was the following: 180 public meetings, 22 protests and 7 cases of "sit-in", while in 2008, the number was the following: 155 public meetings, 22 protests and 8 cases of "sit-in".

Recent jurisprudence

472. Recently, two rulings concerning the right of assembly were rendered by the MSAR's Court of Final Appeal (on 29 April and 4 May 2010, respectively). In both cases, the main issue was that of restrictions to the use of certain public places to hold public meetings imposed by administrative decisions, which were challenged in order to seek their annulment.

473. In the first case, the Court, "noting that it recognized that Law 2/93/M is inappropriate in its omission regarding the exercise of rights that may conflict with each other, as it is the case with the intention of

holding different events or other activities in the same place, an issue that must be resolved by law, specifically setting out basic principles to be complied with such use, in terms appropriate and proportionate to achieve the objectives and assigning responsibility to specific agencies for the purpose”, upheld the appeal, setting aside the disputed administrative decision, and ruled that there is no spatial restriction to meeting and event by reasons of the existence of other meetings or events on the same site.

474. In the second case, the Court considered that a list of places which can be used for meetings or events (referred to in article 16 of Law 2/93/M and published by Notice in 1993) was merely indicative in nature, reaffirmed that the rights of assembly or demonstration can only be restricted, limited or conditioned as provided by law, and that, in principle, MSAR residents may exercise the right of assembly or demonstration in public places or open to the public. However, the Court also reasserted that law enforcement agencies have the power to stop meetings or demonstrations when they deviate from its objectives for acts contrary to law or which disrupt serious and actually public safety or the free exercise of individual rights. The Court ruled that there was space constraint for the meetings in cause and dismissed the appeal in part and annulled the disputed administrative decision also in part.

Article 22

Freedom of association

475. Article 27 of the BL recognizes to all residents the freedom of association. The right to freely constitute and to participate in associations is reaffirmed under article 155 (1) of the CC.

476. There are several treaties on this subject that are applicable to the MSAR, in particular, the ILO Conventions No. 87 concerning the Freedom of Association and Protection of the Right to Organize and No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (for more detail, please refer to the list of treaties).

477. Freedom of association is regulated under Law 2/99/M and articles 154 et seq. of the CC. MSAR residents may freely associate with one another without requiring any form of authorization, as long as such associations are not intended to promote violence, do not infringe criminal law or are not contrary to public order.

478. Associations advocating or encouraging any form of incitement to war and violence, as well as genocide and racial or religious hatred, are forbidden under article 2 of Law 2/99/M, as mentioned in relation to article 20 of the Covenant.

479. Likewise, criminal associations and terrorist organizations are forbidden. Under article 288 of the CCM, the offence of criminal association is defined as the conduct of establishing or joining a group, organization or association that aims at the commission of crimes. The corresponding penalty is aggravated whenever the crime is committed by a triad organization or by an association connected with organized or violent crime, as provided for under Law 6/97/M, on the Legal Framework against Organized Crime. Forming a terrorist organization and/or engaging in terrorist activities are criminal offences defined under Law 3/2006, on the Prevention and Suppression of the Crimes of Terrorism.

480. One of the key features of the freedom of association is that associations shall pursue their aims and objectives freely and without any interference from any public authorities. They may not be dissolved, and their activities shall not be suspended, unless in the cases provided by law and by a court decision (art. 3 of Law 2/99/M).

481. Another significant aspect is that no one may be forced or coerced in any way to join an association or to remain a member thereof against his/her free will. Whoever forces or coerces someone to this effect shall be criminally responsible under article 347 of the CCM (art. 4 (1) and (2) of Law 2/99/M).

482. In the MSAR, there has always been a large number of associations of a different nature, such as professional associations (e.g.

worker's, employer's, professional bodies), associations of persons with disabilities, parents' and students' associations, cultural and sports associations, charitable associations, which underline the great relevance of civic associations in the MSAR as one of the most common manifestations of civil society amongst the residents of Macao. It also reveals the high degree of public participation in community life.

483. As of 31 December 2009, there were 292 professional associations, 290 employers associations, 172 educational associations, 967 charity associations, 834 cultural associations and 1,009 sports associations registered at the IB.

Political associations

484. Freedom of association also comprises the right to constitute political associations and to be a member thereof. Political associations are those organizations that fundamentally aim at contributing to the exercise of political and civil rights and at participating in the political life of the MSAR, such as participating in elections, submitting suggestions, opinions and programmes, participating in the activity of the government and local bodies, and promoting civic and political education. The legal framework of such associations is included in Law 2/99/M.

485. Political associations may stand for elections in direct suffrage (art. 27 (1) (1) of Law 3/2001). General associations are numerous, and many of them participate actively in public affairs.

Associations that represent workers' interests

486. The BL expressly enshrines residents' freedom to constitute and to join trade unions, as well as the right to strike (art. 27). Labour organizations have long been an active group within Macao society, acting politically and defending the interests of workers. In December 2009, there were about 251 labour organizations (36 professional work-based associations) registered at the IB.

487. The right to collective bargaining is also recognized. Representatives of the employers and labour associations have a seat in the Standing Committee for Social Affairs, which is the advisory body of the MSAR Government with the task of promoting dialogue between all partners in labour relations (employers' and workers' associations) and to strive for social development. This entity gives advice on socio-labour policies and, in particular, to salaries, labour law, and employment strategies and social security.

488. It should be stressed that there is no discrimination concerning the individuals who are, or become, members of labour associations, and no restrictions are placed upon the exercise of the rights enshrined in the MSAR legislation.

489. Restrictions or repressive measures upon the exercise of the right to strike are illegal. The right to strike is exceptionally restricted for the militarized personnel of the Security Forces of the MSAR (art. 32 of the Statute of Militarized Personnel of the Security Forces, Decree-Law 66/94/M).

Article 23

Protection of the family, right to marriage and equality of spouses

Marriage and equality of spouses

490. Detailed information on the implementation of article 23 of the Covenant can be found in part III of China's report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/CHN/5-6/Add.2). An outline of the main issues as well as changes that have occurred since the submission of that Report is presented in the paragraphs below.

491. In the MSAR, family is regarded as the fundamental unit of society. Men and women are equals in marriage and have the right to enter into marriage by their own free will and consent. Maternity and paternity constitute human and social values, respected and safeguarded by law.

492. In the MSAR, the term “family” can have several meanings, the most common of which is the relationship derived from marriage and adoption. However, the same term can also mean a group of people who live under the same roof and/or share the same economic environment, de facto unions and respective children, as well as single parents and their children.

493. Article 38 (1) of the BL establishes the freedom of marriage and the right to constitute and raise a family freely. These rights are reaffirmed by the Legal Framework on Family Policy (Law 6/94/M), which lays down government policy on family issues, and by the CC, which regulates family rights.

494. Marriage is a contract between two people of the opposite sex who aim at raising a family through a common and shared life (art. 1462 of the CC). Bigamy is not allowed and constitutes a criminal offence under article 239 of CCM.

495. De facto unions are defined as the relationship between two persons that have been living in conditions similar to a married couple for at least two years. Article 1472 of the CC sets out the conditions for the recognition of such unions.

496. The CC sets legal majority at the age of 18. However, when a minor enters into marriage, emancipation is automatic (art. 120 of the CC). In principle, the minimum legal age for marriage corresponds to the age of legal majority. However, a person aged between 16 and 18 may marry if the consent of the parents or legal guardians is given. In the absence of such consent, the court may give the minor authorization to marry. The court’s decision depends upon the existence of serious reasons for the marriage to take place and evidence of the minor’s ability of carrying out his/her life with sufficient physical and mental maturity (arts. 1487 of the CC).

497. The legal impediments to a marriage are: being under 16 years of age, blatant mental disability, a declaration of legal incapacity by reason

of psychological anomaly, the existence of a previous non-dissolved marriage, and the existence of a family relationship or affinity (arts. 1479 and 1480 of the CC).

498. Marriages that take place in Macao must be registered. Marriages held elsewhere that do not contravene the public order of the MSAR may also be registered upon application. Unregistered marriages may not be invoked, either by the spouses and respective heirs, or by any third party (arts. 1523 and 1530 of the CC). A promise of marriage has no legal effects (art. 1473 of the CC).

499. As already mentioned, there is an absolute equality of rights and responsibilities between spouses regarding the decision to marry, the marriage itself and its dissolution. Furthermore, according to law, both spouses are bound by the duties of respect, fidelity, co-habitation, co-operation and mutual assistance. Both spouses have the responsibility of running the family and should agree on the way in which family life is to be lived, taking into account the well-being of its members and each other's interests (art. 153 (2) of the CC and art. 2 of Law 6/94/M).

500. One of the spouses' duties is to provide for and contribute to family expenses according to each one's possibilities. Maintenance obligation may subsist in case of de facto separation and after the dissolution of the marriage, regardless of gender, although with different modalities, and may be reciprocal (arts. 1536, 1537 and 1857 et seq. of the CC). Failure to comply with maintenance obligation may constitute a criminal offence under article 242 of the CCM. Criminal proceedings depend upon the lodging of a complaint.

501. Husband and wife enjoy the same personal rights, including the choice of family name, profession and occupation. Each spouse may practise any profession or activity without the other's consent.

502. Regarding the issue of the family name, article 1538 of the CC establishes that husband and wife may keep their own surnames, and, if

they so choose, may also add their spouse's surnames up to a number of two. The right to add the spouse's surnames may not be exercised by the spouse that keeps surnames from a previous marriage.

503. Both spouses have the same rights as regards ownership, acquisition, administration, enjoyment and disposition of property and assets. In this respect, article 1543 of the CC stipulates that each spouse is the administrator of his/her own property, as well as income from work, property and assets acquired before entering into the marriage or acquired freely after getting married. On the other hand, the administration of the couple's common property is jointly exercised, each spouse being individually able to perform acts of ordinary administration. However, the disposition of establishments of guarantees, encumbrances, charges, liens or burdens over, the granting of leases over, or the formation of any other rights *in rem* over the matrimonial domicile always requires the consent of both spouses regardless of the matrimonial property regime adopted (arts. 1547 and 1548 of the CC).

504. The rules governing matrimonial property may be determined by means of a prenuptial agreement between the spouses. The subsidiary framework, in the absence of a prenuptial agreement, is called "participation in acquired property". The spouses have the possibility of opting for a total community of, a total separation of, or a community property based on assets acquired during marriage. The definition of what is considered to be community property depends on the type of matrimonial property chosen. Postnuptial agreements are also allowed (art. 1578 of the CC). Spouses may modify or change previous prenuptial agreements or celebrate new agreements.

505. The dissolution of a marriage may be partial, in case of judicial separation of persons and property or total (mutually consented or litigious divorce). In case of divorce, property is divided according to the regime governing property (art. 1628 et seq. of the CC). It should be noted that in case of divorce, the court shall allocate the family home to either of the spouses regardless of whether it is the joint or personal property of one of

them, taking into account the needs of each spouse and the interests of the children (art. 1648 (1) of the CC).

Family protection

506. As far as family protection is concerned, the MSAR Government, together with private associations, has a special responsibility vis-à-vis families by creating the necessary conditions and promoting the quality of family life and the moral and material well-being of families and their members (art. 1 (2) of Law 6/94/M).

507. The Legal Framework on Family Policy establishes as objectives of MSAR Government policy the following: (a) to guarantee the right to constitute a family and to protect maternity and paternity as eminent human and social values; (b) to ensure the protection, development and the right of a child to education; (c) to foment the living conditions relative to work, housing, health and education, in order to enable the integral development of the family and each one of its members; (d) to support economically challenged families, as well as single-parent families; (e) to cooperate with parents in the education of their children, promoting within families the exercise of their full responsibilities with regards to education; (f) to favour the integration and the participation of the elderly in family life and to promote solidarity and mutual support between different generations; (g) to ensure the effective participation and the organic representation of families in decisions that affect their moral and material existence; and (h) to promote the participation of families in community-building (art. 5).

508. The MSAR Government, either by itself or in collaboration with private associations, has created family support centres aimed at helping families in special situations (such as family service centres and day care centres) and has developed efficient mechanisms to deal with crisis situations, in particular those arising from marital or family break-ups, single-parent families, low income families and domestic violence, especially when children are involved.

509. The Social Welfare Bureau (SWB) has a special division to support families with problems or who are at risk, in need or vulnerable – the Department of Family and Community Service. This Department has a team of specialized technical staff, such as social workers, psychologists, nursery teachers, legal advisers, etc. The SWB provides several support services, such as economic assistance, marriage counselling, family education and free meals.

Types of cases handled by the SWB **

<i>Types of cases</i>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Suicide	4	6	17	11	24	14	24	32	21	13
Emotional distress	103	130	174	184	163	239	330	280	286	240
Child abuse	13	19	25	17	16	16	19	21	19	25
Wife abuse	16	19	33	19	33	46	58	48	61	51
Husband abuse	-	-	-	-	-	-	4	6	4	4
Elder abuse	1	0	3	1	3	7	5	3	1	2
Child neglect	15	20	11	7	8	4	9	5	4	7
Marriage problems	199	214	267	280	292	284	514	480	377	327
Parent-child relationship	87	140	160	180	185	167	197	176	127	122
Individual counselling*	157	252	339	386	425	544	776	686	673	585
Family counselling*	43	93	110	122	99	88	319	300	245	237

Source: SWB, 2009.

* The individual counselling and the family counselling refer to all cases handled by SWB (including domestic violence).

** Some cases involve more than one type of problems.

510. The NGOs that cooperate with the MSAR Government provide 3 support hotlines: the 24-hour Hotline for Counselling and the 24-hour Hotline for Domestic Violence of Lai Yuen Center of the Women's General

Association of Macao, both launched in 2005, and the 24-hour Hotline “Life Hope of Macao” from Caritas, which started in 2003.

511. Proper training and family planning is also a key element to family policy, being therefore fully supported by the MSAR Government. Family planning is intended to improve the health and well-being of the family, and consists of providing individuals and couples with information, knowledge and the means that will enable them to decide freely, and in a responsible fashion, the number of children they wish to have and the timing for such. Consultation programmes on family planning are also organized in schools and community associations. Family planning includes pre-marital and genetic issues counselling, information on birth control methods, treatment of infertility and prevention of genetic and sexually transmitted diseases.

512. It is also important to note that the execution of family policy by the MSAR Government is non-discriminatory and non-compulsory. All health centres offer family planning programmes and primary health care free of charge, as well as medication and devices used in family planning. The ultimate aim of the MSAR health system is to provide universal and free health care to everyone.

513. Family protection is also ensured at work. Women have the right to special protection during pregnancy and after childbirth; this includes the right to be released from work for an adequate period of time, without any loss of remuneration or other benefits.

514. Law 7/2008, which governs labour relations in the private sector, stipulates that pregnant women are entitled to 56 days of maternity leave without loss of remuneration or employment; out of these 56 days, 49 must be taken after the birth and the remaining may be used either before or after birth. This period is also guaranteed in case of still birth or abortion. During pregnancy and for three months following birth, women should not engage in any tasks that might cause discomfort or pose a risk to their condition.

515. In the public sector, workers have the right to maternity leave of 90 days, 60 of which must be enjoyed after birth and the remaining 30 either before or after birth, without any limitation to the number of births. Women also have the right to take one hour off each working day to breast-feed their children until the infant is one year old. In the public sector, male workers have the right to five days of parental leave, which shall be enjoyed after the child's birth (arts. 92 and 93 of the Statute of the Public Administration's Workers (SPAW), Decree-Law 87/89/M, as amended by Decree-Law 62/98/M).

Article 24

Rights of the child

General description

516. Detailed information pertaining to the operation of article 24 of the Covenant in the MSAR can be found in the relevant part of China's report on the implementation of the Convention on the Rights of the Child (CRC/C/83/Add.9, part II) and of its Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSA/CHN/1, part II). Reference is also made to the latest Addendum relating to the MSAR of China's Core Document, in particular in what concerns statistical data and the list of treaties. Major issues on this subject and developments that occurred since the submission of the referred reports are summarized below.

517. In accordance with article 38 (3) of the BL, minors enjoy special protection. Positive discrimination is therefore admissible with the purpose of correcting existent inequalities or abusive situations, thus recognizing children's particular needs.

518. There is no distinction between so-called "legitimate" children and children born out of wedlock. All children enjoy the same rights and benefit from the same level of protection, without any discrimination based on their parents' marital status.

519. As seen above, article 111 of the CC sets out legal majority at 18 years, whereas the age of criminal responsibility is 16 (art. 18 of the CCM). In relation to the criminal responsibility of minors and the juvenile system, please see the information provided for in relation to article 11 of the Covenant.

520. In the MSAR legal order, parents have prime responsibility for the care and protection of children. Within a marriage, the exercise of parental responsibility, which is a power and a duty of the parents vis-à-vis their children, belongs jointly to both spouses. Should one of the parents die, the parental authority shall befall on the surviving parent. Should only one of the parents of the child be known, parental authority shall befall on him/her solely (arts. 1756 (1), 1759 and 1764 of the CC, respectively).

521. In cases of divorce, de facto separation or annulment of marriage, parental authority shall be exercised by the parent to whom the child was entrusted. The child's custody and the conditions governing maintenance obligations are established by an agreement between both parents and subject to court approval. The approval is refused if the agreement does not correspond to the best interests of the child. In the absence of such an agreement, the court will decide in accordance with the child's best interests (arts. 1760 and 1761 of the CC).

522. Joint exercise of parental authority in case of divorce, de facto separation or annulment of marriage is possible (art. 1761(2) of the CC).

523. In cases where filial relationship is established to both parents who remain unmarried after the child's birth, the exercise of parental responsibility belongs to the one that has guardianship over the child and there is a legal presumption that the mother shall have guardianship. This presumption is refutable only in court. In case parents living in a de facto union or common law marriage, the exercise of parental responsibility belongs to both when they so declare at the civil registry. In the absence of such an agreement, the court shall decide taking the best interests of the child as the sole criterion (art. 1765 of the CC).

524. Children may not be separated from their parents, except if the latter do not carry out their parental duties and always by order of the court. Whenever the security, health, moral upbringing or education of a minor is endangered, the court may determine entrusting the minor to a third person, a family member, or an institution. The parents continue to exercise parental authority in all issues that are not incompatible with the court decision. Parents have visiting rights unless these are deemed against the child's interests (arts. 1772 and 1773 of the CC).

525. The exercise of parental authority may be subject to restrictions or to disqualification. Disqualification from the exercise of parental authority may only be ordered by a court if a parent violates his/her duties towards the child, thereby causing serious harm to the latter, or when a parent is not able to fulfil such duties, due to inexperience, sickness, absence or other reasons. Disqualification may also arise in relation to parents who have been convicted of a crime to which the law assigns this effect, and those who have been declared legally incapable due to mental anomaly by a court decision (art. 1767 et seq. of the CC).

526. Under such circumstances, minors who have been victims of maltreatment or abandonment, negligence, domestic violence, helplessness or other situations which have endangered their well-being, health, moral up-bringing and education, or have been subject to abusive exercise of parental authority, are protected by the legal system and by existing mechanisms of social protection.

527. The exposure or abandonment of children by those legally responsible for them is a criminal offence under article 135 of the CCM, punishable by two to five years' imprisonment, and if a serious offence against the physical integrity or the death of the victim ensues from such act the term of imprisonment may increase to 8 and 15 years, respectively.

528. In addition, under article 146 of the CCM, whoever, while having the lawful care or charge, or having under his/her responsibility, the direction or the education of a minor, or having a minor as his/her

employee: (a) inflicts upon him/her physical or mental ill-treatment or treats him/her in a cruel manner; (b) employs him/her in dangerous, inhuman or prohibited activities; (c) loads him/her with excessive work; or (d) does not provide the care or the assistance imposed by the duty of his/her functions, is punishable by one to five years' imprisonment. The penalty is aggravated when a serious offence against the physical integrity or the death of the minor ensues from such act, in which cases the term of imprisonment ranges from 2 to 8 years, or from 5 to 15 years, respectively. Criminal proceedings do not depend on a complaint since this crime is of a public nature.

529. As stated before, the responsibility for guaranteeing and promoting children's rights also lies on the society and on the MSAR. Indeed, the MSAR has the duty to encourage and to support children and young people, and to create the conditions towards the full enjoyment of rights and the harmonious development of their personality.

530. The MSAR has been creating necessary measures to protect children's interests at legislative level, as well as in practice, by providing specialized support to vulnerable children and carrying out special actions focused on children/young people (e.g. activities in the areas of education, environment, health, prevention programmes on drugs, HIV/AIDS, alcohol, tobacco, gambling and social rehabilitation, and school and municipal activities with the community). Commissions have been set up in partnership with the civil society, such as the Commission on the Fight against AIDS and the Commission on the Fight against Drugs.

531. The MSAR Government pays particular attention to orphans, children who do not live with their biological parents, young girls and children who are abandoned or deprived of their family environment. Several social institutions provide shelter and assistance to minors of different age who, for whatever reason, have been forced out of their homes. The residential childcare service offers supervision and care for vulnerable children and young persons who cannot be adequately looked

after by their families. In cooperation with associations related to family interests and institutions of social assistance, the MSAR Government promotes a policy of protecting minors deprived of a normal family environment, by trying to provide them with better living conditions, family unity and integration within the community.

532. Trafficking of children for the purpose of unlawful adoption is also provided for and punished under Law 6/2008 on the Fight against Trafficking in Persons.

533. As far as children with disabilities are concerned, please refer to the part related to the MSAR of China's report on the implementation of the Convention on the Rights of Persons with Disabilities, submitted to the United Nation on 30 June 2010.

534. The MSAR Government is also engaged in reducing infant mortality and in eradicating malnutrition by increasing access to health care services, in particular to primary health care, and by providing health and education programmes, by promoting the creation and operation of a maternal-infant network and nurseries, and by setting up an immunization programme especially focused on children from childbirth up to 6 years of age. The EYAB and SWB jointly provide educational and community-based programmes on health and children's rights.

535. Education is also guaranteed to everyone without discrimination. The right to education encompasses the equality of opportunities in the access to education, to study at schools and the freedom to learn (art. 37 of the BL and art. 3 of Law 9/2006 that sets the new Legal Framework on the Educational System for Non-Higher Education). The MSAR Government educational policy is gradually introducing a compulsory education system (art. 121 (2) of the BL and Decree-Law 42/99/M). Education is compulsory in public or private educational institutions for children aged from 5 to 15, or from the last year of kindergarten to lower secondary form 3, regardless of their racial or ethnic background. Children of legal migrant workers are entitled to enjoy the MSAR educational system.

536. Children of undocumented persons (illegal migrants) are also entitled to education. By Order of the Secretary for Social Affairs and Culture, the EYAB has issued a specific Guideline, dated 16 January 2002, informing all educational institutions of Macao that any person staying in the MSAR for a period of time exceeding 90 days is authorized to enrol his/her children in a non-high level educational institutions of Macao for the period of time of his/her legal sojourn, all educational expenses being supported by the person in question.

537. As regards child labour, the MSAR labour legislation provides for the adoption of measures aimed at eradicating child labour and establishes the rules concerning the minimum age for employment, which for the public sector is 18 years of age, and for the private sector is 16. However, in the private sector, the law exceptionally authorizes the employment of persons under 16 years of age, but not younger than 14, if the minor's physical capacity for work has been previously attested. At least once a year, minor workers are submitted to regular and periodic physical robustness and health examinations (arts. 26 to 32 of Law 7/2008).

538. Labour legislation forbids or limits certain employment situations which may endanger (or create a potential risk) to the physical, spiritual and moral development of minors. Without prejudice to judicial remedies, the violation of the conditions established in articles 26 to 32 of Law 7/2008 shall be subject to fines from MOP 10,000.00 up to MOP 50,000.00 per worker for each infraction. In cases of recidivism, the applicable fine may be doubled (art.79 et seq. of Law 7/2008). According to information supplied by the Inspection Division of the LAB, since 2000, no cases of illegal child labour have been reported.

Adoption

539. In the MSAR, adoption may only be granted by a court order and only in cases where adoption has real benefits for the adoptee. Adoption confers parental rights and duties to the adopter(s) regarding the adoptee. Adoption is irrevocable.

540. The court will grant adoption only if it is convinced that adoption assures the best interests of the child, following an inquiry concerning the adopter(s), the child and family conditions. The legal framework for adoption and, in particular, the necessary requirements to apply for adoption, and to adopt, is laid down under articles 1825 et seq. of the CC and in Decree-Law 65/99/M.

541. Adoption may not be decreed unless several preconditions are fulfilled, such as those relative to the adoptability of the child, the eligibility of prospective parent(s), and those pertaining to the establishment of mutual bonds of affection between the child and the prospective parents. Adoption also requires the voluntary and informed consent of the biological parents and of prospective parents. The adopted child is recognized as a full member of the adoptive family and enjoys all the rights pertaining thereto.

Children and armed conflict

542. In relation to this issue, it should be noted that in accordance with article 14 of the BL, the CPG is responsible for defence matters; consequently there is no recruitment of military personnel or compulsory military service in the MSAR.

Right to a name and nationality

543. The child's right to a name, personal identity and personality is guaranteed under article 82 of the CC. Every person is entitled to have a name, to use it and to defend against its illicit use by a third person for his/her identification or for other purposes.

544. The child will have the surnames of the father and the mother or of only one of them. The choice of the first name and surnames of the child is decided by the parents; if they fail to do so, the court will decide according to the best interests of the child. Whenever paternity is not established, the minor may take the surnames of the husband of the mother, should either party declare before the registrar that this is their wish (arts. 1730 and 1731 of the CC).

545. Filial relationships originate at birth and are established through a declaration to the Civil Registry. Such declaration is important since it determines the identity of the child's parents and, therefore, the primary persons to be responsible for the child. Registration has probative value.

546. All births occurred in the MSAR must be, without discrimination, orally declared within 30 days and are subject to registration at the MSAR Civil Registry. The persons who should register a birth are stipulated in article 77 (1) of the Civil Registration Code (CRC). If no declaration is made, the Head of the Civil Registry is required to notify the Procurator's Office to verify the facts necessary for registration and shall request the court to order a compulsory registration (art. 78 of the CRC).

547. Registration includes, in particular, the child's complete name, gender, the date and place of birth, residential address of the parents and any other specification required by law in special cases (art. 81 (1) of the CRC).

548. Abandoned children, i.e., newly born whose parents are not known and have been discovered abandoned in the MSAR, must also have their births registered. In this case, the Head of the Civil Registry shall give the abandoned child a complete name composed of a maximum of three commonly used names, without drawing attention to his/her status as an abandoned child (arts. 85 and 88 of the CRC).

549. The CC regulates the recognition of maternity and paternity. The first requires the mother's declaration or may result from a court decision or the child's application. In relation to paternity, there is a presumption of paternity regarding the spouse of the mother. In respect to children born out of wedlock, the determination of paternity is established by a declaration of the father or may result from a court decision or upon the application of the child (arts. 1657 et seq.).

550. Regarding the right to acquire a nationality, it should be pointed out that the Nationality Law of the People's Republic of China (NLPRC) is applicable to the MSAR by virtue of article 18 of the BL and of its annex III.

551. Articles 4 and 5 of the NLPRC establish that any person born in China or abroad, whose parents, or one of them, are Chinese nationals shall have Chinese nationality. Nevertheless, a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired a foreign nationality at birth, shall not have Chinese nationality.

552. Any person born in China whose parents are stateless or of uncertain nationality, and have settled in China, shall have Chinese nationality (art. 6 of the NLPRC).

Article 25

Right to participate in public affairs, voting rights and the right of equal access to public services

553. Updated information in relation to the implementation of article 25 of the Covenant in what concerns the right to participate in public affairs, the right to vote and stand for elections and main indicators on the political system can be found in the part relating to the MSAR of the latest addendum of China's core document, paragraphs 41 to 58.

554. Equal access to, and participation in public life, and in particular the access to, and the exercise of, public office and positions within the MSAR political system and Public Administration, is guaranteed. The principles of equality and non-discrimination enshrined in the BL are expressly recognized under ordinary legislation through the equality of conditions and opportunities for all candidates to public office and positions, and equality concerning the right to promotion within the ranks of the civil service.

555. Article 97 of the BL establishes that civil servants must be permanent residents of the MSAR, with the exceptions provided for under articles 98 and 99. In fact, the MSAR Government may employ Portuguese and other foreign nationals who have previously served in the Macao civil service, and those holding permanent identity cards of the MSAR, to be employed as civil servants in government departments at all levels, with

the exception of the principal officials provided for in the BL. Paragraph 2 of article 99 also determines that government departments of the MSAR may also employ Portuguese and other foreign nationals as advisers or to fill professional and technical positions. These individuals may be employed only in their individual capacities and shall be responsible to the MSAR Government.

556. The appointment and promotion of civil servants is grounded on objective criteria, such as qualification, professional experience and technical ability. Within the MSAR ordinary legislation, the rules of access to the civil service are defined in the SPAW.

557. Article 46 of the SPAW provides that equality of conditions and opportunities for all candidates to civil service is a general principle for selection and recruitment.

558. All candidates must be of Chinese or Portuguese nationality and have legal residence in the MSAR. However, under exceptional circumstances, persons holding other nationalities may be employed, as long as their work is of a scientific, technical or teaching nature. The age for admission to the civil service ranges from 18 to 50, unless special conditions are established. The maximum age limit is inapplicable whenever the position to be filled requires specific technical, scientific or cultural qualifications (arts. 10 and 11 of the SPAW).

MSAR Public Administration personnel by gender*

<i>Gender</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
M	11 362	11 520	11 683	11 904	12 189	12 631	13 233
%	64.94	64.80	64.02	62.79	62.10	61.16	60.16
F	6 134	6 258	6 567	7 054	7 440	8 022	8 763
%	35.06	35.20	35.98	37.21	37.90	38.84	39.84
MF	17 496	17 778	18 250	18 958	19 629	20 653	21 996

Source: Public Administration Bureau.

* Workers employed by contract and private law system are not included.

559. Women have the same opportunities as men and are not viewed differently, namely with respect to their professional abilities. It is worth stressing that women's role in society has been steadily improving in the MSAR.

560. The LA currently comprises 29 members, four of which are female. The MSAR Government is also well represented by women. The offices of the Secretary for Administration and Justice (the second most important member of the MSAR Government), and of one of the deputies to the Commissioner against Corruption, are occupied by women.

561. In the judiciary, there are currently 35 judges, 15 of whom are women, constituting 42.9 per cent of the total number of judges. In addition, there are 152 judicial clerks in the courts of Macao, 72 of whom are women, representing 47.4 per cent of the total number of judicial clerks.

Article 27

Rights of minorities

562. The MSAR is a place where many different groups of various communities live together harmoniously with a wide range of ethnic, religious, linguistic and cultural diversity.

563. As referred to throughout this report, all persons in the MSAR shall be, without discrimination, equal before the law and shall enjoy the fundamental rights and freedoms established in Chapter III of the BL (arts. 25 and 43 of the BL). Article 44 of the BL states that MSAR residents and other persons who are in Macao shall have the obligation to abide by the laws in force in the MSAR.

564. The respect for fundamental rights and freedoms is deeply rooted in the MSAR legal system. Every ethnic group within the MSAR population shares the same dignity and is entitled to its own cultural life,

to profess and to practise its own religion and to use its own language. Tolerance and respect for cultural differences constitutes a cornerstone of the MSAR lifestyle. Such cultural diversity, also characterized by the cross-cultural features from both the East and the West, contributes to the unique identity of the MSAR.

565. Due to MSAR's historical and cultural background, article 42 of the BL provides for the special protection for the interests of residents of Portuguese descent, in accordance with law. Their customs and cultural traditions shall be respected.

566. Apart from the BL, the legal protection of minorities' rights is also ensured through ordinary law. As mentioned before in relation to article 20 of the Covenant, criminal law severely punishes acts related to hatred and discrimination, such as genocide and incitement to racial discrimination (arts. 230 to 233 of the CCM).

567. For statistical data on place of birth, ethnicity and usual language of the MSAR population; please refer to the part relating to the MSAR of the latest addendum of China's core document.

568. In relation to the access to public office, please see the information provided relative to article 25 of the Covenant. As regards the private sector, see the table below.

Non-resident workers by origin

<i>Place of origin</i>	<i>2004</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Africa	14	56	61	50
Americas	132	597	711	595
Asia Pacific	27 268	83 929	90 752	73 717
Europe	322	625	637	543
Total	27 736	85 207	92 161	74 905

Source: Yearbook of Statistics 2009.

Non-resident workers by sex

<i>Gender</i>	<i>2004</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
M	9 805	50 004	50 338	37 462
F	17 931	35 203	41 823	37 443
MF	27 736	85 207	92 161	74 905

Source: Yearbook of Statistics 2009.

569. Chinese and Portuguese are the official languages of the MSAR. Article 9 of the BL stipulates that in addition to the Chinese language, Portuguese may also be used as an official language by the Executive authorities, legislature and judiciary of the MSAR. Decree-Law 101/99/M, of 13 December, on the Status of the Official Languages expressly states that Chinese and Portuguese, apart from being the two official languages, have equal value and dignity for all legal documents (art. 1).

570. The mother tongue of most of Macao's population is Chinese, spoken in the language (or dialect, according to some classifications) known as Standard Cantonese (Yue). Other languages (or dialects) of spoken Chinese are spoken in Macao, although by smaller numbers and not as widely as Standard Cantonese. The most important of these is Fujianese (Min). There are also other dialects from Jiangsu and Zhejiang of the Wu family of Chinese languages (or dialects). A reasonable proportion of the Chinese population, particularly younger people and those who came to Macao since the 1980's, speaks Mandarin (Putonghua).

571. Portuguese is spoken by a very small percentage of the population. For historical, cultural and practical reasons, it is still the language widely used in the legal practice, although since the reunification in 1999 the use of Cantonese has been increasing. English is the usual language of communication between the various linguistic communities living in Macao.

**2012 WRITTEN QUESTIONS & ANSWERS TO THE LIST
OF ISSUES TO BE TAKEN UP IN CONNECTION WITH
THE CONSIDERATION OF THE INITIAL REPORT OF THE
PEOPLE’S REPUBLIC OF CHINA CONCERNING RIGHTS
COVERED BY ARTICLE 40 OF THE ICCPR * ****

I. Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

1. In view of the principle of the legal system’s continuity as reaffirmed in the Basic Law, please indicate the reason why the State party has not referred to previous concluding observations of the Committee and periodic reports submitted when it was under Portuguese administration. Please indicate to what extent the State party has implemented the Committee’s previous recommendations of 1999 (CCPR/C/79/Add.115).

The Initial Report is the first report submitted to the United Nations Human Rights Committee (hereinafter referred to as “the Committee”) through the Central People’s Government after the handover of the Macao Special Administrative Region (hereinafter referred to as “the Macao SAR”) to China in 1999. It was drafted and made in accordance with the guidelines on the form and content of reports (Document no. HRI/GEN/2/Rev.6) provided by the Committee, as such, it did not respond one by one to the concluding observations (CCPR/C/79/Add.115) made by the Committee in 1999. However, the adoption of the mean of making the Initial Report was only for complying with the guidelines on the form

* CCPR/C/CHN-MAC/Q/1, 5 September 2012

** CCPR/C/CHN-MAC/Q/1/Add.1, 27 February 2013

and content of reports but it does not imply that the Macao SAR did not respond or follow up with the opinions and recommendations made by the Committee. In fact, the Macao SAR's replies to the concluding observations of the Committee are scattered in various parts of the Initial Report, for instance, in response to paragraph 7 of the concluding observations, please refer to paragraphs 11 to 14 of the Initial Report.

The actual situation of the Macao SAR's follow-up of the 1999 concluding observations will be presented individually but as the content of paragraphs 8, 10, 11, 12, 13 and 14 of the concluding observations is basically repeating that of the List of Issues, therefore, we will not reply here again.

For the reply to paragraph 7 of the concluding observations, please refer to paragraphs 11 to 14 of the Initial Report. Regarding the Committee's concern, it must be reiterated that neither human rights nor the law or legal provisions related to human rights cease to be in force after the handover.

The Committee suggested in paragraph 9 of the concluding observations that the Macao SAR should strengthen the training of lawyers and translators in the area of human rights. In fact, the Macao SAR and the European Union have signed an agreement on the "EU-Macao Cooperation Programme in the Legal Field". Under the framework of this Agreement, the Legal and Judicial Training Centre held various legal training seminars for the Macao SAR magistrates, legal instructors, trainees for magistracy, lawyers, trainee solicitors, legal personnel in government departments and other interested parties in the area of human rights. Since 2005, a series of seminars in this field had already been organised, with the training topics covering, namely, "Human Rights, UN Covenants and Fundamental Rights" (2005), "Human Rights, UN Covenants and Fundamental Rights: Realisation of Human Rights - the Glorified Esperanto?" (2005), "Human Rights and International Law: A Global Challenge" (2006), "Cultural Diversity and Human Rights: A Good Match?" (2010), "Human Rights

and Fundamental Freedom: The Rights of Privacy and Data Protection” (2011), the “System of Fundamental Rights” (2012), and so forth. Apart from the activities carried out under the “EU-Macao Co-operation in the Legal Field”, the Legal and Judicial Training Centre had also organised a number of other training activities on human rights including a seminar on the “System of Protection of Serious Violations of Human Rights in International Law” (2004), a seminar on the “Collection of Evidence and Fundamental Rights” (2007), and a seminar on “Fundamental Rights and Criminal Law - One Relationship ‘Complex’ in the Jurisprudence of the European Court of Human Rights” (2008). All these activities positively responded to the recommendations by the Committee.

In paragraph 15 of the concluding observations, the Committee was concerned about the issue of freedom of expression in Macao after the handover. It must be noted that the Committee’s concern or doubt does not exist. The Macao SAR upholds the freedom of press, speech and publication, and the freedom of press and speech is adequately safeguarded. Among which, Article 27 of the Basic Law sets out the freedom of speech, press and publication of Macao residents.

Law no. 7/90/M, the Press Law, is a law designated to guarantee the rights to gather, report and receive information of journalists. It also ensures the independence of journalists during their performance of duties. This law remains in force even after the handover. Please refer to paragraphs 433 to 440 of the Initial Report for the provisions of the Press Law.

On the other hand, it must also be pointed out that the media industry has continued to grow after the handover of the Macao SAR. In fact, the number of newspapers published in the Chinese language has increased from eight to ten, with one of them being a newly published free newspaper. The number of newspapers published in Portuguese has increased from two to three while all the three newspapers in English were founded after the handover. With regards to the broadcasting industry, one cable TV station and three satellite TV stations began services after

the handover, bringing richer and more diverse information to the Macao citizens.

Apart from the increase in its number, the media institutions in Macao have also been constantly enhancing their role in monitoring the Government in respect of law enforcement. In recent years, the newspapers have been successively issuing special columns for commenting on current affairs and political issues, while the electronic media has been launching programmes with guests and residents discussing current affairs and political issues. These initiatives demonstrate that the press and the residents continue to enjoy freedom of press and speech after the handover.

The Committee expressed concerns about a lack of non-governmental organisations (NGOs) in Macao as noted in paragraph 16 of the concluding observations. Article 27 of the Basic Law ensures that Macao residents are entitled to freedom of association. Law no. 2/99/M and Articles 154 to 192 of the Civil Code regulate the legal system of association. Residents of the Macao SAR have the right to form or not form associations under unlimited circumstances. No public authority can, in any form, force individuals to establish, join or withdraw from any kind of association.

NGOs of any nature can apply to the Macao SAR Government for allowances according to the law. The Macao SAR Government encourages and supports NGOs with charitable, medical, educational or other charitable purposes, such as tax exemptions, financial subsidies and so forth. All these support measures show how the Macao SAR Government encourages the establishment of NGOs.

As of November 2012, there are 5,605 associations, which include human rights NGOs such as labour rights NGOs (the Macao Federation of Trade Unions, the Macao Workers' Rights Association, and so forth). As for the NGOs pertaining to the rights of women, children and elderly, there are the Women's General Association of Macao, the Macao Caritas, the Sin Meng Charity Association, the Against Child Abuse (Macao) Association,

and so forth. With respect to NGOs in relation to disability issues, there are the Macao Association for the Mentally Handicapped, the Macao Association for the Mentally Handicapped Parents Association, the Macao Deaf Association, the Macao Association of Support for the Disabled, and so forth registered at the Identification Bureau.

2. Please provide information as to whether individuals have directly invoked provisions of the Covenant before domestic courts, together with information on subsequent decisions taken and remedies provided. Please provide data on complaints lodged from 2009 to date to the Commission against Corruption, to the Public Information and Assistance Centre and the Labour Affairs Bureau. Please also indicate whether the right to petition the Chief Executive and the Legislative Assembly under Law 5/94/M have been exercised by Macao citizens.

As mentioned in paragraphs 34, 47 to 50 of the Initial Report, international treaties are applicable to the Macao SAR by means of “incorporation”. Judicial organs can directly cite the relevant treaties as the legal basis for judgments. Furthermore, natural persons or legal persons can also directly invoke the aforementioned treaties for standing for their own rights and ascertaining relevant obligations.

For example, in Case no. 792/2010 of the Court of Second Instance (criminal appeal case), the suspects directly cited provisions of the Covenant to assert their own rights. The suspects were accused of committing the crime of libel against the Director of the Judiciary Police. The suspects argued that, as a victim, the official participation of the Director of the Judiciary Police in the investigation of this case was a violation of Article 14 of the Covenant which states that “all persons shall be equal before the courts and tribunals”. The Court finally ruled that the allegation of the suspects was unfounded because the investigation and the indictment against the suspects as well as the interrogation were done by the Procuratorate and the original court respectively, but not by the aforementioned victim, the Director of the Judiciary Police. In addition,

the Criminal Procedure Code does not prohibit the dual identity of the criminal police and the libel victim, who is the Director of the Judiciary Police in this case, from being involved in the criminal investigation of the related offence.

In relation to the data of complaints, from January 2009 to 30 November 2012, neither the Public Administration and Civil Service Centre (which is now called the Government Information Centre) nor the Labour Affairs Bureau had received any complaint concerning the violation of the Covenant.

As regards the exercise of the right to petition, the Macao SAR residents have been extensively exercising the right to petition under different formats of “request”, “application” and “appeal” to the Chief Executive, the Office of the Chief Executive and the Legislative Assembly pursuant to the right to petition granted by Law no. 5/94/M. The scopes of petition cover people’s livelihood, education, legal reform and other areas. From January 2001 to November 2012, the Legislative Assembly of the Macao SAR had received a total of 42 petitions, 29 of which were related to the requests for the formulation of or amendment to the existing law and 10 of the 42 petitions concerned the provisions of the International Covenant on Civil and Political Rights such as its Articles 2, 17 and 26, but there was only one petition that directly quoted the provision of the Covenant (Article 9(3)).

3. Does the State party intend to establish a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, annex to General Assembly resolution 48/134)?

As an administrative region of China, the question of whether or not the Macao SAR has established an independent national human rights institution is inapplicable to it. Currently, the Macao SAR has not established any independent human rights institution yet but it

should be emphasized that under the existing legal norms, system and structure, ample protection for human rights is guaranteed. As mentioned in paragraphs 29 to 46 of the Initial Report, the rights stipulated in the Covenant are implemented through the laws of the Macao SAR.

In order to enhance the public's awareness of their own rights and the relevant legal protection, the Legal Affairs Bureau has been disseminating legal information of different areas through various forms, such as dissemination seminars, contests, bazaars and pamphlets, for instance, the publication of the booklet of the International Covenant on Civil and Political Rights could be obtained from all government departments, community centres, libraries and other locations for free. Please refer to paragraphs 51 to 57 of the Initial Report for details of the dissemination of law.

As for monitoring the implementation of the Covenant, it is worth mentioning that the CCAC (the Commission Against Corruption) had amended its Organisational Law in 2012. Apart from maintaining its function as an "ombudsman", the Commission further increased its function in promoting the protection of human rights, freedom, security and legitimate interests as well as ensuring the justice, legality and efficiency of public administration.

Apart from the CCAC being an independent government institution that monitors the implementation of the Covenant, representatives from the civil community and NGOs have formed commissions in different areas, with an aim to promote and facilitate the implementation of human rights, constituted to a series of regulatory mechanisms. Please refer to paragraph 71 of the Initial Report for the list of the aforementioned commissions.

The rights stipulated in the Covenant and other human rights conventions have been extensively disseminated in the Macao SAR through the aforementioned measures and such rights are safeguarded through the highly strict monitoring mechanism.

II. Counter-terrorism measures and respect of rights guaranteed in the Covenant (arts. 7, 9 and 14)

4. Please provide detailed information on measures taken to respond to terrorism threats and indicate if and how these measures, including Law 3/2006 on the Prevention and Suppression of the Crimes of Terrorism, have affected human rights safeguards in law and in practice. Please indicate legal safeguards and remedies available in accordance with national legislation and international law. Please also indicate whether any deportations or expulsions have been undertaken in the context of counter-terrorism measures.

In order to further respond to the international requirements related to anti-money laundering and counter-terrorist financing, the Macao SAR Government established the Financial Intelligence Office in 2006. Its major responsibilities are:

- (1) to collect, analyse and provide information on suspicious money laundering and terrorist financing transaction reports to law enforcement authorities and to report the suspicious cases to the Public Prosecutions Office;
- (2) to provide for, and receive from, entities outside the Macao SAR information regarding crimes relating to money laundering and terrorist financing in compliance with regional agreements or international law instruments applicable to the Macao SAR;
- (3) to collaborate with competent entities in formulating anti-money laundering and combating terrorist financing guidelines;
- (4) to develop and promote programmes for educating the general public on the prevention and suppression of money laundering and terrorist financing.

With respect to internal laws and regulations, the Macao SAR adopted legislations in accordance with the international standards to

counter-terrorism and the financing of terrorism as well as reinforced its intelligence and data collection among its regional and foreign law enforcement counterparts.

Specifically, Law no. 3/2006 of 10 April, sets up the legal regime to prevent and suppress terrorism, including the criminalisation of terrorist acts committed by a single offender or by an organisation; the criminalisation of terrorist acts against a foreign state or international organisation; the extra-territorial jurisdiction for these crimes; the criminal liability of legal persons, and the criminalisation of the financing of terrorism. To prevent the financing of terrorism, a set of administrative measures were adopted through Administrative Regulation no. 7/2006, where it prescribes the prerequisites and contents of the duties regarding the prevention of the criminal offences of money laundering and the financing of terrorism (such as customer due diligence measures, waiving of bank secrecy, duty to report suspicious transactions) and establishes the supervisory system for compliance and the framework of the applicable penalties in case of non-compliance.

Moreover, the Macao SAR, as a member of the Asia/Pacific Group on Money Laundering, is regularly assessed on its efforts to tackle terrorism and the financing of terrorism. There is also a special force unit at the Public Police Security Force that deals with specific operational situations that threaten the public order and security of the Macao SAR to combat and detect terrorists and rescue hostages. This unit is specially trained to handle high-risk missions and exchanges information with neighbouring and foreign counterparts.

Legal cooperation in criminal matters is also important to counter-terrorism. The Macao SAR law enforcement authorities have created a direct communication system and an information exchange channel with Mainland China, the Hong Kong SAR and other countries or regions in order to enhance cooperation as well as closely cooperate with the Macao Sub-Bureau of the China National Central Bureau of INTERPOL.

In addition, in order to enhance international and regional cooperation to strengthen the efforts of combating crimes, the Financial Intelligence Office has signed memoranda of understanding or cooperation agreements with 11 financial intelligence units respectively, with the expectation of working closely in the area of collection, utilisation and analysis of the financial intelligence in relation to money laundering and terrorist financing and of establishing a mechanism of regular information sharing, typology study and personnel interaction.

It should be underlined within this context that there are no records or cases investigated of terrorism or the financing of terrorism in the Macao SAR.

In respect of legal safeguards and remedies, as explained in paragraphs 58 to 72 of the Initial Report, the legal system of the Macao SAR is founded on the principles of legality, equality before the law, non-discrimination and so forth and that all individuals can recur to judicial, quasi-judicial and non-judicial remedies to safeguard their fundamental rights. Any person suspected or accused of committing terrorism or the financing of terrorism in the Macao SAR shall be entitled to criminal procedural guarantees, the right to appeal, habeas corpus, the right to compensation for unlawful arrest, and the right to an equal, fair and public hearing and so forth.

On the other hand, apart from establishing a relief system for victims on the civil and criminal law, victims of terrorist crimes (who are considered victims of violent crimes under Article 1(2) of the Criminal Procedure Code) can also refer to Law no. 6/98/M, Law on the Protection of Victims of Violent Crimes, whereby victims can apply for a special financial compensation even if the offender's identity is not known or if, for any reason, the offender cannot be accused or convicted.

In the context of counter-terrorism, there are no cases of deportation or expulsion.

5. Please provide updated information on judicial control of police access to correspondence, computer databases and other private information for national security reasons (art. 18 of Law 9/2002). How does the State party reconcile this law with Law 8/2005 on the protection of personal data and private life?

First of all, it should be clarified that Law no. 9/2002, Legal Framework for Internal Security, only establishes the legal basis for internal security, that is, the establishment of principles, guidelines and fundamental measures necessary for the protection of internal security. It should also be noted that one of the principles established by that law is the principle of respect for the rights, freedom and protection of individuals.

According to Article 18 of Law no. 9/2002, if there is strong evidence of disturbance of internal security due to criminal activities, the Police Unitary Service can suggest to the judge in charge of criminal litigation to give an order for the execution of the monitoring of communications, including written, telephone and computer communications or other means of the monitoring of communications pursuant to Articles 172 to 175 of the Criminal Procedure Code. Therefore, the monitoring of communications prescribed in Article 18 of Law no. 9/2002 can only be used after receiving an order or authorisation from the judge.

Until now, the Macao SAR Government has never implemented the monitoring system of communications prescribed in Article 18 of Law no. 9/2002.

The coordination of Law no. 9/2002 and Law no. 8/2005 is achieved by the following two basic aspects:

First of all, in principle, the access to personal data is not allowed, except when there is a suspect of illegal activities, criminal offences, administrative offences and decisions relating to penalties, security measures, fines and accessory penalties. Even if personal data is legally obtained, it must comply with the relevant provisions: (1) the access

to personal data shall maintain the standards of data protection and information security; (2) the access to personal data is deemed necessary for legitimate purposes; (3) the personal rights, freedom and guarantees do not take precedence over the responsible entity to achieve its legitimate purposes; (4) in any case, the access to personal data shall be limited to what is necessary for specific purposes (Article 8 of Law no. 8/2005).

Secondly, the law also empowers the party involved to defend and adopt a variety of measures, for instance: (1) to submit a complaint to the competent authority responsible for supervising the collection, storage and use of personal data; (2) to adopt administrative or judicial measures; (3) to use the urgent judicial protection for appealing to the court against decisions made regarding personal data; (4) to invoke the provision of administrative infringements and crimes relating to the access of personal data – Articles 28 to 44 of Law no. 8/2005.

In conclusion, the measures presented are in full compliance with the provisions of the Basic Law, pursuant to which “the freedom and privacy of communication of Macao residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with the provisions of the law to meet the needs of public security or of investigation into criminal offences” (Article 32 of the Basic Law).

III. Non-discrimination, equality between men and women (arts. 2, 3 and 26)

6. Please indicate any measure being taken to eliminate de facto inequalities in salaries between men and women in certain areas and explain how the State party encourages women to lodge complaints to relevant bodies such as the Labour Affairs Bureau.

Regarding equality between men and women in employment, at the legal level, Decree-Law no. 52/95/M establishes regulations to guarantee

equal opportunities and treatment in employment for men and women workers in labour relations. Its Article 9 provides that men and women employees are entitled to receive equal remuneration for work of equal value provided for the same employer. Following the same principle, Article 5(1) of Law no. 4/98/M on the Legal Framework for Employment and Labour Rights and Article 57(2) of Law no. 7/2008, the Labour Relations Law, establish the principle of equal remuneration for work of equal value. Aside from basic remuneration, the Labour Relations Law further establishes that, regarding working conditions, no employee shall be treated unequally due to gender or other grounds. In addition, it is worth mentioning that the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (ILO Convention no. 100) is applicable to the Macao SAR.

In fact, the statistical figures on working population, employed population and unemployed population by gender and age groups announced quarterly by the Statistics and Census Service show that the employment rate of women in the Macao SAR is not low at all. From the statistical data of the median monthly employment earnings of recent years, it can be seen that the remuneration for men and women employees in the public sector are similar, although, in practice, there are still gaps in the remuneration between men and women employees in private institutions. These gaps, however, do not generally exist in all industries and there are many objective factors causing the gaps, such as the physical differences between men and women, the development conditions of relevant industries, and so forth.

Moreover, since 2008, the Consultative Commission for Women's Affairs has been conducting a survey, every two years, on the current status of women in Macao. Among others, the Report on the Current Status of Women in Macao 2008 and the Report on the Current Status of Women in Macao 2010 both reckoned the Macao SAR's ranking on the Global Gender Gap Index so as to assess the inequality between men and women in Macao. According to the aforementioned Reports, in 2008, the ratio of

men's and women's salaries was 0.8 and in 2010, the ratio was 0.78 while the world's average ratios were 0.51 and 0.54 respectively, indicating that the figures achieved by Macao in those two years were higher than the global average figures. The Report on the Current Status of Women in Macao 2010 also pointed out that a considerable number of women gave up their full-time jobs and engaged in part-time works with fewer working hours in order to take care of their families and consequently earned less, thus this may lower the average salary of female employees. From this, it shows that Macao women are willing to devote more time to family life which may be the reason for the existence of the gender pay gap.

On the other hand, in order to enhance the knowledge of the general public on the rights and interests relating to work, the Labour Affairs Bureau continues to disseminate and promote the Labour Relations Law. At the same time, it has also set up a dedicated consultation email address for employees to make inquiries or lodge complaints on issues related to labour relations. Besides following up complaints lodged by employees, the Bureau will also, upon receipt of information from other sources such as media reports or citizen opinions that the labour rights and interests of employees are infringed, take the initiative to contact the employers or employees concerned to understand the specific situations and file cases in time for investigation and follow-up.

IV. States of emergency (art. 4)

7. Please clarify which of the rights set out in the Covenant are restricted during states of emergency and indicate whether effective remedies are available, in law and in practice, for persons affected by emergency measures. Please also indicate any safeguard provided by Law 9/2002 on the Legal Framework for Internal Security regarding the protection of non-derogable rights during states of emergency.

Law no. 9/2002 on the Legal Framework for Internal Security aims at safeguarding public order and tranquility, protecting personal and property safety, preventing and investigating crimes and controlling immigration so

as to ensure stability of the society and the exercise of fundamental rights and freedoms.

According to Article 8 of Law no. 9/2002, whenever there is a case of emergency that poses a serious threat to the internal security, to ensure public order and tranquility, the Chief Executive may, subject to Article 40 of the Basic Law, determine the adoption of measures that involve the restriction of fundamental rights and freedom, provided that these measures are necessary, suitable and proportional to the end of maintaining or restoring the said security. The temporal limit for such measures is 48 hours. With respect to this, Article 40(2) of the Basic Law expressly stipulates that the rights and freedoms enjoyed by the Macao SAR residents shall not be restricted unless as prescribed by law, and that such restrictions shall not contravene the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to the Macao SAR. Therefore, all restrictions are limited to the scope permitted by the International Covenant on Civil and Political Rights. This means that any measure that may restrict or derogate fundamental rights and freedoms provided for in Article 4(2) of the Covenant may not be adopted.

In order to ensure that the legitimate rights and interests will not be restricted, Article 2 of the Legal Framework for Internal Security stipulates that the measures adopted to maintain internal security must respect the rights, freedoms and guarantees of persons and must abide by some fundamental principles of law (including the principle of equality, proportionality and non-discrimination), criminal law, criminal procedure law, organisational law of military and security departments and general police regulations, and the aforementioned measures shall be applied only when they are absolutely necessary to safeguard and ensure public security and tranquility.

Specifically, the law enforcement authorities may adopt the following restrictive measures pursuant to Article 17 of the aforementioned Law:

- To allow police surveillance of persons, buildings and venues for a limited period of time;
- to ask for the identification of a person whenever he/she is in a public place or under police supervision;
- to seize arms, munitions and explosives temporarily;
- to refuse the entry of non-residents into the Macao SAR or expel anyone who may pose a threat to internal security or is considered inadmissible to the Macao SAR or seen as a suspect with connections with transnational crime, including international terrorism;
- to close temporarily some venues or terminate the activities of some enterprises that are linked to organised crime or terrorism, and the judicial authority shall be informed of the adoption of such a measure.

As other persons whose rights are violated, if a person subject to the aforementioned measures considers his/her rights as being violated, he/she may, in accordance with law, access to law and initiate proceedings in court, access to lawyers to obtain legal aid, in order to protect his legitimate rights.

Last but not least, as stated in paragraphs 91 and 92 of the Initial Report, the Macao SAR Government is only responsible for maintaining the *ordre public* (internal security) of the Macao SAR. The power to declare a state of emergency in the Macao SAR, by reasons of war or turmoil which endangers national unity or security, belongs to the Standing Committee of the National People's Congress.

V. Prohibition of torture and cruel, inhuman or degrading treatment or punishment, independence of the judiciary and fair trial (arts. 7, 9, 10, 14 and 15)

8. Please provide information on additional measures taken to combat cases of rape and domestic violence, to prosecute perpetrators and provide redress to victims. Does the State party intend to enact specific legislation to address sexual harassment in the workplace?

Rape is a crime against the sexual freedom of a person and it is provided for in Article 157 of the Macao Criminal Code. Rape includes both the copula with a person, by means of violence, as well as coercion to copulate with a third person. The penalty is 3 to 12 years of imprisonment. The same penalty is applicable to the person that, by means of violence, practises anal coitus with another person or coerces him/her to have it with a third person. Reference shall also be made to the crime of sexual coercion, that is, the coercion of another person, by means of violence, serious threat, or making the victim unconscious, or putting him/her in a position in which he/she may not offer resistance, to endure or practise, with the offender or a third person, a relevant sexual act. The penalty for this crime is 2 to 8 years of imprisonment (Article 158 of the Macao Criminal Code).

The relevant penalties shall be aggravated by one-third in its minimum and maximum limits when the crime is committed by an ascendant, a descendant, an adopter or an adoptee, a family member of the second degree or a guardian of the victim (Article 171 of the Macao Criminal Code).

Different services of the Macao SAR Government adopt different measures to combat those crimes. For instance, the Legal Affairs Bureau is in charge of the dissemination of the law and awareness programmes to the general public and in schools; the Health Bureau is liable to identify such cases at the hospitals and health centres and refer to the police for investigation; the Social Welfare Bureau is liable to provide social and psychological assistance, and shelter whereas the police is responsible for carrying out criminal investigation for prosecution as well as preventing and combating crimes.

The provision to punish the family member that commits the crime of domestic violence is provided for in Article 146(2) of the Macao Criminal Code, which provides that whoever physically and psychologically abuses the spouse, or the person in an analogous situation shall be punished with a penalty of 1 to 5 years of imprisonment. The penalty shall be aggravated

if it concerns a serious offence to physical integrity of the victim (2 to 8 years of imprisonment) or results in the victim's death (5 to 15 years of imprisonment) (Article 146(3) and (4)). The crime against the physical integrity of a person is also provided for in Articles 137 and 138 of the Macao Criminal Code.

The Macao SAR Government is drafting a law specifically for the problem of domestic violence.

The Social Welfare Bureau runs a special unit, the Family Counselling Office, which comprises psychologists, jurists and social workers, providing pluralistic services to families at risk, particularly to women and their children who are victims of domestic violence. In addition to this, the Social Welfare Institute has Social Work Centres throughout the Macao SAR which handle these cases in loco, providing support services to the courts and to urgent cases on a daily and continuous basis. The Social Welfare Bureau maintains a close relationship with private social institutions and other entities with similar objectives, granting them support and cooperating with them.

The following information illustrates the cases related to rape, sexual coercion and domestic violence between 2008 and 2012 for investigation:

<i>Crime/Year</i>	<i>Case for Investigation</i>				
	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>Sept. 2012</i>
Rape	19	17	19	21	16
Sexual Coercion	4	6	2	7	2
Domestic violence - woman victim	239	280	269	243	165
Domestic violence - man victim	18	14	27	17	17
Domestic violence - child victim	28	27	30	15	1

Source of information: Coordination Office for Security, 2012

With regard to emergency relief and protection for victims, the Social Welfare Bureau plays an important role in providing victims with support in many aspects:

In the aspects of accommodation and daily care

With respect to minors who are victims of sexual assault or abuse, the Bureau will, considering their safety, provide them with accommodation and daily necessities. Moreover, the Social Welfare Bureau sponsors two civil institutions to provide shelter for women and families subject to violence and provides monthly financial assistance for victims who are facing financial difficulties for leaving their families in order to protect the safety of the victims and allow them to live in a stable and safe environment.

In the legal aspect

In order to protect the safety of minors, the Bureau will submit to the Public Prosecutions Office reports on their situations and will, considering their specific situations, apply to the court for entrusting them to relevant institutions in accordance with the Legal Framework on Educational and Social Protection on Juvenile Justice. In case the abusers are the parents or guardians of the victims, the Bureau will apply to the court for guardianship measures that arrange for them appropriate guardians who will assist them to take care of their daily lives. On the other hand, the Bureau will also provide the victims and their family members with legal advice service in order to answer their questions on legal issues, such as issues on marriage and property in domestic violence cases.

In the aspect of studies

If the studies of victims are affected due to unfortunate incidents or if there is a need for them to change their learning environments, the Bureau will, through inter-departmental cooperation, assist the victims to handle issues with their studies so as to allow them to continue their studies in safe environments.

In the aspect of treatment

If necessary, victims may be provided with medical treatments, including psychological counselling services for them and their family members.

Regarding the formulation of legislation to regulate sexual harassment at workplaces, although the Macao SAR has not formulated any specific legislation on sexual harassment at the workplace, if an employer does not respect an employee or treat an employee in an impolite manner, including any sexual harassment behaviour, the employee may lodge a complaint with the Labour Affairs Bureau. If, during investigation, any offence such as rape or sex coercion is found, the Labour Affairs Bureau will refer the case to the criminal police authorities for follow-up so that a criminal charge will be initiated against the offender according to legal procedures.

9. Please indicate whether the provisions of Law 6/97/M against Organized Crime are in conformity with the Covenant, in particular the prohibitions on trying a person twice for the same offence and enacting laws with retroactive effect.

The principle of legality (Article 1 of the Macao Criminal Code), non-retroactivity (Article 2 of the Macao Criminal Code) and non bis in idem (Article 6 of the Macao Criminal Code), provided for in the general part of the Macao Criminal Code, are cornerstone principles of the Macao criminal legal system, as mentioned in the Initial Report in relation to Articles 9, 14 and 15 of the Covenant.

The non bis in idem principle is a general principle of criminal procedure guaranteed under the Macao SAR legal order. This principle, as enshrined in the Covenant, is self-executing and may be directly invoked before the courts. Article 6 of the Macao Criminal Code reflects such principle by stipulating that the Macao SAR criminal law is applicable to acts committed outside Macao only when the offender has not been tried in the place where the act was committed.

Also Article 20 of Law no. 6/2006 on Legal Cooperation in Criminal Matters with the title “Non bis in idem” states that “When cooperation request is granted which involves the transfer of competence over criminal proceedings in favour of a judiciary authority of a State or Territory, criminal proceedings cannot be filed or continued in the Macao SAR for

the same facts that substantiated the request; neither shall the enforcement sentence, which has been transferred to another State or Territory judiciary authority, be enforced in the Macao SAR.”

There is nothing in Law no. 6/97/M that contradicts with such fundamental principles of criminal law.

10. Please provide more information regarding Law 2/2007 of 16 April on the juvenile justice system, which introduced restorative justice principles; and on the work of the Division of Social Rehabilitation of the Legal Affairs Bureau, in particular on the reintegration of juvenile offenders.

The Macao SAR Government promulgated a new law on the Educational Supervision Regime for Youth Offenders (Law no. 2/2007) on 30 March 2007. The aforementioned law has made a significant reform on the Juvenile Legal System of the Macao SAR. The new legal regime stresses on the adoption of non-punishment measures and the measure of internment is the last resort.

Four new measures which aim at assisting youth offenders with correction and social reintegration more appropriately have been introduced in the new legal regime. Firstly, police cautioning measure. This measure can be adopted prior to prosecution. Should the measure be adopted, the youth offender will be immunised from prosecution. Secondly, community service order. The order is a community-based measure and provides youth offenders with opportunities to serve the community. Thirdly, the Macao SAR Government introduced the concept of restorative justice to the new regime and restorative measures are officially applied in the law of the Macao SAR for the correction of youth offenders. The execution of the stated measures mainly includes conferences on restorative justice, rehabilitation schemes and so forth, the purpose of which is to restore the relationship between the youth offender and the victim as well as mending the damage. Lastly, the new measure is the placement at a short-term home. The measure is not merely to provide

training for the correction of youth offenders by making them stay at the short-term home but also allow them to maintain their studies and work.

Under the new legal regime, judges have more pluralistic measures to opt when judging youth offenders which can help the youth offenders to turn over a new leaf in a more efficacious manner. Furthermore, the judges must always adopt the measures of non-deprivation of liberty prior to the measures of deprivation, with the confinement being the last resort of the measure of deprivation of liberty.

The Social Reintegration Department subordinated to the Legal Affairs Bureau is responsible for providing community correctional services for youth offenders, which include psychological counselling, family relationship mediation, career counselling, back-to-school scheme, vocational training, anti-drug scheme and so forth. Furthermore, considering that the problem of drug-taking in the generation of youth is becoming worse, the Social Reintegration Department has drawn up several anti-drug programmes such as urine tests, seminars, detoxification programmes and so forth in order to assist the youth to stay away from drugs.

11. Please provide updated information on measures taken to ensure that solitary confinement of detainees, including juveniles, is a measure of last resort and for the minimum necessary period. Please provide information on how discipline in penitentiary institutions is closely monitored and in line with the rights protected under the Covenant.

In terms of juveniles, pursuant to the provision of Article 25 of Law no. 2/2007, the Educational Supervision Regime for Youth Offenders, juvenile offenders aged between 12 and 16 may subject to internment measures 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. Article 96 of the aforementioned Law expressly points out that juvenile offenders, who guiltily infringe the obligations provided

for in the aforementioned Law during the period of internment measures, may be subject to disciplinary measures referred to in that Law, with the placement of the offender in an individual bedroom being the most serious disciplinary action.

According to Order no. 91/DSAJ/2009 issued by the Director of the Legal Affairs Bureau in September 2009, if minors between 12 and 16 years old who are subject to internment measures in the Young Offenders Institute, as stipulated in Law no. 2/2007, are placed in individual bedrooms due to their violations of disciplines, they may continue to receive follow-up counselling required for their education during the day and participate in normal activities with others, such as attending classes or leisure-time activities. They will stay in individual bedrooms only during the night. Although the period of the sanction of staying in individual bedrooms may be up to a month, pursuant to Law no. 2/2007, it, in practical terms, generally lasts for 7 days and the number of days may be reduced for well-behaved minors.

The regime for disciplinary measures within the facility of the Macao Prison remains unchanged, as stated in paragraphs 214 to 226 of the Initial Report. Pursuant to Article 75(3) of Decree-Law no. 40/94/M, the imposition of disciplinary measures must always be in line with the seriousness of the offence and the prisoner's conduct and personality; the application of disciplinary measures must also be preceded by an investigation. Disciplinary measures vary according to the seriousness of the offence, with the solitary confinement of a prisoner being the most severe disciplinary measure which can be imposed just for a maximum period of 1 month with deprivation of the right to stay in open air as referred to in Article 75(1)(g) of Decree-Law no. 40/94/M. Regarding the disciplinary measure of the isolation in an ordinary cell as referred to in Article 75(1)(f) of the aforementioned Decree-Law, it means the isolation of the prisoner in the cell which he has been staying. Although he/she is prohibited to participate in any group activity, he/she can still be in contact with other prisoners in the same cell.

It has to be pointed out that, pursuant to Order no. 19/SS/2009 issued by the Secretary for Security in March 2009, the Macao Prison would not adopt the isolation measure of solitary confinement to prisoners between 16 and 18 years of age in any situation.

To ensure that the aforementioned disciplinary measures will not be abused and to protect the rights of prisoners, pursuant to the provisions of Articles 77 and 82 of Decree-Law no. 40/94/M, the prison director should inform the prisoner in writing of the decision of the imposition of disciplinary measures and the respective grounds; regarding any measure of confinement to a disciplinary cell for over eight days, the prisoner may appeal in writing to the competent court if he is not convinced of such a measure.

Moreover, pursuant to Articles 80 to 83 of Decree-Law no. 40/94/M, prisoners enjoy the right to submit representations, complaints and appeals. Pursuant to Article 80(1) of the aforementioned Law, prisoners may address the prison director, prison staff and prison inspectors for issues related to their interests or their lives in prison or complain to them about any illegitimate order.

Furthermore, pursuant to the provisions of Articles 13 and 16 of Decree-Law no. 86/99/M, judges and prosecutors to whom prisoners may lodge complaints visit the prison once a month. All prisoners may also make requests in writing to the judicial authorities of the Macao SAR, the prison officials at the management level and the administrative superior of the Macao Prison, the Commission Against Corruption, the Legislative Assembly or the consuls of their countries and so forth.

12. Considering that both Chinese and Portuguese are official languages of the State party, please provide updated information on action taken to translate laws and judgments into Chinese and Portuguese and on how the State party deals with the shortage of local bilingual lawyers and magistrates. Please provide updated data on the number of judges and lawyers in Macao.

With regards to the translation of laws and judgments, it must be pointed out that, pursuant to the provision of Article 2 of Decree-Law no. 101/99/M, draft laws and proposed laws must be formulated in one of the official languages and accompanied by either a Chinese or Portuguese translation in order to be submitted to the Legislative Assembly. Article 4 of the same Decree-Law stipulates that laws and administrative regulations shall be published in both official languages. Therefore, all laws and administrative regulations contain both Chinese and Portuguese texts since the entry into force of the aforementioned Decree-Law.

Articles 8 and 9 of Decree-Law no.101/99/M also stipulate that any person has the right to use, orally or in writing, any of the official languages in the courts or judiciary organs. In deciding which language to use for litigation during judicial proceedings, major benefits regarding the protection of the right to choice and realisation of justice of the party involved shall be taken into consideration. The act of oral proceedings shall be conducted in the common language of the parties involved; if no common language can be used, translation must be provided. Especially during criminal proceedings, if the person required to participate in the proceedings does not know or is not fluent in Chinese or Portuguese, an appropriate interpreter shall be assigned and the person shall not be required to pay for such a fee (Article 82 of the Criminal Procedure Code).

For Judicial Year 2011/2012 (1 Sept 2011 to 30 August 2012), the Court of Final Appeal concluded 93 cases, among which a total of 80 cases (86.02%) were concluded in both Chinese and Portuguese languages, with only 13 cases with judgments or decisions being made in Portuguese as both parties involved did not comprehend the Chinese language. Annually, the remarkable judgments of the Court of Second Instance and the Court of Final Appeal will be compiled into the accredited “Compilation of Judgments of the Macao SAR Court of Final Appeal” and “Compilation of Judgments of the Macao SAR Court of Second Instance” which are published in both Chinese and Portuguese languages.

In order to further improve the quality of translated laws and statutes and increase the number of translated judgments, the Public Administration and Civil Service Bureau held a total of 31 training courses from April 2000 to March 2012, with a total of 493 participants. Furthermore, in order to encourage more personnel to pursue a translation career, the Macao SAR Government adopted Law no. 14/2009 in 2009 under which a civil servant who performs the duty of legal translation will be paid an additional remuneration on a monthly basis.

In regards to training bilingual magistrates and lawyers, pursuant to Article 3 of Law no. 3/2001, aside from meeting other requirements, candidates for the “Admission Test for Entry-Level Training and Internship Course for Magistrates” must be familiar with the Chinese and Portuguese languages. As such, by completing the “Admission Test for Entry-Level Training and Internship Course for Magistrates”, the magistrates must possess both Chinese and Portuguese language capabilities. Since the establishment of the Macao SAR, the Legal and Judicial Training Centre (hereinafter referred to as the Training Centre) has organised, until now, three Entry-Level Training and Internship Courses for Magistrates, in which 25 qualified interns completed the course and recruited as local magistrates (14 judges, 11 prosecutors), and 12 interns will have completed the ongoing Fourth Entry-Level Training and Internship Course for Magistrates by July 2013.

In addition, the Macao Tertiary Education Fund, with the support of the Macao Foundation and the Education and Youth Affairs Bureau, annually loans at least 10 Macao SAR secondary school graduates to Portugal to do undergraduate studies in law. Besides, the University of Macao has launched a postgraduate programme for the improvement in the areas of legal practice and legal terminology. These law graduates possessing bilingual capabilities will be engaged in legal work areas including serving as magistrates, lawyers, law instructors, legal personnel of the public sector and so forth so as to fulfill the lack of local bilingual legal personnel.

As of November 2012, the three courts of the Macao SAR has a total of 40 judges (3 in the Court of Final Appeal, 9 in the Court of Second Instance, 28 in the Court of First Instance), while the Public Prosecutions Office has a total of 34 magistrates (1 Prosecutor General, 12 Assistant Prosecutors General, 21 Prosecutors), and there is a total of 249 lawyers in the Macao SAR.

13. In its previous concluding observations, the Committee expressed its concern that no firm agreement had been reached on the transfer of Macao residents to face trial in other jurisdictions in China, or on their extradition to other countries in cases where they might face heavier penalties than those laid down in the Macao Penal Code, including the death penalty. Please provide updated information on any measures taken in this regard.

The transfer of Macao SAR residents to regions or countries other than the People's Republic of China (PRC) should abide by Law no. 6/2006, the Judicial Cooperation in Criminal Matters.

Law no. 6/2006 sets out several grounds for refusal of judicial cooperation in criminal matters. Therefore, the cooperation will be refused if inter alia the offence related with the request is punishable with (1) a penalty which may cause an irreversible damage to the physical integrity of the offender; (2) a penalty or measure involving the deprivation of liberty perpetually or for an indefinite period; (3) the death penalty. Nevertheless, the Macao SAR can consider ratifying the request concerning judicial cooperation in criminal matters if there are strong guarantees given by the Requesting State that the aforementioned penalties will not be imposed or the Requesting State consents to the conversion of those penalties beforehand by a Macao SAR court pursuant to the criminal law of the Macao SAR.

The grounds for declining a request for judicial cooperation in criminal matters are actually applied in practice, for instance, Case no. 320/2010 of the Court of Final Appeal of the Macao SAR made on 5 July 2012 is an

example of the Macao SAR's refusal of the request made by the Republic of Korea for the transfer of an offender due to the involvement of death penalty. In fact, since the Republic of Korea did not provide any guarantee that death penalty would not be applied, the Macao SAR declined its request.

Law no. 6/2006 is not applicable to legal assistance in criminal matters within the territory of the PRC. When there is a specific case, the courts of the Macao SAR will judge according to the situation of the specific case. For instance, in Case no. 12/2007 of the Court of Final Appeal of the Macao SAR, since there is no regional law or local law regulating the transfer of offenders between Mainland China and the Macao SAR, public institutions cannot detain a person in respect of whom the INTERPOL has issued an arrest warrant in order to transfer him to Mainland China. The court, therefore, granted the writ of "habeas corpus" applied by the person concerned and ordered for his immediate release.

VI. Elimination of slavery and servitude (art. 8)

14. Please indicate current measures taken or to be taken to efficiently prosecute traffickers. How does the State party ensure that victims of trafficking are protected and supported by the State party's laws and policies in terms of redress, compensation and rehabilitation? Please provide updated information on efforts undertaken to equip the judiciary to address cases of trafficking adequately. Please report on measures taken to strengthen cooperation with the authorities of other countries from or to which individuals are trafficked to combat this practice, including through multilateral, regional and bilateral arrangements for the prevention, prosecution and punishment of those responsible, and on remedies to victims.

In order to effectively combat the crime of trafficking in persons and protect victims, the Macao SAR Government has strengthened its efforts through measures and policies in 4 areas: legal stipulations, measures to prevent and combat activities of trafficking in persons, protection and

assistance for victims to reintegrate into society and international or regional cooperation.

Firstly, in the aspect of international law, the International Convention for the Suppression of the Traffic in Women and Children, the Slavery Convention, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime are international law related to the combat against the crime of trafficking in persons that are applicable to the Macao SAR.

With respect to local legal stipulations, the criminal legal system on the fight against prostitution remains the same as mentioned in paragraphs 138 to 140 of the Initial Report. The Macao Criminal Code and Law no. 6/97/M, the Law against Organised Crime, provide for the crime of procurement, which effectively combat and punish acts such as the sexual exploitation and sexual slavery of women and prosecute offenders who place women in forced prostitution.

Moreover, in order to combat the crime of trafficking in persons in a more efficacious manner and strengthen the protection and assistance measures for victims, the Macao SAR established the Human Trafficking Deterrent Measures Concern Committee, an inter-departmental body with the function of coordination in 2007 and adopted Law no. 6/2008 on the Fight against Trafficking in Persons in June 2008. Please refer to paragraphs 144 and 145 of the Initial Report for the composition and functions of the Committee.

Law no. 6/2008 completed the penal stipulations of the Macao SAR on the combat against trafficking in persons. The Law defines the crime of “trafficking in persons” as follows: whoever offers, delivers, induces, recruits, accepts, transports, transfers, harbours or receives a person for

the purpose of sexual exploitation, exploitation of labour or services of that person, slavery or practices similar to slavery, removal of organs or tissues of human origin, by means of violence, abduction, or serious threat, deception or fraud, abuse of authority as a result of a hierarchical, economic, labour or family relationship of dependency, abuse of psychic incapacity or of any other situation of vulnerability of the victim or obtaining the consent of a person having control over the victim will be sentenced to a penalty of 3 to 12 years of imprisonment.

Pursuant to the provisions of Law no. 6/2008, the penalties will be aggravated for the commission of the crime of trafficking in persons in the following situations: if the victim of the crime of trafficking in persons is a minor, the penalty of such a criminal act will be of 5 to 15 years of imprisonment; if the victim is a minor under 14 years old, or if the perpetrator acts as a form of living or with intent to profit, the penalty will be aggravated by one-third in its minimum and maximum limits, that is, the maximum penalty may reach 20 years of imprisonment.

In addition, Law no. 6/2008 provides that legal persons will be held criminally liable when the crime of trafficking in persons is committed on their behalf or in their collective interests and may be punished with a fine or even with judicial dissolution, as well as with accessory penalties such as the prohibition of the exercise of certain activities, the deprivation of the right to subsidies or subventions granted by public services or entities, the closing of the establishment, judicial injunction and publicity of the sentence and so forth.

Law no. 6/2008 stipulates that the crime of “trafficking in persons” includes all the behaviours of trafficking in persons from the Macao SAR to foreign countries, from foreign countries to the Macao SAR and within the Macao SAR. Furthermore, the Macao SAR established extraterritorial jurisdiction for the crime of trafficking in persons through the provision of Article 3 of the aforementioned Law.

Secondly, the Macao SAR Government has been adopting positive and specific measures to prevent and combat activities of trafficking in persons, including:

- Routine inspections at several black spots for sexual exploitation and labour exploitation;
- target raids at several black spots of potential TIP for labour exploitation (e.g.: construction sites, hotels, restaurants, employment agencies);
- target raids at several black spots of potential TIP for sexual exploitation (e.g.: saunas, massage parlours, night clubs, bars) and inviting persons working in those places to assist in the investigation and establishing a TIP victims identification mechanism to carry out criminal prosecution against perpetrators;
- stricter control at border checkpoints and visa requests (identification of potential victims);
- questionnaires (in several languages) for potential TIP victims of labour exploitation or sexual exploitation are distributed at the Immigration Department of the Macao SAR;
- identification of high-risk countries of origin (visitors or non-resident workers from such countries are given special attention at the border control points in order to detect eventual situations of trafficking);
- set-up of communication systems with neighbouring regions and reinforcement of the collection of intelligence;
- police cooperation with foreign counterparts, neighbouring regions and the Macao Sub-Bureau of the China National Central Bureau of INTERPOL and other organisations;
- organisation of different training activities to prevent and combat the crime of trafficking in persons, including training courses and workshops with the themes of the “Identification of Victims of the Crime of Human Trafficking through Behaviour and Psychological

Indications”, the “Application of Tools for Assisting in the Identification of Victims of Human Trafficking”, the “Combat against Human Trafficking” and “A Study of A Number of Legal Questions concerning the Crime of Human Trafficking”;

- assigning police officers to participate in international seminars and programmes, for instance, the “Anti-Human Trafficking” Programme held in Bangkok, Thailand in 2010, the Bali Process Conference held in Bali, Indonesia in 2011 and the Bali Process Technical Experts Meeting held in Kuala Lumpur, Malaysia in 2012;
- special training projects organised for female police officers, the staff of the Health Bureau and the Social Welfare Bureau so as to familiarise them with the techniques for handling women and children victims;
- seminars specially organised for magistrates, such as the International Seminar on Economic Crimes and the Economic Impact of Crimes held in Portugal in 2010, with in-depth discussions on the cooperation, difficulties and challenges of each country and international organisations as well as regional organisations in respect of combating economic crimes (including child pornography and trafficking in persons);
- in addition, two 24-hour reporting and assistance hotlines were set up for the convenience of collecting intelligence regarding trafficking in persons and providing assistance for the victims; one hotline is operated by the Public Security Police Force while the other one is operated by a local NGO (the Women’s General Association of Macao) sponsored by the Social Welfare Bureau.

In terms of strengthening the protection for victims of the crime of trafficking in persons, Articles 6 to 8 of Law no. 6/2008 stipulate the rights of victims and a series of measures to protect and assist them. If a victim is from another country, the Macao SAR Government will immediately inform the embassy, consulate or accredited representative of the country

or region where the victim belongs to of the relevant news and will let the victim remain in the Macao SAR during the hearing of the case. In addition, the police will provide protection for the victim in order to safeguard his personal and property safety.

In order to protect the identity of victims from revelation, Article 4 of Law no. 6/2008 amended Articles 77 and 78 of the Criminal Procedure Code so that the procedural actions regarding the crime of trafficking in persons can be conducted in an undisclosed manner and the social media is banned from revealing the identity of the victims of the crime of trafficking in persons, of which the violators will be punished for the crime of disobedience.

Furthermore, the Macao SAR Government formulated a victim protection scheme, which includes the provision of an appropriate but temporary shelter in a confidential and free manner for the victims so as to ensure their personal safety. For this reason, the Macao SAR Government and NGOs (the Women's General Association of Macao and the Good Shepherd Centre) provide assistance for the victims through cooperation. Besides the setting-up of shelters for women and minors, a shelter for men will also be opened in December 2012 to provide victims with necessary and appropriate psychological, medical, social and financial assistance, such as living expenses, travelling expenses for returning to places of origin and expenses for documentation, counselling and case follow-up, drug treatment, legal advice service and skills training, in order to help them reintegrate into society in the future.

The following information shows support services provided by the Social Welfare Bureau for victims between 2008 and 2012.

<i>Support Project Provided by the Social Welfare Bureau /Year</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>10/2012</i>
Shelter (no. of persons)	19	2	11	7	12
NGO shelter for minors (no. of persons)	2	3	2	6	8

<i>Support Project Provided by the Social Welfare Bureau /Year</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>10/2012</i>
No. of counselling and follow-up	150	35	108	62	102
No. of psychological therapy	44	8	14	-	-
No. of medical treatment and health care referral	27	17	16	9	22
No. of detoxification treatment	-	6	-	-	-
No. of technical training	-	-	-	1	-
Financial assistance (MOP\$)	101,310	41,050	51,464	41,834.5	90,746

Source of information: Social Welfare Bureau 2012

With respect to international and regional cooperation, the Macao SAR signed the Agreement on Cooperation to Combat Trafficking in Persons with the Government of Mongolia on 18 October 2010. In order to assist and arrange for victims to return to their places of origin, the Macao SAR signed a cooperation agreement on the ‘risk assessment and escort service for victims of trafficking in persons’ with the Hong Kong Office of the International Organisation for Migration (IOM) in April 2011, whereby the IOM Hong Kong Office will conduct a risk assessment for victims and provide them with escort service to their places of origin while the Social Welfare Bureau will assume all the transportation costs in returning the victims to their places of origin. Furthermore, the police forces of the Macao SAR, Mainland China and the Hong Kong SAR conduct large-scale anti-crime joint operations every year, with a focus on combating crimes, including cross-border crimes such as the trafficking in persons.

15. Please provide updated information on how the State party takes measures to prevent and penalize sexual and economic exploitation of women. Are immigration and police officials taking effective measures to prosecute perpetrators and to protect women from being exploited through prostitution and sexual servitude, including through the use of debt bondage?

In the aspect of preventing and penalising sexual and economic exploitations, as mentioned in paragraphs 139 and 140 of the Initial

Report, pursuant to Articles 163, 164 and 170 of the Macao Criminal Code, the crime of procurement is punishable by 1 to 10 years of imprisonment. The exploitation of prostitution is punishable under the context of organised crime as provided for in Article 8 of Law no. 6/97/M, the Law against Organised Crime. Regarding economic exploitation, as mentioned earlier, various labour laws and regulations safeguard the principle of equal remuneration for equal work. The Labour Relations Law protects all employees from unjustifiable exploitation. Its Article 6 prescribes that no employee or applicant for employment shall be unduly privileged, or discriminated against or deprived of any right or exempted from any duty on the grounds of, inter alia, his/her national or social origin, descent, race, colour, gender, sexual orientation, age, marital status, language, religion, political or ideological beliefs, membership of associations, education or economic background. An employer is obliged to pay his employee a fair remuneration that is compatible with his work on a regular and timely basis and provide good working conditions. An employer is forbidden to degrade his employee's professional grade and reduce his employee's basic remuneration without any justification. Offenders may be punished with a fine of MOP20,000.00 to MOP50,000.00 (Articles 9, 10, 57, 62 and 85 of the Labour Relations Law).

In relation to the concerns raised by the Committee about sexual servitude and debt bondage, Article 153 of the Macao Criminal Code provides for the crime of slavery. Although such a crime does not directly imply sexual or economic exploitation, it covers all criminal offences whereby a person is diminished to the status or condition of a slave through different means of exploitation and is used by the offender, including becoming a slave due to debts. The perpetrator may be punished by 10 to 20 years of imprisonment.

Even if it is not serious enough to constitute the crime of slavery, a person, by exploiting the distress situation or the relationship of dependency of a debtor, causes himself or a third party, to be promised or granted clearly disproportionate pecuniary advantages, may be punished

by a maximum of 5 years of imprisonment (Article 219 of the Macao Criminal Code).

At the level of law enforcement, the Macao SAR has always been committed to the combat against all crimes. The Judiciary Police works closely with the police authorities of neighbouring regions, such as Zhuhai, Guangdong or the Hong Kong SAR, to exchange intelligence and establish communication mechanisms. It also cooperates with the International Criminal Police Organisation in the area of organised crime and the crime of trafficking in persons. On the other hand, the Public Security Police Force works at the level of crime prevention. It conducts sampling surveys with visitors, especially young women, arriving at border checkpoints, in order to find out if they are being exploited of prostitution, threatened or persecuted. If there are indications that these female visitors are crime victims, they will be transferred to the Information Department for investigation and follow-up and, if necessary, to the Public Prosecutions Office. The Public Security Police Force also prosecutes and punishes offenders in accordance with law and appropriate legal procedures.

Concerning the protection for victims, as mentioned above (Question 1), the Government provides funds and technical assistance to women's shelters and NGOs of related areas every year, for them to provide shelters and consulting services for persons at risk and victims of violent crimes. At present, the two major NGOs for women, the Women's General Association of Macao and the Good Shepherd Centre, have set up women's shelters. In addition, the Judiciary Police, the Public Security Police and the Health Bureau have also set up 24-hour assistance hotlines for victims of violence.

According to practical experience, the objective of the crime of trafficking in persons is very often sexual exploitation. Thence, strengthening the combat against the crime of trafficking in persons absolutely helps prevent and suppress the crime of sexual exploitation. Please refer to the reply to Question 14 in the List of Issues for the laws

supporting the combat against the crime of trafficking in persons and the corresponding practical measures.

VII. Freedom of opinion and expression, right of peaceful assembly and freedom of association (arts. 19, 21 and 22)

16. Please provide information on the extent to which the provisions of Law on Safeguarding National Security of February 2009 are compliant with articles 19, 21 and 22 of the Covenant. Has the State party addressed concerns expressed by human rights defenders on the lack of a definition or clarity for a number of terms such as “other grave illegal acts”, “public and direct incitement”? Has the State party considered information that the definition of treason, sedition and state secrets are too broad? Please provide the number of individuals who have been charged under this law.

Regarding the compliance of the provisions of Law no. 2/2009, Law on the Protection of National Security, with those of Articles 19 (Freedom of Expression), 21 (Freedom of Peaceful Assembly) and 22 (Freedom of Association) of the Covenant, it must be said that this Law is fully compliant with the aforementioned articles. In fact, Law no. 2/2009 does not restrict those rights or introduce any offence to them.

The aforesaid rights are protected by the Basic Law and the Covenant, and Law no. 2/2009 will impose restrictions on these rights only when there is a violation of the law or when the exercise of these rights poses a threat to national security. It is, however, a normal consequence of the legal system and social life: in most cases, the protection of certain legal interests cannot be realised without sacrificing other interests or parts of both legal interests and other interests.

The Covenant itself also expressly stipulates that the aforementioned rights could be restricted for safeguarding national security, public safety and public order when necessary (Articles 19(3), 21 and 22(2) of the Covenant).

The concern of the Committee regarding the expression of “other grave illegal acts” is unfounded since Law no. 2/2009 presents a detailed list of behaviours covered by that concept, which means that “other grave illegal acts” solely refers to the behaviours prescribed in Article 2(3) of Law no. 2/2009. It shall be noted that the expression of “public and direct incitement” was not created by Law no. 2/2009, it was adopted by the current Articles 231 and 298 of the Macao Criminal Code instead. Therefore, a lack of clarity in the definition does not exist.

Regarding the doubt on the definition of “state secrets”, it is important to note that its scope is clearly provided by Law no. 2/2009: state secrets refer only to matters, documents, information or objects, which have to be kept confidential and which have been classified as related to national defence, external relations and other matters pertaining to the relationship between the Central Authority and the Macao SAR provided in the Basic Law (Article 5(5)). If necessary, the judicial organs may obtain documents certifying whether or not the aforementioned documents, information or objects are classified as state secrets from the Chief Executive of the Macao SAR or from the Central People’s Government through the Chief Executive.

In relation to the specific matter of national security, the same legislative techniques have been adopted by other jurisdictions with a legal system identical to the Macao SAR’s. In fact, the drafting of the law was made after a detailed comparative analysis of those other legal systems, with special consideration of the following provisions: (1) the provisions of Articles 81, 88, 93 to 99, 100, 125 and 125-A of the German Criminal Code; (2) the provisions of Articles 411-1 to 411-4, 411, 412-1, 413-10, 413-11, 431-6 and 433-10 of the French Penal Code; (3) the provisions of Articles 26, 27 and 28 of the Portuguese Code of Military Justice and of Articles 297, 308, 316, 325, 330 and 333 of the Portuguese Criminal Code; (4) and the provisions of Articles 241, 242, 243, 247, 256, 259, 283, 289 and 302 of the Italian Criminal Code.

So far, no individuals have been charged under this law. Neither has any criminal proceeding been initiated.

VIII. Non-discrimination, marriage, family and measures for the protection of minors (arts. 2, 23, 24 and 26)

17. Bearing in mind the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal, please indicate whether measures have been taken to safeguard the rights of Macao residents who held Portuguese and Chinese citizenship before the 1999 transfer of sovereignty from Portugal to the People's Republic of China.

Pursuant to the provision of Article 3 of the Nationality Law of the People's Republic of China (hereinafter referred to as the Nationality Law of China), it is stated that "The People's Republic of China does not recognise dual nationality for any Chinese national." In order to settle the issue of the nationality of Macao residents, the memorandum of Annex II of 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 Sino-Portuguese Joint Declaration) declares that "The inhabitants in Macao who come under the provisions of the Nationality Law of the People's Republic of China, whether they are holders of the Portuguese travel or identity documents or not, have Chinese citizenship. Taking account of the historical background of Macao and its realities, the competent authorities of the Government of the People's Republic of China will permit Chinese nationals in Macao previously holding Portuguese travel documents to continue to use these documents for traveling to other states and regions after the establishment of the Macao Special Administrative Region. The abovementioned Chinese nationals will not be entitled to Portuguese consular protection in the Macao Special Administrative Region and other parts of the People's Republic of China". The Explanations of Some Questions by the Standing Committee of the National People's Congress concerning the Implementation of the Nationality Law of the People's Republic of China in the Macao Special Administrative Region passed on 29 December 1998 further clarified the aforementioned standpoint and it is a significant legal document for handling the issue of Macao SAR residents' nationality.

Therefore, the rights of Chinese nationals of Macao who were originally holding Portuguese travel documents are not diminished after the handover and are entitled to the corresponding rights and freedom of Macao SAR residents pursuant to the Basic Law and relevant provisions.

18. In addition to its efforts to enhance the integration of children of migrants in the school system, does the State party intend to provide free education to them?

At present, the Macao SAR Government provides 15-year free education to students enrolled in the non-tertiary education institutions of formal education that are within the free-education system. Meanwhile, the Macao SAR Government also provides tuition subsidies to the Macao SAR residents who enroll in the non-tertiary education institutions that are beyond the free education system so as to guarantee the Macao SAR residents, including legal immigrants, their right to education in the economic aspect.

On the other hand, considering children's right to education, the Macao SAR Government allows visitors who are permitted to stay in the Macao SAR for over 90 days to enroll in any non-tertiary education institution in Macao during their legal stay. Currently, due to the fact that the aforementioned people are not Macao SAR residents, hence they are not entitled to any education allowance including free education.

As regards the measures for promoting integration of migrant students, the Macao SAR Government started organising a learning programme for newcomer students to Macao since 1997 and a relevant programme with a non-governmental organisation (the General Union of Neighbourhood Associations of Macao) since 2008. The content of the aforementioned programmes mainly aims at enhancing the self-confidence and language-learning ability of the newcomer adolescents and children to Macao and the programmes chiefly involve English courses, Cantonese courses and courses for familiarising the students with both traditional Chinese and simplified Chinese. The total numbers of students participating in the

activities held during Academic Years 2010/2011 and 2011/2012 were 86 and 124 respectively.

19. What are the measures taken by the State party to eliminate all forms of corporal punishment of children in all settings, including in penal institutions and schools?

The execution of the act of corporal punishment on children, according to the circumstances of offences, is punishable pursuant to the different charges stated in the Macao Criminal Code, including the ordinary offence against physical integrity (Article 137), the serious offence against physical integrity (Article 138) and the aggravated offence against physical integrity (Article 139). Should the act of injury occur during the academic staff's performance of duties, the relevant penalty may be aggravated by one-third in its minimum and maximum limits under Article 140 of the Macao Criminal Code.

In addition, Article 146 of the Macao Criminal Code specially stipulates that the perpetrator of the following offences can be sentenced to imprisonment of 1 to 8 years: failure to care or assist the child whom he/she lawfully cares for or is in charge of, or has the responsibility to instruct or educate in accordance with his/her obligations; or the infliction of physical or mental abuse, or cruel treatment. Should the aforementioned facts lead to the death of the victim, the perpetrator can be sentenced to imprisonment of 5 to 15 years.

As regards the execution of disciplinary penalties on children in schools or educational institutions, the Student Discipline System for Government Educational Institutes ratified by Order no. 46/SAAEJ/97 explicitly prohibits schools from adopting any penalty that harms students' mental or physical integrity and their personal dignity as a disciplinary penalty. In fact, the Education and Youth Affairs Bureau distributes the School Operations Manual that provides guidance for schools to launch various tasks every year. Concerning the elimination of all forms of corporal punishment, the School Operations Manual clearly requires

schools to adhere to the following guidelines: (1) Infliction of any kind of mental or physical harm on students due to their differences in gender, race, cultural background, religious beliefs, family background, lifestyle, academic results, physical and mental development, and so forth is prohibited; (2) the execution of penalties that may harm students' mental, physical and spiritual health and personal dignity, such as hitting students, commanding students to harm themselves or each other, assigning students to stay in certain physically exhausting postures or motions, increasing homework as a form of punishment, ordering students to write school regulations or degrading words, executing confined isolation or social isolation, verbal humiliation, public humiliation, imposing non-compensatory fine, depriving physical needs and so forth, is prohibited.

In order to supervise the execution of the aforementioned guidelines, the Education and Youth Affairs Bureau, together with the Campus Crisis Management Teams, established a notification system. Should violations of the aforementioned guidelines be found, the schools must notify the aforementioned Bureau so that it can launch investigation and supervision tasks, correct problems in time, and impose penalties pursuant to law if the situations are found to be real.

Regarding the minors who are 12 but not yet 16 and who need to be under educational supervision due to their commitments of criminal offenses or misdemeanours, there are articles in Law no. 2/2007 that regulate the Young Offenders Institute's means of handling juvenile delinquents and clearly prohibit the adoption of educational supervision measures that harm students' physical integrity, health and dignity so as to protect the juveniles from experiencing any ill treatment and different kinds of corporal punishment.

In order to implement the related articles, the Young Offenders Institute has arranged a relevant pre-entry training programme for its new staff and has also provided regular internal trainings for other staff. Moreover, the administrative staff and other staff often meet for discussing

various matters of operation so as to ensure that its staff can perform their duties in accordance with relevant laws.

XI. Right to participate in public life and vote in free and fair elections, equality and non-discrimination (arts. 25 and 26)

20. Please provide updated information on the percentage of locally born residents holding senior positions within the public administration.

According to the information received, there are altogether 884 senior civil servants, including leaders, chiefs and office advisers in the structure of public administration of the Macao SAR. 606 of the aforementioned 884 senior civil servants were born in the Macao SAR, with a percentage of 68.6%.

<i>Distribution of Places of Birth of Senior Civil Servants</i>		
<i>Place of Birth</i>	<i>Number of People</i>	<i>Percentage</i>
Macao	606	68.6%
China	172	19.5%
Portugal	39	4.4%
Other Regions	67	7.6%
Total Number	884	100.0%

Source of information: Public Administration and Civil Service Bureau 2012

Note: (1) The information, which excludes that of the personnel of the University of Macao, the Macao Polytechnic Institute, the Macao Foundation, the Civil Aviation Authority, the Macao Trade and Investment Promotion Institute and the Macao Monetary Authority, was provided up to 30 September 2012.

21. Please specify whether the State party intends to amend the Basic Law to ensure that more citizens have the ability to participate in the election of the Chief Executive/Head of the Macao Special Administrative Region.

The Method for the Selection of the Chief Executive of the Macao SAR, which is provided for in Article 47 of the Basic Law and its Annex I, is an important part of the Macao SAR political structure. According to the aforementioned provisions, the Chief Executive will be elected by a broad representative Election Committee and appointed by the Central People's Government. The delimitation of the various sectors in the Chief Executive Election Committee, the organisations in each sector eligible to return Election Committee members and the number of such members returned by each of these organisations will be prescribed by an electoral law enacted by the Macao SAR in accordance with the principles of democracy and openness. In order to implement the provisions of the Basic Law, the Legislative Assembly of the Macao SAR formulated Law no. 3/2004, the Chief Executive Election Law, in April 2004. The Election Committee for the 2nd term and 3rd term Chief Executives was composed of 300 members.

Since the establishment of the 3rd term Government of the Macao SAR, the Government has been extensively listening to the society for opinions on the development of its political structure. The Chief Executive, in accordance with the Basic Law and the relevant explanations of the Standing Committee of the National People's Congress, submitted a report to the Standing Committee of the National People's Congress in February 2012, expressing the need to make appropriate modifications to the Method for the Selection of the Chief Executive in 2014 within the framework of the Basic Law, according to the practical situation of the Macao SAR.

The Standing Committee of the National People's Congress, after receiving the report submitted by the Chief Executive, adopted the Decision on the Methods for Forming the Legislative Assembly in 2013 and Selecting the Chief Executive in 2014 of the Macao Special Administrative Region, which provides that Article 1 of Annex I of the Basic Law about the Chief Executive being elected by a broadly representative Election Committee remains unchanged. With this

prerequisite, the Method for the Selection of the Chief Executive of the Macao SAR in 2014 may be appropriately modified pursuant to Article 47 of the Basic Law and Article 7 of its Annex I.

For this reason, the Macao SAR Government launched a 45-day public consultation for the society to have a consensus on the modification to the Method for the Selection of the Chief Executive, and submitted to the Legislative Assembly in May 2012 the resolution on the Modification to the Method for the Selection of the Chief Executive of the Macao Special Administrative Region (draft), suggesting that the number of members of the Chief Executive Election Committee should be increased from 300 to 400 and, correspondingly, the number of members required for the nomination of candidates for the office of the Chief Executive should be increased from 50 to 66.

Afterwards, the aforementioned resolution was adopted smoothly at the Legislative Assembly and approved by the Standing Committee of the National People's Congress; thereby, the legal procedures for the modification to Annex 1 of the Basic Law were completed. In order to implement the modified Annex 1 of the Basic Law, the Legislative Assembly adopted Law no. 11/2012, the Amendment to Law no. 3/2004, the Chief Executive Election Law.

Thence, in 2014, during the selection of the 4th term Chief Executive, the number of members of the Chief Executive Election Committee will be increased from 300 to 400.

22. Please clarify how the State party upholds migrant workers' rights and how it ensures that they are not discriminated against in law and in practice.

In compliance with the principle of the Basic Law and conformance to the stipulations of all fundamental rights and duties, the Macao SAR Government devotes to the protection of the rights of migrant workers. In fact, Article 43 of Chapter III of the Basic Law provides that "persons in

the Macao SAR other than Macao residents shall, in accordance with law, enjoy the rights and freedoms of Macao SAR residents prescribed in this Chapter.”

In addition, pursuant to the provision of Article 6 of the Labour Relations Law, employees shall not be harmed or deprived of any right on the grounds of nationality, race, descent, and so forth under the premise of a lack of rational reasons. Furthermore, the principle of “non-discrimination” established in Article 2(3) of Law no. 21/2009, the Law on Employment of Non-Resident Workers, grants non-resident workers no less favourable treatment compared to resident workers in terms of rights, obligations and working conditions. Article 20 of the aforesaid law also stipulates the additional application of the general system of the Labour Relations Law to the labour relationship established with non-resident workers, particularly in the matters concerning rights, obligations and protection.

As regards equal remuneration, Article 2(4) of the Law on Employment of Non-Resident Workers stipulates that both non-resident workers and resident workers are entitled to equal remuneration for the same work or for work of equal value. In relation to compensation for work-related accidents and occupational diseases, non-resident workers are also protected by Decree-Law no. 40/95/M, the Legal Regime of Compensation for Work-Related Accidents and Occupational Diseases. Pursuant to Article 2(1) of the aforesaid Decree-Law, workers who provide service in any industry are entitled to the right of compensation for work-related accidents and occupational diseases. For this reason, the Macao SAR legislations have already explicitly protected non-resident workers from discrimination at work in the Macao SAR and guarantee them treatment no less favourable than that of resident workers.

On the other hand, it must be pointed out that the Labour Affairs Bureau carries out daily inspections of workplaces. If discrimination against resident workers or non-resident workers is found in workplaces, the Labour Affairs Bureau shall prosecute and punish the misconduct

in accordance with the relevant law. Significantly, no complaint about discrimination has been reported to the Labour Affairs Bureau so far.

23. Please provide detailed information on how Article 38 (2) and (3) of the Basic Law, which explicitly provides for special protection of the rights of women, minors, elderly people and people with disabilities, are implemented in practice.

Article 38(2) and (3) of the Basic Law provides that the special protection for women, minors, persons with disabilities and the elderly involves various aspects such as education, employment, rehabilitation, family relations and so forth. Considering the limitation of space and the fact that the Macao SAR has recently submitted its detailed reports on the implementation of the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women and the information contained therein is still valid, please refer to Annex II of the latest periodic report submitted by China in relation to the aforementioned three Conventions (CRC/C/CHN-MAC/2, CRPD/C/CHN-MAC/1 and CEDAW/C/CHN-MAC/7-8) for information on the legal protection and the actual protection measures for minors, persons with disabilities and women. Only the latest development since the submission of the reports and the special protection for the elderly will be narrated below.

With respect to protection at the legal level, apart from what was mentioned in the aforementioned reports, it is necessary to point out that, in order to facilitate family harmony and the protection for minors, women, persons with disabilities and the elderly who may be in relatively fragile situations, the Macao SAR Government is drafting a law on the prevention of domestic violence, with the aim at preventing, curbing and correcting acts of domestic violence, and strengthening the protection and assistance for victims.

The drafted law proposes that the competent department, upon identifying cases of domestic violence, shall inform domestic violence

victims of their right to be protected and assisted and other information that is beneficial for safeguarding their rights and interests. The draft also proposes the competent department to, on its own or through cooperation with public or private entities, disseminate information on the prevention of domestic violence in schools, communities and media, so as to make the victims become aware of their rights and interests and where to seek help, and call public attention to the social problems caused by domestic violence and encourage the prevention of domestic violence together. Meanwhile, it also proposes specific training activities for police officers and other personnel with related functions on responding to and handling domestic violence issues.

Similarly, in order to ensure that the elderly may obtain appropriate domestic and social support and promote their well-beings, the Macao SAR Government is drafting a legal framework for the protection of the rights and interests of the elderly, with the aim at safeguarding the rights and interests of the elderly, particularly by establishing the form and responsibilities of the pension of the elderly, various fundamental rights, benefits and protection, and social participation of the elderly. The draft law also regulates the entity responsible for the coordination and supervision of the enforcement of the aforementioned Law and the consequences for violation. The public consultation of the draft law was launched earlier and will be submitted to the competent entity for consideration as soon as possible.

The Macao SAR Government emphasizes the comprehensive care for the elderly. At present, under the social protection system, the elderly who are 65 years old are entitled to apply for the pension for the elderly. In 2012, both pension for the elderly and pension for persons with disabilities were adjusted, both of which are MOP2,000.00 per month. In addition, in order to take care of the special needs of some of the elderly, those who are 60 years of age are allowed to advance part of their pensions. The amount will be calculated in proportion to their ages until they are 80 years old when they are entitled to the full amount (Law no. 4/2012 and

Order no. 100/2011 of the Chief Executive). Moreover, the Government grants subsidies, with the amount of MOP6,000.00, to the elderly who are 65 years old every year (Administrative Regulation no. 12/2005 and Order no. 183/2012 of the Chief Executive).

It is worth mentioning that the Macao SAR Government is planning to increase both the pension and subsidies for the elderly to MOP3,000.00 per month and MOP6,600.00 per year respectively in 2013. At the same time, the Government is studying the possibility of combining and granting both allowances together, in order to ensure that the level of protection by pension is higher than the minimum subsistence index, so as to provide a little more protection for the elderly.

In the face of occasional difficulties or needs, the elderly may apply for subsidies to the Social Welfare Bureau, which will, according to specific situations, grant subsidies to individuals or families that are in financial difficulties due to social, health and other reasons (the subsidies may be converted into benefits in kind or the provision of services), to ensure that their basic daily needs are satisfied (Administrative Regulation no. 6/2007 and Order no. 151/2012 of the Chief Executive). Furthermore, disadvantaged families, including those with members with disabilities and chronic illnesses, may apply for treatment and disability subsidies (Orders no. 18/2003 and no. 214/2011 of the Secretary for Social Affairs and Culture).

Practically, with the financial and technical support of the Macao SAR Government, certain NGOs provide residential facilities, home care services and other community support services like meal delivery, personal care, household cleaning, bathing, escorted medical visits, laundry, shopping, personal counselling, telephone hotlines, mutual support network, community activities, visits, home care and rehabilitation services to those in need which include the frail elderly, vulnerable women, and persons with disabilities who lack family care. In recent years, the Government has extended their support services to the elderly who

live alone and who have special needs to include home emergency alarm services like alerting ambulances, contacting family members or important persons, and service hotlines for timely nursing reminder services or social contacts (Order no. 279/2009 of the Chief Executive).

To supervise and assist the implementation of legal protection for minors, women, persons with disabilities and the elderly, the Youth Affairs Committee (2002), the Women Affairs Committee (2005), the Elderly Affairs Committee (2007) and the Rehabilitation Affairs Committee (2008) were successively established, consisting of representatives of government departments and NGOs, as well as outstanding people in the community in the related fields, with the aim at assisting the administrative authorities in formulating, executing, coordinating, following up and supervising social policies or laws and regulations for minors, women, persons with disabilities and the elderly, in order to facilitate the realisation of their legitimate rights and interests. The participation of NGOs in the abovementioned four committees strengthens and safeguards the realisation of equality and non-discrimination policies and ensures the transparency of procedures in the allocation of resources and quality of services.

24. Please comment on information that the Labour Law of 2008 fails to impose criminal sanctions against employers who do not pay wages, do not set maximum working hours and minimum wages and do not sufficiently protect part-time and migrant workers?

Pursuant to the provision of Article 85(1)(vi) of the Labour Relations Law, should an employer deny, in whole or in part, his employees' right to receive remuneration, such an act is regarded as a misdemeanor and the employer is liable to a fine of MOP20,000.00 (twenty thousand patacas) to MOP50,000.00 (fifty thousand patacas) for each affected employee. In fact, "fines" contain a criminal nature in the legal system of the Macao SAR. Pursuant to Article 87 of the same Law, the aforementioned penalty fine shall be convertible into imprisonment under the Macao Criminal Code .

In relation to working hours, pursuant to the provision of Article 33(1) of the Labour Relations Law, the normal working hours shall not exceed eight hours a day and forty-eight hours a week. Although an employer may, according to the characteristics of the operation of his enterprise, reach an agreement with his employee in order to exceed those limits, in which case the employee must have 10 consecutive hours and a total of not less than 12 hours of rest per day and that the working hours shall not exceed 48 hours per week. The employer's violation of the relevant provision will be considered as a misdemeanor and he, pursuant to the provision of Article 85(2)(ii) of the same law, shall be punished with a fine of MOP10,000.00 (ten thousand patacas) to MOP25,000.00 (twenty-five thousand patacas) for each affected employee.

Concerning the issue of setting the minimum wage, as a free economic society, employers and employees in the Macao SAR are free to set working conditions that are not lower than the statutory standard. Although the minimum wage has not been set in the current system, there are relevant measures for relieving the economic pressure of low-income employees. The outsourced security guards and cleaners of the Macao SAR Government are already protected by the statutory minimum wage. The amounts concerned had already been raised to a minimum hourly wage of MOP23.00, a minimum daily wage of MOP184.00 and a minimum monthly wage of MOP4,784.00 in 2011. As regards the issue of the implementation of the minimum wage, the Macao SAR Government will continue to facilitate the tri-party of employees, employers and politicians to launch discussions about the establishment of a minimum wage system through the Standing Committee for the Coordination of Social Affairs in coordination with the circumstances and needs of the development of our society.

Regarding the protection for non-resident workers, pursuant to the provision of Article 3(3) of the Labour Relations Law, the labour relations established with non-resident workers and part-time employees shall be governed by special legislation. For this reason, the Macao SAR

Government has formulated the Law on Employment of Non-Resident Workers. Article 20 of the aforementioned law stipulates that the general regime of the Labour Relations Law is additionally applicable to the labour relations established with non-resident workers, especially the matters involving rights, obligations and protection. Therefore, the rights of non-resident workers are equally protected as local workers' under the law. If any infringement of the violation of interests of non-resident workers is found, the punishment will be imposed by the Labour Affairs Bureau according to the law.

As there is no specification for part-time work in the Macao SAR yet, the provisions of the Labour Relations Law are additionally applicable to the relevant labour relations and the rights of part-time employees are guaranteed under the law. On the other hand, the Labour Affairs Bureau is actively conducting a comprehensive analysis and study of the formulation of a part-time work regime in the hope that it can submit the relevant comments to the Standing Committee for the Coordination of Social Affairs for the discussion between employers and employees.

X. Dissemination of information relating to the Covenant (art. 2)

25. Please provide information on the steps taken to disseminate information on the Covenant's previous concluding observations, the submission of the State party's report, and its forthcoming examination by the Committee. Please also provide information on the involvement of non-governmental organizations (NGOs) in the preparatory process for the report. Please indicate what measures have been taken to extend existing cooperation to more NGOs for the implementation of human rights programmes and indicate how NGOs have been consulted in the preparation of the State party's report to the Committee.

In accordance with the practice in the making of other human rights report, the Initial Report has already been uploaded to the website of the Macao SAR Government and that of the Law Reform and International

Law Bureau for public reference. All government departments, relevant committees, the Legislative Assembly, NGOs and the public are free to provide the report with opinions and suggestions. However, the Macao SAR Government also holds that the present practice can be further improved by consulting the public, the Legislative Assembly, government departments and NGOs more extensively, including the uploading of the Committee's question list, concluding observations and other information to the government website so that the general public will have a better understanding of the latest progress of the implementation report, will make comments and will supervise the implementation of the Covenant in the Macao SAR.

In relation to the participation of NGOs in the making of the Initial Report, it is worth mentioning that the compilation of the Report was based on the information provided by various government departments in different areas of the implementation of the Covenant. These government departments and the relevant NGOs that provided the information have been in close cooperation for the sake of providing the Report with the latest information about the protection of human rights.

In order to strengthen the cooperation with NGOs, the Macao SAR Government encourages NGOs to implement and execute various sorts of projects or activities for the protection of human rights by different means of funding. For instance, the Social Welfare Bureau provides NGOs (such as the Association of Parents of the Mentally Handicapped, the Women's General Association of Macao, the Good Shepherd Centre and so forth) with financial assistance, technical assistance, facilities and so forth in order to support them in their continuous provision of individual assistance services for those in need. The Education and Youth Affairs Bureau continues funding NGOs (such as the Caritas Macao) for their purchase of education or support services for students with special educational needs. The Labour Affairs Bureau also organises seminars and question-and-answer sessions related to the labour relations laws for the private sector and NGOs so as to enhance the understanding of the Macao SAR residents

and non-resident workers in the Labour Relations Law and the Law on Employment of Non-Resident Workers and in the protection of their rights.

In fact, the monitoring institutions for the promotion and protection of human rights in the Macao SAR have been increasing (the relevant institutions are already listed in paragraph 71 of the Initial Report) and the institutions are composed of members from different communities and representatives of NGOs. The establishment of such institutions helps build a close and interactive relationship between the Macao SAR Government and NGOs which alternately advances the enforcement of the relevant content of the Covenant.

PART III

**CONCLUDING OBSERVATIONS OF THE
HUMAN RIGHTS COMMITTEE**

1997 CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE IN RELATION TO PORTUGAL (MACAO) *

1. At its 1476th and 1477th meetings, held on 4 April 1997, the Human Rights Committee considered the third periodic report of Portugal relating to Macao (CCPR/C/70/Add.9) and adopted¹ the following observations:

A. Introduction

2. The Committee welcomes the presence of a high-level delegation, which included several officials of the Macao government. It expresses its appreciation to the representatives of the State party for the high quality of the report, abundance of additional information and detailed and frank answers provided in response to the oral and written questions posed and comments made by the Committee during its consideration of the report. The Committee notes with satisfaction that such information enabled it to engage in a highly constructive dialogue with the State party.

B. Factors relating to reporting obligations under the Covenant

3. The Committee notes that given the late extension of the Covenant to Macao, the Sino-Portuguese Joint Declaration and Exchange of Memoranda of 13 April 1987 does not refer to it and merely states that the laws currently in force in Macao will remain basically unchanged and that all rights and freedoms of the inhabitants and other persons in Macao, including the rights of the person, freedoms of speech, of the press, of assembly, of association, of

* CCPR/C/79/Add.77, 5 May 1997

¹ At its 1584th meeting (fifty-ninth session), held on 10 April 1997.

travel and movement, to strike, of choice of occupation, to undertake academic research, of religion and belief and of communication and the right to own property will be ensured by law in Macao Special Administrative Region. This was followed by a Memorandum of Undertaking between the People's Republic of China and the Government of Portugal, signed by their respective Ambassadors, for extension of the Covenant to Macao with reservations, and thereafter by resolution 41/92 of the Assembly of the Portuguese Republic of 31 December 1992, stipulating that the provisions of the Covenant were extended to Macao with certain reservations, particularly in regard to article 12, paragraphs 4 and 13. The Committee notes that article 40 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, adopted by the People's Congress on 31 March 1993, states that the provisions of the Covenant shall continue in force after 19 December 1999 and shall be implemented through the laws of the Macao Special Administrative Region.

4. Accordingly, the Sino-Portuguese Joint Declaration, read in conjunction with the Memorandum of Understanding and the Basic Law, appears to provide a sound legal basis for the continued protection in Macao after 19 December 1999 of the rights specified in the Covenant. The Committee, moreover, wishes to reiterate its longstanding position that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them merely on account of the dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State.² Consequently, the reporting requirements under article 40 of the International Covenant on Civil and Political

² See documents CCPR/C/SR.1178/Add.1, SR.1200-1202 and SR. 1453.

Rights will continue to apply and the Human Rights Committee expects to receive and review reports in relation to Macao after 19 December 1999.

C. Positive aspects

5. The Committee welcomes the fact that the death penalty has been abolished in Macao, including for military crimes. In this context, it notes with appreciation that the domestic law as interpreted by the Superior Court of Justice prohibits extradition to a country where the person concerned may be sentenced to death.

6. The Committee notes with appreciation that strict safeguards exist in the Organic Statute of Macao with regard to the declaration of a state of siege or state of emergency and that non-derogable rights under article 4, paragraph 2, of the Covenant may under no circumstances be derogated from.

7. It is also noted with appreciation that under article 30 of the Portuguese Constitution persons deprived of their liberty are entitled to continue to enjoy their fundamental rights, save for the limitations that are inherent in their imprisonment.

8. The Committee welcomes the efforts being made by the authorities to disseminate information on human rights to members of the judiciary, civil servants, teachers and the public in general.

9. The Committee notes with appreciation that under article 22 of the Portuguese Constitution, read in conjunction with article 2 of the Organic Statute of Macao, State agencies and public bodies are held liable for actions or omissions resulting in violations of human rights.

10. The Committee welcomes the setting up of new institutions and offices to protect human rights, such as the Public Information and Assistance Centre and the High Commission against Corruption and Administrative Illegality.

D. Principal subjects of concern

11. The Committee notes with concern that, while the majority of the population is Chinese-speaking, official charges forms and charge sheets, as well as court documents and decisions, are in Portuguese only, although efforts are being made to make Chinese versions available to the people.

12. The Committee is concerned that, despite guarantees of equality in the Constitution and in labour legislation, *de facto* inequalities continue in regard to the situation of women and their remuneration. The persistence of certain traditional attitudes and practices contributes to this inequality and discrimination in the workplace.

13. The Committee is particularly concerned at reports on the extent of trafficking in women in Macao and on the large numbers of women from different countries who are being brought into Macao for the purpose of prostitution. The Committee is extremely concerned at the inaction by the authorities in preventing and penalizing exploitation of these women and that, in particular, immigration and police officials are not taking effective measures to protect these women and to impose sanctions on those who are exploiting women through prostitution in violation of article 8 of the Covenant.

14. The Committee expresses concern at the low percentage of locally born residents holding senior positions within the public administration, thus raising the issue of implementation of article 25 of the Covenant.

15. The Committee is concerned that no firm arrangements have been made between the Governments of China and Portugal with regard to the nationality of the residents of Macao after 19 December 1999.

16. The Committee regrets that, despite the efforts that are being made by the authorities to disseminate information in regard to the rights recognized in the Covenant, the public in general, and non-governmental organizations in particular, were not adequately informed of the Human Rights Committee's consideration of the report. The Committee is also concerned that non-governmental organizations in Macao are not being encouraged to participate in programmes for the promotion and protection of human rights and that their cooperation is not sought in regard to the implementation of human rights.

E. Suggestions and recommendations

17. The Committee recommends that efforts be accelerated to introduce, as soon as possible, the use of the Chinese language in the courts at all levels and particularly in regard to court documents and decisions.

18. The Committee recommends that determined efforts be made to ensure a substantial rise in the percentage of locally born residents holding senior posts within the public administration and the judiciary.

19. The Committee further recommends that the Government should initiate or strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into Macao for the purpose of prostitution. Strong measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an opportunity to stay in order to give evidence against the person responsible in criminal or civil proceedings.

20. The Committee recommends that the provisions of article 4 of the Portuguese Assembly's resolution No. 41/92, whereby articles 12,

paragraph 4, and 13 of the Covenant are not applicable to Macao as far as entry and departure of persons and the expulsion of foreigners from the Territory are concerned, be repealed as soon as possible.

21. The Committee recommends that human rights education be extended to members of the police and security forces, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training.

22. The Committee suggest that further efforts be undertaken to disseminate information in regard to the rights recognized in the Covenant and the activities carried out by the Committee. In particular, it recommends that the present Concluding Observations be widely disseminated among the public.

1999 CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE IN RELATION TO PORTUGAL (MACAO) *

1. The Committee considered the fourth periodic report of Portugal relating to Macao (CCPR/C/POR/99/4) at its 1794th and 1795th meetings, held on 25 and 26 October 1999, and adopted the following concluding observations at its 1806th meeting, held on 2 November 1999.

A. Introduction

2. The Committee welcomes the attendance of a large delegation, including a number of officials from the Macao Government. It wishes to express its thanks to the representatives of the State party for their detailed responses to the questions posed orally and in writing and the comments made by the Committee during its consideration of the report, and for their offer to supply further information in writing. The Committee regrets that, although it has received information on the legislation applicable before and after 19 December 1999, it has not been given enough detail on the subject or up-to-date statistics.

3. The Sino-Portuguese Joint Declaration, read in conjunction with the Memorandum of Understanding and the Basic Law, provides a legal basis for the continued protection in Macao after 19 December 1999 of the rights specified in the Covenant. The Committee, moreover, wishes to reiterate its long-standing position that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory find themselves under the protection of the International

* CCPR/C/79/Add.115, 4 November 1999

Covenant on Civil and Political Rights, they cannot be stripped of that protection on account of a change in sovereignty. (See documents CCPR/C/SR.1178/Add.1, SR.1200-1202 and SR.1453.) Consequently, the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply and the Human Rights Committee expects to receive and review reports in relation to Macao after 19 December 1999.

B. Positive aspects

4. The Committee notes with satisfaction the negotiations between the Portuguese and Chinese authorities to ensure legal continuity (article 8 of the Basic Law) and continued application of international treaties. It welcomes the fact that a large number of the rights and fundamental freedoms set forth in the International Covenant on Civil and Political Rights are enunciated in articles 24 to 44 of the Basic Law of Macao.

5. The Committee notes with satisfaction the great efforts which have been made in the past few years to give the Chinese-speaking population access to official forms and to court documents and decisions in Chinese, and that Chinese is used in the courts and for official business. It notes that, under article 9 of the Basic Law, both Chinese and Portuguese can be used as official languages after 19 December 1999.

6. The Committee also notes with satisfaction that Portugal and China reached agreement in March 1998 on the principles underlying the new organization of the legal system, which guarantee the non-removability of judges and the autonomy and independence of the judiciary.

C. Principal subjects of concern and Committee recommendations

7. The Committee notes with great concern that on the eve of the territory of Macao being returned to the sovereignty of the Peoples

Republic of China, it still remains unclear which laws, including human rights laws, will be held incompatible with the Basic Law of the Macao Special administrative Region and therefore become invalid after 19 December 1999.

The Committee wishes to underline the obligation of the State Party, according to article 2 of the Covenant, as well as that of the State under whose jurisdiction the territory will be, to ensure that the population of Macao remain fully protected under the Covenant after 19 December 1999.

8. The Committee notes the Ombudsman functions of the High Commissioner against Corruption and Administrative Illegality, and the petition procedure; however, it regrets the absence of an independent, statutory Human Rights Commission with a mandate to monitor the implementation of human rights legislation.

Such a Commission should be established.

9. The Committee is concerned at the paucity of judges, lawyers and interpreters, which might adversely affect the administration of justice.

Further efforts should be made to train lawyers and interpreters and give them a specialization in human rights.

10. The Committee is concerned that, despite guarantees of equality in the Constitution also reflected in article 25 of the Basic Law, and in labour legislation, de facto inequalities continue with regard to the status of women and their remuneration.

Effective measures should be taken to eliminate such inequalities.

11. The Committee notes reports that organized crime and, in particular, trafficking in women and prostitution, persist in Macao. It acknowledges that the Penal Code prohibits organized crime, but is concerned at the authorities' failure to take action to protect the victims.

Preventive action should be taken to stamp out trafficking in women and rehabilitation programmes for the victims should be provided. The victims should be protected and supported by laws and policies of the State party.

12. The Committee is concerned at certain aspects of Law 6/97/M (promoting, founding or supporting a secret association), namely the creation of a vague and insufficiently defined (or “abstract”) offence, and the imposition of an increased sentence, or conviction, on the basis that the person is a “habitual offender” or is likely to repeat such an offence.

Penal legislation should be brought into line with articles 14 and 15 of the Covenant, in particular the prohibition on trying a person or placing him/her in jeopardy, twice for the same offence (*non bis in idem*, article 14, para. 7) and the ban on laws with retroactive effect (*nullum crimen sine lege, nulla pœna sine lege*, article 15).

13. The Committee is concerned that the Governments of China and Portugal have not yet reached firm agreement on the nationality of residents of Macao after 19 December 1999, and that the criteria which will determine which Macao residents may be regarded as being of Portuguese origin are not yet known.

Effective measures should be taken to safeguard the rights of those who at present hold dual citizenship.

14. The Committee is also concerned that no firm agreement has been reached on the transfer of residents of the Macao Special Administrative Region to face trial in other jurisdictions in China, or their extradition to other countries in cases where they may face heavier penalties than those laid down in the Macao Penal Code, including the death penalty.

The Committee reiterates that Macao residents enjoy the protection of the Covenant and should not lose that protection by being transferred to other jurisdictions

15. The Committee is concerned at the lack of firm agreements guaranteeing freedom of the press and expression after 19 December 1999.

Effective measures should be taken to guarantee those freedoms for the future.

16. The Committee is concerned at the paucity of non-governmental human-rights organizations and the fact that their establishment is not being encouraged.

D. Dissemination

17. The Committee regrets that the public in general is not adequately informed of the Human Rights Committee's consideration of the report. The Committee recommends that the State party distribute the text of its report and these Concluding Observations widely. The State party's next report should be prepared on an article by article basis, in accordance with the Committee's new Guidelines (CCPR/C/66/GUI) and should give particular attention to the issues raised by the Committee in these Concluding Observations. It sets the date for the next report on the implementation of the Covenant in Macao as 31 October 2001.

2013 CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE IN RELATION TO THE PEOPLE'S REPUBLIC OF CHINA (MACAO SAR) *

1. The Committee considered the initial report of the Macao Special Administrative Region of the People's Republic of China (Macao, China) (CCPR/C/CHN-MAC/1) at its 2962nd and 2963rd meetings (CCPR/C/SR.2962 and 2963), held on 18 and 19 March 2013. This is the first report for Macao submitted by the People's Republic of China following the return of Macao to Chinese sovereignty on 20 December 1999. At its 2975th meeting (CCPR/C/SR.2975), held on 27 March 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the Macao Special Administrative Region of the People's Republic of China (Macao, China), while regretting that it was submitted late. It expresses appreciation for the opportunity to start its constructive dialogue with the high-level delegation on the measures taken by Macao, China, to implement the provisions of the Covenant since the transfer of sovereignty over Macao from Portugal to the People's Republic of China on 20 December 1999. The Committee expresses its satisfaction with the constructive dialogue with the delegation of Macao, China. The Committee appreciates the detailed written replies to the list of issues (CCPR/C/CHN-MAC/Q/1/Add.1) which were supplemented by the oral responses provided by the delegation during the dialogue, as well as the supplementary information provided to it in writing.

* CCPR/C/CHN-MAC/CO/1, 29 April 2013.

B. Positive aspects

3. The Committee welcomes the ratification of the following international instruments:

- (a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 3 December 2002;
- (b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 February 2008;
- (c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 8 February 2010;
- (d) The Convention on the Rights of Persons with Disabilities, on 1 August 2008.

4. The Committee welcomes the following legislative and other measures taken by Macao, China, since the consideration of the fourth periodic report of Portugal relating to Macao (CCPR/C/POR/99/4):

- (a) The adoption of Law No. 1/2004, establishing the legal framework on the recognition and loss of refugee status, which provides for the set up of the Commission for Refugees to assess asylum claims, in cooperation with the United Nations High Commissioner for Refugees (UNHCR);
- (b) The adoption of Law No. 2/2007, on the juvenile justice system, which introduced restorative justice principles;
- (c) The adoption of the Law No. 6/2008, on the fight against trafficking in persons, which define and criminalize trafficking in accordance with international standards;

C. Principal subjects of concern and recommendations

5. The Committee notes that the Covenant forms part of the legal order of Macao, China, and takes precedence over local law, and that its provisions may be directly invoked in court. Nonetheless, the Committee is concerned at the apparently limited level of awareness of the provisions of the Covenant among the judiciary, the legal profession and the general public, resulting in a restricted number of cases in which the provisions of the Covenant have been invoked or applied by courts in Macao, China (art. 2).

Macao, China, should continue its efforts to raise awareness among judges, the legal profession and the general public of the rights set out in the Covenant, and their applicability under local law. In its next periodic report, Macao, China, should include detailed information on the application of the Covenant by its courts and the remedies provided for individuals claiming a violation of their rights as enshrined in the Covenant.

6. The Committee notes with concern that under article 143 of the Basic Law, the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress, a fact that may weaken and undermine the rule of law and the independence of the judiciary (arts. 2 and 14).

Macao, China, should ensure the proper functioning of judicial structures in accordance with the Covenant and with principles governing the rule of law. It should also ensure that interpretations of the Basic Law are in full compliance with the Covenant.

7. The Committee takes note of the recent amendments adopted in 2012 by Macao, China, to the method for the selection of the Chief Executive (annex I to the Basic Law), according to which membership of the Election Committee mandated to elect the Chief Executive has been extended from 300 to 400. The Committee recalls that article 25 of the Covenant recognizes and protects the right of every citizen to take part

in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Furthermore, article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant (Committee's general comment No. 25, para. 1). While recognizing the reservation to article 25 (b) of the Covenant, the Committee regrets that Macao, China, has not expressed its intention to institute universal suffrage to ensure the right of all persons to vote at genuine elections and to stand for election without unreasonable limitations, nor has it indicated a timeline for the introduction of such an electoral system. The Committee is also concerned about Macao, China's position in maintaining its reservation to article 25 (b) of the Covenant (arts. 2, 25 and 26).

Macao, China, should consider taking all preparatory measures with a view to introducing universal and equal suffrage in conformity with the Covenant, as a matter of priority. It should outline a clear and comprehensive plan of action and set timelines for the transition to an electoral system based on universal and equal suffrage that will ensure enjoyment by all its citizens of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's general comment No. 25 (1996). The Committee recommends that Macao, China, consider steps leading to the withdrawal of the reservation to article 25 (b) of the Covenant.

8. While noting the dual mandate of the Commission against Corruption to fight corruption and to fulfil the function of ombudsman, the Committee regrets the lack of concrete information on the effective functioning of the ombudsman's mandate, the capacity to investigate individual complaints and to take measures to remedy attested violations. The Committee is also concerned that the Commissioner is appointed by the Chief Executive, which might affect the independence of the institution in relation to the executive power (art. 2).

Macao, China, should ensure that the ombudsman's mandate of the Commission against Corruption is independent and in full

compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex). Alternatively, Macao, China, should establish a new, independent statutory human rights institution, with a broad human rights mandate, and provide it with adequate financial and human resources, in line with the Paris Principles. It should also raise awareness among the general public of the ombudsman's mandate so that anyone can submit complaints to seek remedies for the violation of their rights as protected under the Covenant.

9. While the Committee welcomes the measures taken to eliminate inequalities in salaries between men and women, the Committee is still concerned at the persistent wage gap between women and men in Macao, China, especially in the private sector (arts. 2, 3, and 26).

In the light of the Committee's previous recommendation (CCPR/C/79/Add.115, para. 10), Macao, China, should pursue and strengthen measures to reduce the wage gap which persists between women and men, and give full effect to the principle of equal pay for work of equal value, in practice. It should also address all the causes that widen said gap.

10. While welcoming the efforts made by Macao, China, to combat and eliminate domestic violence, the Committee is concerned that, despite the decrease in the number of investigated cases of domestic violence, the magnitude of the domestic violence phenomenon remains unclear. The Committee also regrets the lack of specific legislation proscribing sexual harassment in all settings, including at workplace (arts. 7 and 14).

Macao, China, should continue its efforts to eliminate domestic violence; adopt the law on prevention of domestic violence; strengthen the services available to victims and the remedies provided and conduct studies on the magnitude and root causes of domestic violence in Macao, China. It should also enact specific legislation prohibiting

sexual harassment in all settings, including in the workplace; thoroughly investigate such cases; sanction perpetrators; provide adequate remedies to victims and take measures to raise awareness of the sexual harassment phenomenon.

11. While the Committee welcomes the actions of the judiciary in blocking the transfer of an offender to mainland China (case No. 12/2007, decision of the Court of Final Appeal of Macao), it is concerned that, despite its previous recommendation (CCPR/C/79/Add.115, para. 14), Macao, China, has not adopted any specific regulations regulating the transfer of offenders from Macao, China, to mainland China to protect them against the risk of the death penalty or ill-treatment upon return. The Committee takes due note of Macao, China's assertion that negotiations with mainland China on this matter are ongoing (arts. 6, 7, 9, 10 and 14).

The Committee reiterates its previous recommendation and urges Macao, China, to pursue negotiations with mainland China with a view to reaching a firm agreement on the transfer of offenders from Macao to the mainland, as a matter of priority. Macao, China, should ensure that the agreement is in line with its obligations under articles 6 and 7 of the Covenant.

12. While commending Macao, China, for the adoption of the law on juvenile justice, the Committee is concerned at the excessive length of solitary confinement that may be applied in respect of juvenile offenders during nighttime. It also notes Macao, China's commitment to reconsider this practice (arts. 7, 10 and 24).

Macao, China, should review the overall period of nighttime solitary confinement for juveniles, taking due account of articles 7 and 10 of the Covenant.

13. While appreciating the various efforts made by Macao, China, to address and combat trafficking in persons, the Committee is concerned about the persistence of the phenomenon in Macao, China, as well as

about the low number of cases of trafficking in persons that come to the attention of the authorities and the limited number of convictions. The Committee also regrets the lack of information on the existence of any legal alternatives to removal of victims to countries where they may face hardship and retribution (art. 8).

Macao, China, should intensify its efforts to combat trafficking in persons; systematically and vigorously investigate and prosecute perpetrators, and ensure that, when convicted, they are adequately sanctioned. Macao, China, should also guarantee adequate protection, reparation and compensation to victims, including rehabilitation. It should ensure that legal alternatives are available to victims that may face hardship and retribution upon removal.

14. While noting the efforts made by Macao, China, regarding the training and employment of more judges and magistrates, the Committee remains concerned about inadequate staffing of the court system; the substantial backlog of cases; the delays in proceedings; and the reported difficulties non-Portuguese-speakers may face due to inadequate interpretation during court proceedings (art. 14).

In the light of the Committee's previous recommendation (CCPR/C/79/Add.115, para. 9), Macao, China, should increase the number of qualified and professionally trained judicial personnel, as a matter of urgency; continue efforts to reduce the backlog of court cases; and decrease delays in proceedings. It should also ensure that adequate compensation is awarded in cases related to lengthy proceedings. Macao, China, should also ensure true bilingualism in the administration of justice.

15. The Committee is concerned at measures taken against journalists and social activists that create an environment discouraging the expression of critical positions or of critical media reporting on matters of valid public interest, and adversely affect the exercise of freedom of expression in Macao, China. In particular, the Committee expresses concern at reports of

media self-censorship; application of the Internal Security Law to impose immigration bans against Hong Kong journalists and activists, on the grounds that they “constitute a threat to the stability of internal security”; police use of identity checks to justify detention of social activists and journalists up to six hours; as well as reports that journalists may face arbitrary arrest and confiscation of their material. The Committee also regrets the lack of clarification regarding the crime of abuse of freedom of the press and criminalization of defamation (arts. 9, 14 and 19).

Macao, China, should ensure that journalists, social activists and individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression. Macao, China, should refrain from profiling foreign journalists as threats to internal security, and abstain from applying its Internal Security Law to ban their entry into Macao, China. It should also refrain from any measures taken against journalists and individuals aimed at deterring or discouraging them from freely expressing their opinions. Any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant. Macao, China, should consider decriminalizing defamation and, in any case, it should countenance the application of criminal law only in the most serious of cases.

16. Regarding the right to freedom of assembly, the Committee is concerned, in particular, at reports of application of the section of the Penal Code establishing the offences of “inciting, in a public gathering or by any means of communication, collective disobedience of public order or law, with an intention to destroy, alter or overturn the established political, economic or social system”, and of spreading “false or demagogic information that may frighten or unsettle the residents” against those exercising their right to freedom of assembly and freedom of expression. It is also concerned at reports of systematic use by police of cameras and

video-recordings during demonstrations, as well as other methods to deter individuals from participating in any type of street actions (art. 21).

Macao, China, should take all measures to ensure that individuals fully enjoy their rights under article 21 of the Covenant and that the right to freedom of assembly is safeguarded in practice. It should abstain from any unjustified interference with the exercise of this right and ensure that any restrictions imposed are in compliance with the strict requirements of article 21 of the Covenant.

17. While welcoming the legal framework in place for the protection of the rights of migrant workers, the Committee remains concerned at the practice of employing migrant workers without formal contracts; the excessive fees that may be requested from them by recruitment agencies; and the payment of lower wages compared to local workers. All these factors make migrant workers vulnerable and expose them to abuses and exploitation. The Committee is also concerned at the lack of effective legal recourse against unfair dismissal or unpaid wages (arts. 2, 8 and 26).

Macao, China, should strengthen the protection of rights of migrant workers against abuses and exploitation and establish affordable and effective mechanisms to ensure that abusive employers or recruitment agencies are held accountable.

18. Macao, China, should widely disseminate the Covenant, the text of the initial report, the written replies it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations, so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the region,, as well as the general public. The Committee also requests Macao, China, when preparing its second periodic report, to broadly consult with civil society and non-governmental organizations.

19. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, Macao, China, should provide, within one year, relevant

information on its implementation of the Committee's recommendations made in paragraphs 7, 11 and 17 above.

20. The Committee requests Macao, China, in its next periodic report, due to be submitted on 30 March 2018, to provide specific, up-to-date information on all its recommendations and on the Covenant as a whole.

PART IV

**FOLLOW UP TO THE CONCLUDING
OBSERVATIONS OF THE HUMAN RIGHTS
COMMITTEE**

**COMMENTS OF THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA IN RELATION TO THE MACAO
SAR ON THE 2013 CONCLUDING OBSERVATIONS OF THE
HUMAN RIGHTS COMMITTEE***

Introduction

Paragraph 7. The Committee takes note of the recent amendments adopted in 2012 by Macao, China to the Method for the Selection of the Chief Executive (Annex I to the Basic Law), according to which the membership of the Election Committee mandated to elect the Chief Executive has been extended from 300 to 400. The Committee recalls that article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service, and that article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant (CCPR/C/21/Rev.1/Add.7, paragraph 1). While recognizing the reservation to article 25 (b) of the Covenant, the Committee regrets that Macao, China has not expressed its intention to institute universal suffrage to ensure the right of all persons to vote at genuine elections and to stand for election without unreasonable limitations nor indicated any timeline for the introduction of such an electoral system. The Committee is also concerned about Macao, China's position in maintaining its reservation to article 25(b) of the Covenant (articles 2, 25 and 26).

Macao, China should consider taking all preparatory measures with a view to introducing universal and equal suffrage in conformity

* CCPR/C/CHN-MAC/CO/1/Add. 1, 9 April 2014

with the Covenant as a matter of priority. Macao, China should outline a clear and comprehensive plan of action and set timelines for the transition to an electoral system based on universal and equal suffrage that will ensure enjoyment by all its citizens of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's general comment No. 25 (1996). It is recommended to consider steps leading to withdrawing the reservation to article 25(b) of the Covenant.

1. Concerning the Committee's suggestion on withdrawing the reservation to Article 25(b) of the Covenant, the Macao SAR Government holds that the aforementioned suggestion does not comply with the current political system of the Macao SAR. In fact, when the Central People's Government of the People's Republic of China delivered a note to the depositary of the Covenant regarding the continuous application of the Covenant in the Macao SAR in 1999, four declarations, which conformed to the provisions relating to reservations of the 1969 Vienna Convention on the Law of Treaties, including the reservation to Article 25(b) of the Covenant, were made pursuant to the relevant provisions of the Basic Law and the legal status and actual situation of the Macao SAR.

Paragraph 11. While the Committee welcomes the actions of the judiciary in blocking the transfer of a person to mainland China (case No. 12/2007, Decision of the Court of Final Appeal), it is concerned that, despite its previous recommendation (CCPR/C/79/Add.115, para. 14), Macao, China has not adopted any specific regulations regulating the transfer of offenders from Macao, China to mainland China to protect those persons against the risk of death penalty or ill-treatment upon return. The Committee takes due note of the Macao, China's assertion that negotiations with mainland China on this matter are ongoing (articles 6, 7, 9, 10 and 14).

The Committee reiterates its previous recommendation, and urge Macao, China to pursue the negotiations with mainland China with a view to reaching a firm agreement on the transfer of offenders from

Macao, China to mainland China as a matter of priority. Macao, China should ensure that the agreement is in line with Macao, China's obligations under articles 6 and 7 of the Covenant.

2. Article 93 of the Basic Law of the Macao Special Administrative Region provides that the Macao Special Administrative Region may, through consultations and in accordance with law, maintain judicial relations with the judicial organs of other parts of the country, and they may render assistance to each other. In accordance with the provision of that Article, the Working Group of Regional Legal Assistance and International Mutual Legal Assistance of the Macao SAR Government has already negotiated with the relevant authorities of Mainland China with regard to the specific content and procedures of the arrangement for legal assistance in criminal matters several times and will continue to study and negotiate on the arrangement for legal assistance in criminal matters, including the arrangement for the surrender of fugitives.

Paragraph 17. *While welcoming the legal framework in place for the protection of the rights of migrant workers, the Committee remains concerned at the practice of employing migrant workers in the absence of formal contracts, at the excessive fees that may be requested from them by recruitment agencies, and the payment of lower wages compared to local workers; all these factors make migrant workers vulnerable and expose them to abuses and exploitation. The Committee is also concerned at the lack of effective legal recourse against unfair dismissal or unpaid wages (articles 2, 8 and 26).*

Macao, China should strengthen the protection of rights of migrant workers against abuses and exploitation and establish affordable and effective mechanisms to ensure that abusive employers or recruitment agencies are held accountable.

3. With regard to labour contracts established with non-resident workers, pursuant to paragraphs 1 to 3 of Article 23 of Law no. 21/2009, Law for the Employment of Non-Resident Workers, employment contracts

concluded with non-resident workers shall be made in writing and shall include content such as the non-resident workers' working conditions, remuneration and so forth. There shall be two copies of the contract, with the employer and the employee holding a copy each. When the Human Resources Office reviews an employment permit application for hiring a non-resident worker, the Office will also review the working conditions and remuneration which the employer has planned to offer the worker. If the employer did not conclude an employment contract in writing with the non-resident worker or if the working conditions given by the employer to the non-resident worker are less favourable than those stated in the employment permit application, pursuant to paragraph 2(1) and (2) of Article 32 of the same law, the employer shall be punished with a fine between MOP5,000 and MOP10,000 per worker involved in each violation, and the employer may at the same time be subject to accessory sanctions stated in paragraph 1(1) of Article 33, *i.e.* the revocation of all or part of the employment permits issued to the employer, along with the suspension of the right to request new employment permits for a period of six months to two years. Nevertheless, in any circumstance, if the employee has started working, the absence of a formal employment contract in writing does not impair his/her right to remuneration.

4. In relation to employment agencies' collection of service charges from non-resident workers, pursuant to Article 17(3) of Decree-Law no. 32/94/M, Licensing System for Employment Agencies, employment agencies are prohibited from charging fees from non-resident workers other than accommodation fees, which shall not exceed one-sixth of a non-resident worker's monthly remuneration. Shall an employment agency be proved to have violated the relevant provisions, the Labour Affairs Bureau may impose a fine between MOP10,000 and MOP30,000 on the offender for each worker involved in the violation pursuant to paragraph 1(c) of Article 22 of the aforementioned Decree-Law.

5. As regards the remuneration of non-resident workers, Article 20 of the Law for the Employment of Non-Resident Workers distinctly stipulates

that the general regime for labour relations, which regulates local workers, is subsidiarily applicable to the labour relations established with non-resident workers, particularly issues relating to rights, obligations and protection. Therefore, it is apparent that the basic legal protection provided for both non-resident workers and local workers is the same.

6. The provision of equality of remuneration was established in both the Framework Law on Employment Policy and Workers' Rights and the Law for the Employment of Non-Resident Workers, guaranteeing the rights of non-resident workers to enjoy the rights, obligations and working conditions which are not less favourable than those of local workers and that both non-resident workers and local workers receive equal remuneration for equal work or work of equal value. In addition, Article 26 of the Law for the Employment of Non-Resident Workers stipulates that non-resident workers are entitled to suitable accommodation and the right to receive payments from their employers corresponding to the costs of transportation to the workers' usual places of residence upon termination of the labour relations. Order of the Chief Executive no. 88/2010 sets the minimum hygiene and living standards for the accommodation for non-resident workers. For instance, the accommodation of each non-resident worker must have a floor area not smaller than 3.5 square meters in average and a group of eight non-resident workers or less must be provided with a bathroom with hot and cold shower facilities and so forth. A non-resident worker's right to accommodation can be assured by his employer by means of payment in cash and the amount shall not be lower than MOP500 per month.

7. If an employer dismisses a worker without just cause, whether the worker is local or non-resident, the employer must, pursuant to paragraph 5 of Article 70 and Article 72 of the Labour Relations Law, pay dismissal compensation and give prior notice to the dismissed employee. If an employer owes workers remuneration, pursuant to paragraph 1(6) of Article 85 of the Labour Relations Law, the employer shall be punished with a fine of MOP20,000 to MOP50,000 for each worker involved and pursuant to Article 87 of the same law, the aforementioned fine imposed

on the employer is convertible into imprisonment under the Penal Code. Furthermore, if non-resident workers believe that their rights and interests are infringed, they can lodge complaints with the Labour Affairs Bureau as local workers do and the Bureau will handle and follow up the complaints in line with its scope of functions. Hence, it is apparent that the existing laws have already offered non-resident workers effective protection for their labour rights and interests and the right to appeal to law.