



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Initial reports of States parties**

**Macao, China\***

[12 May 2011]

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

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## List of abbreviations

AJRPC	Administrative Judicial Review Procedure Code of Macao
APC	Administrative Procedure Code of Macao
CAC	Commission against Corruption
CC	Civil Code of Macao
CCM	Criminal Code of Macao
CCWA	Consultative Commission for Women's Affairs
CFD	Commission for Disciplinary Control of the Security Forces and Services of Macao
CMAB	Civic and Municipal Affairs Bureau
CPC	Civil Procedure Code of Macao
CPG	Central People's Government of the People's Republic of China
CRC	Civil Registration Code of Macao
DPO	Data Protection Office
DSR	Division of Social Rehabilitation of the Legal Affairs Bureau
EYAB	Education and Youth Affairs Bureau
HB	Health Bureau
IB	Identification Bureau
LA	Legislative Assembly
LAB	Labour Affairs Bureau
LJTC	Legal and Judicial Training Centre
MS	Migration Service of the Public Security Police
MSAR	Macao Special Administrative Region of the People's Republic of China
NLPRC	Nationality Law of the People's Republic of China
PIC	Public Information and Assistance Centre
PSP	Public Security Police
SWB	Social Welfare Bureau
SPAW	Statute of the Public Administration's Workers
YOI	Young Offenders Institute

## 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 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](http://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](http://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 to 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
<b>Total</b>	<b>1 326</b>	<b>1 488</b>	<b>1 697</b>	<b>1 707</b>	<b>1 714</b>	<b>1 836</b>	<b>1 956</b>	<b>2 006</b>	<b>1 889</b>

*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 <sup>a</sup>	1 <sup>b</sup>	1 <sup>c</sup>
Others	8	15	5	1
<b>Total</b>	<b>27</b>	<b>40</b>	<b>16</b>	<b>16</b>

*Source:* Security Forces Coordination Office, 2009.

\* Data on offences against physical integrity committed off-duty.

<sup>a</sup> One case of alleged torture by a police officer inside the police station that led to the death of the victim.

<sup>b</sup> One case of physical integrity injuries committed by two prisoners that led to the death of one of them.

<sup>c</sup> 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>	<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>
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

Years	Prisoners		Prisoners on pretrial detention		Total
	M/F	F	M/F	F	
2000	672	51	175	20	<b>847</b>
2001	688	64	198	30	<b>886</b>
2002	794	92	134	23	<b>928</b>
2003	786	90	127	10	<b>913</b>
2004	766	70	101	9	<b>867</b>
2005	704	73	193	13	<b>897</b>
2006	665	70	194	16	<b>859</b>
2007	604	60	208	28	<b>812</b>
2008	592	59	320	49	<b>912</b>
2009	623	64	307	63	<b>930</b>

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
<b>MF</b>	<b>146</b>	<b>141</b>	<b>108</b>	<b>164</b>	<b>139</b>	<b>155</b>	<b>179</b>	<b>193</b>	<b>164</b>	<b>156</b>

*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
Physical assault	3	0	0	1	1	27	19	23
Unauthorized correspondence	46	53	42	4	20	52	22	19

<i>Incidents</i>	2002	2003	2004	2005	2006	2007	2008	2009
Extortion/threat	4	0	0	1	0	2	0	3
Bad behaviour	101	63	79	95	52	77	37	22
<b>Total</b>	<b>206</b>	<b>240</b>	<b>170</b>	<b>187</b>	<b>141</b>	<b>246</b>	<b>118</b>	<b>94</b>

*Source:* MSAR Prison Establishment, 2009.

### Number of prisoners subject to disciplinary measures

<i>Categories</i>	2002	2003	2004	2005	2006	2007	2008	2009
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
<b>Total</b>	<b>208</b>	<b>240</b>	<b>180</b>	<b>116</b>	<b>53</b>	<b>53</b>	<b>158</b>	<b>90</b>

*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**

	<i>Gender</i>	<i>2004</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
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	<b>142</b>
2003	123	9	13	2	<b>136</b>
2004	115	6	17	1	<b>132</b>
2005	96	6	37	0	<b>133</b>
2006	90	8	14	2	<b>104</b>
2007	63	5	23	2	<b>86</b>
2008	56	3	63	9	<b>119</b>
2009	79	3	59	11	<b>138</b>

*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

Item	2001	2002	2003	2004	2005	2006	2007	2008	2009
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

Years	Illegal immigrants from the Mainland of China		Overstayers from the Mainland of China		Other overstayers	
	M	F	M	F	M	F
2002	120	1 078	3 502	8 860	239	420
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

Gender	2004	2007	2008	2009
M	170	697	700	796
F	233	878	724	728
<b>MF</b>	<b>403</b>	<b>1 575</b>	<b>1 424</b>	<b>1 524</b>

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 depository 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>	<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	72	74	81	86	88	93	111	119	120
F	28	22	24	30	36	40	57	60	62
<b>MF</b>	<b>100</b>	<b>96</b>	<b>105</b>	<b>116</b>	<b>124</b>	<b>133</b>	<b>168</b>	<b>179</b>	<b>182</b>

*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	<b>4 047</b>
	C**	1 661	3 672	432	270	<b>6 035</b>
2002	PP	2 735	899	472	131	<b>4 237</b>
	C	2 272	3 867	459	253	<b>6 851</b>
2003	PP	2 663	715	487	169	<b>4 034</b>
	C	1 913	4 373	429	553	<b>7 268</b>
2004	PP	2 981	1 527	622	471	<b>5 601</b>
	C	2 113	4 982	686	249	<b>8 030</b>
2005	PP	3 496	2 089	331	553	<b>6 469</b>
	C	2 820	3 677	630	338	<b>7 465</b>
2006	PP	2 849	4 486	282	532	<b>8 149</b>
	C	2 505	5 745	512	506	<b>9 268</b>
2007	PP	2 390	5 309	265	705	<b>8 669</b>
	C	2 095	5 890	575	875	<b>9 435</b>
2008	PP	2 231	6 807	272	1 306	<b>10 616</b>
	C	2 022	6 299	491	1 060	<b>9 872</b>
2009	PP	2 249	8 884	249	1 125	<b>12 507</b>
	C	2 237	7 829	453	1 208	<b>11 727</b>

*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	<b>32</b>
	C**	43	86	<b>129</b>
2002	PP	25	18	<b>43</b>
	C	48	92	<b>140</b>



<i>Years/cases</i>		<i>Civil/labour</i>	<i>Criminal</i>	<i>Total</i>
2003	PP	27	26	<b>53</b>
	C	57	147	<b>207</b>
2004	PP	31	21	<b>52</b>
	C	88	195	<b>283</b>
2005	PP	11	10	<b>21</b>
	C	57	130	<b>187</b>
2006	PP	49	26	<b>75</b>
	C	216	183	<b>399</b>
2007	PP	83	106	<b>189</b>
	C	212	300	<b>512</b>
2008	PP	283	101	<b>384</b>
	C	188	317	<b>505</b>
2009	PP	502	45	<b>547</b>
	C	597	219	<b>816</b>

*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	<b>2</b>
	C**	2	6	<b>8</b>
2002	PP	-	3	<b>3</b>
	C	3	7	<b>10</b>
2003	PP	-	2	<b>2</b>
	C	3	11	<b>14</b>
2004	PP	1	9	<b>10</b>
	C	4	20	<b>24</b>
2005	PP	2	1	<b>3</b>
	C	3	12	<b>15</b>
2006	PP	2	-	<b>2</b>
	C	14	6	<b>20</b>
2007	PP	3	-	<b>3</b>
	C	9	13	<b>22</b>
2008	PP	18	1	<b>19</b>
	C	39	15	<b>54</b>
2009	PP	2	3	<b>5</b>
	C	11	13	<b>24</b>

*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
<b>Total</b>	<b>86</b>	<b>92</b>	<b>77</b>	<b>98</b>	<b>98</b>	<b>88</b>	<b>92</b>	<b>154</b>	<b>119</b>	<b>96</b>

*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
<b>Total</b>	<b>40</b>	<b>61</b>	<b>73</b>	<b>109</b>	<b>90</b>	<b>114</b>	<b>129</b>	<b>151</b>	<b>147</b>	<b>157</b>

*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 commitment 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, cohabitation, 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



<i>Types of cases</i>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
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
<b>MF</b>	<b>17 496</b>	<b>17 778</b>	<b>18 250</b>	<b>18 958</b>	<b>19 629</b>	<b>20 653</b>	<b>21 996</b>

*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
<b>Total</b>	<b>27 736</b>	<b>85 207</b>	<b>92 161</b>	<b>74 905</b>

*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
<b>MF</b>	<b>27 736</b>	<b>85 207</b>	<b>92 161</b>	<b>74 905</b>

*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.

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