



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

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COMMITTEE AGAINST TORTURE

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

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

**ADDENDUM**

**MACAO SPECIAL ADMINISTRATIVE REGION\* \*\* \*\*\***

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\* The present document comprises the second component of the fourth periodic report of China (CAT/C/CHI/4)

\*\* For the initial report of the Russian Federation, see CAT/C/7/Add.5; for its consideration, see CAT/C/SR.50 and 51 and *Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44)*, paras. 471 - 502

For the second periodic report, see CAT/C/20/Add.5; for its consideration, see CAT/C/SR.251, 252 and 254 and *Official Records of the General Assembly, Fifty-first session, Supplement No. 44 (A/51/44)*, paras. 138-150.

For the third periodic report, see CAT/C/39/Add.2; for its consideration, see CAT/C/SR.414, 417 and 421 and *Official Records of the General Assembly, Fifty-fifth session, Supplement No. 44 (A/55/44)*, paras. 106-145.

\*\*\* In accordance with the information transmitted to States parties regarding the processing of reports, the present document was not formally edited before being submitted for translation.

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## INTRODUCTION

1. This third part of the supplementary report of the People's Republic of China is the first information submitted by China under Article 19 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as Convention) with regard to its Macao Special Administrative Region (hereinafter referred to as MSAR). It covers the period between 20 December 1999 and 31 December 2004.
2. Thus, it was prepared in accordance with the General Guidelines regarding the Form and Contents of Initial Reports to be Submitted by States Parties under Article 19, paragraph 1, of the Convention, adopted by the Committee against Torture (contained in document CAT/C/4/Rev.2 and consolidated in document HRI/GEN/2/Rev.1) and should be read together with Part III of the second revision of the Core Document of China (HRI/CORE/1/Add.21/Rev.2).
3. The referred Part III of the Core Document of China contains the general information on the land and population, the political structure and the framework for the protection of human rights within the MSAR legal system.
4. The Convention became applicable to Macao on 15 June 1999 and its text was published in the Macao Official Gazette, Series I, No. 11, of 16 March 1998.
5. On 19 October 1999, China notified the Secretary-General of the United Nations that the Convention would apply to the MSAR with effect from 20 December 1999, having declared that the reservation made by China to Article 20 and to Article 30 (1) of the Convention would also apply to the MSAR.
6. On 20 December 1999, the People's Republic of China resumed the exercise of sovereignty over Macao and the MSAR was thus established. On the same day, the Basic Law of the MSAR (hereinafter referred to as the Basic Law) was put into effect.
7. Pursuant to the "One country, Two systems" principle, the Basic Law enshrines the general principles, policies and provisions relating to the MSAR, thereby defining the extent of the autonomy to be enjoyed by the MSAR.
8. Under Article 2 of the Basic Law, "The National People's Congress authorizes the Macao Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication (...)".
9. The Basic Law has a constitutional value. In fact, therefore, its Article 11 (2) stipulates that, "no law, decree, administrative regulations and normative acts of the Macao Special Administrative Region shall contravene this Law".

## **PART I. - GENERAL INFORMATION**

10. The Basic Law, under its Article 4, establishes that “the Macao Special Administrative Region shall safeguard the rights and freedoms of the residents of the Macao Special Administrative Region and of other persons in the Region in accordance with law”.

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

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

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

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

15. Law 1/1999, the Reunification Law, reiterating the principle of the continuity of the legal system, lists the laws, decree-laws, administrative regulations and other normative acts previously in force in Macao that are deemed inconsistent with the Basic Law and therefore are not adopted as legislation of the MSAR. However, regarding some of those acts not adopted as legislation of the MSAR, the Reunification Law allows the Region to handle issues regulated therein according to the principles contained in the Basic Law and taking previous practices as reference until new legislation is enacted.

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

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

aware that a subordinate has committed any of the aforesaid crimes) (Articles 235 and 237, respectively).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **ARTICLE 1**

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

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

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

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

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

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

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

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

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

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



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

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

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

## ARTICLE 2

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

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

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

56. A set of principles and norms enshrined in the Basic Law and relevant for this matter are also embodied in the Macao Criminal Procedure Code. Such are the cases of Article 28 (2) of the Basic Law, which states that "no Macao resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment" and of Article 36 (1) of the Basic Law, which ensures Macao residents "(...) the right to resort to law and to have access to the courts, to lawyer's help (...)".

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

- a) the principle of procedural legality, established in its Article 2, by virtue of which the application of penalties and security measures can only take place in accordance with its provisions; to be read together with Article 8, which stipulates that only the courts alone are empowered to impose penalties and security measures;

- b) the right of any defendant, at any stage of the proceedings, to “choose a counsel or to request the appointment of a counsel by the judge”, as well as the right to “be assisted by a counsel in all procedural acts in which he takes part and, whenever detained, to communicate with him, even in private” (Article 50 (1) (d) and (e));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72. The imposition of the most serious special security measures is always subject to the *ultima ratio* criterion. Hence, the solitary confinement of a prisoner can only take place when other special security measures prove inefficient or inappropriate in view of the seriousness or the nature of the situation, the use of physical coercion on a prisoner is only permitted in cases of legitimate defence, escape attempt or resistance to a legitimate order and the use of fire weapons is subject to even tighter conditions, being allowed only under the circumstances of necessity, direct action or legitimate defence (Articles 70 (1), 72(4) and 73 (1) (a) to (e) of the same Decree-Law, respectively).

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

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

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

76. As already mentioned, the execution of prison sentences and security measures involving internment is under the competence of the criminal investigation sections of the Court of First Instance. The law expressly establishes that the court's intervention on the enforcement covers, inter alia, visit the correctional facility, hearing of prisoner's complaints and decision on appeals against disciplinary decisions passed by the relevant organs of correctional facility (Articles 27 and 29 of Law on the Basis of the Organization of the Judiciary and Article 2 (c), (d) and (e) of Decree-Law 86/99/M).

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

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

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

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

81. In the Educational Framework, the principle of *numerus clausus* of educational measures prevails (Article 7 (a) to (e) of Decree-Law 65/99/M). To minors placed in educational institutions are applicable, with necessary adaptations, the provisions governing the enforcement of measures of deprivation of liberty, regarding accommodation, clothing, hygiene and food, visits and communication with the outside world, medical health care, work and training. The same can be said regarding special security measures (their enumeration, prerequisites and requirements), disciplinary offences and corresponding measures (their identification, adoption and enforcement). It is also prescribed judicial intervention in the enforcement of these institutional measures, with the aims, among others, of visiting educational institutions and

hearing minors' complaints or appeals against disciplinary decisions passed by the relevant organs of the correctional facility (Articles 45 and 56 of Decree-Law 65/99/M).

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

83. Decree-Law 31/99/M, of 12 July, approving the Mental Health Regime, establishes the general principles of mental health protection and promotion policy, ensuring persons suffering from mental disorders, among others rights, the right to receive protection and treatment with respect for his individuality and dignity, the right to refuse diagnostic and therapeutic interventions (except in cases of compulsory internment and in urgent situations from which a serious risk may arise), the right to refuse to participate in investigations, clinical experiments or training activities, and the right not to be submitted to mechanical restrictions or placed in isolation wards (Article 4 (1) (b), (c), (e) and (g)). This Decree-Law also provides for the right to benefit from proper inhabitability, hygiene, food and safety standards, to communicate with the outside world and to be visited by relatives, friends and legal representatives, with the limitations inherent to the functioning of the services or the nature of the illness, as well as the right to receive support in exercising the rights of objection and complaint (Article 4 (1) (i), (j) and (m)). Psychosurgical interventions require a written consent of the person suffering from mental disorders and a favourable written opinion of two psychiatric doctors (Article 4 (2)).

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

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

be impossible to obtain due to an urgent situation, the intervention, if indispensable to safeguard the health of the person concerned, shall be performed promptly (Article 8 (1)).

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

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

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

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

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

90. With regard to the occurrence of exceptional circumstances and to the rules applicable there under, it should be noted that, according to Article 18 (4) of the Basic Law, “in the event that the Standing Committee of the National People’s Congress decides to declare a state of war or, by reason of turmoil within the Macao Special Administrative Region which endangers national

unity or security and is beyond the control of the Government of the Region, decides that the Region is in a State of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region".

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

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

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

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

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

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

97. Under the exculpatory state of necessity, it is considered that whoever commits an unlawful act suitable to remove an actual and not otherwise removable danger that threatens the life, the physical integrity, the honour or the liberty of the offender or of a third person, acts without guilt (prerequisite of the act's punishability) when, in the light of the circumstances of the case, it would not be reasonable to demand a different behaviour (Article 34 (1) of the Criminal Code).

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

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

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

**ARTICLE 3**

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

101. Article 94 of the Basic Law provides that “with the assistance and authorization of the Central People's Government, the Macao Special Administrative Region may make appropriate arrangements with foreign States for reciprocal judicial assistance”.

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

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

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



105. Law 6/2004, Law on Illegal Immigration and Expulsion, prescribes the expulsion of illegal immigrants from the MSAR (Article 8 (1)). Persons are considered to be in a situation of illegal immigration if they are not allowed to remain or reside in the MSAR and have entered through a way other than the immigration posts or under a false identity or using false identification or travel documents or during a period of entry interdiction. Likewise, persons who overstay are also deemed to be in a situation of illegal immigration, as well as those who have had their permission of stay cancelled, but have not left the Region within the set time limit (Article 2).

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

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

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

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

#### **ARTICLE 4**

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

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

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

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

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

- a) aggravated homicide is punished with a penalty of 15 to 25 years of imprisonment (Article 129 (1) of the Criminal Code);
- b) aggravated offence to physical integrity is punished with the penalties applicable to the crime of simple offence to physical integrity, to the crime of serious offence to physical integrity or to the result-aggravated variant of these crimes, further amplified by one third in both their minimum and maximum limits (Article 140 (1) of the Criminal Code); and
- c) kidnapping is punished with a penalty of 3 to 12 years of imprisonment (Article 152 (2) of the Criminal Code).

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

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

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

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

## **ARTICLE 5**

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

120. Article 4 of the Criminal Code stipulates that, “unless otherwise provided by an international convention (...) or judicial cooperation agreement, Macao criminal law shall be applicable to acts committed: a) in Macao, irrespective of the offender’s nationality; or b) aboard a vessel or an aircraft registered in Macao”.

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

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

123. Macao criminal law shall likewise be applied to acts committed outside the Region “by a Macao resident against a non-resident, or by a non-resident against a resident, when: (1) the offender is found in Macao; (2) the acts are also punishable under the legislation in force where the act has been committed, unless the jus puniendi is not exercised there; and (3) the acts constitute a crime on account of which the surrender is admitted but cannot be granted” (Article 5 (1) (c) of the Criminal Code).

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

125. Article 5 (2) of the Criminal Code provides that “the Macao criminal law is also applicable to acts committed outside Macao whenever the obligation to bring such acts under trial arises from an international convention applicable to Macao or from a mutual legal assistance agreement”.

## ARTICLE 6

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

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

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

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

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

131. As to coercive measures, one of the necessary prerequisites is the actual occurrence of flight or a flight risk. In order to counter a flight or a flight risk, any of the following measures may be imposed: declaration of identity and residence, obligation to present oneself periodically, prohibition of absence and contact, suspension from the performance of one's duties, the practice of one's occupation or the exercise of one's rights, bail and pre-trial detention (Articles 181 to 186 and 188 of the Criminal Procedure Code).

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

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

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

135. With respect to the right of the detainee to promptly get in touch with the representative of the State of his nationality, it should be referred in the first place that, due to the MSAR

system of reception of international law, Article 6 (3) and (4) of the Convention are directly applicable. Furthermore, the Vienna Convention on Consular Relations, of 24 April 1963, is also applicable to the MSAR.

136. To fully fulfil the obligations arising from that the Conventions, the MSAR authorities, whenever a foreigner is remained in custody in the MSAR, immediately inform the person by writing of his rights and, if the person so wishes, communicate the situation to the competent consular post, ensuring to the respective consular authority the right to visit him and to converse and correspond with him and to arrange for his defence before the court.

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

#### **ARTICLE 7**

138. According to Article 7 (1) of the Convention, the State Party in the territory under whose jurisdiction a person alleged to have committed acts of torture is found shall, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. The fulfilment of this obligation has already been dealt with in this report in what regards Article 5 of the Convention.

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

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

#### **ARTICLE 8**

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

#### **ARTICLE 9**

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

143. In compliance with Article 94 of the Basic Law, Law 3/2002 established the Legal Framework on the Notifications to be Addressed to the Central People's Government by the MSAR Competent Authorities, either before the expedition of a request for judicial cooperation addressed to foreign authorities or after the reception of such a request from foreign authorities. These rules apply to all requests for judicial cooperation issued or received under the law or the relevant applicable bilateral or multilateral treaties.

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

## ARTICLE 10

145. Owing to the nature of their functions, information pertaining to the training and conduct standards of police will be analysed first; information concerning prison guards, judicial officers, the CAC, health care workers and, lastly, teaching personnel will ensue.

### **Police bodies**

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

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

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

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

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

151. The Customs Service has to be mentioned, for it is entrusted with police-like functions pertaining to customs control (Article 1 (3) of Law 11/2001). Under Law 3/2003, which establishes the legal framework on customs personnel’s career, posts and pay, favourable result in training courses is equally a condition for entry into both the junior and the senior careers within the Customs Service (Articles 10 (1) and (3) and 11 (1)). The access to their careers, as a rule with the passing of a public examination, may be completed via a training course (Article 18 (2) of the said Law).

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

### **Prison wardens**

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

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

### **Magistrates**

155. In the judicial realm, Law 10/1999, which approves the Legal Statute of the Members of the Judiciary, sets successful attendance of a training course and traineeship as one of the special requirements for the definite appointment as a judge of first instance and as a procurator. That course, as well as the training course and internship for entry into the judiciary, provides for theoretical training in relevant subject matters such as the Basic Law, criminal law and criminal procedure law, international law and the deontology (Article 16 of Law 10/1999 and Articles 13 and 17 of Administrative Regulation 17/2001).

156. The prohibition of committing acts of torture ensues from the very nature of the functions and powers of the MSAR courts and Procuratorate. Moreover, the provisions of the SPAE are applicable as subsidiary rules. According to the SPAE, civil servants are bound by the duty of

correctness, i.e., the duty to treat users of public services with respect and urbanity (Article 112 of Law 10/1999 and Article 279 of SPAE).

### **Investigators of the CAC**

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

158. Law 10/2000 stipulates that the acts practised within the CAC domain are subject to the rules of criminal procedure legislation (in particular, regarding the legality of the means of proof) and to the limitations on obtaining of evidence imposed by the respect for rights, freedoms, guarantees and lawful interests of persons (Articles 11 (1) and 12 (1)). The provisions of the SPAE are also applicable, in subsidiary terms, to the CAC personnel. On the other hand, the CAC has worked out internal guidelines laying down the criteria to handle complaints and to carry out investigation actions.

### **Health care workers**

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

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



161. Infliction of torture is forbidden in the laws governing medical and nursing careers, inasmuch as they impose the duty to perform one's functions with full responsibility (Article 5 (1) of Decree-Law 68/92/M and Article 3 (1) of Decree-Law 9/95/M). Health care personnel of the public sector are also subject to the rules that apply to civil servants (Article 2 of Law 22/88/M, of 15 August, defining the Legal Framework on the Specific Careers of the Health Department) and therefore have to respect the duty of correctness prescribed by the SPAE.

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

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

#### **Public education teaching personnel**

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

165. Forbiddance of torture ensues from the duties prescribed to teachers by Decree-Law 67/99/M, of 1 November, enacting the Statute of Teaching Personnel of the Education and Youth Department. This Statute provides that teaching personnel must favour the creation and development of relations based on mutual respect, specially among teachers, pupils, persons in charge of the latter's education and non-teaching staff (Article 3 (2) (c)). Likewise, Decree-Law 15/96/M, of 25 March, enacting the Statute of Teachers and Educators from Private Schools Integrated into the Public School Network, imposes on those teachers the duty to create and develop relations based on mutual respect within the educational process (Article 4 (2) (b)).

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

#### **ARTICLE 11**

167. The legality review over interrogation practices is undertaken, in the first place, by the criminal police bodies themselves. To this end, the JP has installed video-recording systems in the interrogation rooms enabling the supervision of all questioning stages. Inside the PSP

premises, video-recording systems have been set up as well, particularly in the on-duty chief agents' rooms, in the investigation room, in the interrogation room and in the public reception room.

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

169. Internal review is also carried out in CAC. Its investigators are instructed, as a rule, not to meet individually persons under investigation, defendants or witnesses, so that mutual control between the investigators attending the procedure is ensured. The CAC interrogation rooms are equipped with a thermometer, a clock and a video-recording system. An internal video-surveillance system in non-reserved areas is also installed, in order to enable the detection of any change in the physical or psychological conditions of persons subject to interrogation, before and after its conduction.

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

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

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

173. The Legal Framework on Educational and Social Protection on Juvenile Justice also prescribes the judicial intervention in the execution of institutional measures under the educational system and in situations where the minor has been entrusted to an institution under the social protection system, as also already described. Provisions of Decree-Law 86/99/M are applicable in both cases.

## ARTICLE 12

174. As previously mentioned, since criminal proceedings related to the crime of torture and other cruel, degrading or inhuman treatments, to its qualified type and to other criminal types

involving commission of these acts do not require a complaint or a private accusation, the notice of any of these crimes always gives rise to the opening of an inquiry by the Procuratorate (Article 245 (2) of the Criminal Procedure Code).

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

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

177. This preliminary investigation is led by the Procuratorate, whereas the criminal police bodies act under its direct guidance and functional dependence. Subject to the exceptions provided for by law, the Procuratorate may delegate to these bodies the carrying out of investigation acts. The examining judge may also intervene at this stage. The acts that he alone may perform or he alone may order or authorize are exhaustively listed in law, such as the adoption of most coercive measures, house search and seizure of correspondence. (Articles 246 and 250 to 252 of the Criminal Procedure Code).

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

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

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

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

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

183. Once the decision to commit to trial a civil servant in the course of criminal proceedings has become non-appealable, it must be notified to the defendant's place of work. On the other hand, once a sentence convicting a civil servant of any crime has become non-appealable, the

institution of disciplinary proceedings shall be originated as well, with regard to all facts that have been held proven in the sentence and have not been subject to previous proceedings (Articles 287 (3) and 288 (1) of the SPAE).

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

### ARTICLE 13

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

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

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

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

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

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

Source: Office for Security Co-ordination

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

\*\*Data not available

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

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

Crime	Occurrence	Accusation	Opening of enquiry	Follow-up
of torture				
Serious torture and other cruel, degrading or inhuman treatment	26/10/2002	26/10/2002	05/11/2002	Filed

Source: Office of the Procurator

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

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

Source: CAC

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

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

192. Under the framework governing judicial intervention, as mentioned, the prisoner is entitled to submit representations and complaints. Specific laws – described earlier – accord prisoners those rights, allowing them to address the judge, the director and staff of the facility, as well as prison inspectors. Such rights, which – also as explained – are equally guaranteed, with necessary adaptations, to minors allocated in educational establishment or entrusted to an institution under the Social Protection Legal Framework.

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

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

195. Within the health care system, a technical commission exists, named Evaluation Centre of Complaints Relating to Health Care Activities. This commission is an advisory organ whose

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

#### ARTICLE 14

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

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

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

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

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

201. As this petition for civil compensation is grounded on the commission of a crime, it must be filed, as a rule, within the corresponding criminal proceedings. It is up to the offended himself to petition for the compensation. Judicial authorities and the criminal police bodies being bound to make this right known to the person entitled to it at the moment the latter partakes in the criminal proceedings (Articles 60 and 62 (1) and 64 (1) of the Criminal Procedure Code).

202. Even where no petition for civil compensation has been filed, the judge shall adjudicate in his decision, even if it was of acquittal, an amount intended to redress damages, whenever it is justifiable for a reasonable protection of the interests of the offended, provided that the latter

does not oppose and the prerequisites as well as the amount of the compensation to be adjudicated have been proven on trial (Article 74 (1) of the Criminal Procedure Code).

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

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

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

206. The victims may apply for this allowance even if the identity of the offender is not known or, by some other reasons, he cannot be accused or convicted. The redress of non-property-related damages is also permitted, as long as it is warranted by their nature and seriousness (Article 1 (2) and (5) of Law 6/98/M).

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

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

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

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

## **ARTICLE 15**

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

212. According to this principle, only evidence that is not banned by law is admissible. In Article 113 of the said Code, methods of obtaining of evidence which are forbidden are expressly listed. It stipulates, as a general rule, that “evidence obtained by torture or coercion or, in general, by means of any offence to physical or moral integrity of a person is null and void and must not be used”. For this purpose, it also establishes what is deemed offensive to physical or moral integrity.

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

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

#### **ARTICLE 16**

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

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

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

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

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



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

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## **ANNEX I. LEGISLATION MENTIONED IN THE REPORT**

1. Basic Law of the Macao Special Administrative Region of the People's Republic of China;
2. Macao Criminal Code;
3. Macao Criminal Procedure Code;
4. Macao Civil Code;
5. Decree-Law 62/88/M, of 11 July, which restructures Prison Guard's Career;
6. Law 22/88/M, of 15 August, which defines the Legal Framework on the Specific Careers of the Health Department;
7. Decree-Law 87/89/M, of 21 December, which approves the Statute of the Public Administration Employees of Macao, as last amended by Decree-Law 89/99/M, of 29 November (SPAЕ);
8. Decree-Law 68/92/M, of 21 September, which establishes the Legal Framework on Medical Careers and Pre-career Training;
9. Decree-Law 72/92/M, of 28 September, which reorganizes and updates the Regime on Civil Protection, as amended by Administrative Regulation 32/2002, of 16 December;
10. Decree-Law 40/94/M, of 25 July, which approves the Regime on the Implementation of Measures that Deprive Liberty;
11. Decree-Law 60/94/M, of 5 December, which establishes the Disciplinary Framework on the Macao Corps of Prison Guards;
12. Decree-Law 66/94/M, of 30 December, which approves the Statute of Militarized Personnel of the Security Forces;
13. Law 9/95/M, of 31 July, which establishes the Legal Framework on Nursing Career;
14. Decree-Law 59/95/M, of 27 November, which rules the Interruption of Pregnancy, as amended by Law 10/2004, of 22 November;
15. Order 8/GM/96, of 5 February, which establishes the Macao Prison Regulations;
16. Decree-Law 15/96/M, of 25 March, which enacts the Statute of Teachers and Educators from Private Schools Integrated into the Public School Network;
17. Law 2/96/M, of 3 June, which sets the Rules to be Observed in Acts Involving Donation, Collection and Transplantation of Human Organs and Tissues;

18. Permanent Instruction 106, of 23 September 1996, which regulates the processing of and direction conferred to prisoners and detainees;
19. Decree-Law 41/97/M, of 22 September, which establishes the Legal Framework on the Training of Teachers at Pre-school, Primary and Secondary Levels, Defining its Coordination, Administration and Support System;
20. Order 46/SAAEJ/97, of 2 December, which establishes the Disciplinary Framework on Pupils in Official Educational Institutions;
21. Decree-Law 5/98/M, of 2 February, which governs official communications, the use of symbols and logotypes, the standardization of documents of Public Administration, simplification of some administrative procedures and establishment of the validity of documents issued outside the territory of Macao that produce effects in Macao;
22. Order 53/SAS/98, of 18 May, which maps out the courses for promotion posts within the Public Security Police's junior careers;
23. Decree-Law 27/98/M, of 29 June, which reorganizes the Judicial Police;
24. Decree-Law 32/98/M, of 27 July, which defines the functions, powers and internal organization of the Judicial Police School;
25. Law 6/98, of 17 August, which regulates the protection of victims of violent crimes;
26. Decree-Law 26/99/M, of 28 June, which maps out the special regime careers of the Judicial Police's personnel;
27. Decree-Law 31/99/M, of 12 July, which approves the Mental Health Regime;
28. Decree-Law 52/99/M, of 4 October, which approves the Legal Framework on Administrative Infractions and Related Procedure;
29. Decree-Law 65/99/M, of 25 October, which establishes the Legal Framework on Educational and Social Protection on Juvenile Justice;
30. Decree-Law 67/99/M, of 1 November, which approves the Statute of the Teaching Personnel of the Education and Youth Department;
31. Decree-Law 81/99/M, of 15 November, which restructures the Macao Health Department;
32. Decree-Law 86/99/M, of 22 November, which governs judicial intervention in the enforcement of prison sentences and security measures involving internment and their respective effects;
33. Decree-Law 111/99, of 13 December, which establishes the Legal Framework on the Protection of Human Rights and Human Dignity in the Face of Biology and Medicine Applications;

34. Law 1/1999, of 20 December, which approves the Reunification Law;
35. Law 3/1999, of 20 December, which provides for the publication of statutes and formulae to be used therein;
36. Law 9/1999, of 20 December, which approves the Law on the Basis of the Organization of the Judiciary, as amended by Law 9/2004, of 18 August;
- 37.
38. Law 10/1999, of 20 December, which approves the Legal Statute of the Members of the Judiciary;
39. Law 10/2000, of 14 August, which approves the Organic Law of the Commission Against Corruption;
40. Law 11/2001, of 6 August, which creates the Customs Service of the Macao Special Administrative Region of the People's Republic of China;
41. Administrative Regulation 17/2001, of 27 August, which establishes the rules on the training course and traineeship for entry into the judiciary or the Procuratorate;
42. Administrative Regulation 22/2001, of 22 October, which governs the structure and operation of the Public Security Police;
43. Law 3/2002, of 4 March, which establishes the Legal Framework on the Notifications to be Addressed to the Central People's Government by the MSAR Competent Authorities;
44. Order 5/2002 of the Health Department, of 26 June, which sets up the *Evaluation Centre of Complaints Relating to Health Care Activities*;
45. Order of the Secretary for Social Affairs and Culture 60/2002, of 23 July, which maps out the scientific-pedagogical organization and the new curriculum of the three-year diploma course in General Nursing at the Macao Polytechnic Institute's School of Health Sciences;
46. Law 9/2002, of 9 December, which approves the Law on Internal Security;
47. Law 3/2003, of 24 February, which establishes the Legal Framework on Customs Personnel's Careers, Posts and Pay;
48. Order of the Secretary for Security 32/2003, of 23 June, which enacts the General Regulations of the Instruction Course;
49. Administrative Regulation 27/2003, of 25 August, which regulates the procedure for enrolment, selection and training for entry into, or accession to, the special regime careers in the Judicial Police;
50. Law 1/2004, of 23 February, which approves the Legal Framework on the Recognition and Loss of Refugee Status;

51. Law 6/2004, of 2 August, which approves the Law on Illegal Immigration and Expulsion;
52. Order of the Secretary for Security 36/2004, of 9 August, which establishes the curricula of the officers' training courses held in the Academy of Security Forces.

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

1. Convention for the Pacific Settlement of International Disputes, done at The Hague on 29 July 1899;
2. Convention for the Pacific Settlement of International Disputes, done at The Hague on 18 October 1907;
3. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva on 12 August 1949;
4. Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva on 12 August 1949;
5. Geneva Convention (III) Relative to the Treatment of Prisoners of War, done at Geneva on 12 August 1949;
6. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, done at Geneva on 12 August 1949;
7. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 8 June 1977;
8. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977;
9. Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951;
10. Protocol relating to the Status of Refugees, done at New York on 31 January 1967;
11. Vienna Convention on Diplomatic Relations, done at Vienna on 18 April 1961;
12. Vienna Convention on Consular Relations, done at Vienna on 24 April 1963;
13. International Covenant on Civil and Political Rights, adopted at New York on 16 December 1966;