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**Replies of Macao, China to the list of issues in relation to its  
second periodic report\***

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\* The present document is being issued without formal editing.



## **List of issues in relation to the second periodic report of the Macao Special Administrative Region of the People's Republic of China on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/CHN-MAC/Q/2)**

### **Reply of the Macao Special Administrative Region**

#### **Question 1**

1. The Government of the Macao Special Administrative Region of the People's Republic of China (Macao SAR) continues to organise training programmes on the protection of human rights for government officials, magistrates and legal professionals, including the protection of human rights and fundamental freedoms, the fight against the crime of trafficking in persons and the crimes against sexual freedom and sexual self-determination, the protection of disadvantaged groups, prohibition of torture, *etc.*

2. According to the information provided by the Office of the President of the Court of Final Appeal, from 2011 to 30 June 2020, there were respectively 5 and 27 cases in which provisions of the International Covenant on Civil and Political Rights (Covenant) were invoked by the Court of Final Appeal and the Court of Second Instance in their judgments.

3. Regarding the declaration and reservation made with respect to Articles 12(4), 13 and 25(b) of the Covenant, it has to be hereby reiterated what was mentioned in paragraph 1 of the report on follow-up to concluding observations (CCPR/C/CHN-MAC/CO/1/Add.1) that the four-point declaration in relation to the continuous application of the Covenant to the Macao SAR, made by the Central Government of the People's Republic of China in accordance with the relevant provisions of the Basic Law of the Macao Special Administrative Region of the People's Republic of China (Basic Law) and the legal status and practical situations of the Macao SAR, complies with the relevant provisions of the 1969 Vienna Convention on the Law of Treaties which allow the formulation of reservations to the provisions of a treaty.

#### **Question 2**

4. Pursuant to Article 143 of the Basic Law, the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress. The Standing Committee of the National People's Congress shall authorise the courts of the Macao SAR to interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the Macao SAR. The courts of the Macao SAR may also interpret other provisions of the Basic Law during trial.

5. The Standing Committee of the National People's Congress exercised the power of interpretation only once pursuant to Article 143 of the Basic Law on 31 December 2011 relating to Article 7 of Annex I and Article 3 of Annex II to the Basic Law, namely regarding the provisions on the method for the selection of the Chief Executive and the method for the formation of the Legislative Assembly. Since the previous consideration of report by the United Nations Human Rights Committee (Committee), the Standing Committee of the National People's Congress has not issued any new interpretations pursuant to Article 143 of the Basic Law.

6. Regarding the concern of the Committee, it has to be stressed that the interpretations of the provisions of the Basic Law relating to the method for the selection of the Chief Executive and the method for the formation of the Legislative Assembly by the Standing Committee of the National People's Congress concerned the gradual improvement of the electoral system of the Macao SAR in accordance with the Basic Law and the promotion of the development of the democratic political system in an orderly manner. The interpretations did not involve the obligations under Articles 2 and 14 of the Covenant.

7. Article 83 of the Basic Law stipulates that the courts of the Macao SAR shall exercise judicial power independently. They shall be subordinated to nothing but law and shall not be subject to any interference. It has to be reiterated that the exercise of the power of interpretation by the Standing Committee of the National People's Congress does not weaken or undermine the rule of law and judicial independence of the Macao SAR. The courts of the Macao SAR have not dealt with any cases in which the interpretations of the Standing Committee of the National People's Congress are not in conformity with the Covenant.

### Question 3

8. The Macao SAR has different institutions and mechanisms to implement the fundamental functions of a human rights institution as set out in the Paris Principles, such as the Office for Personal Data Protection, Commission for Disciplinary Control of the Security Forces and Services (CFD) and different commissions/committees comprising representatives of government departments and of non-governmental organisations, including the Commission for Refugees, Human Trafficking Deterrent Measures Concern Committee, Senior Citizens Affairs Committee, Commission for Rehabilitation Affairs, Commission for Women and Child Affairs, to assist and supervise the work of the Government on human rights protection.

9. In addition, as mentioned in paragraphs 49 to 54 of the second periodic report, the Commission against Corruption (CCAC) accumulates the Ombudsman's functions and plays an indispensable role in promoting and protecting rights and freedoms, safeguarding interests of individuals and ensuring that the exercise of public powers abides by the criteria of justice, legality and efficiency. Adequate financial and human resources are provided to the Commissioner to guarantee the exercise of his Ombudsman's functions in an independent and autonomous manner (Article 59 of the Basic Law and Article 37 of Law 10/2000 on the Legal Framework of the CCAC of the Macao SAR, as amended by Law 4/2012). The CCAC may initiate *ex officio* enquiries, analyse complaints and issue recommendations to government departments.

### Question 4

10. As mentioned in paragraphs 22 to 28 of the second periodic report, the legal system of the Macao SAR guarantees that all persons within the Macao SAR, or subject to its jurisdiction, are equal before the law, irrespective of their nationality, descent, race, sex, language, religion, political persuasion or ideological belief, educational level, economic status or social conditions (Articles 25 and 43 of the Basic Law).

11. The rights to equality and non-discrimination are fully embodied at the various normative levels of the legal system of the Macao SAR through different laws, having the double meaning that everyone is equal before the law and that everyone may achieve equality through the law. These two principles constitute structural guidance at the legislative, administrative and judicial levels to prohibit illegitimate subjective discrimination, while requiring a distinct treatment of different situations regarding the entitlement to, and the enjoyment of, fundamental rights, when it is objectively justified and measured.

12. Although the Macao SAR does not have a specific anti-discrimination law, the anti-discrimination legal system constituted by a series of laws including the Basic Law covers various areas such as labour relations, education, social welfare, judicial remedies, racial equality, and freedom of religious beliefs, providing a sufficient legal basis for comprehensive anti-discrimination.

### Question 5

13. Overall, the recognition of transgender persons in accordance with law involves issues such as social values, civil law provisions, marriage and family relations. To this end, the Macao SAR Government formed a working group on gender identity recognition in 2017, comprising representatives of the Office of the Secretary for Administration and Justice, the

Legal Affairs Bureau, the Civil Registry Office, the Identification Bureau and the Health Bureau, which conducts studies on the legal systems of neighbouring countries and regions involving gender identity recognition. The Macao SAR Government will continue to advance relevant work on the premise that the entire legal system of the Macao SAR would be coordinated and a social consensus would be reached.

14. Law 2/2016 on Preventing and Combating Domestic Violence establishes the legal framework for the intervention of public entities in situations of domestic violence, typifies the crime of domestic violence, sets forth the respective sanctions regime and adopts measures to protect and assist victims. For the purposes of this Law, any physical, mental or sexual ill-treatment in a family relationship or in an equivalent relationship shall be considered domestic violence. Family relationship or an equivalent relationship only includes persons mentioned in Article 4(2) of the Law and does not include same-sex cohabitants. At present, there is no plan of extending the purview of Law 2/2016 to cover same-sex cohabitants, mainly due to the lack of consensus in the society on the recognition of same-sex marriage and the incompatibility with the current legal system of the Macao SAR.

15. However, it has to be highlighted that the victims of violence in same-sex cohabitation relationships may pursue criminal and civil liabilities against the perpetrators in accordance with law, including Article 137 (Offences against physical integrity) and Article 138 (Serious offences against physical integrity) of the Macao Criminal Code (Criminal Code). And depending on the situation, the judge may also immediately order coercive measures against the perpetrator to protect the victim in accordance with the relevant provisions of the Macao Criminal Procedure Code (Criminal Procedure Code) during the course of the criminal proceedings. In addition, the victims may also pursue the civil liability of the perpetrator through civil proceedings or a supplementary civil action in the criminal proceedings. Furthermore, the Social Welfare Bureau (SWB) and social service institutions also provide assistance services to victims in same-sex cohabitation relationships in an appropriate manner.

## Question 6

16. Regarding the crime of domestic violence stipulated in Law 2/2016, it is particularly necessary to consider whether the relevant violent acts are committed continually. When investigating suspected cases in which family members harm each other, the police file and handle the cases as the “crime of domestic violence”, “offences against physical integrity”, “threat” or “insult” according to the specific circumstances. Serious cases, such as those involving homicide, serious injuries, or aggravated injuries, as the respective penalty is heavier than that of the “crime of domestic violence”, will be dealt with according to the felony principle, pursuant to Article 21 of Law 2/2016.

17. In order to strengthen the enforcement of Law 2/2016, as stated in paragraphs 280 to 289 of the second periodic report, the Public Security Police Force, the Judiciary Police and the SWB continue to work closely together to formulate relevant work guidelines, and organise seminars and training courses to deal with domestic violence, to enhance law enforcement capabilities, and continue to conduct relevant public education. At the same time, the SWB or other public entities provide appropriate support to victims of domestic violence or related endangering situations, including temporary shelter, financial assistance, legal aid, medical care and counselling.

18. Regarding sexual harassment, before the entry into force of Law 8/2017, the criminal law of the Macao SAR did not specifically deal with the crime of sexual harassment, but depending on the circumstances of the case, penalties were imposed in accordance with the corresponding provisions of the Criminal Code. For example, verbal sexual harassment might be punished for the crime of insult (private crime) in accordance with its Article 175, punishable by up to 3 months’ imprisonment or a fine of up to 120 days. In order to strengthen the fight against sexual harassment, Law 8/2017 amended the Criminal Code, introducing the crime of sexual harassment (Article 164-A), making it a semi-public crime, punishable by a maximum of 1 year’s imprisonment or a fine of up to 120 days.

19. According to the information provided by the Office of the President of the Court of Final Appeal, from the entry into force of Law 8/2017 to 30 June 2020, the court concluded

a total of 41 sexual harassment cases (involving 49 crimes of sexual harassment), with 33 convictions (one of them being converted from the crime of sexual coercion) and 2 acquittals made, and 14 charges withdrawn. The aforementioned 41 cases included 5 sexual harassment cases in the workplace, involving 6 crimes of sexual harassment, 1 of which was withdrawn and 5 convicted.

### **Question 7**

20. The Basic Law provides for the principles concerning legal assistance in criminal matters between the Macao SAR and other jurisdictions in China. To enhance the legal system, the Macao SAR Government drafted the Law on Interregional Legal Assistance in Criminal Matters in 2016 and submitted it to the Legislative Assembly for consideration. Nevertheless, in June 2016, the Macao SAR Government withdrew the aforementioned draft Law, considering mainly that the legal systems of different jurisdictions were very different and that the draft law needed to find a balance between fully considering those differences and maintaining the integrity of its own legal system; therefore, it was necessary to conduct a more in-depth study. In response to the further studies on the draft Law on Interregional Legal Assistance in Criminal Matters, further consultation between the Macao SAR and Mainland China on the agreement for the surrender of fugitive offenders would also be necessary.

21. In fact, the Court of Final Appeal issued two rulings (Case No. 12/2007 and Case No. 3/2008), which stated that even if it was to execute a Red Notice issued by INTERPOL, in the absence of applicable specific laws and regulations, no public authorities including the Procuratorate and the Judiciary Police can transfer persons wanted by INTERPOL to Mainland China which acts as the requesting party. According to the information provided by the Procuratorate, since the Court of Final Appeal handed down the ruling on case No. 3/2008, there has been no case of surrendering fugitive offenders from the Macao SAR to Mainland China.

### **Question 8**

22. Regarding monitoring places of detention and places of deprivation of liberty, and the corresponding complaint handling mechanisms, in addition to paragraphs 115, 121, 123 to 126 of the second periodic report, the Macao SAR Government improved the operation of the CFD in 2019, increasing its members from 7 to 11 and making it report directly to the Chief Executive, instead of the Secretary for Security; therefore, it became an external and independent body monitoring the activities of the security forces and security services. At the same time, the powers of the CFD have also been expanded. It may monitor places of detention and places of deprivation of liberty, conduct summary investigations within the scope permitted by law, hear the complainants during the investigations and require security services to provide information or explanations in order to determine whether there is any breach of duty or illegality; it may directly make recommendations to the Secretary for Security (paragraphs 2, 3(4) and 5 of Order of the Chief Executive 160/2019).

23. As mentioned in paragraph 178 of the second periodic report, Decree-law 31/99/M on the Mental Health Regime continues to govern the compulsory internment of persons with severe mental illness. Meanwhile, when the situation of persons with severe mental illnesses allows the replacement with compulsory consultation or treatment, or when the premises for hospitalisation no longer exist, or when there are reasonable grounds for the termination of hospitalisation, the relevant hospital or court has to cancel the compulsory hospitalisation of the persons. In addition, the persons concerned are also vested with the right to be supported in the exercise of their rights to object and complain. Appeals may also be filed against decisions for compulsory hospitalisation or decisions for the maintenance of compulsory hospitalisation (Articles 4(1)(m), 10(1)(d) and 15 to 17).

24. Macao is an international tourist city, attracting approximately 3 million tourists annually in recent years, according to the Yearbook of Statistics of the Statistics and Census Bureau. In addition, there are also tens of thousands of workers of foreign nationalities in

Macao. According to the information provided by the Office of the Secretary for Security, the proportion of foreign prisoners serving sentences in the Macao Coloane Prison has gradually dropped from 17% in 2011 to 11% in 2020.

25. In order to prevent the novel coronavirus pneumonia, the Coloane Prison has formulated corresponding internal work guidelines and adopted a series of measures, including strengthening environmental sanitation in prison, promoting awareness of pandemic prevention and hygiene to staff and prisoners, screening new prisoners, and requesting visitors to observe pandemic prevention measures. In addition, the Coloane Prison has also maintained close contact with the health services to notify suspected cases in accordance with the established mechanisms and send samples for examination. Until now, the Coloane Prison has not recorded any prisoners infected with the novel coronavirus pneumonia. As for other places of detention, the police, in accordance with the pandemic prevention guidelines of the health services, conduct nucleic acid tests on all detainees, measure their body temperature, require them to wear and regularly replace masks, implement solitary detention and regularly disinfect detention rooms.

### **Question 9**

26. The Macao SAR Government provides a series of assistance measures to refugee status applicants and their families in accordance with Law 1/2004 on the Legal Framework on the Recognition and Loss of Refugee Status (please refer to paragraphs 192 and 194 of the second periodic report). The two pending cases of refugee status applications mentioned in paragraph 193 of the second periodic report are still at the approval stage and applicants have to report regularly to the Public Security Police Force. During this period, the SWB has been providing humanitarian support services to the two applicants and their families, including arranging them to stay in accommodation facilities and providing them with financial assistance (the amount being determined by Order of the Chief Executive 211/2019, depending on the number of family members; at present, it is MOP4,350 per month for a one-person family). The SWB will review the situation of the persons concerned and report regularly to the Commission for Refugees.

### **Question 10**

27. In accordance with subparagraph 3 of Article 2 and Article 20 of Law 21/2009 on the Employment of Non-resident Workers, non-resident workers shall enjoy the same treatment as resident workers, as regards rights, obligations and working conditions and the labour relations entered into with non-resident workers shall be subsidiarily governed by the labour relations law, *i.e.*, Law 7/2008 on Labour Relations, especially with respect to the rights, obligations and guarantees provided therein. In other words, non-resident workers enjoy the same labour rights as resident workers, including the rights to annual leave, remuneration and maternity leave. In addition, non-resident workers are also entitled to accommodation and transportation to and from their usual place of residence upon termination of their contract. Employers who violate the laws protecting non-resident workers may be subject to a penalty or fine depending on the circumstances (Articles 32 and 33 of Law 21/2009 and Articles 85 and 88 of Law 7/2008).

28. With respect to wage protection, Law 5/2020 on the Minimum Wage for Workers, with the entry into force on 1 November 2020, will apply to resident workers and non-resident workers (with the exception of domestic helpers and Disability Assessment Registration Card holders). Its Article 4(1) stipulates different methods of calculating the minimum wage (the minimum wage is set at MOP6,656 per month and MOP1,536 per week) to protect workers' right with respect to the minimum wage. As regards wages for non-resident domestic helpers, the Labour Affairs Bureau (LAB) will adjust its remuneration reference indicators in time when approving the applications for non-resident workers to ensure their wage levels.

29. Regarding the commission fees charged by employment agencies, Article 16 of Decree-law 32/94/M on the Licensing Regime of Employment Agencies prohibits employment agencies from charging non-resident workers commission fees or receive any

payment by deducting their salary. Violation of the above is punished with fines ranging from MOP10,000 to MOP30,000 for each worker involved in the violation (Article 22(1)(c)).

30. It is worth mentioning that Decree-law 32/94/M will be superseded by Law 16/2020 on Employment Agency Activities on 15 March 2021. Law 16/2020 establishes more rigorous requirements for the issue and renewal of employment agency licenses, introduces the employment guidance system and improves the system for fees and fines. For instance, in terms of fee-based services, in order to ensure the continuous operation of employment agencies and take into consideration workers' ability to pay (including non-resident workers), Article 28 of the Law stipulates that employment agencies may charge workers a service fee of no more than 50% of the salary for the first month 60 days after signing a labour contract, and expressly prohibits employment agencies from charging a service fee when the non-resident workers' stay permits expire and the current employers apply for their renewal. Moreover, Article 27(3) of the Law provides that employment agencies shall establish a fee table and send it to the LAB and post the fee table in a visible place at their entrance. Pursuant to Article 29 of the Law, in the unilateral termination of the labour contract by the employer during the trial period, employment agencies must return to the workers at least 50% of the fees. Correspondingly, the relevant penalties will also be increased. If employment agencies violate the above regulations, they will be fined MOP20,000 to MOP50,000 for each worker involved in the violation (Article 43(2)).

31. To strengthen law enforcement, the LAB has been constantly conducting inspection and supervision on the spot in employment agencies by means of education and inspection, including before issuing and renewing licenses. From time to time, irregular inspections are also carried out in order to know about the business status of employment agencies. Meanwhile, the LAB has also conducted "door-to-door" promotional work, explaining to employment agency practitioners about the relevant legal provisions that must be complied with, enabling the agencies to operate in accordance with law, so as to protect the rights and interests of service users. On the other hand, the LAB also works with various organisations and groups to conduct seminars, covering contents such as the legitimate operation of employment agencies and the matters that must be noted by service users.

## Question 11

32. Law 6/2008 on the Fight against the Crime of Trafficking in Persons establishes a comprehensive and integrated legal, institutional and assistance framework to prevent and combat the crime of trafficking in persons and to support victims. Since its entry into force in 2008, and the Macao SAR Government has been promoting crime prevention messages to the public. Moreover, with 12 years of law enforcement and practice, the police actively intercept trafficking in persons and related illegal activities from the source, including by carrying out raids and targeted operations in establishments, such as saunas, massage establishments, nightclubs and illegal guesthouses, conducting stricter control at border checkpoints, and performing random checks and questionnaire surveys on arriving visitors or non-resident workers. The above measures are the main reasons for the very low incidence of trafficking in person in the Macao SAR in recent years.

33. In terms of assisting victims of trafficking in persons, the SWB provides victims with financial assistance based on the situation of each case (including living expenses, transportation expenses of the return trip, fees for certificates, *etc.*), drug treatment services, shelter, medical referral, interpretation and legal counselling. If the victims are minors, they will be provided with personalised care services, including personal counselling and education and entertainment activities. In addition, victims whose lives are in danger are entitled to receive physical protection (be placed under police protection).

34. The SWB also, by cooperating with the Hong Kong Office of the International Organisation for Migration, provides risk assessment and escort services to assist non-resident victims to return to their places of origin. Since 2011, 2 minor victims have been successfully escorted to their places of origin (one in 2017 and another in 2018). It is worth mentioning that if the victims may face retribution or difficulties after returning to their places of origin, they may also apply to the Chief Executive for a residence permit in accordance

with Law 4/2003 on the General Principles of the System of Entry, Stay and Residence Authorisation (Article 9(2)(6)).

35. In terms of bilateral cooperation, as mentioned in the second periodic report, the Macao SAR and Mongolia signed the Agreement between the Government of the Macao Special Administrative Region of the People's Republic of China and the Government of Mongolia on Cooperation to Combat Trafficking in Persons in 2010, which stipulates a series of protection and assistance measures (Articles 13 to 19). For more details, please refer to: [https://bo.io.gov.mo/bo/ii/2010/50/aviso28\\_cn.asp#cht](https://bo.io.gov.mo/bo/ii/2010/50/aviso28_cn.asp#cht). Moreover, in 2018, the Office of the Secretary for Security proposed to the Ministry of Public Security of China to assist victims of trafficking in persons from Mainland China to return to their places of origin, thus establishing a regular cooperation mechanism. The two sides have exchanged the draft text of the agreement.

## Question 12

36. As mentioned in paragraphs 212 to 213 of the second periodic report, in order to reduce the backlog of court cases, apart from increasing the number of judges (46 judges currently) and setting up an expeditious regime, the courts have also adopted a series of internal guidelines. In addition, with the adoption of Law 4/2019, which amended Law 9/1999 on the Legal Framework of the Judiciary, the Macao SAR revised the concurrent appointment system for judges, introduced a secondment system, and adjusted the statutory claims limits of appeal cases of the court. It also revised Articles 371, 549(1) and (2) of the Macao Civil Procedure Code to improve the efficiency of the trial (Articles 14, 14-A, 14-B, 14-C, 18(1) and (2), 66(2) of Law 9/1999, as amended, and Tables 1, 2 and 5 of its Annex).

37. According to the information provided by the Office of the President of the Court of Final Appeal, the number of pending cases in the three levels of courts has continued to decline in recent years, from 14,641 in 2017 to 11,548 in 2020 (as of 30 June) (76 in the Court of Final Appeal, 489 in the Court of Second Instance and 10,983 cases in the Court of First Instance). As for the time required for trial, it is worth pointing out that the Macao SAR amended the Criminal Procedure Code in 2013, introducing new provisions in relation to the hearing of appeals by higher courts, thereby shortening the trial time and simplifying related proceedings procedures. In 2020 (as of June), the average time required for the Court of Final Appeal to hear cases was 120 days, and that for the Court of Second Instance was 185 days. The average number of days scheduled for trial in the Court of First Instance varied depending on the type of case. The overall average was about 108 days.

38. In the act of resorting to judicial authorities, the law guarantees that any person has the right to use any one of the official languages in oral or written proceedings. When necessary, translation has to be provided or an interpreter has to be designated for the relevant persons and the persons do not have to assume the expenses (Articles 8 and 9 of Decree-law 101/99/M which approves the Status of the Official Languages, Article 89(2) of the Macao Civil Procedure Code, Article 82(2) of the Criminal Procedure Code). From 2017 to June 2020, 1,106 translation services were provided, involving MOP1,149,403.

39. In addition, in terms of making judgments, at present, the courts at all levels do their best to ensure that all judgments and decisions are made in the language of the parties without affecting the operation of the courts and the quality of judgments, and without delaying the trial of cases.

40. Since the enforcement of Law 13/2012 on the General Legal Aid System in April 2013, the Legal Aid Commission has reviewed the legal aid application procedures and followed up the approval of cases in a timely manner, and has also submitted an overall work report to the Chief Executive every year, in order to gain experience from practical operation, continue to optimise the relevant legal aid system. For instance, the "Online Inquiry of Legal Aid Application Progress" service was established in 2017 for applicants to quickly check the progress of their applications online (please see [www.caj.gov.mo](http://www.caj.gov.mo) for details).



### Question 13

41. The newly-added Article 19-A of Law 4/2019 is based on the crimes stipulated in Law 2/2009, the Law on Defending National Security, involving sensitive matters such as independence, unity, integrity, internal and external security of the State. The proceedings relating to those crimes should be heard by judges who meet specific criteria, *i.e.*, judges who are definitely appointed and who are Chinese citizens. It is necessary to clarify here that in order to ensure judicial independence and comply with the principle of the natural judge, the Council of the Judicial Magistrates pre-appoints relevant judges in accordance with the above criteria for a two-year term but does not specifically assign a certain case to a certain judge. The distribution of cases is still conducted in a random manner; therefore, it does not amount to the creation of a special court for certain types of crimes.

### Question 14

42. The Office for Personal Data Protection continues to strengthen the pre-intervention in the processing of personal data by various agencies, by reviewing the plans and work projects carried out by relevant agencies that involve the processing of personal data and providing opinions, thus implementing Law 8/2005 on Personal Data Protection.

43. With regard to wiretapping, it is only for specific crimes stipulated by law, and only when there are reasons to believe that wiretapping is very important for discovering the truth of the fact or in terms of evidence may it be carried out with the prior approval of the judge. During the wiretapping period, the criminal police bodies have to keep a written record of the information obtained through wiretapping for the prosecutor and judge to know the contents, and the judge also has to order irrelevant or useless information to be destroyed (Articles 172 and 173 of the Criminal Procedure Code). On the other hand, pursuant to Article 3 of Law 16/92/M, telecommunications operators shall be obliged to ensure confidentiality of communication and protection of privacy. Only after receiving the order of the judge shall telecommunications operators assist the police in the interception of communications. Telecommunications practitioners shall be obliged to report criminal acts of illegal interception of communications that they become aware of (Article 336 of the Criminal Code and Article 225 of the Criminal Procedure Code).

44. It should be hereby stressed that it is prohibited to use evidence obtained by wiretapping except for the cases provided for by law (Article 113(3) of the Criminal Procedure Code). Relevant actions may lead to criminal liability (Article 191 of the Criminal Code), disciplinary actions and civil compensation.

45. According to Article 56 of Law 9/1999, as amended, and Article 42 of the Criminal Procedure Code, the Procuratorate leads criminal investigations and has the power to supervise police investigations, including whether the interception of communications is in conformity with law.

46. Regarding the formulation of the Legal Regime for the Interception and Protection of Communications, the Macao SAR Government launched a public consultation in 2018. Currently, the Macao SAR Government is further improving the contents of the draft law based on the results of the public consultation and in compliance with the laws of the Macao SAR (including conventions applicable to the Macao SAR).

47. With regard to the “Sky Eye” and facial recognition technology, the police use the “Sky Eye” to assist in the investigation of criminal cases. In the investigation, the facial recognition function was tried out. The application test of the facial recognition technology was introduced only to replace the manual review of the “Sky Eye” videos. The facial recognition technology has nothing to do with the “Sky Eye”; it is not a component part of the “Sky Eye” system.

48. It should be pointed out that in order to ensure proper protection of privacy, the security authorities must obtain the binding opinions from the Office for Personal Data Protection and the permission from the Chief Executive when installing video surveillance systems.

49. Law 2/2012 on the Legal Regime for Video Surveillance in Public Spaces specifies the purposes of video surveillance, including the protection of public buildings and public interest facilities, the protection of buildings classified as historical or cultural heritage, the protection of personal safety and property, public or private, and the prevention of crimes in places where there is a considerable risk of their occurrence. The collection and processing of video surveillance must be carried out for the above-mentioned purposes, and the security authorities must also eliminate records and personal data contained therein that prove to be excessive or unnecessary for the statutory purposes. The relevant personnel are bound by the obligation of professional secrecy, even after the termination of their functions, or they may be subject to criminal and disciplinary actions (Articles 5, 6 and 23).

50. In addition, Article 7 of Law 2/2012 prohibits surveillance under certain specific circumstances, including the prohibition of surveillance in any areas which are intended to be used to protect privacy or in religious sites, prohibition of audio recording except where permitted by law, prohibition of video and audio recordings that may infringe privacy, prohibition of video and audio recordings inside residences or residential buildings. Even if the above images and sounds were captured accidentally, they must be immediately destroyed.

### **Question 15**

51. According to Article 175 of the Criminal Code, the maximum penalty for the crime of insult is 3 months in prison or a fine of up to 120 days. If the object of insult is a civil servant who was performing his duties or who was violated because of his duties, it constitutes the crime of aggravated insult and the above penalties will be increased by half (Article 178). In addition, Article 9 of Law 1/2019 on the Amendment to Law 5/1999 - Use and Protection of the National Flag, Emblem and Anthem, provides for the crime of insulting national symbols and representations. Those who intentionally desecrate national symbols and representations by words, gestures, dissemination of written documents or other means of communication with the public through burning, mutilating, scrawling on, defiling or trampling upon the national flag or emblem or who alter the lyrics or music of the national anthem and perform it in a distorted or derogatory manner shall be punished with imprisonment of up to 3 years or a fine of up to 360 days. The Macao SAR has no intention to remove the provisions criminalising such crimes.

52. The Legal Framework on Civil Protection was renamed the Civil Protection Law (Law 11/2020), which entered into force on 15 September 2020. Its Article 26 establishes the crime against public security, order and peace in sudden public incidents. The establishment of the crime was fully discussed during the deliberation of the Legislative Assembly. And after appropriate revisions and adjustments, a consensus was finally reached. In fact, during a disaster, false information or rumors may cause serious and unpredictable consequences. In order to avoid disrupting rescue operations, causing anxiety and alarm in the society, there was a general consensus that it was necessary to formulate legislation to prevent the dissemination of false information or rumors during disasters.

53. It is worth pointing out that the relevant crime is only intended to punish those who during the maintenance period of immediate or higher-level prevention (immediately or has reached a rescue or disaster situation), with the intention of causing public alarm or anxiety, produce and disseminate false information concerning the contents or situations of sudden public incidents and their response operations; or those who still disseminate the above information knowing that it is false and enough to cause public alarm or anxiety.

### **Question 16**

54. Pursuant to Article 17(1)(4) of Law 9/2002 on the Legal Framework on Internal Security of the Macao SAR, the police may refuse the entry of non-residents into the Macao SAR or expel anyone who is considered inadmissible to the Macao SAR or may pose a threat to the stability of internal security or is seen as a suspect connected with transnational crime,

including terrorism. The provisions shall apply to all non-residents, not specifically to persons engaged in certain occupations.

### **Question 17**

55. As mentioned in paragraphs 233 to 235 of the second periodic report, freedom of expression, encompassing freedom of the press, of publication, the right to form and hold an opinion and the right to access to information without discrimination, is expressly safeguarded under the Basic Law and ordinary law (Articles 27 and 37 of the Basic Law).

56. Law 7/90/M, the Press Law, ensures the independence of journalists and the secrecy of their sources (Articles 6(1), (2) and 7). No one may seize legitimate publications, or impede their composition, printing, distribution and free circulation (Article 8). Professional secrecy may only be suspended by a court order when the disclosure might reveal facts that are criminally relevant, and that involve organised crime or criminal associations (Article 6(3)). Law 8/89/M establishes the Legal Framework of Radio and TV Broadcasting. Its Article 47 provides for freedom of information and programme arrangements. The above-mentioned laws provide sufficient legal protection for the free expression of opinions by the media, civil society and political groups.

### **Question 17 (a)**

57. In 2014, the Open Macau Society issued a written notice to the former Civic and Municipal Affairs Bureau (now the Municipal Affairs Bureau) twice, expressing its intention to hold an assembly relating to civil referendum, in accordance with Law 2/93/M on the Rights of Assembly and Demonstration, as amended by Law 16/2008 and Law 11/2018. The former Civic and Municipal Affairs Bureau did not grant permission for the two applications. The Open Macau Society filed an appeal with the Court of Final Appeal regarding the two cases. In the first case, owing to flaws in the proceedings, the Court of Final Appeal finally issued Judgment No. 95/2014 to reject the appeal of the case; with regard to the second case, the Court of Final Appeal heard the case and issued Judgment No. 100/2014, stating that civil referendum is not a personal right, and that the act would occupy public places impeding the legal rights of other residents. Based on the principle of legitimacy, the Administration could not grant permission for civil referendum to be carried out and restrict the legal rights of other residents in the absence of any legal basis. Therefore, it was confirmed that the decision of the former Civic and Municipal Affairs Bureau not to grant permission for the assemblies for civil referendum did not violate the law.

### **Question 17 (b)**

58. The Macao SAR Government respects the autonomy enjoyed by higher education institutions in terms of administration, finance and academic affairs. The dismissal of the two teaching staff was part of the internal operation of the higher education institutions. Higher education institutions may make their own decisions to hire and renew their faculty staff in accordance with their actual situations. The Macao SAR Government does not interfere with their academic autonomy and administrative operations according to law.

### **Question 17 (c)**

59. Regarding the police's decision to ban an assembly against police abuse of power and brutality with advanced notice in 2019, the police believed that the purpose of the assembly was clearly illegal and suspected that the rights of assembly and demonstration were abused. The police, therefore, decided to ban the assembly in accordance with the provisions of Articles 2 and 6 of Law 2/93/M, as amended. The decision was appealed to the Court of Final Appeal, which finally ruled that the appeal was not substantiated. Concerning the "Lennon Wall" event at Nam Van Lake, the police intervened because the act violated Administrative

Regulation 28/2004 on the General Regulations Governing Public Places, which stipulates that promotional materials shall not be posted in public places without permission.

### **Question 17 (d)**

60. Law 7/90/M and Law 8/89/M stipulate that media organisations, including those using print and electronic media, enjoy the right to disseminate and access information. Accordingly, the Government Information Bureau set up the web platform GovInfo Hub for the media, such as Chinese, Portuguese, or English language newspapers, radio stations, and TV stations, as well as correspondents in the Macao SAR. However, since no law defines the legal status of online-only media organisations, the Government Information Bureau does not currently accept applications of online-only media to access GovInfo Hub.

### **Question 18**

61. Law 2/93/M, as amended, does not provide for a statutory definition of “for purposes contrary to the law” and the Public Security Police Force has no relevant internal guidelines either. It has to be stressed that in the interest of the public, it is necessary for the police to adopt measures to ensure that assemblies and demonstrations are carried out in a lawful and orderly manner, in order not to have serious impacts on public order and public safety.

62. Law 11/2018 amended Law 2/93/M. The amendments mainly involve the transfer of competence from the Municipal Affairs Bureau to the Public Security Police Force and do not involve any amendment to Article 5 relating to the notification procedures for assemblies and demonstrations. When issuing permits to event organisers for the use of public places, the Municipal Affairs Bureau, apart from complying with the general criteria, such as those relating to its functions, must also make necessary consideration to better respond to the novel coronavirus pneumonia pandemic.

### **Question 19**

63. For notifications of each assembly or demonstration, the police will analyse the specific situation individually in accordance with Law 2/93/M, as amended, to make a decision. Due to the influence of the novel coronavirus pneumonia, the organisation of assemblies or demonstrations may pose a serious hazard to public health and public safety and damage the effectiveness of pandemic prevention measures, thus it has to be seriously considered and decided for public interest. Regarding the restrictions imposed by the Macao SAR on assemblies and demonstrations in response to the novel coronavirus pneumonia, it has to be explained that the Macao SAR has never been declared a state of emergency and therefore this does not involve the provisions of Article 4 of the Covenant. Moreover, the restrictions comply with the reasons for protecting public health referred to in Article 21 of the Covenant.

64. In order to cope with the implementation of pandemic prevention measures, the Public Security Police Force issued notices of refusal of permit in relation to 5 assemblies from January to June 2020, involving religious, political and environmental protection issues.

### **Question 20**

65. As stated in Article 21 of the Covenant, the freedom of assembly may be appropriately restricted for specific reasons. Articles 298 to 300 of the Criminal Code all concern the protection of national security, public safety and public order; therefore, they comply with the provisions of Article 21 of the Covenant. The public prosecution system of the Macao SAR pursues the “doctrine of mandatory prosecution”, which leaves no room for prosecutorial discretion with respect to such crimes. The police and the Procuratorate must file a case for such crimes according to legal procedures.

66. According to the information provided by the Office of the Secretary for Security, from August 2016 to June 2020, there were 12 cases involving Articles 311 (Resistance and coercion) and 312 (Disobedience) of the Criminal Code, and a total of 30 persons were detained.

67. The images recorded by the police during procession must comply with the provisions of Law 8/2005. When processing related videos, the purposes shall be limited to preventing specific dangers or preventing crimes. Violation of the aforementioned purposes constitutes an administrative infraction and may be fined MOP8,000 to MOP80,000 (Article 8).

## Question 21

68. Article 27 of the Basic Law guarantees the right and freedom of association, of assembly, of procession and of demonstration, to form and join trade unions, and to strike. Law 4/98/M on the Framework Law on Employment Policy and Worker's Rights stipulates that workers have the right to join associations representing their interests. Article 6 of Law 7/2008 expressly stipulates that no worker or job seeker shall be prejudiced, deprived of any rights or be exempt from any duties due to his membership in an association.

69. Although the Macao SAR does not have a law specifically regulating trade unions ("trade union law") at present, the rights and interests of workers are fully protected through a series of laws: Decree-law 52/95/M on Equal Opportunities and Treatment in Employment between Male and Female Workers, Decree-law 33/99/M on the Regime of Disability Prevention, Rehabilitation and Social Integration of Persons with Disabilities, Law 7/2008, Law 5/2020 and the Labour Procedure Code.

70. In terms of the formulation of the trade union law, the Macao SAR Government continues to learn about the perceptions of all sectors of society regarding the trade union law and conducted a comparative research on related systems in neighbouring regions. In 2017, the Macao SAR Government commissioned a third-party agency to conduct a preliminary research on its legislation. The research was completed in 2019 and suggested the Macao SAR Government improve the current labour policies and systems in accordance with the Basic Law and international conventions in a gradual and orderly manner in response to changes in the socio-economic environment of the Macao SAR. The Macao SAR Government will follow the suggestion of the research to push forward the legislative work of the trade union law.

## Question 22

71. Concerning the introduction of universal and equal suffrage for the selection of the Chief Executive and the election of the Legislative Assembly, as the Committee is aware, a reservation was made by the Central Government of the People's Republic of China with respect to Article 25(b) of the Covenant upon its application in the Macao SAR. The reservation is consistent with the practical situation of the Macao SAR. The current political system of the Macao SAR has its historical continuity and is generally recognised by the society. The latest developments in the selection of the Chief Executive and the election of the Legislative Assembly were elaborated in paragraphs 41 to 46 of the Core Document in relation to the Macao SAR.

72. Pursuant to Article 95 of the Basic Law, municipal organisations which are not organs of political power may be established in the Macao SAR. Entrusted by the Government, they shall provide services in such fields as culture, recreation and environmental sanitation, and shall be consulted by the Government on the above-mentioned affairs. For that purpose, Law 9/2018 created the Municipal Affairs Bureau. Its Article 5 provides that the Municipal Affairs Bureau comprises the Administration Committee on Municipal Affairs and the Consultative Committee on Municipal Affairs, whose members are designated by the Chief Executive among qualified persons who have the enthusiasm and experience to serve the society and the public, and who have a certain professional aptitude. This is also an important manifestation of the Municipal Affairs Bureau being "entrusted by the Government". The

Municipal Affairs Bureau must be accountable to the Government and accept its supervision. It is not appropriate for members to be elected.

73. Pursuant to Article 6 of Law 3/2001 on the Electoral Law for the Legislative Assembly of the Macao SAR, as amended by Law 11/2008, Law 12/2012 and Law 9/2016, apart from the Chief Executive, principal officials, judicial magistrates in office, ministers of any religion or belief, those who do not have an active electoral capacity under Article 4 of the aforementioned Law, the following persons are also not eligible to be elected:

(1) Members of parliament or legislative assembly of a foreign State, of any scope, especially federal, national, regional or municipal;

(2) Members of government or public administration workers from a foreign State, of any scope, especially federal, national, regional or municipal;

(3) Those who refuse to declare that they uphold the Basic Law and that they are loyal to the Macao SAR or that, for proven facts, do not uphold the Basic Law or are not loyal to the Macao SAR;

(4) The person who has resigned as a member of the Legislative Assembly, under the terms of Article 18 of Law 3/2000 on the Legislature and the Statute of Members of the Legislative Assembly, as amended by Law 13/2008 and Law 12/2009, but only in the supplementary election to fill a vacancy for an elected member that occurs during the same legislature and within 180 days following the date on which his resignation took effect.

74. Article 47-B of Law 3/2001, as amended, provides that appeal may be filed with the Court of Final Appeal against the decision to determine the disqualification of a candidate for the Legislative Assembly.

75. With respect to the suspension from office of Sou Ka Hou, a member of the Legislative Assembly, in accordance with Article 27 of Law 3/2000, as amended, if criminal proceedings are initiated in the Macao SAR against a member of the Legislative Assembly, the judge of the case shall communicate the fact to the Legislative Assembly, which shall decide whether the respective mandate should be suspended. During a plenary session on 4 December 2017, the Macao SAR Legislative Assembly passed Resolution No. 21/2017, suspending Sou Ka Hou from office due to the criminal proceedings initiated against him.

76. On 29 May 2018, Judgment No. CR4-17-0194-PCS of the Macao SAR Lower Court stated that Sou Ka Hou was convicted of unlawful assembly and demonstration and was fined 120 days. It is worth pointing out that the judgment invoked the right of peaceful assembly as stipulated in Article 21 of the Covenant but, at the same time, emphasised that “the right of assembly and demonstration must be exercised within the legal framework” and that “even if Macao residents enjoy the right to criticise, procession and demonstration that violate the law are not allowed”. Article 19 of Law 3/2000, as amended, provides that a member loses his mandate if he committed a criminal offence and was sentenced to imprisonment for more than 30 days. On 3 July 2018, the Macao SAR Legislative Assembly received the notice of the final judgment from the courts and So Ka Hou resumed his duties as a member of the Legislative Assembly from that day.

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