



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

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

[29 September 2008]

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

## Article 1

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

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

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

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

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

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

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

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

(a) Two specificities at the level of the concept of torture, namely, the act of torture caused serious physical injury to the victim (article 236(1)(a)), and the act of torture was carried out by particularly harsh means and/or methods, such as beatings, electric shocks, mock executions or hallucinogenic substances (article 236(1)(b)), the enumeration being exemplificative; and

(b) One specificity regarding the conduct of the author of the act of torture, more precisely, if he/she habitually commits acts of torture; it is the habitual conduct of the offender that constitutes the justification for the aggravated type.

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

8. Regarding the difference between *intense suffering*<sup>1</sup> (*sofrimento agudo*) and *severe fatigue* (*cansaço grave*), both expressions are to be constructed literally. *Suffering* means pain, whether physical or mental, and though *fatigue* is obviously a type of suffering, it may be caused without inflicting pain *stricto sensu*; the scholar example which is normally given is that of submitting a person to a prolonged interrogatory. Article 234(2) does not distinguish between torture and other cruel and degrading or inhuman treatments (hereinafter “ill-treatment”); however, there is an implicit differentiation in terms of degree of gravity of the acts in question, torture being at the top, followed by inhuman and degrading treatments. By reason of the principle of legality, which precludes interpretation by analogy in criminal law, it is believed the rationale to be that of covering all possible forms of conduct/means that may be used to impair a victim’s ability to make decisions or freely express his/her will, including those that by themselves would not be considered *intense* or *severe* but become so over a period of time.

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

## Article 2

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

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

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

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

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

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

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

15. Notwithstanding, and within the referred deadline of 48 hours, if the accused was not released by the Procurator or was not presented to the court to be judged immediately, the first judicial questioning takes place (article 128(1) of the CPC).
16. The purpose of this first judicial questioning is solely to ensure the legality of the detention on remand and/or the application of a coercive measure, including pretrial detention. The Judge must inform the accused of his/her rights under article 50 of the CPC, of the reasons for the detention and the facts imputed to him/her (article 128(5) of the CPC). The absence of the defence lawyer in the first judicial questioning results in it being void and null (article 106(c) of the CPC).
17. Whenever (during this questioning, or latter on in the course of the investigation or of the criminal enquiry) a Judge decides to order the continued detention of an accused pending trial, such a decision must be motivated, notified to the accused and, with his/her consent, immediately communicated to a relative, or to a trustworthy person named by the accused, or to his/her defence lawyer (article 179(4) of the CPC).
18. At any time, during detention on remand, medical care is provided if the detained person so requests or if deemed necessary.
19. If subject to the coercive measure of pretrial detention, or after judgement, when convicted to a prison sentence, detainees/prisoners continue to enjoy their fundamental rights, except for those limitations inherent to the deprivation of liberty (article 3 of Decree-Law 40/94/M, of 25 July, which approves the Legal Framework on the Execution of Measures Depriving Personal Freedom).
20. Immediately upon entrance into the Prison Establishment, all inmates have the right to contact their families or their legal representatives to inform them about their situation. If they are not able to do so, such communication is performed by the Prison Establishment's social workers (article 6(1) of Decree-Law 40/94/M).
21. Also upon their entrance into the Prison Establishment, but within 48 hours, all inmates are interviewed by a social worker, who has the duty to inform them of the laws and regulations that apply to them, in particular those related to the Prison Establishment's legal framework (article 6(2)(a) of Decree-Law 40/94/M). Besides the interview, all inmates are also given a copy of the "*Notice to Prisoners*", which contains information on their rights and obligations in the Prison Establishment.
22. Moreover, during the mentioned interview, the social worker must inquire about any questions put forward by inmates requiring resolution either immediately or in short, medium or long term, as well as to assess if inmates show any sign of poor health condition. In both cases, if urgency is detected, the social worker is bound to immediately report the situation to the relevant authority in order that the problem may be solved without delay (article 6(2)(d)(e) in conjunction with 6(3) of Decree-Law 40/94/M).

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

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

25. Inmates are entitled to consult/be treated by a doctor that is not the Establishment's staff, upon advice or proposal of the Prison Establishment's doctor and subject to authorization of the Prison Establishment's Director. The corresponding expenses are supported by inmates if this occurs on their initiative, and by the Prison Establishment in other cases (article 48 of Decree-Law 40/94/M and article 40(6) of Order 8/GM/96).

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

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

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

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

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

30. Apart from *flagrante delicto*, detention requires a warrant issued by a Judge or, where pretrial detention is admissible, by the Procuratorate. Exceptionally, criminal police authorities may also order detention, provided that: (a) pretrial detention is admissible in the concrete case;

(b) there are serious reasons to fear that the suspect poses a flight risk; (c) such issuance is urgent in view of the impossibility of timely intervention by the competent judiciary authorities (article 240 of the CPC).

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

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

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

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

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

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

37. In this respect, it should be stressed that the principles of legality, subsidiarity and necessity constitute key principles of the Macao SAR's criminal justice system. These principles are contained in several provisions of the Basic Law, the CC and the CPC. Hence, procedural measures are subject to the *numerus clausus* rule, and must be applied in accordance with the principles of adequacy and proportionality, *i.e.*, they must be adequate for the purpose of crime

prevention, according to the circumstances of the case, and proportional to the seriousness of the criminal offence and the applicable punishment. Such measures may not affect the exercise of fundamental rights, insofar as these are not incompatible with the purposes and objectives of crime prevention (articles 176 and 178 of the CPC).

38. As general requisites, the application of procedural measures (except for the declaration of identity and residence) depends upon the concrete existence of: (a) flight or flight risk of the accused; (b) risk of the course of the investigation being corrupted, particularly with regard to the obtaining of evidence; (c) danger to public order or risk of further criminal activity - pondered on the basis of the nature or circumstances of the criminal offence or of the personality of the accused (article 188 of the CPC).

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

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

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

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

43. Furthermore, procedural measures must be revoked by the Judge if they have been illegally applied or if the circumstances that lawfully justified their application cease to exist. Proceedings for revocation or modification of procedural measures may be initiated *ex officio* or at the request of the Procurator or the accused (article 196 of the CPC). Specifically in relation to pretrial detention, the Judge must re-examine on a quarterly basis the conditions which justify its continued application (article 197 of the CPC). The termination of procedural measures of a coercive nature is governed by article 198 of the CPC.

44. Pretrial detention must be discontinued after a period of: (a) 6 months without the formal accusation having been made; (b) 10 months, in cases where investigation is due, and there is no decision for committal to trial; (c) 18 months, if no conviction has been rendered by a court of

first instance; and (d) 2 years, if no conviction with *res judicata* force has been rendered (article 199(1) of the CPC). In case of the crimes referred to in article 193, such time limits are increased to 8 months, 1 year, 2 years and 3 years, respectively (article 199(2) of the CPC). If the criminal proceedings have been suspended by reason of a separate judgment on a prejudicial question, the time limits referred to in article 199(1)(c) and (d) and 199(2) are increased by 6 months (article 199(3) of the CPC).

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

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

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

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

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

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

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

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

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

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

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

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

55. In this context, it is important to stress that one of the peremptory requisites of both the *right of necessity* and the *exculpatory state of necessity* is the existence of a sensible superiority of the interest/value to be safeguarded as compared to the interest sacrificed. In the Macao SAR, torture or inhuman treatments are not only expressly prohibited at the highest level (article 28 of the Basic Law), and the absolute prohibition contained in the Convention applies directly, but also the crime of torture is a crime against humanity, *i.e.*, the highest of all of the protected interests. Therefore, it is not foreseeable how the mentioned requisite could be fulfilled in case of acts of torture.

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

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

57. As mentioned, the Macao SAR's courts are vested with independent judicial power, including that of final adjudication and they have jurisdiction over all cases in the Region, except

as regards acts of state (article 19(1)(3) of the Basic Law and article 1(2) of Law 9/1999, of 20 December, which approves the Basis of the Organization of the Judiciary, as amended by Law 9/2004, of 18 August).

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

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

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

61. The appointment by the Chief Executive of the Judges of the Court of Final Appeal (including its President) shall be reported to the Standing Committee of the NPC for record (articles 87(1)(4) and 88(1) of the Basic Law and 15(1) and 91(3) of Law 10/1999).

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

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

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

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

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

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

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

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

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

70. Judges and magistrates of the Procuratorate may not perform any public or private duties, except teaching or scientific research, and may not be appointed to public commissions, unless exceptionally authorised by the Judicial Council or by the Procurator, respectively. During their term of office, both legal professions may not concurrently take on other public or private positions, nor may they take on any position in organisations of a political nature (article 89(3) of the Basic Law and articles 22 and 24 of Law 10/1999).

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

### Article 3

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

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

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

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

*Source:* Commission for Refugees of the Macao SAR.

*Notes:* (1) As of May; (2) Involving 6 persons (household); (3) Involving 4 persons (household).

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

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

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

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

76. If a person seeking to be recognized as refugee claims to have been or to face the risk of being tortured or ill-treated, the Macao SAR's Commission for Refugees, in cooperation with the UNHCR, will assess the claim according to international law's criteria to which the internal law directly refers to. It is worth mentioning that the UNHCR is entitled to take direct part in the application process, to freely contact persons who request the status of refugee (as well as refugees), and to give them any kind of support that it deems necessary. Furthermore, all decisions within the application process must be notified to the UNHCR (article 4 of Law 1/2004).

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

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

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

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

80. In practice, as the detention centre is not yet constructed, at the expiration of the 48 hours deadline, if the process of expulsion is not concluded, migrants are released on condition to present themselves periodically in a police station. Once the decision of expulsion is taken, persons are notified that they must leave the Macao SAR, otherwise they will be forced to. In most cases, they do so of their own free will.

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

Persons forced to leave the Macao SAR					
	2004	2005	2006	2007	2008 <sup>(1)</sup>
Due to problems related to travel documents/all nationalities	90	64	75	115	30
Illegal entrance/Chinese Mainlanders	403	516	1 085	1 575	570

*Source:* Office for Security Co-ordination.

*Note:* (1) As of May 2008.

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

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

83. As to expulsion, the process must be instructed by the police within 48 hours, and submitted for decision to the Chief Executive, whose order may be appealed in general terms (articles 8 to 10 of Law 6/2004). The hierarchic administrative appeal has suspensive effect, except when there is prejudice to public interest (article 157 of the Administrative Proceedings Code). The judicial administrative appeal does not have suspensive effect, unless suspension is requested by the interested person and the court declares it. This request is judged as a prejudicial question within the main procedure (article 120 and *seq.* of the Administrative Procedure Code).

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

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

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

*Source:* Office of the Secretary for Security.

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

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

*Source:* Office of the Secretary for Security.

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

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

#### Article 4

**Question 9.** *With reference to question 2 above, please clarify the criteria used by the investigative and judicial authorities to legally qualify and distinguish in practice the crimes referred to in articles 234 (torture) and 236 (serious torture) of the Criminal Code.*

87. As mentioned in response to question 2, the distinction between the crimes of *torture* and *serious torture* rests with the means/methods employed, the outcome of the offence and the habitual conduct of the offender, which vary and may only be qualified on the basis of the circumstances of each concrete case and collected evidence. Criminal investigations are directed by the Procurators, who are magistrates with competence, *inter alia*, to oversee the legality of all criminal police bodies' actions during the investigation process, and to decide whether to prosecute or not after the completion of an investigation. Overall, the CPC lays down strict rules on systems such as investigation, evidence, *etc.* The Procurators strictly abide by the principle of legality in the collection of evidence in criminal procedures, and at the same time, safeguard the legal rights and interests of the parties involved.

**Question 10.** *With reference to paragraph 116 of the Macao SAR's report and article 22, paragraph 1 of the Criminal Code, please clarify whether all attempts to commit torture (in all the forms provided for by articles 234, 235 and 236 of the Criminal Code) are punished in practice, and please provide relevant statistics on actual practices for the period since the review of the last periodic report.*

88. As of May 2008, there were no cases reported to, or detected by the police, and consequently there were no prosecutions for crimes of torture in the Macao SAR.

**Question 11.** *Please provide information, disaggregated by sex, age and nationality of victims, on the number of investigations, convictions and sanctions that have been applied in cases of human trafficking, commercial sexual exploitation or sexual violence since the review of the last periodic report. Is there any form of rehabilitation or assistance programme in place for persons subject to these forms of violence, including for children?*

89. In relation to trafficking in persons, it is worth stressing that to better tackle the problem, a new law was recently adopted. The previous provision criminalizing trafficking in persons was

inserted in a special criminal law on organized crime and raised serious doubts as regards to the constitutive elements of the crime. It was found to be of limited scope and not in line with the definition contained in the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

90. The new Law 6/2008, of 23 June, on the Fight Against Trafficking in Persons, provides not only for a modern enlarged definition, but also includes legal persons' criminal liability, extends jurisdiction, and sets up measures on victims' protection. Meanwhile, prevention has already been reinforced by the establishment of an interdepartmental body, the Commission to Follow the Implementation of Dissuasive Measures Against Trafficking in Persons (created by Order of the Chief Executive 266/2007, of 10 September).

91. As regards data on trafficking, there are only available data in relation to: (a) non-residents allegedly engaged in prostitution whenever there are reasons to suspect a link with procurement, and (b) situations related to criminal offences investigated or under investigation by the police. It should be noted that as prostitution is not a crime, the concerned persons are intercepted during police raids, and thus, unless there are grounds to suspect such persons to be victims of a crime, they are dealt with within immigration and permanence laws.

92. The following table illustrates the number of cases of suspected criminal offences of procurement (either simple, aggravated or procurement of minors, provided for and punished under articles 163, 164 and 170 of the CC, respectively) investigated or under investigation by the police.

Suspected cases of procurement					
Types of cases	2004	2005	2006	2007	2008 <sup>(1)</sup>
Explored, but voluntarily engaged in prostitution	N/A	20	30	25	2
Forced/by means of deception	N/A	14	19	19	8
Forced/by means of violence	N/A	24	8	7	5
Total	N/A	58	57	51	15

*Source:* Office for Security Co-ordination.

*Note:* (1) As of May 2008.

93. Crimes of procurement usually entail more than one person (offenders or victims), the following tables refer to the same cases as the previous table, though in the perspective of the persons involved, alleged victims.

Non-residents allegedly engaged in prostitution/by place of origin					
Nationality/gender <sup>(1)</sup>	2004	2005	2006	2007	2008 <sup>(2)</sup>
China, Mainland	25	46	46	45	12
Nigeria	0	0	0	0	2
Mongolia	0	4	0	0	0
Philippines	0	3	4	3	0
Russia	4	1	0	0	0
South Africa	1	0	0	0	0
Uzbekistan	0	3	0	0	0
Vietnam	5	1	7	3	1
Total	35	58	57	51	15

*Source:* Office for Security Co-ordination.

*Notes:* (1) All feminine; (2) As of May 2008.

Non-residents allegedly engaged in prostitution/by age					
Age	2004	2005	2006	2007	2008 <sup>(1)</sup>
≤ 14	N/A	0	0	1	1
15	N/A	0	2	3	0
16	N/A	2	6	2	1
17	N/A	5	4	5	1
18	N/A	11	1	3	2
19	N/A	6	10	3	0
20	N/A	5	2	7	3
21	N/A	4	5	8	1
22	N/A	6	4	3	0
23	N/A	4	1	0	0
24	N/A	2	1	5	2
≥ 25	N/A	13	21	11	4
Total	35	58	57	51	15

*Source:* Office for Security Co-ordination.

*Note:* (1) As of May 2008.

94. With reference to criminal offences against sexual freedom and sexual auto-determination, the desegregated data per gender, age and place of origin available concerns only to situations related to criminal offences investigated or under investigation by the police.

Sexual abuse of children (article 166 of the CC) ( $\leq 14$ years old)										
Age <sup>(2)</sup>	2004		2005		2006		2007		2008 <sup>(1)</sup>	
	F	M	F	M	F	M	F	M	F	M
3			1		2					
4									1	
5					1		2			
8									2	
9			2							
11	1						1			
12	1		3		2		3		2	
13	2		3		2		2			1
Total	4		9		7		8		6	

*Source:* Office for Security Co-ordination.

*Notes:* (1) As of May 2008; (2) With the exception of one victim from Mainland China, all the other victims are from the Macao SAR.

Statutory rape (article 168 of the CC) (14 to $\leq 16$ years old)						
Age <sup>(2)</sup>	2004		2005		2008 <sup>(1)</sup>	
	F	M	F	M	F	M
14	1		1		5	
15			2			
Total	1		3		0	

*Source:* Office for Security Co-ordination.

*Notes:* (1) As of May 2008; (2) All victims are from the Macao SAR.

Sexual act with minors (article 169 of the CC) (14 to $\leq 16$ years old)										
Age/place of origin <sup>(2)</sup>	2004		2005		2006		2007		2008 <sup>(1)</sup>	
	F	M	F	M	F	M	F	M	F	M
14	2		3		2		1		3	
15	2		1		4		4		1	
Total	4		4		6		5		4	

*Source:* Office for Security Co-ordination.

*Notes:* (1) As of May 2008; (2) With the exception of one victim from the USA, all the other victims are from the Macao SAR.

Rape (article 157 of the CC) ( $\geq$ 16 years old)/by place of origin					
Place of origin	2004	2005	2006	2007	2008 <sup>(1)</sup>
	F	F	F	F	F
China, Hong Kong SAR		1			
China, Macao SAR	9	8	9	3	7
China, Mainland	6	6	2	3	5
China, Taiwan		1			
India				1	
Philippines		2	2	1	
Thailand	1				
USA			1		
Total	16	18	14	8	12

*Source:* Office for Security Co-ordination.

*Note:* (1) As of May 2008.

Rape (article 157 of the CC) ( $\geq$ 16 years old)/by age					
Age	2004	2005	2006	2007	2008 <sup>(1)</sup>
	F	F	F	F	F
16	1	1			2
17	3	3	2		2
18			1		
19	2	2	1		1
20		2	1	1	1
21			1	2	
22		2	1	1	
23	1	2			1
24			1		
$\geq$ 25	9	6	6	4	5
Total	16	18	14	8	12

*Source:* Office for Security Co-ordination.

*Note:* (1) As of May 2008.

95. The remaining available data on criminal offences against sexual freedom and sexual auto-determination is desegregated as follows:

No. of criminal procedures regarding offences against sexual freedom and sexual auto-determination		
Years	Instituted	Accusations deducted
2001	121	32
2002	68	17
2003	49	22
2004	45	23
2005	65	28
2006	55	23
2007	47	16

*Source:* Procuratorate Statistics for the years 2001-2007.

96. On rehabilitation or assistance programs for victims, it should be mentioned that such assistance exists and is provided to all persons, including children, by the Macao SAR's SWI. Assistance is given on the basis of an assessment of the victims' needs and it may include accommodation and shelter, financial assistance, medical referral, clinical psychological consultation, individual counselling, and legal consultation.

97. When notified of a case of sexual exploitation or sexual violence, trafficking in persons, *etc.*, the SWI assigns specialized workers to the case. Upon their assessment, the SWI provides shelter and accommodation to victims, as well as an allowance, depending on their financial status. For those who are minors, institutional accommodation may be considered. Victims are referred to the Macao SAR's Health Department for health check-up or to receive treatment, as appropriate. Some of the victims may require psychological services and support; in such cases individual counselling is provided, or suggested to them for their consideration. Victims are also referred to clinical psychological assessment when necessary. These services aim to assist victims to resume their daily functioning, to lower the intensity of psychological distress and to help them adjust better to the possible imminent changes. It is common that victims are in need of legal advice, if so, and without prejudice to the legal aid system, SWI's legal consultants are made available.

## Article 5

***Question 12. Please clarify whether Macao can establish its jurisdiction over acts of torture committed abroad according to article 5, paragraph 2 of the Convention, even if these acts are not punishable under the legislation in force where the act has been committed. Also, please indicate whether Macao SAR has ever prosecuted anyone present in its territory who has committed a crime of torture outside of Macao.***

98. In case of acts of serious torture (article 236 of the CC) committed abroad, the Macao SAR's criminal jurisdiction may be established over such acts of torture according to article 5(2) of the Convention, even if these acts are not punishable under the legislation in force where the act has been committed, provided that the offender is found in Macao and cannot be surrendered to another Territory or State (article 5(1)(b) of the CC).

99. With respect to other torture offences (and correlated offences), the exercise of extraterritorial jurisdiction depends upon the fulfillment of certain conditions enumerated in article 5(1)(c) of the CC, as detailed in the report with reference to article 5 of the Convention. One of those conditions is, in fact, dual criminality, *i.e.*, the act [of torture] must be “*punishable under the legislation in force where the act has been committed*”. However, the very same provision, by stating “*unless the jus puniendi is not exercised there*”, makes it explicit that the requisite of dual criminality is overridden in the absence of the exercise, by any reason, of punitive power in the place where the act was committed.

100. Furthermore, and still on this issue, it seems pertinent to mention that article 7 of the CC, on *sedes delicti*, rules that an “act is considered to have been committed at the place where totally or partially, and under any form of complicity, the offender acted or, in the case of an omission, should have acted, as well as in the place where the typical result of the offence has been produced”.

101. Notwithstanding, and also as mentioned in the report, pursuant to article 5(2) of the CC, extraterritorial jurisdiction may also be established over any acts committed outside the Macao SAR whenever the obligation to bring such acts under trial arises from an applicable international convention.

102. In all cases, extraterritorial jurisdiction is subject to the principle of *ne bis in idem* (article 6 of the CC).

#### Articles 6, 7, 8, 9

**Question 13.** *With reference to paragraph 104 of the Macao SAR’s report, please update the Committee on the progress of the ongoing negotiations with respect to bilateral agreements on mutual legal assistance in criminal matters with mainland China and HKSAR.*

103. The new law on international mutual legal assistance in criminal matters, Law 6/2006, of 24 July, entered into force on 1 November 2006. An interregional Agreement on the Transfer of Sentenced Persons between the Macao SAR and the Hong Kong SAR was signed on 20 May 2005. Negotiations with Mainland China regarding an interregional agreement on mutual legal assistance in criminal matters are still ongoing.

**Question 14.** *Please provide information on cases, if any, where Macao SAR rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus has engaged its own prosecution as a result.*

104. There was no such type of cases.

## Article 10

***Question 15. Please provide more detailed information on the instruction and training provided to law enforcement officials and other public officials with respect to human rights and specifically the treatment of detainees and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Please also provide information on training in areas such as non-coercive investigatory techniques. What monitoring and evaluation is used to assess the impact of these programmes, if any?***

105. Law enforcement officials are given specific training (before, as a prerequisite of their career and while in the exercise of functions). Both the Academy of the Public Security Forces and the Judiciary Police Training School comprise in their curricula disciplines such as deontology, ethics, law (including international law), judiciary thematic and police culture. Human rights are taught within those subject matters. The prevention of torture and other ill-treatments is of special interest for law enforcement professions, whose members have the duty of protecting and abiding by the law in general and fundamental rights in special. It is addressed in various manners, either in general or in the context of their legal duties or within specific professional techniques.

106. Likewise, in the Prison Establishment, apart from other educational requirements, specific pre-job training is offered. All prison guards must have knowledge of the applicable legislation on the execution of measures depriving personal freedom, of prison regulations, and of the legal framework on the discipline of prison guards (approved by Decree-Law 60/94/M, of 5 December). Prison guards are specially trained to deal with prisoners. This training aims at ensuring that they understand the rights and responsibilities of prisoners and are able to take proper action and to deal with them within the strict limits imposed by law and in full respect for justice, urbanity and human dignity.

107. There are also other mechanisms to ensure that both the fundamental rights of the prisoners and the rules applicable in the Prison Establishment are respected. As mentioned, inmates are informed of their rights. All inmates have the right to send and receive letters, to complain and to petition. They may complain about an unlawful order or bring any matter before the Director of the Prison Establishment, prison guards and prison inspectors. They also may complain or file a petition to judicial authorities and the Procuratorate, to the Prison Establishment's Board, and to other entities who are legally entitled to address the subject of the petition, such as the Commission Against Corruption (CAC), the Legislative Assembly or, if they are foreign, their Consulates. All complaints and petitions must be immediately forwarded to the competent authority. Inmates must be notified in writing of the decision as well as their respective grounds (articles 80 and 81 of Decree-Law 40/94/M and article 6(2) and (3) of Order 8/GM/96).

108. Moreover, audio video surveillance is set up in interrogatory rooms of the Judiciary Police and in the Prison Establishment.

109. The juvenile justice system is now regulated under Law 2/2007, of 16 April, which entered into force on 16 October 2007. Minors aged between 12 and 16 who have committed a criminal offence are subject to an educational regime in a special facility, the Young Offenders Institute (YOI), under the supervision of the Legal Affairs Department. The applicable measures are of a

solely educational nature, aimed at the minor's socio-educational needs and social integration. In the YOI, the staff internal regulations detail the instructions and procedures for dealing with the residents. Pre-job training on the application of the internal regulation is offered for new staff and internal trainings are also arranged for the whole staff team periodically. In addition, regular conferences between the operational and administrative staff are held to discuss such issues and to ensure that all activities are carried out in accordance with the law and internal regulations. Up to the present, there are no reported cases or complaints of residents being subjected to any kind of ill-treatments or punishment.

110. Professional permanent training is also available and encouraged, some training actions are directed to law enforcement officials and others to all public officials. Each year a vast number of training actions, seminars, conferences, etc., are organized by the referred educational institutions and by the Legal and Judicial Training Centre; many of them focus on the protection of human rights. For example, recently in regard to law enforcement officials, seminars on "*The accused in the context of the Criminal Procedure Code*", "*Evidence within criminal procedure*", "*Police acts within criminal procedure*", "*Fight against trafficking in human beings*" took place. And for all public officials, training actions were also held, such as the "*International Conference on Criminal Procedure Law: Challenges in the 21<sup>st</sup> Century*", "*Human Rights, UN Covenants and Fundamental Rights: Glorified Esperanto? Realizing Human Rights*", "*Conventions on Human Rights and their implementation*", "*Conventions on Human Rights and related hot topics*", etc.

***Question 16. Please indicate further the nature of programs to train medical and health personnel to identify and document cases of torture and assist in the rehabilitation of victims. Please comment on any training to develop more gender-sensitive treatment in both legal and medical institutions.***

111. Though there is no training on how to identify and document cases of torture or assist in the rehabilitation of victims of torture in specific, the internal regulation for medical staff encompasses rules on how to identify and report cases of abuse or ill-treatments in general. In addition, instructions and procedures have been detailed for developing gender-sensitive treatment.

112. The Emergency Department of the public Hospital *Conde de São Januário* provides immediate assistance treatment to victims, conducts medical examination and drafts medical reports upon request by the competent authorities; in the event of a person with suspicious injury or suspected cases of torture, the Emergency Department will notify the relevant authority for follow-up action.

## Article 11

***Question 17. Please provide updated information on the number of persons and the occupancy rate of the places of deprivation of liberty in the criminal justice system, disaggregated by gender, ethnicity or nationality, and age.***

113. At present, the Prison's capacity is of up to 1,050 prisoners. As at 30 June 2008, there were 863 prisoners in the Prison Establishment with an occupancy rate of approximately 82%. The relevant data is as follows:

Composition of the Macao Prison Establishment's population							
Nationality	Convicted		On remand		Subtotal p/gender		Subtotal p/Country
	M	F	M	F	M	F	
Chinese <sup>(1)</sup>	515	56	202	16	717	72	789
Bengali	2	0	0	0	2	0	2
Burmese	1	0	1	0	2	0	2
Cambodian	0	1	0	0	0	1	1
Filipino	1	2	0	2	1	4	5
Ghanaian	0	0	1	0	1	0	1
Indonesian	1	0	0	0	1	0	1
Ivorian	0	0	2	0	2	0	2
Japanese	1	0	0	0	1	0	1
Korean	2	0	1	0	3	0	3
Malaysian	2	0	5	0	7	0	7
Mongolian	1	0	0	0	1	0	1
Nepalese	1	0	0	0	1	0	1
Nigerian	2	0	0	0	2	0	2
Pakistani	1	0	0	0	1	0	1
Peruvian	1	0	0	0	1	0	1
Portuguese	7	0	0	0	7	0	7
Russian	0	0	0	1	0	1	1
Singaporean	1	0	0	0	1	0	1
South African	0	0	1	0	1	0	1
Tanzanian	0	0	4	0	4	0	4
Thai	14	0	0	0	14	0	14
Turkish	2	0	0	0	2	0	2
Uganda	0	0	0	1	0	1	1
Vietnamese	10	2	0	0	10	2	12
Subtotals	565	61	217	20	782	81	-
Totals	626		237		863		863

Source: Macao Prison Establishment.

Note: (1) Subdivision is shown in the next table.

Subdivision of Chinese nationals							
China's place of residence	Convicted		On remand		Subtotal p/gender		Subtotal p/place of residence
	M	F	M	F	M	F	
Hong Kong SAR residents	36	1	14	2	50	3	53
Macao SAR residents	298	29	87	9	385	38	423
Mainland China residents	171	26	99	5	270	31	301
Taiwan residents	10	0	2	0	12	0	12
Subtotals	515	56	202	16	717	72	-
Totals	571		218		789		789

Source: Macao Prison Establishment.

Composition of the Macao Prison Establishment's population by age group			
Age group	M	F	Subtotals p/age group
≤ 20 years old <sup>(1)</sup>	111	12	123
21 to 30 years old	272	18	290
31 to 50 years old	363	46	409
≥ 51	36	5	41
Totals	782	81	863

Source: Macao Prison Establishment.

Note: (1) Young inmates aged between 16 and 21 are segregated from adults and housed in separate blocks (article 7(2) of Decree-Law 40/94/M).

114. As to the composition of the population under the juvenile system, the available data is as follows:

Minors under the responsibility of the Young Offenders Institute						
Interned minors	2003	2004	2005	2006	2007	2008 <sup>(1)</sup>
Minimal No.	65	64	71	71	48	35
Maximum No.	79	78	83	81	83	47
Average No.	68-72	71-75	72-78	74-78	46-67, 75-78	36-46

Source: Macao Young Offenders Institute.

Note: (1) As of the 2<sup>nd</sup> semester of 2008.

Minors under the responsibility of the Young Offenders Institute by age and gender												
Age groups	2003		2004		2005		2006		2007		2008 <sup>(1)</sup>	
	M/F	F	M/F	F	M/F	F	M/F	F	M/F	F	M/F	F
< 14	2	0	5	2	4	1	2	0	5	2	2	0
14-16	47	8	42	14	52	18	59	15	34	2	34	6
Totals	49		47		56		61		39		36	

Source: Macao Young Offenders Institute.

Note: (1) as of 15 August 2008.

**Question 18. Please further specify the cases when solitary confinement of a prisoner may be applied and clarify what is its maximum length possible. Can solitary confinement be applied to persons below 18?**

115. Confinement may be applied in the following cases: (a) by order of a court; (b) for medical reasons; (c) as a disciplinary measure; and (d) as a special security measure.

116. A court may order the compulsory psychiatric internment of a person declared criminally incompetent by reasons of insanity (articles 19 and 83 of the CC and article 18 of Decree-Law 31/99/M, of 12 July, which establishes the legal framework for compulsory internment of persons with severe mental disorders).

117. A court may also order a prisoner's compulsory internment in an health establishment, when that prisoner, though not declared criminally incompetent, suffers from a mental disorder and serving the sentence under the Prison Establishment's normal regime would be in his/her detriment, or if there is a serious risk of disturbance of the Prison Establishment's normal regime. The period of confinement is strictly limited to the necessary time for treatment and may not exceed the term of imprisonment. The court may review its decision at any time at request (whenever it is invoked that the reason motivating the internment ceased) and is required to review it, *ex officio*, 2 months after the day of the internment or of the decision that maintained its application. Judicial appeal against both the order for internment or for its maintenance is possible. All judicial proceedings relating to compulsory internment are secret, urgent and free of charge (article 10 of Decree-Law 40/94/M and articles 16, 17(2), 23 of Decree-Law 31/99/M).

118. In addition, confinement can be applied for medical reasons if the prisoner appears to be suffering or is suffering from a contagious disease. In such case, at the suggestion of the Prison Establishment's doctor, the prisoner's internment takes place in a unit under the Health Department. The period of internment is limited to the necessary time for treatment. The court must be informed of the prisoner's internment and of the dates on which it started and ended (articles 41(5), 46(1)(g) and 47(5) and (6) of Decree-Law 40/94/M).

119. As a disciplinary measure, confinement has a maximum length of 1 month and it can take one of two forms, the first is carried out in an ordinary cell, without authorisation to leave the cell from 1 to 7 days, and the second consists of internment in a disciplinary cell, without access to the outdoors (article 75(1)(f) and (1)(g) of Decree-Law 40/94/M, respectively).

120. Disciplinary measures may be applied when a prisoner commits a disciplinary infraction, *i.e.*, when the prisoner intentionally violates the duties imposed on him/her or any other legal obligations and, in general, when the prisoner's conduct is in breach of the order or discipline of the Prison Establishment or the execution of the penalty. The law provides for an exemplificative list of such conducts, ranging from simple infractions, for instance, lack of personal hygiene, to more serious ones, such as the intimidation or abuse of other inmates, the instigation of, or participation in, disorders, revolts or riots, the escape, and the commission of crimes (article 74 of Decree-Law 40/94/M).

121. The application of disciplinary measures is decided by the Prison Establishment's Director taking into account the seriousness of the offence, the prisoner's behaviour and personality; such application should always be replaced by mere reprehension whenever that is sufficient. It is preceded by an inquiry, during the course of which the prisoner and all other persons who might supply useful information are heard. The decision and the respective grounds are communicated in writing to the prisoner by the Director. If the infraction committed constitutes a public criminal offence, a file is opened and sent to the relevant judiciary authority (articles 75(3) and 77 of Decree-Law 40/94/M).

122. Disciplinary measures cannot be applied in a manner susceptible of endangering the prisoner's health. Before its application, and depending on the nature of the applied measure, a doctor must examine the prisoner. Disciplinary cells must be habitable and certified by a doctor, in particular with respect to furniture, dimension, ventilation and illumination for reading. Prisoners placed in confinement in disciplinary cells are under strict medical control, if necessary on a daily basis, and may receive visits from social workers, family members, lawyers or ministers of religion provided authorisation has been given to that effect (articles 76 and 78 of Decree-Law 40/94/M).

123. As a special security measure, solitary confinement may only be applied when there are reasons intrinsic to the behaviour or psychological condition of the prisoner, there is serious risk of escape or of the commission of violent acts by or against the prisoner. It can only be applied if there is no other way of preventing the danger or the risk of serious disturbances to the order and security of the Prison Establishment and if other special security measures are revealed to be inoperative or inadequate to tackle the seriousness or nature of the situation. As all other special security measures, confinement cannot be used as a disciplinary measure and it has to be proportional to the risk posed by the situation in hand and can only be maintained exclusively as long as the corresponding risk persists. Furthermore, whenever its length exceeds 30 days, it must be confirmed by the entity supervising the Prison Establishment (articles 66 and 70 of Decree-Law 40/94/M).

124. Prisoners in solitary confinement must be frequently visited by the Prison Establishment's doctor, who must assess the prisoner's physical and mental health and, if necessary, inform and propose the replacement of confinement by another measure (article 70(3) of Decree-Law 40/94/M).

125. Minors starting from the age of 16 are criminally responsible. Solitary confinement can be applied to prisoners from 16 to 18 years of age, provided that the above-mentioned conditions are met.

126. Minors between 12 and 16 years old may be deprived of liberty, by means of compulsory commitment at the YOI, if they have committed a criminal offence carrying a sentence of a maximum term of over 3 years of imprisonment or if they have repeatedly committed criminal offences or misdemeanours punishable by imprisonment terms and if other educational measures prove to be inadequate (articles 4(1)(8) and 28(1) and (2) of Law 2/2007, of 16 April).

127. Confinement can be applied to such minors, either as a disciplinary measure or as a special security measure. It also can be applied by order of a court to minors who have committed criminal offences provided for in the law on organized crime and, according to the same law, must be subject to a regime of internment suited to their age and dangerousness (article 102 of Law 2/2007 in conjunction with 22 of Law 6/97/M, of 30 July).

128. The requisites described above in regard to the application of each one of the referred measures apply with some adaptations.

129. As a disciplinary measure, confinement may be applied to minors who committed an infraction. It is carried out in an individual sleeping room; it cannot exceed the period of 1 month; its application must comply with the rule of last resource, proportionality to the

seriousness of the offence, adequacy to the minor's behaviour and personality, and it cannot jeopardize the minor's health, who for that purpose has to be examined by the YOI's doctor. It must also be preceded by an inquiry, in which the minor is heard as well as any person who may have useful information and the decision of the YOI's Director that orders its application must be notified to the minor. An appeal against the Director's decision can be lodged to the court. The appeal is tried within 5 days after being received, and the Judge has the power to order the appeal to have suspensive effect. The court decision is given in writing and notified to the minor (articles 95 to 98 and 106 of Law 2/2007).

130. As a special security measure, the placement of a minor in confinement also follows the mentioned general rules as regards to the requisites of applicability, namely in what concerns the fulfilment of both personal and material conditions, though in a more strict manner, as it depends upon a previous examination of the minor by a doctor and it is subject to a written medical certification that the minor may be placed in isolation. Moreover, it is always without prejudice to the minor's right to be outdoors for at least one hour per day whenever no other outdoor activity is carried out. Isolation for over 8 consecutive days or 15 alternate days must be confirmed by the Judge. The minor placed in isolation must be frequently visited by the doctor, who must inform the YOI's Director about the minor's physical and mental health condition and, if necessary, propose the replacement of isolation by another measure. If the doctor considers isolation to be seriously prejudicial to the minor's physical and mental health, the YOI's Director shall communicate it to the Judge, who shall decide if isolation should be suspended, terminated or replaced by another appropriate measure.

***Question 19. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably women, migrants, persons suffering from mental illness and children.***

131. The juvenile justice legislation was recently revised. The Educational and the Social Protection Regimes on Juvenile Justice, approved by Decree-Law 65/99/M, of 25 October, was superseded in part by the mentioned Law 2/2007, which establishes the new Young Offenders Educational Regime.

132. In regard to minors up to 12 years old, as they are not considered to meet the necessary psychobiological conditions to be criminally responsible, when they commit criminal offences or misdemeanours they are merely subject to a social protection regime under Decree-Law 65/99/M.

133. Minors aged 12 to 16 years old who commit criminal offences or misdemeanours are, as mentioned, subject to the Young Offenders Educational Regime. The measures that may be applied to this age group aim at educating the minors to respect Law and basic rules of social interaction, and at their insertion in the community's life in a dignifying and responsible manner. Such measures are exhaustively enumerated, commitment being the most severe one, which application is restricted (as detailed in the previous answer).

134. The duration of the minor's commitment is always determined by a court decision. Their minimum and maximum lengths are, as a rule, of one year and 3 years, respectively. In cases of

criminal offences punishable by imprisonment over 8 years or if the minor has committed several criminal offences punishable by a maximum limit of imprisonment over 5 years, the minimum and maximum lengths are increased to 3 and 5 years, respectively. The maximum limit can be prolonged if certain conditions are met (articles 25 and 26 of Law 2/2007).

135. The implementation of commitment measures must respect the minor's personality and be carried out with absolute impartiality, without discrimination founded in ascendancy, gender, race, language, country of origin, religion, political and ideological convictions, instruction, economic situation and social condition. Minors still enjoy their fundamental rights, except for those limitations inherent to the execution of the measure (articles 73(1) and 74(1) of Law 2/2007).

136. The rights and duties of committed minors and of their parents or guardians are regulated in detail in articles 74(2) to 87 of Law 2/2007.

137. Among others, they have the right to be cared for in terms of physical and health integrity, to religious freedom, to attend necessary classes for the fulfilment of compulsory education or professional training, to the reserve of their dignity and intimacy, to the non-publicizing of the measure of commitment to third parties, to contact with the Judge, the Procurator and the defence lawyer in private, to receive visits, to have contacts with the exterior when authorized (including by writing, phone or e-mail, or to receive and send postal packages), to be outdoors for at least one hour per day whenever no other outdoor activity is carried out, to be heard before the application of any disciplinary sanction, to be informed of their situation and of the evaluation of their individual plans of education, to file complaints or to appeal, to be informed of their rights and duties, including the laws and regulations that apply to them and of the right to complain and appeal, and in case of mothers, to keep the company of their children up to 3 years old. Furthermore, if the child's birth occurs during commitment, the child's birth registration does not mention that fact, neither the fact that the mother is committed. Minors are also entitled to receive free primary medical care. In this respect, it is worth mentioning that there is a clinical treatment room in the YOI. In more serious cases and upon the doctor's advice, hospitalisation is provided.

138. When a minor enters the YOI, a brief evaluation is immediately performed to assess the minor's physical and emotional condition. An individual room is attributed to the minor in order to facilitate his/her observation and gradual adaptation to life at the YOI. The minor's rights and obligations are explained to him/her. On the first workable day following entrance, an interview with the YOI's Director is conducted to better consider the minor's history, family background, the nature of the infraction committed and his/her psychological state at that moment, his/her educational and professional status and other factors relating to his/her necessary social reinsertion. According to each minor's situation, security conditions are determined and a person responsible (a social worker or psychologist) is designated to follow up the minor's case. If needed, medical treatment is immediately provided for and psychological guidance arranged.

139. Afterwards, the person responsible will continue to assess the minor, collecting detailed information on the minor's development, family situation, relationship with his/her family, education, *etc.* Within 20 day of commitment, the person responsible must submit a social report on the minor. Before the end of the 20-day observation period, an evaluation report related to the

minor's individual situation, cognitive and emotional capacities, and behaviour, is drafted by a psychologist, who also informs on the need of psychological and/or psychiatric follow up. In the latter case, if the minor appears to be experiencing serious problems, he/she is referred to the child's psychiatric unit at the Hospital for necessary treatment.

140. According to the situation and needs of each minor, an individual plan of education is established. Such plans focus on 3 main specific areas, more precisely, vocational and educational training, individual counselling, and family therapy.

141. In the Macao Prison Establishment, offenders aged 16 to 18 years old are separated from other prisoners. Likewise, women and men are also detained separately.

142. Appropriate medical care is provided for to pregnant prisoners. After delivery, they are exempt from obligatory work. Furthermore, at their own discretion, their children may live with them in the prison until the age of 3 (articles 43 and 84 of Decree law 40/94/M, and articles 27(3) and 43 of Order 8/GM/96). Thereafter, the child must leave, but in the absence of family members to take care of the child, the SWI will take the child into its charge.

143. As to foreign persons, in order to protect their rights and in compliance with article 36 of the 1963 Vienna Convention on Consular Relations, upon entrance into the Prison Establishment, and without prejudice to other measures already described, all foreign prisoners are asked to fill in a declaration stating whether they want their Consulate or Embassy to be informed of their detention and, in the affirmative case, the prison's staff will make the relevant notification immediately. Such form is available in both official languages and in English. If necessary, a translator can be arranged. If an international agreement on the transfer of sentenced persons is in force in the Macao SAR, prisoners who are nationals of the other party to the agreement are informed of their rights under it, in particular conditions for transfer back to their country for the purpose of serving their sentences.

144. As regards prisoners suffering from mild level of mental illness, normally, they stay in ordinary cells, unless confinement is deemed necessary to ensure their own or others' protection. Aside from basic medical care, appropriate psychiatric and/or psychological treatment is arranged periodically.

145. As referred, prisoners suffering from a severe mental disorder, as well as persons incapable of criminal responsibility, may by order of a court be subject to compulsory internment in a psychiatric/health institution.

146. The rights of persons suffering from mental illnesses are protected and guaranteed under the already quoted Decree-Law 31/99/M. All interned persons have the right to be explained about or informed of their rights, in particular, of the reasons for their internment, of the right to appeal against the order for internment, and of the right to be assisted by a lawyer of their choice or, if necessary, appointed to them. Interned persons are entitled, *inter alia*, to be treated in a manner respectful for their individuality, dignity and privacy, and to adequate accommodation and food. When receiving medical treatment, they must be informed of the proposed therapy, the respective predictable effects and of other possible treatments (articles 4, 9 and 10 of Decree-Law 31/99/M).

147. Moreover, an independent consultative body, the Mental Health Commission, was created to monitor all issues connected with mental health policies, including the operation of the institution and the inspection of internment conditions in order to ensure that the rights of the interned persons are fully complied with. This Commission is composed of 2 doctors, one of them a psychiatric, who presides, a representative of the SWI, a representative of the patients' association and 3 other persons of recognized merit.

### Articles 12 and 13

***Question 20. Please elaborate on the mandate and activity of the Judicial Police and the Public Security Police. Is there any independent body tasked with receiving complaints of police misconduct, including excessive use of force and abuse of powers, with the power of external oversight and monitoring? If so, please provide information as to its composition, mandate and activities.***

148. Public legal persons are subject to the principles of legality and speciality, meaning that they solely have the powers and competences determined by law. The Judiciary Police (PJ) is mainly governed by Law 5/2006, of 12 June, and Administrative Regulation 9/2006, of 3 July. And the nature, organization and operation of the Public Security Police (PSP) are primarily set forth in Administrative Regulation 22/2001, of 3 July. As law enforcement agencies, both the PJ and the PSP are under the operational command of the Unitary Police Service (SPU), which is the entity responsible for the Macao SAR's public security (established by Law 1/2001, of 29 January, as complemented by Law 5/2001, of 2 May, and governed by Administrative Regulation 2/2001, of 26 March, as amended by Administrative Regulation 17/2003, of 7 July). All of these entities are part of the Macao SAR's Executive. More precisely, they are under the Secretary for Security's supervision.

149. The PJ is a criminal police body, to which the activities of prevention and investigation of crimes are assigned, as well as of assisting the judiciary authorities (*i.e.*, the judicial and the Procuratorate). Within criminal proceedings, the PJ operates under the direction and hierarchical dependency of the judiciary authorities.

150. In what concerns criminal investigation activity, the PJ has exclusive competence, in general, to investigate all criminal offences punishable by imprisonment term of a maximum limit of over 3 years when the offender is not known. In specific, the PJ has reserved competence in relation to criminal offences of illicit trafficking of narcotic drugs and psychotropic substances, of counterfeiting or passing counterfeit money, credit instruments, stamps, stamped worth forms or other similar values, of slavery, kidnapping, abduction and of illegal restraint or hostage taking (without prejudice to the PSP competence), criminal offences against property and perpetrated with violence in banks or other financial or credit institutions and in public services or entities, of theft of movable property having a high relevance for the technological or economic development, or which is, by its nature, a highly dangerous substance or having a scientific, artistic or historic value or being valuable as cultural property, which may be found in public collections or exhibitions or in places available to the public, of organized criminal association or secrete society, offences carried out inside of casinos or inside gaming rooms or

places or around such places connected with gaming, of illicit administration of substances to animals intended for racing, crimes related to electronic means, money-laundering and similar or connected offences, and of terrorism (without prejudice to the competence of the PSP's special units) in case of special danger and high risk to life.

151. The PSP is a security paramilitary force and a criminal police body. As such, within the context of criminal procedure, it also operates under the direction and hierarchical dependency of the judiciary authorities. Its mandate consists of ensuring public order and tranquillity, as well as to exercise the activities of prevention and investigation of, and fight against crime, to defend public and private property, to control illegal migration, to ensure the migration service, to regulate and control traffic of vehicles and persons. Among its various tasks, the PSP is in charge of the prevention of all crimes, in particular of organized crime. Until the intervention of other relevant criminal police bodies, the PSP is the first line responsible entity for the adoption of all urgent necessary measures to prevent the commission of a crime or to investigate and deter perpetrators of any crime which preparation or commission is of its knowledge. In addition, and without prejudice to the provisions of the CPC, the exclusive competence for the investigation of the offences of slavery, kidnapping, abduction and of illegal restraint or hostage taking is presumed to be delegated in the PSP whenever such investigation happens as an immediate consequence of the gathering of indicia of the commission of those crimes resulting from, and within, the PSP's criminal prevention activity.

152. The investigation of acts of misconduct, including excessive use of force and abuse of powers, falls within the judiciary authorities and the relevant hierarchical structure competence if such acts constitute criminal offences and, thus, automatically also disciplinary infractions. If an act does not meet the necessary legal elements of a criminal offence, it may, nevertheless, fall in the category of disciplinary infractions and be subject to disciplinary action. Different legal frameworks rule disciplinary action, for instance, in the case of the PSP, the corresponding regime is contained in Decree Law 66/94/M, of 30 December, as amended, and in the case of the PJ in Decree Law 85/89/M, of 21 December, as amended, in conjunction with the abovementioned Law 5/2006.

153. Notwithstanding, in 2005, the *Commission for Disciplinary Control of the Security Forces and Services of Macao* (CFD) was established by Order of the Chief Executive 14/2005, of 31 January. The CFD is composed of 5 persons of recognized social merit, designated by the Chief Executive. The CFD is directed to the defence of legality and of the fundamental rights of the people in view of achieving an improvement on the quality of law enforcement's services. Its activity complies with strict criteria of legality, justice, impartiality, objectivity and celerity.

154. Within the scope of the CFD's mandate, it is worth mentioning the competence to follow up complaints lodged by citizens against any member of the staff of the Security Forces Corporations and Services of the Macao SAR related to their members' civic conduct, eventual legality infringements, actions against fundamental rights or any suspicions of irregularities or deficient operation of those Services. The CFD can act on its own initiative or at request. Complaints can be lodged directly by the citizens. Within 5 days of the complaint's reception,

the relevant Corporation or Service must send a copy thereof to the CFD. Likewise, a copy of all decisions taken in regard to complaints, including disciplinary sanctions or any other measure, is sent to the CFD in the same deadline of 5 days following their adoption. The CFD drafts an opinion on each of such decisions, which is then forwarded, as a recommendation, to the Secretary for Security.

155. Even though the CFD has no investigative or prosecution powers, its activity has shown an important impact in what concerns the exercise of disciplinary action in regard to enforcement agents' misconducts. Furthermore, the CFD has conducted visits to the Corporations and Services, including some places of detention, and has frequently promoted seminars, where necessary compromise between police action and full respect of human dignity is a recurrent topic.

156. The activity of the CFD, since its inception in what concerns its direct intervention can be resumed as follows: in 2005, 13 complaints were received, corresponding to the issuance of 13 recommendations; in 2006, from a total of 29 complaints received, 18 procedures were concluded and 6 recommendations issued; in 2007, from a total a 12 complaints received, 12 procedures were concluded and 6 recommendations issued. With regard to the CFD's interaction with citizens, the following table illustrates its activity of control over the disciplinary actions of all Security Forces Corporations and Services of the Macao SAR.

CFD's activity in terms of follow up and control of complaints and disciplinary actions related thereof			
	2005	2006	2007
Registered complaints by citizens <sup>(1)</sup>	2 001	-	1 677
Disciplinary actions instituted	442	721	441
Disciplinary actions concluded	319	396	439

*Source:* CFD Annual Reports 2005, 2006 and 2007.

*Note:* (1) The complaints concern a vast number of subject-matters, rarely to the violation of fundamental rights.

Sanctions applied as a result of the disciplinary actions			
	2005	2006	2007
Demission <sup>(1)</sup>	5	43	15
Suspension	6	6	11
Fine	256	258	253
Admonishment (verbal or written)	109	115	94

*Source:* CFD Annual Reports 2005, 2006 and 2007.

*Note:* (1) Includes similar situations, as compulsive reform or non-renewal of labour contract.

**Question 21. Please provide the following updated information since the review of the last periodic report:**

- (a) With reference to the tables contained in paragraphs 190 and 191 of the Macao SAR's report, on any specific complaint of torture, the authorities before which they are pending, the status and the outcome of the investigations;**

157. With reference to the table contained in paragraph 190 of the report relating to denunciations of crimes received by the Procuratorate, and as mentioned therein, all the corresponding inquiries have been filed.

158. According to article 259 of the CPC, the Procuratorate files criminal inquiry without charges when there is no sufficient evidence that a crime has been committed, there is enough evidence that the accused did not commit the crime or the prosecution is legally inadmissible. The inquiry is also filed whenever it is not possible for the Procuratorate to gather sufficient information to establish the commission of a crime or to identify its perpetrator. However, the inquiry can be reopened if new evidence is found (article 261 of the CPC) and in any case if the Procuratorate files the case, it still has to be continued if the offended, formally intervening in the proceedings, requests so (article 270 of the CPC).

159. As to the table contained in paragraph 191 of the report relating to denunciations of crimes received by the CAC, the corresponding outcome is as described in the said table.

- (b) With reference to the table contained in paragraph 189 of the Macao SAR's report, on the number of complaints related to police misconduct in Macao and inform on whether investigations have been opened as well as on the number of disciplinary and/or criminal proceedings initiated as a result of those complaints, and their results, if known;**

160. As to the total number of complaints lodged by citizens and received by all the Security Forces Corporations and Services of the Macao SAR, please refer to the final part of the response to question 20. It is important to stress, however, that the data therein contained, in what concerns the object of the complaints, is not disaggregated in terms of police misconduct. Nevertheless, other references in the mentioned table to the numbers of disciplinary actions instituted and corresponding sanctions applied may be useful for the present purpose. Still, the given infractions may concern police misconducts not related to violations of citizens' rights.

161. Specifically, in what regards the table contained in paragraph 189 of the report, there is no available data disaggregated as requested by the Committee. The available data, based on police records, is as follows:

No. of complaints and of persons involved p/complaint <sup>(1)</sup>										
Security Forces Corporations and Services whose personnel the complaints concern	2004		2005		2006		2007		2008 <sup>(2)</sup>	
	C	P	C	P	C	P	C	P	C	P
PJ	4	7	11	19	2	2	4	10	1	2
PSP	8	9	6	7	5	10	11	27	2	2
Customs services	1	6	1	1	1	1	1	3	0	0
Total	13	22	18	27	8	13	16	40	3	4

Source: Office for Security Co-ordination.

Notes: (1) When a complaint refers to several persons without more specifications, it is registered as involving 3 persons; (2) As of May 2008.

Follow up of the complaints referred to in the previous table							
Year	No cases	Disciplinary actions			Criminal proceedings		
		Instituted	Filed	Sanctions applied	Reported to the Procurator	Filed	Pending
2004	13	7	7	0	11	1	1
2005	18	2	2	0	9	7	2
2006	8	4	4	0	4	3	1
2007	16	9	5	2	10	3	2
2008 <sup>(1)</sup>	3	0	0	0	2	0	1

Source: Office for Security Co-ordination.

Note: (1) As of May 2008.

Criminal offences allegedly committed by Security Forces Corporations and Services' personnel					
Criminal offences by type	2004	2005	2006	2007	2008 <sup>(1)</sup>
Offences against sexual freedom (rape)	0	0	0	1	0
Offences against physical integrity <sup>(2)</sup>	11	10	12	17	6
Offences against physical integrity <sup>(3)</sup>	13	18	8	15	3
Extortion	1	0	0	1	1
Breaking and entering	1	1	0	0	0
Threat	3	2	6	7	4
Other offences	6	9	6	14 <sup>(4)</sup>	1
Total	35	40	32	55	15

Source: Office for Security Co-ordination.

Notes: (1) As of May 2008; (2) Committed by law enforcement officials in their private capacity; (3) Committed by law enforcement officials in the exercise of their functions; (4) one case resulted in death of the victim.

Sanctions applied to Security Forces Corporations and Services' personnel as a result of disciplinary actions relating to the commission of criminal offences					
Criminal offences by type	2004	2005	2006	2007	2008 <sup>(1)</sup>
Demission <sup>(2)</sup>	3	4	2	2	3
Suspension	2	1	2	5	1
Fine	0	2	0	0	0
Total	5	7	4	7	4

*Source:* Office for Security Co-ordination.

*Notes:* (1) As of May 2008; (2) Includes similar situations, as compulsive reform or non-renewal of labour contract.

Deaths occurred under police custody					
Place	2004 <sup>(1)</sup>	2005	2006	2007	2008 <sup>(2)</sup>
At the Prison Establishment	1	0	0	0	0
At police stations	1	0	0	1 <sup>(3)</sup>	0
Total	2	0	0	1	0

*Source:* Office for Security Co-ordination.

*Notes:* (1) The data concerning 2004 relates to the entire year (in the table contained in paragraph 189 of the report the data corresponded to the period from January to June); (2) As of May 2008; (3) Criminal proceedings were instituted and are in course.

162. Still with reference to the table contained in paragraph 189 of the report, regarding the two cases mentioned therein as being homicide, the respective inquiries concluded the cause of death to be self-inflicted by hanging. In one of these cases, a sub-inspector was punished for lack of proper diligence duty.

163. Meanwhile, in 2005, the last appeal decision was rendered in relation to a case of another death occurred in a police station in 2002, and referred in the table as homicide. In this latter case, the accused was charged for the crime of serious coercion (provided for and punished in articles 148(1) and 149(1)(b) of the CC). The accused was sentenced in first instance to an imprisonment term of 3 years and 6 months, which was commuted by the appeal decision into imprisonment term of one year and 6 months. The court of appeal further decided to order the admissibility of extra-contractual civil liability request. Later on the accused and the Macao SAR were, jointly, ordered to pay the victim's family a monetary compensation.

- (c) ***With reference to paragraph 74 and following the Macao SAR's report, on the number of complaints from persons deprived of their liberty, the results of the investigations and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints, and the results, if known.***

164. There is no available data.

**Question 22. Please explain whether Macao has taken, or envisages to take, any steps to establish a fully independent national human rights institution in conformity with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993) with, *inter alia*, investigative, oversight and monitoring powers. Are there limitations in the present oversight mechanisms, for instance the ombudsperson? What independent oversight mechanism has authority regarding inspection of jails and other places of detention or confinement? Please provide information on the findings of these mechanisms.**

165. Not at the moment. However, apart from the Commission for Refugees, it is worth mentioning that several other independent specialized bodies have been established to improve the protection of humans rights in different domains, such as the Commission for Women's Affairs (created by Administrative Regulation 6/2005, of 5 May), the Commission to Follow the Implementation of Dissuasive Measures against Trafficking in Human Beings (created by Order of the Chief Executive 266/2007, of 10 September), the Commission for the Senior Citizens' Affairs (created by Order of the Chief Executive 307/2007, of 12 November), the Commission on the Fight against Drug (created by Order of the Chief Executive 179/2008, of 16 June), *etc.*

166. Specifically in regard to the inspection of jails and other places of detention or confinement, besides the CFD, it should be recalled the existence of the Commission Against Corruption (CAC), which is an independent public body entrusted with ombudsman functions. For more detail on CAC, please refer to paragraphs 27, 37, 139, 151-152 and 163 of the report. As mentioned therein, the CAC is governed by Law 10/2000, of 14 August, as complemented by Administrative Regulation 31/2000, of 21 August, which, meanwhile was amended by Administrative Regulation 13/2005, of 8 August. At the moment it is being pondered the adoption of further legislation to reinforce the CAC's powers. Within the scope of its ombudsman's activity, the CAC aims to protect human rights, freedoms and legitimate interests of individuals, as well as to uphold fairness, lawfulness and efficiency of the public administration.

167. The CAC has the powers to carry out any inquiries and investigations necessary to fulfil its aims, in particular, to inspect, with or without notice, any places of public entities, to examine documents, and request for such information and documents as it deems fit, to conduct (or request) inquiries, investigations, or any other measures aimed at examining the legality of administrative acts and proceedings with regard to relations between public entities and individuals. As to any shortcomings it finds in any legal provisions, specially those that may affect rights, freedoms, safeguards or any legitimate interests of the individuals, the CAC may formulate recommendations or suggestions concerning their interpretation, amendment or repeal, or make suggestions for new legislation.

168. Also relevant is the Commission for Mental Health (created by article 6 of the quoted Decree Law 31/99/M), which plays an important role in all matters related to mental health, including the protection of the rights of the mentally impaired. For that purpose, the Commission was granted, *inter alia*, the powers to inspect conditions of confinement and treatment. It may also draft opinions on the operation of the mental health establishments, as well as formulate recommendations or suggestions for new legislation.

169. Foremost, external independent supervision of detention places is of the competence of the Judges and Procurators. Inspections to the prison must be conducted at least once a month. Prisoners are allowed to express their grievances and their needs to the Judges and Procurators during inspections (articles 13 and 14 of Decree Law 86/99/M).

#### Article 14

**Question 23.** *Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred since the last periodic report. Please also indicate whether the right to compensation depends on the existence of a judgement in criminal proceedings ordering compensation. Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment the perpetrator of which has been subjected to a disciplinary, but not to a penal, sanction?*

170. There is no available statistic data on compensation provided to victims of torture or ill-treatments.

171. The right to compensation does not depend on the existence of a judgement in criminal proceedings.

172. The general rules on civil liability are provided for in the Civil Code of Macao (articles 477 and *seq.*). Any person who wilfully or negligently causes damage to another must pay compensation for the damage caused, including damage caused by omission whenever the duty to perform the omitted act exists. If the damage is caused by more than one person, all of them shall be jointly and severally liable.

173. Decree-Law 28/91/M, of 22 April, establishes the legal framework on extra-contractual civil liability of the Macao SAR, public legal persons, their officials and agents for acts of public administration. Both liabilities for lawful and unlawful acts are covered. In respect to the latter, reference is made to acts committed wilfully by the Macao SAR's public bodies or public legal persons' officials or agents in the exercise of their functions and by reasons of such functions. Furthermore and without prejudice to that, reference is equally made to acts committed - by the same persons - with *mens rea*. In addition, and for the purpose of this law, an unlawful act is explicitly defined as any violation of the rights of third parties or of a legal provision intended to protect their interests, as well as any legal act in violation of applicable legal provisions, regulations or general principles, any concrete act against such legal provisions and principles or against any rules of a technical or prudence nature which should be taken into consideration. Evaluation of the degree of wilfulness/intent and plurality of liable persons are governed by the Civil Code general rules (articles 2, 3, 7 and 4, respectively).

174. Furthermore, compensation can be obtained regardless of the result of a disciplinary action. However, as torture and other ill-treatments constitute criminal offences, both actions, disciplinary and criminal, must be instituted.

175. The Criminal Code dictates that compensation for damages suffered as a result of a criminal offence is governed by the civil provisions. Such compensation should be paid by the person who caused the damage, the offender, to any person who has suffered damage, including

the victim (or his/her heirs or legal representatives). However, if that is not possible by any reason, the court may, at the request of the injured party, assign as compensation for the damage, the property forfeited to the Macao SAR or the proceeds from their sale, up to the value of the damage suffered. If the damage caused by the criminal offence is serious enough to leave the injured party in need and if the offender is unlikely to pay compensation, the court may also assign to the injured party all or part of any fine paid, up to the value of the damage. The Macao SAR remains subrogated in the injured party's right to compensation for any sums it may have paid (articles 121 and 122 of the Criminal Code).

176. As a rule, compensation claims for damages caused by criminal offences should be brought up within the relevant criminal proceedings by the injured party, except for certain cases specifically provided for in the law (articles 60 and 62 of the CPC).

177. More precisely, article 61(1) of the CPC determines that a civil claim can be made separately when: (a) within 8 months of the crime being reported, no charges were brought up in the criminal proceedings or there have been no developments; (b) the criminal proceedings have been filed or lapsed before the judgment has acquired *res judicata* force; (c) the proceedings depend upon a private complaint or charge; (d) there was no damage at the time charges were brought up, or the damage or its full extent were not known; (e) the criminal sentence did not include a decision on the claim for damages as provided for in article 71(4), namely, when the issues involved by such claim may impede a thorough decision or give cause to incidents which may delay the criminal procedures in an intolerable manner; (f) the claim is brought against the defendant and other persons with merely civil liability, or only against the latter and the defendant is summoned to those proceedings; (g) the criminal proceedings take the form of summary, very summary or of contravention proceedings.

178. Acquittal in the criminal proceedings does not necessarily entail refusal of the right to compensation (article 358 of the CPC).

179. Moreover, another way of seeking compensation by means of a subsidy from the Macao SAR is provided for under Decree-Law 6/98/M, of 17 August, which regulates the protection of the victims of violent crime. This compensation scheme benefits persons who sustained serious bodily injury as a result of an intentional act of violence, as well as, in case of death, those to whom, under the civil law provisions, maintenance is due by such persons, even when they did not or cannot constitute themselves as a party in the criminal proceedings.

180. The established requisites are: (a) the victims are legally in the Macao SAR or in a ship or aircraft registered therein; (b) the injury caused death, permanent incapacity or temporary total incapacity for work of at least 30 days; (c) the injury caused a serious deterioration in the standard of living of the victim or of the persons entitled to maintenance; and (d) compensation could not be provided by means of the judgment of an application in criminal proceedings pursuant to articles 60 to 74 of CPC or when there are serious reasons to believe that the offender and persons who bear civil liability will not pay the compensation and it is not possible to obtain effective and adequate compensation by any other means.

181. The compensation will be awarded even if the offender is unknown or cannot be prosecuted or punished. Compensation is limited to material damages caused by the injury and will be equitably determined. The maximum amount payable to each injured party is determined by reference to the index 1000 of the civil servants wages' chart. Any amounts received from any other source, including from the offender or from social security will be taken into account. Life or personal accident insurance will only be taken into account to the extent required by equity.

182. The power to grant the subsidy is of the Chief Executive, who decides upon the advice of a Commission set up for that purpose. The subsidy must be applied for, at the request of the victim, or other interested parties or of the Procuratorate, within one year of the commission of act that caused the damage, unless criminal proceedings are still pending, in which case the referred time limit is counted from the date of the corresponding sentence, or after the deadline if the Chief Executive, on the basis of exceptional circumstances, grants a relief from the expiration of the time.

183. The Commission comprises two persons of recognized social merit, a lawyer appointed by the Lawyers' Association, and by the Directors of the Legal Affairs Department and of the SWI.

***Question 24. Please indicate in further detail what services exist for the treatment of trauma and other forms of rehabilitation of victims of torture or other cruel, inhuman or degrading treatment.***

184. The public Hospital provides care for victims or seeks other specialized assistance for them according to their condition of injury, thus providing comprehensive treatment for trauma patients and victims.

185. The Hospital's Rehabilitation Department provides full facilities, human and equipment resources similar to clinical rehabilitation program of any developed country. In what concerns psychiatric care, specific work flow and particular measures have been adopted to ensure patients are provided with safe and professional medical treatment, which includes the opening of a special diagnostic and therapeutic area to guarantee patients' privacy. At the same time, immediate psychiatric counselling services and therapies such as rehabilitation for post-psychological trauma are offered.

186. On the other hand, there is a social service at the public Hospital. The social workers are trained to try to form a therapeutic alliance with the family in view of facilitating their ability to better communicate with medical professionals, anticipate and solve psychosocial problems, and develop a sense of confidence in the process of health care. The social workers help to provide necessary social and peer support to the rehabilitation experience.

## Article 16

**Question 25.** *Please clarify the difference between torture and other cruel, inhuman or degrading treatment according to article 234 of the Criminal Code, since - at it is stated in the Macao SAR's report - this provision does not draw any distinction between the two concepts. In this respect, please also clarify the criteria used by investigative and judicial authorities to legally qualify and distinguish between acts of torture and other cruel, inhuman or degrading treatment in practice.*

187. Please refer to the answers to questions 1 and 2.

**Question 26.** *Please inform the Committee of measures taken to prohibit the use of corporal punishment in all settings.*

188. Corporal punishments of persons deprived of freedom are forbidden. If a prisoner considers himself/herself to have been subject of corporal punishment (or, for that matter, of any other kind of abuse), he/she can lodge a complaint to the Judge or to the Procurator, the CAC, the CFD, the Prison Establishment's Director or to any other relevant entity of his/her choice. If the Prison Establishment receives a complaint, an internal investigation is instituted, culminating in disciplinary and/or criminal action, as may be the case.

## Other

**Question 27.** *Please clarify what measure, if any, Macao has taken to inform citizens of their right to petition the Committee under article 22, as discussed in previous reviews.*

189. No specific dissemination action regarding the right to petition has been undertaken; nonetheless, divulgation actions on the Convention took place. The Macao SAR has been, and still is, endeavouring continuous efforts to disseminate information on fundamental rights and freedoms, either through the *mass media*, or by means of the publication of books, brochures and leaflets, which are made available in public places for free, as well as by carrying out and promoting "learning-leisure" activities in the Community, such as contests, plays, shows, and other interactivity, whereby human rights, and more importantly the ways of exercising them in practice, are made easy to understand to the general population.

**Question 28.** *Is Macao considering adhering to the Optional Protocol to the Convention against Torture?*

190. The OPCAT is a treaty reserved to sovereign States; the Macao SAR is not a State.

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