


Chapter 9

The Fundamental Rights and Duties of the Residents of the Macao SAR

- The concept of residents in the Macao Basic Law
- Fundamental rights and duties of Macao residents

The Structure of the *Macao Basic Law*

Preamble	
Chapter I	General Principles
Chapter II	Relationship between the Central Authorities and the Macao Special Administrative Region
Chapter III	Fundamental Rights and Duties of the Residents
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Chapter VII	External Affairs
Chapter VIII	Interpretation and Amendment of the Basic Law
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Article 24 to 44

Fundamental rights (基本權利)

“Basic” rights and duties as those that are necessary for living or maintaining a minimally acceptable human life and therefore being in a position to benefit from less basic rights.

“Fundamental” rights and their correlative duties we may define as those that are given high priority or special protection and emphasis, sometimes through constitutional recognition.

“Human rights” are those fundamental rights that morally ought to be secured for all human beings.

Features of Fundamental Rights of Macao Residents stated in the Macao Basic Law



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1. Reflection of the “One Country, Two Systems” policy

The fundamental rights stated in the Macao Basic Law are not the same as those stated in the Constitution of the PRC. For example, Macao residents' freedom to form and raise a family is protected by the Macao Basic Law.

2. The diversity of subjects

The subjects are the residents, which include not only Chinese citizens, but non Chinese citizens. Macao residents include permanent and non-permanent residents.

3. The Extensiveness of the contents

More contents of fundamental rights and freedoms are included in the Basic Law.

Residents of the Macao Special Administrative Region

Para. 1, Article 24, the Macao Basic Law

Residents of the Macao Special Administrative Region (“Macao residents”) shall include permanent residents and non-permanent residents.

《澳門基本法》第24條第1款

澳門特別行政區居民，簡稱澳門居民，包括永久性居民和非永久性居民。

Residents of the Macao Special Administrative Region

Item 1&2, Para. 2, Article 24, the Macao Basic Law

The permanent residents of the Macao Special Administrative Region shall be:

- (1) **Chinese citizens** born in Macao before or after the establishment of the Macao Special Administrative Region and their children of **Chinese nationality** born outside Macao;
- (2) **Chinese citizens** who have ordinarily resided in Macao for a continuous period of not less than seven years before or after the establishment of the Macao Special Administrative Region and their children of **Chinese nationality** born outside Macao after they have become permanent residents;

《澳門基本法》第24條第2款第1、2項

澳門特別行政區永久性居民為：

- (一) 在澳門特別行政區成立以前或以後在澳門出生的**中國公民**及其在澳門以外所生的中國籍子女；
- (二) 在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上的中國公民及在其成為永久性居民後在澳門以外所生的中國籍子女；

Residents of the Macao Special Administrative Region

Item 3&4, Para. 2, Article 24, the Macao Basic Law

(3) The **Portuguese** who were born in Macao and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;

(4) The **Portuguese** who have ordinarily resided in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;

《澳門基本法》第24條第2款第3、4項

（三）在澳門特別行政區成立以前或以後在澳門出生並以澳門為永久居住地的**葡萄牙人**；

（四）在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上並以澳門為永久居住地的**葡萄牙人**；

Residents of the Macao Special Administrative Region

Item 5&6, Para. 2, Article 24, the Macao Basic Law

- (5) **Other persons** who have ordinarily resided in Macao for a continuous period of not less than seven years and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region;
- (6) **Persons under 18 years of age** born in Macao of those residents listed in category (5) before or after the establishment of the Macao Special Administrative Region.

《澳門基本法》第24條第2款第5、6項

- （五）在澳門特別行政區成立以前或以後在澳門通常居住連續七年以上並以澳門為永久居住地的其他人；
- （六）第（五）項所列永久性居民在澳門特別行政區成立以前或以後在澳門出生的未滿十八周歲的子女。

Residents of the Macao Special Administrative Region

Para. 3-4, Article 24, the Macao Basic Law

The above mentioned residents shall have **the right of abode** in the Macao Special Administrative Region and shall be qualified to obtain **permanent identity cards**.

The **non-permanent residents** of the Macao Special Administrative Region shall be persons who are qualified to obtain Macao identity cards in accordance with the laws of the Region but have no right of abode.

《澳門基本法》第24條第3、4款

以上居民在澳門特別行政區享有**居留權**並有資格領取澳門特別行政區**永久性居民身份證**。

澳門特別行政區**非永久性居民**為：有資格依照澳門特別行政區法律領取澳門居民身份證，但沒有居留權的人。

Permanent Residents of the Macao SAR

Whether a person is qualified to be a permanent resident in the Macao SAR depends on:

- Nationality of the parent: Chinese, Portuguese, others (right of blood 屬人主義/血統主義)
- Place of birth: Macao or other places (right of soil 屬地主義)
- Macao as the place of permanent residence
- Residing in Macao for over 7 years

Law No. 8/1999

Law on Permanent Residents and Right of Abode of the Macao Special Administrative Region

第8/1999號法律

《澳門特別行政區永久性居民及居留權法律》

Lei n.º 8/1999

Lei sobre Residente Permanente e Direito de Residência da Região Administrativa Especial de Macau

Permanent Residents of the Macao SAR



- ✓ Chinese parent(s)
- ✓ Parent(s) being Macao resident (permanent or non-permanent) on the date of the baby's birth
- ✓ Born in Macao

Macao Permanent Resident

- ✓ Chinese parent(s)
- ✓ Parent(s) being Macao permanent resident on the date of the baby's birth
- ✓ Born outside of Macao

Macao Permanent Resident



Permanent Residents of the Macao SAR



- ✓ Portuguese parent(s)
- ✓ Parent(s) being Macao resident (permanent or non-permanent) on the date of the baby's birth
- ✓ Born in Macao
- ✓ Macao as the place of permanent residence

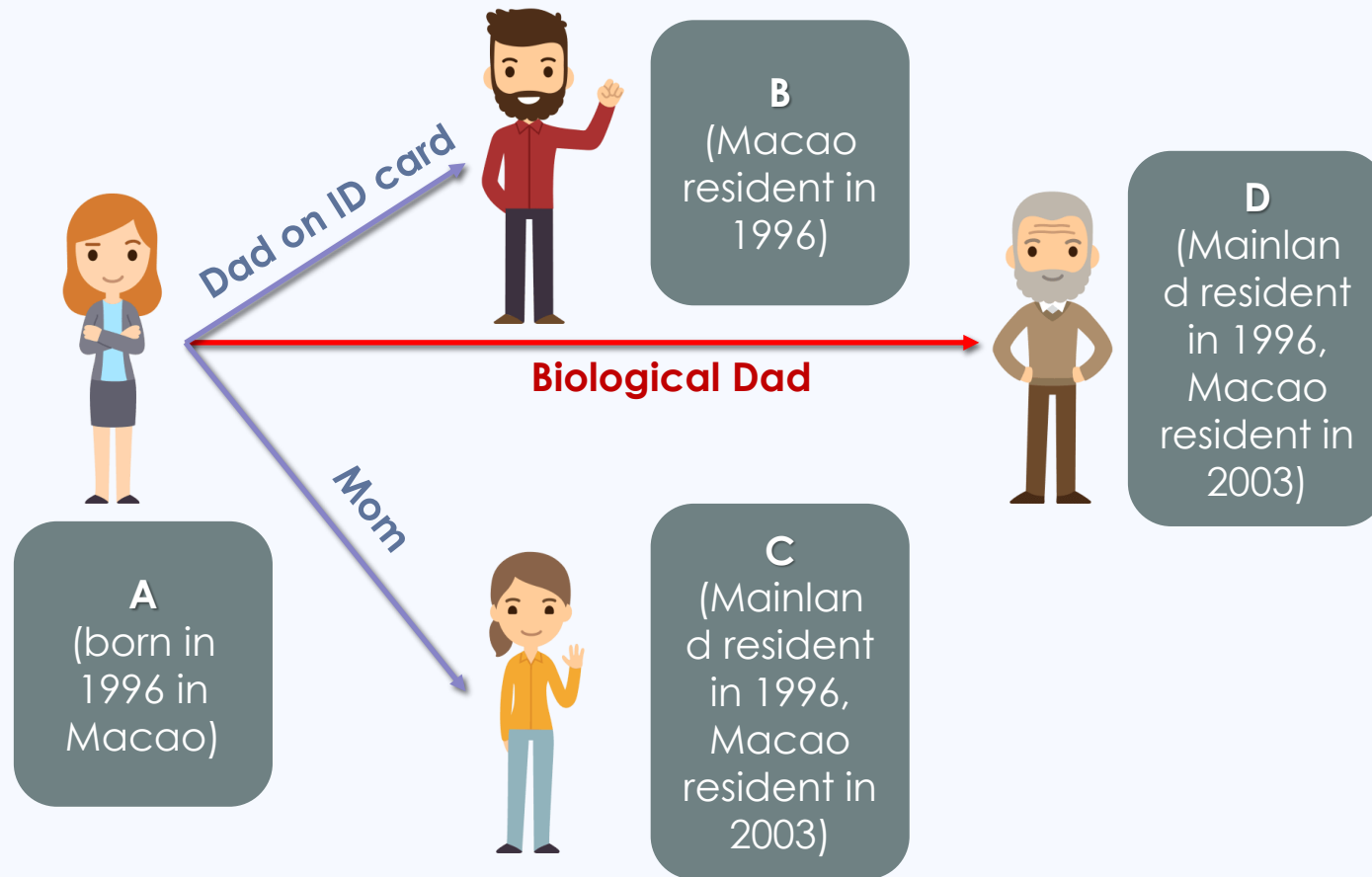
Macao Permanent Resident

- ✓ Foreign parent(s)
- ✓ Parent(s) being Macao permanent resident on the date of the baby's birth
- ✓ Born in Macao
- ✓ Macao as the place of permanent residence

Macao Permanent Resident (before 18 years old)



Case study (Case No. 56/2021)



- **A** was born in Macao in 1996. She obtained the Macao residency because her “father” **B** is a Macao resident.
- **A** did a DNA test and confirmed that **D** is her biological father.
- **A** made an application for changing her father on her ID information from **B** to **D** at DSI.
- DSI cancelled **A**'s Macao residency in 2019.
- **A** appealed to the Court, but the Court made a judgement that DSI's action is legal and valid.

Comparison: the Hong Kong SAR vs. the Macao SAR

“Chong Fung Yuen” Case “莊豐源” 案



Source of picture:
https://hd.sheheadline.com/nt/images/2950/img_201212140936402950_11.jpg

Anchor babies in Hong Kong “雙非” 兒童問題



Source of picture: <https://orientaldaily.on.cc/cnt/news/20120914/photo/0914-00176-018b2.jpg>

- Chong Fung Yuen was born in Hong Kong in September 1997. Both of his parents are not Hong Kong residents.
- He was left in Hong Kong to his grandfather who was a Hong Kong resident. The HK Immigration claimed that Chong had no right of abode in Hong Kong. Chong's grandfather appealed to the court.
- The court made a judgement: According to Article 24 of the Hong Kong Basic Law, Chinese citizens born in Hong Kong before or after the establishment of the HKSAR are HK permanent residents.
- The legal system of HK is the common law system. Therefore, the “Chong Fung Yuen” Case became a precedent. Since then, Chinese pregnant women rushed to HK to give birth and so came the “anchor babies” problem.

Non-permanent Residents of the Macao SAR

Para. 4, Article 24, the Macao Basic Law

The **non-permanent residents** of the Macao Special Administrative Region shall be persons who are qualified to obtain Macao identity cards in accordance with the laws of the Region but have no right of abode.

《澳門基本法》第24條第4款

澳門特別行政區**非永久性居民**為：有資格依照澳門特別行政區法律領取澳門居民身份證，但沒有居留權的人。

Article 3, Law No. 8/1999 Law on Permanent Residents and Right of Abode of the Macao SAR

Individuals permitted to reside in Macao in accordance with the laws are non-permanent residents of the Macao SAR, with the exception of those stated in Article 1.

《澳門特別行政區永久性居民及居留權法律》第3條

澳門特別行政區的非永久性居民為：除第一條所列的人士以外的依法獲准在澳門居留的人士。

Artigo 3.º, Lei n.º 8/1999 Lei sobre Residente Permanente e Direito de Residência da RAEM

São residentes não permanentes da RAEM os indivíduos autorizados a residir em Macau nos termos da lei, excepto aqueles previstos no artigo 1.º.

Residents, Citizens, Fundamental Rights and Duties

The constitution of every country protects the fundamental rights and freedoms of its citizens – people who hold the nationality of that country.

Citizens of a country shall fulfill the duties or obligation stated in the constitution.

Citizenship is a concept related to state sovereignty.

The Macao SAR is not an independent political entity, it is not a sovereign state. It is an inalienable part of the People's Republic of China. Therefore, *the concept of "citizen" in the Macao Basic Law is exactly the same as that in the Constitution of the PRC.* Moreover, the *Nationality Law of the People's Republic of China* is listed in Annex III of the *Macao Basic Law*, thus, it is applicable in the Macao SAR.

Residents, Citizens, Fundamental Rights and Duties

The population in the Macao SAR is consisted of:

- Chinese nationals
- Non-Chinese nationals

Therefore, it would be inappropriate if the subjects for fundamental rights and duties are only Chinese nationals (citizens), as it would rule out those non-Chinese nationals.

“Residents” being the subjects for fundamental rights and duties in the Macao SAR a measure that respects the factual situation and history of Macao.

Residents, Citizens, Fundamental Rights and Duties

However, according to the Macao Basic Law, the scope of rights and duties are not the same for permanent and non-permanent residents, and for Chinese citizens. For example:

Article 26, the Macao Basic Law

Permanent residents of the Macao Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.

《澳門基本法》第26條

澳門特別行政區**永久性居民**依法享有選舉權和被選舉權。

Only **Chinese citizens** among the Macao residents shall be entitled to participate in the management of state affairs according to law. (Article 21)

The Chief Executive, the principal officials, the President and the Vice President of the Legislative Council, and the President of the Court of Final Appeal of the Macao SAR shall be **Chinese citizens** who are permanent residents of the Region. (Various articles in Chapter IV)

The Nationality of Macanese



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Interpretation by the Standing Committee of the National People's Congress on Some Questions Concerning Implementation of the Nationality Law of the People's Republic of China in the Macao Special Administrative Region of the PRC

《全國人民代表大會常務委員會關於〈中華人民共和國國籍法〉在澳門特別行政區實施的幾個問題的解釋》

(Adopted at the 6th Meeting of the Standing Committee of the Ninth National People's Congress on December 29, 1998)

- Macao resident who is a Chinese descent → Chinese national (regardless holding Portuguese ID documents or travel documents)
- Macao resident who is both a Chinese and a Portuguese descent → choose their nationality

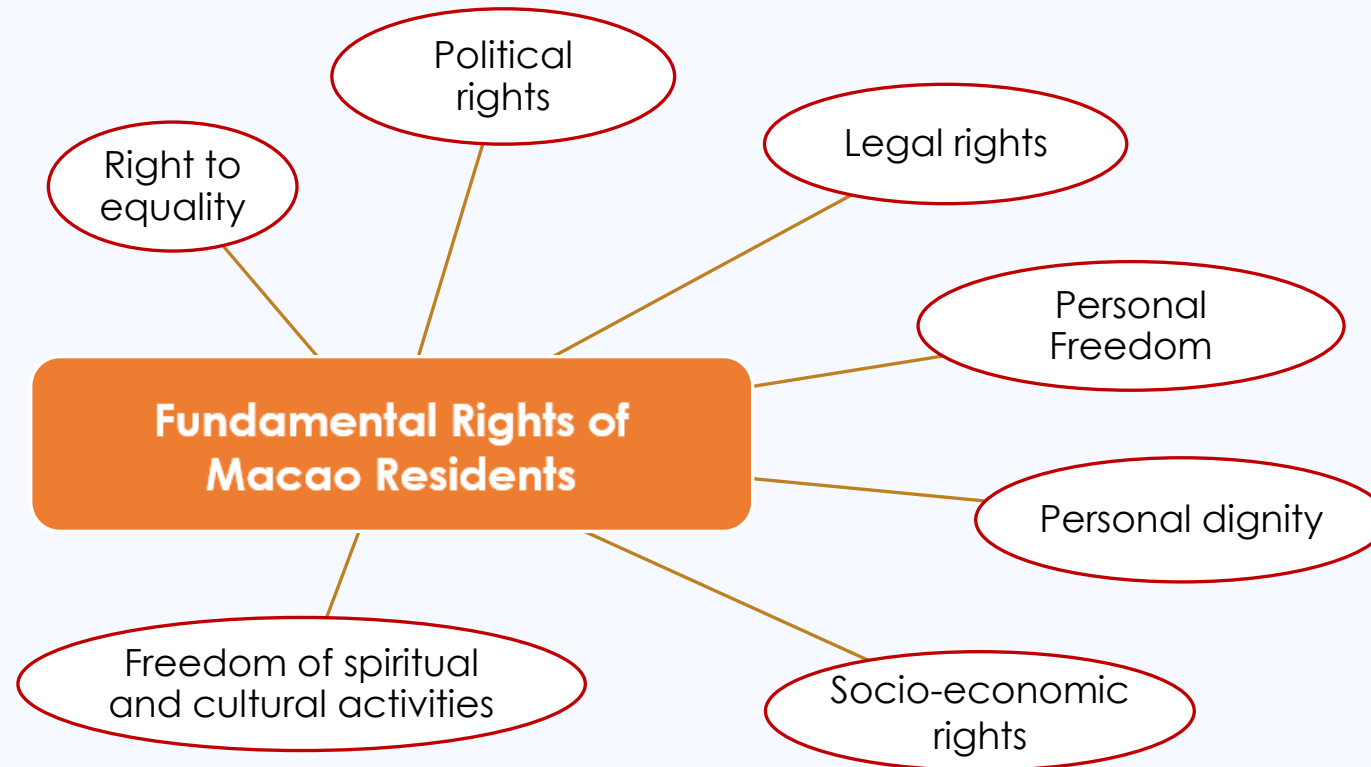
Fundamental Rights of Residents of the Macao SAR



中華人民共和國
澳門特別行政區基本法

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Fundamental Rights of Macao Residents



Right to equality

Article 25, the Macao Basic Law

All Macao residents shall be equal before the law, and shall be free from discrimination, irrespective of their **nationality**, **descent**, race, sex, language, religion, political persuasion or ideological belief, educational level, economic status or social conditions.

《澳門基本法》第25條

澳門居民在法律面前一律平等，不因**國籍**、**血統**、種族、性別、語言、宗教、政治或思想信仰、文化程度、經濟狀況或社會條件而受到歧視。

Political rights

Four types of political rights and freedoms stated in the *Macao Basic Law*

- Right to vote and stand for election 選舉權及被選舉權 (Article 26, permanent residents only)
- Freedom of speech 言論自由 (Article 27)
- Freedom of assembly 集會自由 (Article 27)
- Right to collective bargaining 集體談判權 (Article 27)

Article 27, the Macao Basic Law

Macao residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and **the right and freedom to form and join trade unions, and to strike.**

《澳門基本法》第27條

澳門居民享有言論、新聞、出版的自由，結社、集會、游行、示威的自由，**組織和參加工會、罷工的權利和自由。**

Political rights: Right to collective bargaining



International
Labour
Organization

The International Labour Organization is a United Nations agency whose mandate is to advance social and economic justice through setting international labour standards. It issues conventions, protocols and recommendations for member states to ratify and follow.

The following conventions of the ILO are in force in the Macao SAR:

- *Freedom of Association and Protection of the Right to Organize Convention*, 1948 (No. 87) 《結社自由和保護組織權利公約》
- *Right to Organize and Collective Bargaining Convention*, 1949 (No. 98). 《組織權利和集體談判權利原則的實施公約》

Websites for Reference:

- ILO website: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103582)
- The Labour Affairs Bureau of the MSAR: <https://www.dsal.gov.mo/en/standard/law.html>

Political rights: international laws applicable in the MSAR

Article 40, the Macao Basic Law

The provisions of *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*, and *international labour conventions* as applied to Macao shall remain in force and shall be implemented through the laws of the Macao Special Administrative Region. The rights and freedoms enjoyed by Macao residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the first paragraph of this Article.

《澳門基本法》第40條

《公民權利和政治權利國際公約》、《經濟、社會與文化權利的國際公約》和國際勞工公約適用於澳門的有關規定繼續有效，通過澳門特別行政區的法律予以實施。

澳門居民享有的權利和自由，除依法規定外不得限制，此種限制不得與本條第一款規定抵觸。

Political rights: international laws applicable in the MSAR

Three important principles:

1. The contents in the international laws that are ratified and applicable in the Macao SAR
 - The provisions of right of self-determination (民族自決) is not applicable
 - The provisions of complete direct election of the legislature is not applicable
 - The Provisions of freedom to enter and leave any countries is not applicable
2. The way these laws are ratified and put into force in the Macao SAR
 - By local legislation
3. These laws as the boundary of restriction by local legislation
 - No local legislation should restrict the rights and freedoms which are protected by the contents of these laws that are applicable in the Macao SAR

Legal rights

All Macao residents shall be equal before the law. (Article 25)

All Macao residents shall have the right to obtain legal remedy. (Article 36)

Article 29, the Macao Basic Law

Macao residents shall not be punished by law, unless their acts constitute a crime and they shall be punished for it as expressly **prescribed by law at the time**.

When charged with criminal offences, Macao residents shall enjoy the right to an early court trial and shall be **presumed innocent before convicted**.

《澳門基本法》第29條

澳門居民除其行為**依照當時法律明文規定**為犯罪和應受懲處外，不受刑罰處罰。

澳門居民在被指控犯罪時，享有盡早接受法院審判的權利，在法院判罪之前均**假定無罪**。

Personal freedom and personal dignity

Article 28, the Macao Basic Law

The freedom of the person of Macao residents shall be inviolable.

No Macao resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. In case of arbitrary or unlawful detention or imprisonment, **Macao residents have the right to apply to the court for the issuance of a writ of habeas corpus.**

Unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited.

Torture or inhuman treatment of any resident shall be prohibited.

《澳門基本法》第28條

澳門居民的人身自由不受侵犯。

澳門居民不受任意或非法的逮捕、拘留、監禁。對任意或非法的拘留、監禁，**居民有權向法院申請頒發人身保護令。**

禁止非法搜查居民的身體、剝奪或者限制居民的人身自由。

禁止對居民施行酷刑或予以非人道的對待。

Personal freedom and personal dignity

Article 30, the Macao Basic Law

The human dignity of Macao residents shall be inviolable. Humiliation, slander and false accusation against residents in any form shall be prohibited.

Macao residents shall enjoy the right to **personal reputation** and the **privacy** of their private and family life.

《澳門基本法》第30條

澳門居民的人格尊嚴不受侵犯。禁止用任何方法對居民進行侮辱、誹謗和誣告陷害。

澳門居民享有個人的**名譽權**、私人生活和家庭生活的**隱私權**。

Personal freedom and personal dignity

The homes and other premises of Macao residents shall be inviolable. (Article 31)

The freedom and privacy of communication of Macao residents shall be protected by law. (Article 32)

Macao residents shall have **freedom of movement** within the Macao Special Administrative Region and freedom of emigration to other countries and regions. (Article 33)

Macao residents shall have freedom of conscience and **freedom of religious belief**. (Article 34).

Socio-economic rights

1. Freedom of choice of occupation and work (Article 35)
2. Freedom of marriage and right to form and raise a family (Article 38)
3. Protection to women, the minors, the aged and the disabled (Article 38)
4. Right to social welfare (Article 39)



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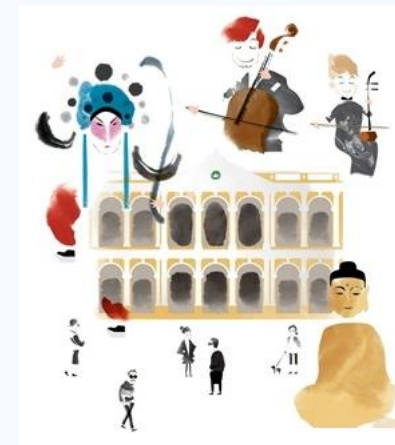
Freedom of spiritual and cultural activities

Article 37, the Macao Basic Law

Macao residents shall have freedom to engage in education, academic research, literary and artistic creation, and other cultural activities.

《澳門基本法》第37條

澳門居民有從事教育、學術研究、文學藝術創作和其他文化活動的自由。



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<https://gallery.icm.gov.mo/images/News/2010/12/15/20101215162918L.jpg>

Fundamental rights and freedoms of other people

Article 42, the Macao Basic Law

The interests of **the residents of Portuguese descent** in Macao shall be protected by the Macao Special Administrative Region in accordance with law, and their customs and cultural traditions shall be respected.

《澳門基本法》第42條

在澳門的**葡萄牙後裔居民**的利益依法受澳門特別行政區的保護，他們的習俗和文化傳統應受尊重。

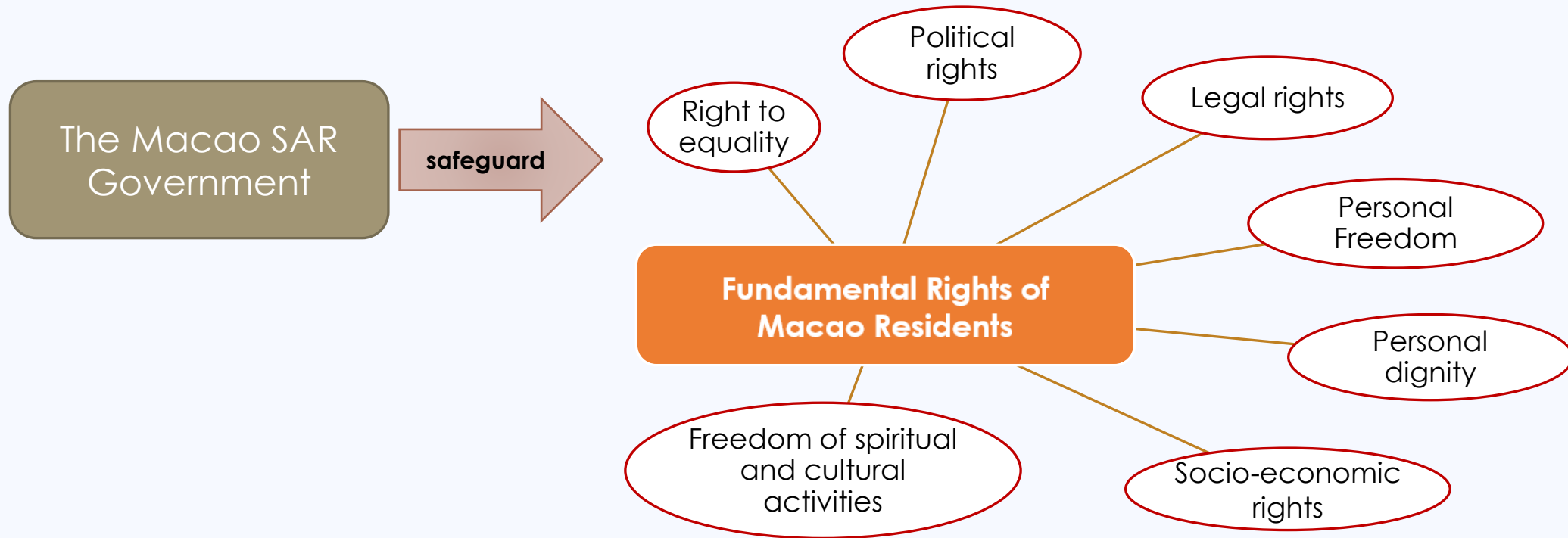
Article 43, the Macao Basic Law

Persons in the Macao Special Administrative Region **other than Macao residents** shall, in accordance with law, enjoy the rights and freedoms of Macao residents prescribed in this Chapter.

《澳門基本法》第43條

在澳門特別行政區境內的**澳門居民以外的其他人**，依法享有本章規定的澳門居民的權利和自由。

Fundamental Rights of Macao Residents



Macao residents shall enjoy the other rights and freedoms safeguarded by the laws of the Macao SAR. (Article 41)

Obligations and duties of Residents of the Macao SAR



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Obligations of Macao residents and other people

Article 44, the Macao Basic Law

Macao residents and other persons in Macao shall have the obligation to abide by the laws in force in the Macao Special Administrative Region.

《澳門基本法》第44條

澳門居民和在澳門的其他人有遵守澳門特別行政區實行的法律的義務。

Important knowledge points

1. The concept of residents in the Macao SAR
2. The relationship between residents, citizens and fundamental rights
3. Fundamental rights and freedoms of Macao residents

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