
V.

MULTITUDE OF SOURCES VERSUS CENTRALITY OF THE RULES OF PROCEDURE OF THE LEGISLATIVE ASSEMBLY

1. Introduction

This chapter is also intended, up to a certain point, to encompass an introductory nature — of streamlining preliminary notions regarding the object of the present text.

One of the key ideas, sometimes left out of studies on legislative procedures, is this: while the norms concerning the legislative procedure find their centrality in the Rules of Procedure of the Legislative Assembly,¹²⁷ the latter do not embody the totality of such procedural norms. There is, in fact, a gamut of other normative acts that converge in the regulation of the legislative procedure, as indeed occurs in other legal orders, especially when the legislative procedure is seen as the set comprising all the norms which, in turn, regulate all the acts and all the moments or stages leading up to the normative act designated as Law.

Accordingly, the MSAR's legislative procedure spreads out from several sources, including, but not limited to, the constitutional order. The major sources are the Basic Law, the Joint Declaration, Law No. 3/1999, Law No. 13/2009, the Rules of Procedure of the Legislative Assembly, and in a few cases, *special* legislation, for example, the one regulating the Legal Status of Lawyers, which establishes prior consultation duties regarding certain subject-matters.

One must necessarily ponder the issue of other possibly legitimate sources: whether they indeed exist, and to what extent they would or conform the legislative procedure. Here, I am thinking of in-house usages and customs.

A distinction can also be drawn between internal and external sources of the legislative procedure: the former comprises the Rules of Procedure, Committees' rules of procedure, parliamentary customs, parliamentary usages, intra-parliamentary case-law; the Constitution, ie the Basic Law, international law — and, particularly in the MSAR,

¹²⁷ In other legal orders, in the respective parliamentary Rules of Procedure and other types of Rules, such as, in Portugal, the Rules of Procedure of the Council of Ministers, with respect to the governmental legislative procedure. On this issue, see eg Jorge Miranda, *Manual Direito Constitucional V* (Coimbra Editora 2011) 259, et seq.

the Joint Declaration — along with individual/piecemeal laws, constitute the latter grouping.¹²⁸

The Rules of Procedure are the centralising vortex — laying down the chain of acts and events, developing the constitutional norms, governing new subject matters, and anchoring the procedural sequence. The Rules are the roadmap of formal lawmaking.

One forewarns that the scope of the Rules of Procedure goes beyond strict lawmaking and establishing the legislative procedure.

Indeed, it plunges into a multitude of issues, encompassing Members' functional powers and duties—not only in legislative matters but also in others, such as political scrutiny. They address the various singular and plural bodies of the Legislative Assembly and their respective competencies and powers, including the President, Board, and Committees. General rules regarding the functioning of the Legislative Assembly, such as seat allocation, normal functioning periods, official languages, functioning of the Plenary meetings, acts of the Legislative Assembly, and rules on publicity, *inter alia*, are also covered. The Rules further govern the process of passing resolutions, and scrutiny processes—including questioning Government action, debates on matters of public interest, hearings and petitions processes, the debate on the Government Annual Policy Action Address, and examining the Report on the execution of the MSAR Budget.

Based on these initial ideas, a brief look at other sources of the legislative procedure, other than the Legislative Assembly's Rules of Procedure, might prove insightful.

Let us begin at the top, from the constitutional level.¹²⁹ The Basic Law conditions and molds the legislative procedure *ex ante*, *intra*, and *ex post*. This interaction is acknowledged and thus, received/integrated into the Rules of Procedure. Such a situation is perfect common one under comparative law and manifests the umbilical cord that exists between parliamentary rules of procedure and the constitutional order concerning these issues. When all is said and done, lawmaking is a Public Law mission of the utmost political relevance, reflecting the traditional essentiality of a *State*.¹³⁰

¹²⁸ For more developments, Fabio Pascua Mateo, *Fuentes y control del Derecho Parlamentario y de la Administración Parlamentaria* (Centro de Estudios Políticos y Constitucionales 2014) *passim*.

¹²⁹ As stated by Gustavo Gramaxo Rozeira, 'A origem da Lei — o lugar da iniciativa legislativa no procedimento legislativo parlamentar' (European University Institute 2009) 238, "the regulation of the parliamentary legislative procedure is therefore inextricably linked to the need to trace, within the legal-constitutional framework, the precise contours of the sphere of intervention of each of the subjects and political-constitutional actors, with different titles and different degrees of intervention, to participate in the formation of the legislative will/intent". And, ahead, clearly and with several scholarly references, "The Constitution is, however, undoubtedly the primary regulatory source of the legislative procedure [...] It is in the constitution that we find the main determining norms, the maximum guidelines": pp, 250–251.

¹³⁰ Despite the growing pressure coming from supra-national organisations and from regulatory phenomena of a private nature.

2. The Constitution of the Legislative Process under the MSAR Basic Law¹³¹

In a not too taxing effort, one may attempt to find more than a veneer of a *constitution of the legislative process*, under the Basic Law.¹³² Such an endeavour is far from useless. It facilitates the identification of norms that, while incorporated into the Rules of Procedure, fundamentally emanate from constitutional origins rather than being merely procedural. Furthermore, this examination broadens the horizon into a better understanding of the relevant co-ordinates governing the subject-matter in hand.

The said *constitution* is structured into two levels: a first one, relative to the norms directly and immediately governing aspects of the legislative procedure and, in a second level, containing norms that shape — indirectly or in a reflexive effect — the legislative procedure.

The following examples stem from the *first level*:

Article 8 underscores the principle that there exist “legal procedures” for the “amendments” to normative acts and necessitates their adherence. Essentially, it enshrines the concept of a legislative procedure.

Article 11 mandates the principle of constitutionality (or constitutional conformity), meaning no law or any other normative act may contravene the Basic Law. This principle integrates the safeguarding of the Basic Law into the legislative procedure itself.

Article 17 affirms that the Macau Special Administrative Region is vested with legislative power. It further establishes that reporting to the Standing Committee of the National People’s Congress does not impede a law’s entry into force. Strictly speaking, there is a political-administrative procedure for overseeing the compliance of laws with *segments* of the Basic Law, conjoined *ex post* the legislative procedure *per se*.

Article 18, by reference to Article 8, mentions the laws enacted by the legislative body of the Macau Special Administrative Region. In the former provision, the Basic Law enshrines, in general terms, the legislative power of the MSAR, whereas the latter provision develops such constitutionally granted power, which is materialised through laws enacted by the legislative body.

Article 50, paragraph (3) established that the Chief Executive of the Macau Special Administrative Region is the competent entity to sign the bills — be they introduced by the Government or by Members — that are approved by the Legislative

¹³¹ I refer only to the Basic Law. Being a Constitution *in a broad sense*, the Basic Law does not correspond to the constitutional order of the MSAR since I deem such order to be multi-composed and multileveled, comprising, at least, the Basic Law, parts of the Constitution of the PRC and the Joint Declaration.

¹³² Similarly, one may identify a constitution on criminal justice issues, a fiscal constitution, etc

Assembly, and to order their respective publication.

Article 51 establishes the right of the Chief Executive of the MSAR to veto bills: when the holder of such office considers that a bill approved by the Legislative Assembly is not compatible with the overall interests of the Region, he or she may return it to the Legislative Assembly within 90 days,¹³³ for reconsideration, together with a written statement of the reasons for refusal of signature. If the Legislative Assembly confirms the original bill by not less than a two-thirds majority of all the Members, the Chief Executive must sign and order publication thereof within 30 days or dissolve the Legislative Assembly in accordance with Article 52 of the Basic Law.

Article 58, by requiring that the Chief Executive consult the Executive Council before introducing Government bills to the Legislative Assembly: only such prior formal consultation is mandatory, not any substantive assent, nor authorisation of any kind for introduction of such bills. These must contain an express indication that said Council was consulted. One may conclude that this consultation is a necessary element in shaping and completing a Government bill, ie by alluding to the formal act of original legislative impetus coming from the executive branch of power, corresponding to the constitutionally provided for type of act designated as “Government bill”. The Basic Law is silent on supervening and Government legislative initiatives — ie bills to amend bills or, rather, amendment proposals to bills...

Article 64 confers on the Government of the Macau Special Administrative Region the competence to introduce the aforementioned bills.

Article 67 establishes that the Legislative Assembly of the Macau Special Administrative Region is the legislative body of the Macau Special Administrative Region.

Article 71 establishes that the Legislative Assembly of the Macau Special Administrative Region has the competence, under paragraph (1), to enact, amend, suspend, and repeal laws, under the terms of the Basic Law¹³⁴ and, with particular emphasis on the subject matter under scope, also “*in accordance with legal procedures*”,

¹³³ What would be the legal solution if, during this period, the bill can only be returned to a new Legislative Assembly due to the beginning of a new legislature? A thought experiment: a Member’s bill approved in the last Plenary meeting of the legislature; in the course of such 90 days, there will be a new legislature in place (or a “new Assembly” as is sometimes said in Macau, and technically a misnomer, for there is only one Legislative Assembly as an institution — the composition of which is periodically renewed, under constitutionally and legally defined procedures and deadlines.) Will the Chief Executive necessarily have to shorten the period of 90 days and send it to the Legislative Assembly, with a view to holding a meeting thereof after the term of the legislative session? If the bill is confirmed, does it make sense to dissolve a Legislative Assembly, which, in any event, will very soon cease to function? On the other hand, if the *new* Legislative Assembly confirms the bill approved by the *previous* one, could the body be dissolved in its early days? Would such a scenario make constitutional and political sense?

¹³⁴ And also: “2) Examine and approve the budget bill introduced by the Government and assess the report on the execution of the budget submitted by the Government; 3) Define, based on a bill introduced by the Government, the essential elements of the taxation legal framework, and authorise the Government to incur debts”.

ie appealing, yet again, for the general idea of legislative proceduralisation.

Article 74 specifies that the President of the Legislative Assembly of the Macau Special Administrative Region has the power to decide on the agenda and to give priority to Government bills for inclusion therein, if so requested of the Chief Executive.

Article 75 enshrines a core rule with respect to the important issue of legislative initiative:¹³⁵ Members of the Legislative Assembly of the Macau Special Administrative Region may introduce bills under the terms of the Basic Law and in accordance with legal procedures (again the idea of legislative proceduralisation).

Bills which do not relate to public revenue and expenditure, the political structure or the operation of the Government may be introduced, individually or jointly, by Members. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.

Article 77 establishes the quorum for the meeting of the Legislative Assembly of the Macau Special Administrative Region shall be not less than one-half of all its Members. And, unless otherwise expressly provided for under in the Basic Law, the Members' bills¹³⁶ are approved with the votes of more than half of the total number of Members — imposing a demanding absolute majority, thus potentially blocking the approval of bills that may not have gained a widespread consensus; such a state of affairs is indeed uncommon in comparative law and marks a discontinuity *vis-à-vis* the legal-constitutional framework previously in force. In addition, one should take heed that, in the name of the separation of powers, the Legislative Assembly is exclusively competent to define its Rules of Procedure, in a manner not contradictory to the Basic Law.

Article 78, by reaffirming that bills approved by the Legislative Assembly of the Macau Special Administrative Region may only enter into force after being signed and published by the Chief Executive. This mechanism is akin to a promulgation.

The next examples are taken from the *second level*, as explained above:

Article 9 establishes that in addition to the Chinese language, the Portuguese language may also be used as an official language by the executive, legislative and judicial bodies of the Macau Special Administrative Region. Portuguese is also an official language, thus entrenching the MSAR's official bilingualism.

¹³⁵ See also, in the context of areas reserved legislative initiative, Annex II of the Basic Law, "2. the specific method for electing Members shall be specified by an electoral law **introduced by the Government** of the Macau Special Administrative Region and approved by the Legislative Assembly"; and, under Article 71, "(2) Examine and approve the budget bill **introduced by the Government**, and assess the report on the execution of the budget submitted by the Government; (3) Define, based on a **bill introduced by the Government**, the essential elements of the taxation legal framework, and authorise the Government to incur debts". (boldface added)

¹³⁶ The Portuguese language version of the Basic Law omits Government bills and only mentions Members' bills in Article 77, unlike the *letter*, for example, of Article 78 of said official version. According to what I have been told, the *spirit* of the Chinese language version of Article 77 seems to suggest the intention of covering both types of bills; such an interpretation is not, however, clear-cut nor undisputable.

Several norms on fundamental rights, both *within* (eg Articles 26, 29, 32, 40) and *without* Chapter III (for example, Articles 6, 7, 103, 128), when expressly linked to the principle of the existence of areas reserved to the law.¹³⁷

Article 74, paragraph (6) confers to the President of the Legislative Assembly of the Macau Special Administrative Region the exercise of other powers and functions, as prescribed in the Legislative Assembly's Rules of Procedure.

Article 84 establishes that the subject-matters relative to the organisation, competences and functioning of the courts of the Macau Special Administrative Region shall be reserved to the law.

Article 90 states that the organisation, competences and functioning of the Public Prosecution Service of the Macau Special Administrative Region shall be regulated by law.

Article 96 provides that the competences and functions of municipal bodies shall be regulated by law.

Article 107 prescribes that the monetary and financial systems of the Macau Special Administrative Region shall be defined by law.

This short and incomplete list illustrates how the Basic Law commands many facets of the legislative procedure. The constitutional norms are *ipso facto* mandatory, radiating towards — and illuminating — all other norms pertaining to the legislative procedure. Many of the latter norms, as contained in the Rules of Procedure, are verbatim transcriptions of the former ones.

3. “In accordance with legal procedures” as a Constitutional Pole

A fine-tuning exercise is warranted, whereby one might seek to axially buttress — or stabilise the seemingly tilting poles of — Macau's relatively *immature* system of norm-making. The Basic Law's frequent reference to the terms “*according to legal procedures*” and its equivalent “*in accordance with legal procedures*”, especially in Articles 8, 71, and 75, highlights the concept of the legislative procedure.¹³⁸ Moreover, it alludes to the fact that certain laws, and normative acts like the Rules of Procedure, must adhere to other laws,¹³⁹ precisely when the legislative procedure *in a broad sense* is considered. Specifically, this refers to Law No. 13/2009 concerning the framework of the internal

¹³⁷ See, for example, José Melo Alexandrino, O Sistema de Direitos Fundamentais na Lei Básica da Região Administrativa Especial de Macau (CFJJ 2013)135 et seq.

¹³⁸ And legislative procedure primarily, but not exclusively, understood as what is determined in the Rules of Procedure. On the same provision applicable in Hong Kong, P Y Lo, *The Hong Kong Basic Law* (LexisNexis 2011) 446.

¹³⁹ See, under comparative law, the explicit formulation of this principle, for example, in Article 112, paragraph (3) of the Portuguese Constitution.

sources of legal norms¹⁴⁰ and Law No. 3/1999 on the forms and templates of legal enactments.¹⁴¹ These laws are substantively conforming laws, of a parametric nature. Although not specifically mentioned, nor placed, under the formulation “*in accordance with legal procedures*” (or equivalent¹⁴² ones), such laws do have a *residuary or remanent* application and effectiveness.¹⁴³

The constitutional backdrop secures these laws as buoys in parametric waters — certain norms contained in such legislation do play the role of conforming other laws, namely in the drafting process.

Within this residuary mesh of conforming laws — in local legalese, of making laws *in accordance with legal procedures* — I have also included other norms. For instances, those impose consultations and/or hearings during the legislative procedure, for example,¹⁴⁴ Article 30, paragraph (3) of the Legal Status of Lawyers:¹⁴⁵ “*The Association shall be heard, on a mandatory basis, on legislative drafts concerning the judiciary organisation, the practise of law, civil procedure and criminal procedure.*” Similarly, Article 95, paragraph (15) of Law No. 10/1999, on the Legal Status of Magistrates: “*The Council of Judicial Magistrates has the competence to issue an opinion on legislative projects concerning the General Framework Law on the Judiciary Organisation and the Legal Status of Magistrates.*”

Other cases of this general typology do exist, as I shall demonstrate below. One should be careful in noting that a legal obligation to consult *per se* is distinct from the issue of *when* and *who* shall carry out such consultation. Each subject-matter is governed differently — for instance, the role of the Macau Lawyers’ Association (MLA), as a co-participant in lawmaking, may not be confused with the Government bodies whose function is to support, and provide consultation, *solely* to the Chief Executive, with the exclusion of the Legislative Assembly and the Members thereof, eg the Executive Council and the Permanent Council for Social Dialogue.

4. The Sino-Portuguese Joint Declaration on the Question of Macau

A quick glance at the — so often overlooked, yet fundamentally structuring, pre-

¹⁴⁰ This law is substantively parametric in nature, for the reasons explained above, namely because it develops and implements the framing of the internal sources of norms in accordance with the pre-requisites laid down in the Basic Law.

¹⁴¹ On the comparable Portuguese law, with clear substantive and formal similarities with the MSAR statute, see eg Alexandre Sousa Pinheiro, ‘Artigo 112.º’ (2008) 3 *Comentário à Constituição Portuguesa* 153, who alerts that the law contains provisions of a different nature, the contravention of which entails, in some cases, no more than an irregularity, while, in others, the resulting penalty is illegality.

¹⁴² With points of convergence, and hence the relevance within the scope of the MSAR’s legal order, Alexandre Sousa Pinheiro, ‘Artigo 112.º’ (2008) 3 *Comentário à Constituição Portuguesa* 153.

¹⁴³ With points of convergence, and hence the relevance within the scope of the MSAR’s legal order, Alexandre Sousa Pinheiro, ‘Artigo 112.º’ (2008) 3 *Comentário à Constituição Portuguesa* 153.

¹⁴⁴ On this issue, for example, Jorge Miranda, *Manual Direito Constitucional V* (Coimbra Editora 2011) 192.

¹⁴⁵ Approved by Decree-Law No. 31/91/M, of 6 May 1991.

determining and mooring — Joint Declaration allows one to extract from this international treaty,¹⁴⁶ either directly or reflexively (as norms on the legislative power), the following rules with relevance to the legislative procedure:

The Macau Special Administrative Region shall be vested with legislative power — paragraph (2), subparagraph (2), and Annex I,¹⁴⁷ point I.

The legislative power of the Macau Special Administrative Region shall be granted to the legislative body of the Macau Special Administrative Region, — Annex I, point III.

The legislative body of the Macau Special Administrative Region may, on its own, enact laws according with the provisions of the Basic Law and legal procedures. The Joint Declaration, in anticipation of the Basic Law, lays the groundwork for the idea of legislative procedure: “according with ... the legal procedures”: Annex I, point III.

The principle that fundamental rights are areas reserved to the law: paragraph (2), subparagraph (4), and Annex I, point V.

The principle of the two official languages within the scope of the legislative body: paragraph (2), subparagraph (5).

In a gist, the Joint Declaration contains normative references, directly related or closely associated, to the legislative procedure, which are from negligible.

5. The Legislative Assembly’s Rules of Procedure: Referral

It goes without saying that the primary source for understanding the legislative procedure is the Rules of Procedure. A comprehensive examination of these rules is set for a subsequent discussion.

¹⁴⁶ There is absolutely no doubt — legally or for any other reason — that the Joint Declaration of the Government of the People’s Republic of China and of the Government of the Portuguese Republic on the Question of Macau, signed by Zhao Ziyang and Cavaco Silva, published in the Macau OG, No. 23, 3rd Supplement, on 7 June 1988, is a true international treaty, for the purposes of the Vienna Convention on the Law of Treaties, As an international treaty, valid and in full effect, having been duly deposited by both signatory parties at the UN, in the exercise of their sovereign powers in the international sphere. Although said treaty is multi-composed (eg body and annexes) and is formally designated as a “declaration”: such circumstances in no way affect the nature of such instrument, in its entirety, under international law. In fact, point 7 of the body thereof establishes: “*The present Joint Declaration and its Annexes shall have equal binding force.*” This international treaty will cease to be effective under the terms therein provided for, ie with the lapsing of the period of 50 years: “*12. The fundamental policies mentioned above and the respective clarifications in Annex I to the present Joint Declaration shall be established in a Basic Law of the Macau Special Administrative Region of the People’s Republic of China by the National People’s Congress of the People’s Republic of China and shall remain unchanged for fifty years.*” See also Appendix I, I of the Joint Declaration.

¹⁴⁷ Entitled Clarification by the Government of the People’s Republic of China on the Fundamental Policies Regarding Macau.

6. Law No. 13/2009, Legal Framework Governing the Internal Sources of Norms

I have briefly described above the historical motivation, nature, and function of this law, which is, indeed, also a law about/on laws.¹⁴⁸

This law, under Article 1, “develops the legal framework governing the internal sources of legal norms, under the terms of the Basic Law of the Macau Special Administrative Region [...]”. Naturally, said law also affects the legislative procedure in several aspects.

Under Article 2, the purposes of Law No. 13/2009 are, namely: to establish the fundamental principles of the legal framework governing laws and administrative regulations; and to enunciate the subject-matters that fall within the scope of formal laws. This is performed either by means of a general norm — simultaneously agglutinative and self-excluding, “*The Legislative Assembly exercises the competences provided for in the Basic Law of the MSAR, for enacting, amending, suspending and repealing laws on any and all matters within the scope of the autonomy of the MSAR.*”¹⁴⁹, or in menu-type norms, including, for instance, the legal framework of fundamental rights and freedoms or the status of Macau residents.¹⁵⁰

The general rule of competence articulated in Article 5 demonstrates an inclusive approach since the Legislative Assembly may enact laws on all matters, beyond those provided for under Article 6 — nothing is excluded from the lawmaking power of the Legislative Assembly, with the natural exception of matters residing outside the limits of the MSAR’s autonomy (which explains the self-exclusionary feature).

This point is very cogent at several levels and decisively interferes in the moulding and conformation of the legislative procedure.

The Rules of Procedure are silent on the fate of bills that contravene the Basic Law. For instance, when a bill intends to regulate matters that are outside the perimeter of the MSAR’s autonomy, which clearly would be violating the options solemnly enshrined in the Basic Law itself.¹⁵¹

¹⁴⁸ Such law is infused with “*borrowed constitutionality*”: as analysed above, Paulo Cardinal, ‘Notas breves e esparsas sobre o regime jurídico de enquadramento das fontes normativas internas: Lei Básica e Lei n.º 13/2009’, in *Direito, Transição e Continuidade - Escritos Dispersos de Direito Público de Macau* (Fundação Rui Cunha/CRED-DM 2017) 355.

¹⁴⁹ Article 5 of Law No. 13/2009.

¹⁵⁰ Article 6 of Law No. 13/2009.

¹⁵¹ In this regard, it is worth recalling Draft Resolution No. R1/I/1999-1, which recommended the following most appropriate wording (albeit with an alternative version) to Article 110 of the Rules of Procedure of the Legislative Assembly:

“(Organic and material limits) — The President of the Legislative Assembly, shall summarily reject Members’ bills, Government’s bills, and proposals containing amendments thereto, which:

The segment “*on any and all matters within the scope of the autonomy of the MSAR*”¹⁵² enables, in my view, the President of the Legislative Assembly to issue a decision of preliminary immediate rejection, similarly to that which is provided for under Articles 107 and 108 of the Rules of Procedure.

Article 4 establishes the main types of normative acts, including, naturally, the law. A single type and form of law exists, unlike the duality of administrative regulations.¹⁵³

Paragraph (2) of this same Article 4 establishes the legal principles to which it is worth returning:

“The law shall have a determinate, precise and sufficient content that includes a clear prescription of the commands intended to create legal norms of conduct for the addresses, rules of action for the administration and standards of control for judicial decisions on disputes.”

In essence, we revisit the bottom-line of the principle of sufficiency or completeness¹⁵⁴ of laws.

I would like to put forth an additional, different, yet non-contradictory perspective, vis-à-vis the ones expounded in the previous chapter.

This time, the objective is to seek a deeper interconnection between the principle of the completeness of laws and the idea — a noble and necessary one in a Region under the Rule of Law (*Rechtsregion*) — of a substantive area reserved to the law in matters pertaining to fundamental rights.

- a) Contravene the principles or the norms provided for in the Basic Law;
- b) Contravene the principles or the norms provided for in conventions, treaties, pacts, agreements and other instruments of International Law in force in the MSAR’s legal order;
- c) Contravene the general principles of law in force in the MSAR’s legal order;
- d) Contravene the provisions of Articles 107 and 108;
- e) Omit the specific definition of the meaning or direction underlying the modifications to be introduced into the legal order.”

This draft text — a much more clarifying and adequate solution for the substantive normative limits to which the Legislative Assembly is bound — was not approved and thus not included in the Rules of Procedure.

¹⁵² Article 5 of Law No. 13/2009.

¹⁵³ “There are now two types of administrative regulations: independent administrative regulation by the Chief Executive and complementary administrative regulation by the Chief Executive.”: FSC, Report No. 3/III/2009, “Administrative regulations include two types: independent administrative regulation of the Chief Executive; complementary administrative regulation of the Chief Executive”: Guo Tianwu and Chen Xuezheng, ‘O problema da fiscalização da legislação dos regulamentos administrativos da RAEM’ (2011) 24(93) Administração 753, 753 (especially 757). These authors apparently entertain the idea that the primacy of the law over administrative regulations, stemming from the hierarchical relationship between these two types of internal sources of norms, as having been being weakened, due to both strata needing to be in conformity with the Basic Law. The fact agreed upon that both laws and administrative regulations must obey the Basic Law, as the superior fundamental text, does not, within the current constitutional framework, rule out the principle of the primacy or prevalence of the law, which entails the squashing of conflicting administrative regulations.

¹⁵⁴ The point is not to tediously undermine administrative regulations. My sole intent is to draw attention to the fact that this principle and legislative provision are often forgotten. In the future, in the event of a possible reform of Law No. 13/2009, this issue may naturally be subject to reconsideration and careful reconfiguration. Likewise, others contained in said law, provided that the modifications are not unidirectional and unbalanced.

Quoting the learned JOSÉ MELO ALEXANDRINO, writing about the MSAR's legal order:

“It is commonly said, in this matter of fundamental rights and freedoms, that a principle of a substantive (and not just a formal) zone reserved to the law applies; the substantive perspective means, quite simply put, that norm-making, with respect to fundamental rights and freedoms, is governed exclusively by the law, with two main dimensions: (i) a negative one, signifying that the matters reserved to the law may not be governed by other sources; (ii) a positive one, entailing that the law must define, with a sufficient degree of certainty, precision and fullness, all that which might be related to the restriction, configuration or regulation of fundamental rights.”¹⁵⁵

The same illustrious Author immediately settles the issue within the legal order of the MSAR, and with particular incisiveness to my discussion:

“Interestingly, this second dimension [...], which is the most difficult, is provided for in Macau's legal order, in the interesting Article 4, paragraph (2), of Law 13/2009, of 27 July — practically summing up what I just said.¹⁵⁶ [...]

This substantive zone reserved to the law is absolutely required in laws that are restrictive of fundamental rights and freedoms. [...]

Beyond these cases, the Legislative Assembly has self-limited itself,¹⁵⁷ being bound by such substantive requirement in relation to other hypotheses: it is, in my opinion, a useful norm, which has a guiding and pedagogical function [...] clarifying that, whenever the law contains rules of conduct for individuals (but also rules of action for the Administration and control standards for the judge), it must have a determinate, precise and sufficient content (ie the law must not be limited to defining the minimum rules, nor may it leave essential aspects unregulated, much less may it adopt vague, empty expressions or defer regulation to other sources). The law must have sufficient density and determinability in its content, otherwise the Administration's margin for intervention in the sphere of individual freedom shall expand unduly.”¹⁵⁸

The principle of completeness of laws is already ingrained in the legal order of MSAR and performs useful functions, particularly when it comes to issues as valued and deserving of protection as fundamental rights.

¹⁵⁵ José Melo Alexandrino, *O Sistema de Direitos Fundamentais na Lei Básica da Região Administrativa Especial de Macau* (CFJJ 2013) 136–137.

¹⁵⁶ *ibid* 137; a transcription of said norm follows.

¹⁵⁷ “Even though it might repeal such norm contained in a subsequent law.”

¹⁵⁸ José Melo Alexandrino, *ibid*, 137–138.

Article 6 provides for as open-ended catalogue¹⁵⁹ of matters on which norm-making is reserved to the law. This encompasses those that explicitly or easily result from the Basic Law, such as fundamental rights (and the legal framework governing fundamental rights, freedoms, and respective guarantees, as provided for in the Basic Law and in other legislative acts),¹⁶⁰ crimes, criminal procedure, forms and templates of normative acts, budget, legal framework on taxation, environment, expropriation, along with others. While many of these issues unambiguously stem from the Basic Law, some, such as the Commercial Code,¹⁶¹ civil procedure and arbitration proceedings, registration and notary codes, legal framework on urban development, Legal Status of the Members of the Legislative Assembly, legal framework on the structure, functioning and staff of the Legislative Assembly's support services, and, last but not least, the Civil Code,¹⁶² might be seen as less directly derived.

7. Law No. 3/1999, Publication, Forms, and Templates of Legal Enactments

If one changes direction to another law on laws, an inevitable point of arrival is the law on forms and templates of legal enactments.

The said law contains several norms that intersect with the legislative procedure.

Article 1 establishes that the official journal or bulletin of the MSAR is the OG, wherein the legal enactments under the purview of such law shall be published. Laws, specifically, are published in Series I of the O. G, as per Article 3, paragraph (1).

Article 3 sanctions the “*legal ineffectiveness*” of laws when they are not

¹⁵⁹ See paragraph (19), “*Other matters conferred by the Basic Law to the Legislative Assembly*”. For example, one might revisit the areas reserved to the law, relating to the organisation, competences and functioning of the Courts, the Public Prosecution Service and the municipal bodies. See, in more detail, FSC, Report No. 3/III/2009, “*And, prudently – given that it would be very difficult to complete the set or list of matters reserved to the law – it ends with the following rule: “(19) Other matters conferred by the Basic Law to the Legislative Assembly.” In these other matters, we can mention, for example, the organisation, competence and functioning of the Courts and the Public Prosecution Service, the competence and constitution of municipal bodies, compulsory education, the protection of scientific and technological research, patents, discoveries and inventions, the protection of the results achieved by authors in literary, artistic and other creations, as well as their legitimate rights and interests.*”

¹⁶⁰ To which one should add the rights and freedoms provided under instruments of international law. In this sense, FSC, Report 3/III/2009, “*In addition, naturally, under the terms of Article 40 of the Basic Law, the instruments of international law, which may thus be, and indeed are, sources of fundamental rights.*”

¹⁶¹ A very similar option is found in the Argentinian Constitution, Article 75, paragraph (12): “*The Congress shall:[...] Enact the Civil, Commercial, Criminal, Mining, and Labour and Social Security codes [...].*” See also Article 85 (1) of the Uruguayan Constitution and Article 202 (2) of the Paraguayan Constitution.

¹⁶² In fact, there was no shortage of suggestions that the Civil Code could be revised by simple administrative regulation... Taking aside the plain truth that the Civil Code contains matters reserved to the law and flow into the category of fundamental rights — legal personality, capacity, rights of personality, marital status, affiliation, norms on norms that open the Civil Code, as well as property rights, *inter alia* — what would happen to the dignity of the Civil Code, the backbone of our legal order, under the form of an administrative regulation? In general, the dignity and structural function of Codes in a legal system require that they be approved by law of the Legislative Assembly. Such clamour might have been only the result of a passing anti-parliamentary crucible.

published in Series I of the OG, despite the requirement of mandatory publication.

Article 6 confers unto the Chief Executive the competence to order the publication of the laws.

Article 7 refers — timidly and without properly completing the general formulation of the Basic Law — to the publication in the official languages, including that of the laws.¹⁶³

Article 9 alludes to, and regulates, the issue of rectifications/corrections. Although not directly related to the legislative procedure *per se*, it's pertinent as it allows for clarifications regarding whether: there is a need for rectification or correction; which specific text is subject thereto; and, finally, which is the rectifying or corrective text.

Article 11 deals with the titles of legal enactments, having introduced, without any improvements whatsoever, modifications to the previous legal framework on this issue. While the removal of “/M/” may be reasonable, the omission of the publication date (which formerly included day, month, and year) seems less so, especially when considering the significance of this information in discerning the succession of laws.

Finally, Article 12 lays down the formal template of laws, as transcribed below:

“1. The laws, as a rule, shall adopt, in their initial segment, the following template:

“The Legislative Assembly decrees, to be valid as law, under the terms of Article 71, paragraph....of the Basic Law, the following:”.

2. In the case of a law regulating a general legal framework contained in the Basic Law or in laws, the following template shall be applied:

“In the development of the fundamental legal framework established by Article..... of the Basic Law (or of Law No..... /.... of the Macau Special Administrative Region), the Legislative Assembly decrees, to be valid as law, under the terms of article 71, paragraph.... of the Basic Law, the following:”.

3. The laws approved by the Legislative Assembly shall contain, after the body of the text and in the following sequential order:

- 1) The date of approval;
- 2) The signature of the President of the Legislative Assembly;
- 3) The date of signature of the Chief Executive;
- 4) The order for publication;

¹⁶³ The idea of bilingual publication is naturally a consequence of a bilingual formal *legislative procedure*.

5) The signature of the Chief Executive.”

Paragraphs (1) and (3) of this Article are commonly adhered to in the practice of lawmaking in the MSAR; paragraph (2) has been rarely complied with, thereby generally omitting the development, by ordinary laws, of laws governing general legal frameworks.¹⁶⁴

8. Piecemeal Statutory Laws Establishing Rights to Consultation

Within the legislative landscape, certain laws bestow certain entities with special consultation rights, or conversely, impose duties to consult, during legislative procedures. This occurs when subject-matters directly related to those entities are under discussion or the law considers such issues to be especially relevant.

A first example appears in the hitherto untouched provision of Article 30, paragraph (3) of the Legal Status of Lawyers,¹⁶⁵ approved by Decree-Law No. 31/91/M, of 6 May:¹⁶⁶ the MLA shall be heard on bills pertaining to the judiciary organisation, the practise of law, civil procedure, and criminal procedure.

A second example is Law No. 10/1999, on the Legal Status of Magistrates, under which the Council of Judicial Magistrates has the right to issue an advisory opinion on legislative bills relating to the General Framework of the Judiciary Organisation and on the Legal Status of Magistrates.¹⁶⁷ The Council of Magistrates of the Public Prosecution Service has been granted the same competence.¹⁶⁸

¹⁶⁴ Five non-exclusive and rare examples of laws that correctly applied paragraph (2): Law No. 8/2005, on the Protection of Personal Data, “*In the development of the fundamental legal frameworks established by Articles 30, 32 and 43 of the Basic Law of the Macau Special Administrative Region, the Legislative Assembly decrees, to be valid as law, under the terms of Article 71, paragraph (1) of said Basic Law, the following:*”; Law No. 13/2012, on the General framework on legal aid, “*In the development of the fundamental legal framework established by Article 36 of the Basic Law of the Macau Special Administrative Region, the Legislative Assembly decrees, to be valid as law, under the terms of Article 71, paragraph (1) of the Basic Law of the Macau Special Administrative Region, the following:*”; Law No. 3/2002, on the Procedure for notification of requests within the scope of judicial cooperation: “*The Legislative Assembly decrees, to be valid as law, under the terms of Article 71, paragraph 1), and Article 94 of the Basic Law of the Macau Special Administrative Region, the following:*”; Law No. 8/2014, on the Prevention and control of environmental noise: “*The Legislative Assembly decrees, to be valid as law, under the terms of Article 71, paragraph (1), and of Article 119 of the Basic Law of the Macau Special Administrative Region, relative to the protection of the environment, the following:*”; Law No. 12/2018, on the Legal framework for guaranteeing the rights and interests of the elderly, “*In the development of the fundamental legal framework established by Article 38, paragraph (3) of the Basic Law of the Macau Special Administrative Region, the Legislative Assembly decrees, to be valid as law, under the terms of article 71, paragraph (1) of the Basic Law, the following:*”.

¹⁶⁵ As amended by Decree-Laws No. 26/92/M, of 4 May 1992, and No. 42/95/M, of 21 August 1995.

¹⁶⁶ As amended by Decree-Laws No. 26/92/M, of 4 May 1992, and No. 42/95/M, of 21 August 1995.

¹⁶⁷ Article 95, subparagraph (15) of Law No. 10/1999.

¹⁶⁸ Article 107, subparagraph (9) of Law No. 10/1999.

9. Rules of Procedure of the Legislative Assembly's Committees

Another possible source of the parliamentary legislative procedure¹⁶⁹ is comprised by rules of procedure adopted by each of the Legislative Assembly's Committees, regulating their functioning during the legislative process, especially in the examination in detail stage.¹⁷⁰

Indeed, Article 77 of the Rules of Procedure of the Legislative Assembly provides — precisely under the title *Committees' rules of procedure* — that each committee may draw up its own rules. In the absence of Committee rules, or in the event of omissions contained therein, the Rules of Procedure of the Legislative Assembly shall apply by means of analogy. This general norm is germane to all committees of the local parliament.

The Rules of Procedure, under Article 22, categorise committees into different types: the Legislative Assembly functions through the CRPMM and other committees. The latter encompasses Standing Committees, monitoring committees, with the added provision for the formation of ad hoc or specialised committees for specific issues.

The overwhelming majority of the legislative work is shouldered by the standing committees, of which three currently operate.

If effect, the monitoring committees seem to be excluded from the functions provided for in Articles 29 and 30, ie intervention in the legislative procedure.¹⁷¹ They were not designed, nor created, to replicate the functions of the standing committees.¹⁷²

In the rare instances when the ad hoc committees are created, they may sometimes have competences for the purposes of the legislative process,¹⁷³ as was the

¹⁶⁹ On these “minor rules of procedure”: see Chiara Di Seri, ‘I regolamenti “minori”’ (*Federalismi.It*, –Focus Fonti|n. 1/20182018) downloaded on <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=36851&content=&content_author=>>, therein elucidating “*With the expression “minor”: it is customary to allude to all acts – with the legal nomenclature of rules – that are different from the major and general parliamentary Rules of Procedure.*”

¹⁷⁰ Or in the case of voting, in committee, on the specifics of bill, which is permitted by the Rules of Procedure, albeit not currently practiced.

¹⁷¹ Nor would their *raison d'être* entail require or permit the exercise of such functions — the fact that the composition of each of these committees, at this moment, exactly mirrors the composition of each of the standing committees (only changing the President and Vice-President of each one), does not allow for the idea of duplication or competition between committees in the legislative process. In truth, a tendency towards a subject-matter specialisation would a priori be potentially fruitful.

¹⁷² Nonetheless, it may make sense, in theory, for monitoring committees to be allowed, within the scope of each standing committee's purview, to assist and follow-up on matters contained in bills, as assigned thereto by the latter committee, thereby taking advantage of a possible specialisation in analysis or work already undertaken by the monitoring committees, to be continued in the context of a legislative initiative. Such a solution, if adopted in a possible reform of the Rules of Procedure, could clarify the issue and be regarded as a step geared towards substantive specialisation of the committees in the legislative process itself. I must stress, once again, that the current composition and the parliamentary practice do not favour this evolutionary step, which does seem to be looked upon askance.

¹⁷³ Article 32 of the Rules of Procedure establishes that the ad hoc committees shall assess the matters that

case of the AHC for the Consideration of the Government Bill on the Legal Framework for the Operation of Games of Chance, the object of which was the bill entitled “*Legal framework for the operation of games of chance*”, giving rise to Law No. 16/2001.

The Committee on the Rules of Procedure and Members’ Mandates does not, in principle, intervene in the legislative processes, although there have been exceptions.¹⁷⁴

However, said Committee may indirectly influence the course of events, for instance, when asked to interpret the Rules of Procedure, address normative *lacunae* therein, or settle conflicts of competences between committees. Furthermore, it is the competent authority concerning the *legislative* procedure governing the Rules of Procedure *per se*, under the terms of Article 26(e) of such Rules.

Having performed this little introduction, an obvious question rears its head: what *committee(s) rules of procedure*, particularly pertaining to standing committees, are currently in existence? The answer is none, following a decades-long tradition and a general feeling that the practices on the ground have not required their enactment.

Nevertheless, procedural rules exist for the monitoring committees.¹⁷⁵ As aforementioned, these do not play a role in the lawmaking process. Such rules are not even formally designated as rules of procedure — which does not preclude such nature, considering Article 77, paragraph (1), of the Rules of Procedure of the Legislative Assembly, explicitly establishing that each committee may adopt up its own rules of procedure.¹⁷⁶

Although legally available, this legal source for the legislative procedure does not yet exist, because no rules of procedure have been approved by the standing committees, nor by the CRPMM. It would indeed be beneficial if a few foundational rules on legislative initiatives were in place...

Should these committee rules of procedure materialise, several issues shall have to be addressed.

The foremost query revolves around their normative essence. What type of norms shall they be? Will they have an external, or only an internal, binding effect? Will

justified their creation. In other cases, for example, the AHC for the Analysis and Improvement of Legislation for the Protection of Minors did not intervene in a specific legislative process, seeking instead to perform a diagnosis of the subject-matter in question.

¹⁷⁴ Cf CRPMM, Report No. 2/III/2009, Law No. 12/2009 “Amendment to Law No. 3/2000 - On the Legislature and on the Legal Status of the Members of the Legislative Assembly”: CRPMM, Report No. 2/III 2008, Law No. 14/2008 - “Amendment to the Organic Law of the Legislative Assembly of the Macau Special Administrative Region”.

¹⁷⁵ Eg the Monitoring Committee on Land Affairs and Public Concessions, the rules approved by Deliberation No. 1/2009. Subsequently, in the next legislature, we have rules of procedure, under the name of *Operating Rules*, for the Monitoring Committee on Public Finance Affairs, of the Monitoring Committee on Public Administration Affairs and, again, for the Monitoring Committee for Land Affairs and Public Concessions. These rules of procedure are substantively identical, with only minor variations.

¹⁷⁶ One can intuitively perceive the problem at hand, which is solely one of formal designation. For example, in the Rules of Procedure of the Assembly of the Republic, in Portugal, a different terminology is used: “*The standing parliamentary committees are competent: [...] j) To draft and approve their rules;*” Article 35.

they be regarded as purely *administrative*, ie as *regulations of parliamentary administrative law*, or merit another qualification?¹⁷⁷ Such rules possess singularities: they do not directly derive from the principle of constitutional legitimacy;¹⁷⁸ they are approved by the committees, and not by the Legislative Assembly as a whole, sitting in a Plenary meeting; and they do not benefit from the existence of areas or matters reserved to the committee's rules of procedure.

The second contemplation hinges on the alignment with the Rules of Procedure of the Legislative Assembly. These rules must inherently uphold a hierarchical link over committee rules rather than asserting a substantive uniqueness, meaning the committee's procedural rules shouldn't contradict the overarching Rules of Procedure of the Legislative Assembly¹⁷⁹ due to their subordinate stature. The primary Rules of Procedure inherently shape and influence the committee rules. Hence, the general principle of application of the law — according to which special norms derogate or imply the non-application of general norms — does not apply here. Committee rules should echo, elaborate, and potentially fill gaps within the overarching rules, without undermining the Legislative Assembly's foundational procedures.¹⁸⁰

A third dimension to consider is how these committee rules might engage with the areas reserved to the Rules of Procedure, which will be developed in a later chapter. Assuming such reserved domains, as hinted by the Basic Law and deeply rooted in Macau's constitutional traditions and practices, do exist, how will committee rules

¹⁷⁷ Cf addressing these and other important issues, Chiara Di Seri, 'I regolamenti "minori"' (*federalismi.it*, 23 July 2018), downloaded on <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=36851&content=&content_author=>>.

¹⁷⁸ There is a single, incidental reference in the Basic Law to the committees of the Legislative Assembly, in Article 50, regarding the powers of the Chief Executive, who is competent "to decide whether members of the Government or other personnel in charge of government affairs should testify or give evidence before the Legislative Assembly or its committees." The Organic Statute of Macau contained several norms directly related to parliamentary committees, for example, "The Assembly may be organised in permanent committees and ad hoc committees may be created for specific purposes." Or "The President, on his or her own initiative or at the request of any Member, may request attendance of Assembly sessions or committee meetings": paragraphs (2) of Articles 35 and 37 respectively, also referring to "organisation of the committees deemed necessary"; "Article 42 (b). In other words, although Macau's previous constitutional law was silent on the rules of procedure of the parliamentary committees, the truth is that it gave such committees a reasonably significant formal importance. In comparative constitutional law, there are many examples that go even further in the constitutional framework for the intervention of parliamentary committees at relevant moments — for example, cf. Article 178 of the Constitution of the Portuguese Republic.

¹⁷⁹ As Jorge Miranda teaches, "In addition to the 'general' Rules of Procedure of the Assembly, each parliamentary committee draws up its own rules of procedure [...] necessarily subordinate thereto": Manual Direito Constitucional V (Coimbra Editora 2011) 261. See also, in agreement, Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 301.

¹⁸⁰ The emergence of this problem and a solution thereto can be found in the aforementioned rules of procedure of the monitoring committees. For example, Article 10, paragraph (2) of the Rules of Operation of the Monitoring Committee on Land Affairs and Public Concessions, approved by Deliberation No. 1/2009: "In the event of a contradiction between the provisions of the Rules of Operation of the Monitoring Committee for Land Affairs and Public Concessions and the Rules of Procedure of the Legislative Assembly, the latter shall prevail."

interact with them?¹⁸¹

One possible hypothesis is to consider that the Rules of Procedure of the Legislative Assembly, together with all committee rules of procedure (and, eg resolutions relating to the hearings process, the Government questioning process), would constitute a whole, a “single normative complex”,¹⁸² as Italian scholarship has defended.¹⁸³

Although this path could prove useful in assessing the issue, I remain sceptical. It would necessitate the coexistence of various instruments and norms from distinct source hierarchies within this proposed complex. If one adds to this argument both the existence of norms with parametric and conforming measures for others — which, in itself, would not be totally exclusionary of the above thesis¹⁸⁴ — and the fact that the Rules of Procedure *per se* do have constitutional legitimacy and a formal identity, I cannot fathom how the idea of a true single normative complex may be duly entertained. Moreover, some norms integral to committees’ rules of procedure could be approved by the whole Legislative Assembly, sitting in a Plenary meeting, whilst others may be approved *only* by the respective committee.¹⁸⁵

A second approach, arguably more compelling, is to embrace the core notion that there are indeed areas or matters reserved to the Rules of Procedure. This viewpoint derives directly from the principle of the “self-organization of politico-legislative bodies.”¹⁸⁶ The Rules of Procedure of the Legislative Assembly, in this sense, are envisioned as “reservoir-type source of norms, exclusively dedicated to regulate the organisation and functioning of the Assembly.”¹⁸⁷ Within this framework, one can discern two components of reserved areas: one being more intense or *absolutely* reserved, the second less intense or *relatively* reserved.

That first component of an absolute nature, shall always be directly grounded on the Rules of Procedure, being defined, from the outset, by the matters that the local constitution expressly establishes. For instance, the *additional powers of the President of the Legislative Assembly*, and rules on the legislative procedure, which stems from the competence to *enact, amend, suspend, and repeal laws, under the terms of this Law and*

¹⁸¹ The above, on committee rules of procedure is, with adaptations, applicable to the rules of procedure governing hearings, which, under Article 143 of the Rules of Procedure, shall be contained in a regulation approved by the Plenary in the form of a Resolution; the same applies to the complementary rules of the questioning process, contained in Resolution No. 2/2004, regulating the Process of Questioning Governmental Action, which was explicitly based on the “*development of Articles 134 and 135 of the Rules of Procedure*.”

¹⁸² Excluding, of course, the resolutions of a non-normative nature.

¹⁸³ According to Pedro Alfaro Velez, ‘O Regimento da Assembleia da República como fonte de Direito’ in *Estudos de Direito Público* (Âncora 2006) 740.

¹⁸⁴ As in the parametric relationships between laws governing general legal frameworks and the respective development laws.

¹⁸⁵ With respect to the latter norms, one might call into question their nature and external binding effectiveness, as they are out of the scope of the imperative protection provided by the Basic Law.

¹⁸⁶ Gomes Canotilho, *Direito Constitucional e Teoria da Constituição* (7th edn, Almedina 2003) 856.

¹⁸⁷ Pedro Alfaro Velez, ‘O Regimento da Assembleia da República como fonte de Direito’ in *Estudos de Direito Público* (Âncora 2006) 741.

in accordance with legal procedures.¹⁸⁸ This component is further intertwined with Article 77 of the Basic Law, concerning matters such as the quorum for the functioning of the Legislative Assembly, and the required majorities for the approval of bills (in the first paragraph). Together, these provisions bestow the Rules of Procedure of the Legislative Assembly with a constitutional identity.

At least in the above cases, there may not be any room for *minor or lesser* rules of procedure,¹⁸⁹ as the matters in question shall, *per constitutionem*, be regulated in the Legislative Assembly's Rules of Procedure.

The second component, with a *less intense perimeter of reserved matters*, contains areas which are not inalienable: the Rules of Procedure may grant authorisations,¹⁹⁰ in a parallel fashion with the now extinct legal typology of legislative authorisations.¹⁹¹

In other words, the *modus operandi* would be similar to a normative delegation, from the Rules of Procedure to other normative acts of the Legislative Assembly; the latter would be distinct from, but subordinate to, the former.¹⁹² Such is my proposal.

An approximation — with due caution — of this understanding may be perceived in the concept of “*de-location from the Rules of Procedure*” to legislative acts¹⁹³ in this case (ie in effect, an *upgrading* of the source of norm-making). The distinction is that the Rules of Procedure are not merely delegating competences but also narrowing their primary regulatory intervention by expelling matters into the sphere of lawmaking.

¹⁸⁸ Article 71 of the Basic Law.

¹⁸⁹ Are there other matters subject to the Rules of Procedure, which are foreseen under the Basic Law, for example, in view of Article 65 (and, conversely, Article 76), which establishes the Government's duty to respond to questions from Members of the Assembly Legislative? If such norm, in addition to expressing an express duty, may also be added to the area of matters reserved to the Rules of Procedure, the consequence would be thus: the entire regulatory framework of the political scrutiny process would have to be therein included; such matters could not be subject to delegation to other minor resolutions within the scope of Macau's parliamentary law. On this issue of matters reserved to parliament, although not expressly established in the constitutional text, see eg Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario (ponencia general)’ in *Estudios de Derecho Constitucional* (CEPC 2009) 676–77, of a reserve of bylaws broader than that which is made up of the constitutional remissions expressed.

¹⁹⁰ Addressing a possibility in a similar sense, see Pedro Alfaro Velez, ‘O Regimento da Assembleia da República como fonte de Direito’ in *Estudios de Derecho Público* (Áncora 2006) 741.

¹⁹¹ An emblematic example: “The rules on hearings shall be contained in a regulation approved by the Plenary in the form of a resolution.”: the sole pre-requisite being “When the clarification of issues of public interest so requires, any standing or ad hoc committee, within the strict scope of such committee's material competence, may summon any persons to testify or give evidence, under the terms of Article 71, paragraph (8) of the Basic Law.”: Article 142 of the Rules of Procedure. See also Article 136. “The rules for the questioning process are set out in a resolution approved by the Plenary.” A different direction was taken with the debates on issues of public interest, which are directly regulated under Articles 137 to 141 of the Rules of Procedure.

¹⁹² This concept of authorisation reinforces the principle of prevalence (of the Rules of Procedure of the Legislative Assembly over the committees' rules of procedure).

¹⁹³ See article 85, paragraph (2) of the Rules of Procedure (“The rules on the identification, forms and templates, publication, rectification/correction and entry into force of laws and resolutions are governed by law.”), and Article 192 of the former Macau Legislative Assembly's Rules of Procedure, dating from 1977. Cf, Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario (ponencia general)’ in *Estudios de Derecho Constitucional* (CEPC 2009) 677 et seq wherein the author asks if parliamentary rules of procedure may renounce to matters reserved thereto.

Although laws in the MSAR are enacted by the very same body, the Legislative Assembly, the respective procedure co-involves third parties. Throughout this text we shall provide examples of this phenomenon.

10. Rules of Procedure of the Executive Council

A few words on the Rules of Procedure of the Executive Council, approved by Administrative Regulation No. 2/1999, are warranted.¹⁹⁴

As discussed above, Article 58 of the Basic Law requires the Chief Executive to consult the Executive Council before introducing bills to the Legislative Assembly.

Such requirement entails not only the prior consultation of the Executive Council by the Chief Executive, but also the reference thereto in the bill to be introduced, as a mandatory element of the creation thereof.¹⁹⁵ The said consultation is a necessary element in shaping and completing bills.

This process alludes to the formal legislative impetus proceeding by the Executive branch, translated into the constitutionally designated “Government bill”.¹⁹⁶ Essentially, this pertains to an original legislative initiative. The Basic Law remains silent on the so-called supervening initiatives, which should take the form of an amendment proposal.¹⁹⁷ Regardless of whether the Chief Executive chooses to consult the Executive Council at its discretion, it can be deduced from the Basic Law and in the context of an ongoing legislative process that the Executive Council’s involvement in the legislative process is confined to a single, *ex ante* moment, as to the introduction of a bill to the Legislative Assembly.

Therefore, there is no obligation to consult the Executive Council in the event of amendment proposals introduced to the original version of Government bills, given that the latter will have already transited from the Executive power into the sphere of the legislative body, with the Chief Executive acting, before the Legislative Assembly, as the proponent and sole actor.

Taking a closer look at the Rules of Procedure of the Executive Council, Article 2, entitled “competence”, which declares: “The Chief Executive shall consult the Executive Council before: [...] 2) Introducing Government bills to the Legislative Assembly.”

Nothing of note here, as it replicates the Basic Law and, as such, is endowed with a higher value than that of a mere ordinary norm inserted in an administrative

¹⁹⁴ As amended by Administrative Regulation No. 2/2005 and Administrative Regulation No. 25/2011.

¹⁹⁵ Article 103, paragraph (2), subparagraph (b) of the Rules of Procedure.

¹⁹⁶ In identical terms, with the very similar Consultative Council, the Organic Statute of Macau provided for, under Article 48, the following: “2. *The Council shall be heard on the following subjects: a) Bills that the Governor introduces to the Legislative Assembly;*”. No one has ever suggested that the Consultative Council would have to be heard at any stage after the introduction of bills to the Legislative Assembly.

¹⁹⁷ In view of these different concepts, see Article 102 of the Rules of Procedure.

regulation.

Notably, few aspects within these Rules of Procedure are pertinent to the legislative procedure. There is Article 13 that sheds light on the quorum, and Article 21, further on the non-binding advisory opinion of the majority of the members: “*If the Chief Executive does not accept the opinion of the majority of the Members of the Executive Council, the specific justifying reasons for the refusal must be recorded.*” In this case, a special duty of stating the reasons by the Chief Executive is created, for his or her refusal of and disagreement with the recommendation given by the Council.¹⁹⁸

Article 1 transcribes the Basic Law: “The Executive Council of the Macau Special Administrative Region is the body for assisting the Chief Executive in decision-making.”, including those regarding Government bills (whether he or she introduces them or not, irrespective of content). Clearly, decision-making within the legislative procedure¹⁹⁹ rests solely with the Chief Executive, given that the Council functions strictly as an advisory entity.

There is a procedural rule in force, which apparently limits the material scope of the consultation: “*The Executive Council does not discuss in detail, unless otherwise directed by the Chief Executive.*”²⁰⁰ The said rule, although typical for such bodies, seems incongruent with a holistic understanding of the legislative procedure, which demands comprehensive analysis and assessment of bill provisions and their implications.

In conclusion, the Executive Council does not have any intervention in the legislative procedure, other than the one established by the Basic Law — and only when the constitutional law so requires — as the Chief Executive’s consultative body. It is not an autonomous source of norms relating to the legislative procedure.

11. Customs, Usages, Practices, Conventions, Precedents, and Intra-Parliamentary Case-Law

11.1 Introduction

I venture now into what is, generally speaking, a shifting quicksand or quagmire: the analysis of whether customs, usages and practices are legitimate sources of the legislative

¹⁹⁸ It is unclear what the consequences are in the event of non-compliance with this duty to state reasons, as, moreover, it is not even less clear what happens when a given bill is rejected by the Council. Although the legal effect of a lack of reference to consultation by the Executive Council could perhaps be deemed a minor irregularity, not jeopardising the legislative process, the absence of such consultation has a much graver dimension, as it contravenes a requirement contained in the current constitutional framework. The correct solution would be to consider such a bill invalid — and, by extension, any law the approval of which resulted thereof — on the grounds of violation of Article 58 of the Basic Law.

¹⁹⁹ Given that “the Executive Council itself is not a decision-making body, but rather a body that assists the Chief Executive in making decisions, in order to assert the former’s collective advisory functions, while the latter is responsible for decision-making.”: as claimed by Jiang Hua, ‘Mútuo controlo e articulação entre o Executivo e o Legislativo na RAEM’ (2001) 99 Administração 163.

²⁰⁰ Article 19, paragraph (2) of Administrative Regulation 2/1999.

procedure,²⁰¹ possibly including other potential *sources*²⁰² in this discourse.

In the subsequent chapter on the dynamics on the ground, I shall apply the observations made herein to specific examples.

Quoting JORGE MIRANDA,

“In addition to the written legal norms, there are or may be customary norms of greater or lesser importance, and the terrain has always proved to be the most conducive to the rooting of practices and conventions. It would be reductive not to pay attention to these.”²⁰³

While this observation holds merit, it was arguably *truer* in the past.

The proliferation of normative sources of parliamentary law, in general, and of the legislative procedure, in particular — namely through its constitutionalisation — means that “This enlargement of normative sources reduces, as such, the role of customs in parliamentary law, thereby strongly limiting its flexibility in terms of application and, naturally, its very ‘availability’ to parliament.”²⁰⁴

Given varying degrees of significance, this area has often served as a fertile foundation for the emergence of these sources, be they genuine, quasi, or merely illusory. Sometimes, they stand as true sources of the legislative procedure; at other times, they appear as misleading bases for parliamentary law, tainted by their lack of legitimacy. Given that such sources are invoked in Macau, it is essential to address these ambiguous typologies in our examination of the sources of the legislative procedure.

It is crucial to consider, when addressing these non-formal and unwritten

²⁰¹ A relevant and revealing work on these issues is Diogo Freitas do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004), a compilation of studies (legal opinions, *Pareceres*). The core question was conferring flexibility to the *legislative procedure* by using one of these non-formal (or informal) routes. The aim was to clarify which source would be admissible, for example, customs (and, if so, whether *praeter* or *contra constitutionem*), conventions and practices. See also, Fabio Pascua Mateo, *Fuentes y control del Derecho Parlamentario y de la Administración Parlamentaria* (Centro de Estudios Políticos y Constitucionales 2014) *passim*, in particular, 77 et seq.

²⁰² In this regard, there are some authors who speak of an “*informal parliamentary law*”: with several classifications, Renato Ibrido, ‘Prima “legge” del diritto parlamentare: l’adattamento. A proposito delle modalità di coesistenza fra Regolamenti delle Camere e fonti non scritte’ (*federalismi.it*, 23 July 2018), downloaded on <<https://flore.unifi.it/retrieve/e398c37d-e893-179a-e053-3705fe0a4cff/Prima-“legge”-del-diritto-parlamentare-l’adattamento.-A-proposito-delle-modalità-di-coesistenza-fra-Regolamenti-delle-Camere-e-fonti-non-scritte.pdf>>.

²⁰³ Jorge Miranda, *Direito Constitucional*, vol V (Coimbra Editora, 2009) 261.

²⁰⁴ Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario (ponencia general)’ in *Estudios de Derecho Constitucional* (CEPC 2009) 668.

sources,²⁰⁵ whether they go *beyond* the formal written norms or conflict with them.²⁰⁶

Naturally, their value and admissibility shall vary on a case-by-case basis.

11.2 Customs

Customary law in general, regardless of its modalities and admissibility, is recognised as having little real importance as a source of law in Macau: “In the case of Macau, one is at a loss to provide a single example of an area of the law where the custom is currently of any degree of importance.” says JORGE GODINHO.²⁰⁷

Custom has been understood, in the theory of the sources of law, as comprising two elements.²⁰⁸ Firstly, the substantive component corresponds to repetitive usage of certain behaviours or practices within a certain circle of subjects. In this case, this pertains to the actions of the bodies and Members of the Legislative Assembly and, perhaps, third parties that relate therewith due to their functional roles. Secondly, there’s a referential, subjective, or psychological element, encapsulated as the entrenched conviction that such behaviours are mandatory and need to be respected by the community, ie the so-called *opinio juris vel necessitates*. As HANS Kelsen taught, “is an essential element of a

²⁰⁵ Customs, usages, and practices will always be unwritten, whereas conventions, precedents, and *intra-parliamentary case-law* may or may not, be subject to written form. Evidently, it is much more difficult to interpret and find precise definitions and meanings in less formal or unwritten sources: “Therefore, in most institutionalized settings such as parliaments the truly important rules are usually formalized. Formal rules governing the conduct of parliamentary work are typically contained in the constitution and standing orders or rules of procedure of parliaments.”: Wolfgang Muller and Ulrich Sieberer, *Procedure and Rules in Legislatures*, in Martin Shane and Thomas Saalfeld and Kaare Strøm (eds.), *The Oxford Handbook of Legislative Studies* (Oxford University Press 2014) 314.

²⁰⁶ There are those who, just by appealing the principle of legality, summarily dismiss the validity of this type of sources, when such are not in conformity with the formal written sources. In other words, these sources do exist, provided that they are subordinated to the *legal norms*; see eg Susana Pedroza De La Llave, ‘Las fuentes formales del derecho parlamentario y su normatividad constitucional en México’ (2012) 26 *Cuestiones Constitucionales* 204.

²⁰⁷ Jorge A. F. Godinho *Macau Business Law and Legal System* (LexisNexis 2007) 13. Jorge Bacelar Gouveia states, “The written and legislated character is evident in the fact that the functioning of Macau’s legal system is based on legislative acts, other sources of a customary nature being inoperative.”: Jorge Bacelar Gouveia, ‘Macau no Direito Constitucional de Língua Portuguesa’ in *Direito Constitucional de Macau* (IDILP 2012) 195. See in general João Baptista Machado, *Introdução ao Direito e ao Discurso Legitimador* (Almedina 2014) 161: “In a modern, strongly dynamic and differentiated society, there is little possibility of the formation of law through a customary route”, notwithstanding the existence of derogating custom (disuse). See however Sun Tongpeng, ‘Uma Reflexão Sobre a Localização Jurídica de Macau’ (1998) 42 *Administração* 1005, 1008–09, who attaches particular value and importance to custom as “living law” in the regulation of Macau’s society.

²⁰⁸ See, for example, Marcelo Rebelo De Sousa and Sofia Galvão, *Introdução ao estudo do Direito* (Lex 2000) who exclude a range of requirements from custom, stating that “Custom only requires two elements. the usage and the conviction of the mandatory nature thereof.”: 150–151. To which, sometimes, a third component is added: duration, ie the period necessary for the custom to consolidate itself as a source of law, considering that the requirement that “custom, to be a source of law, has to last since time immemorial – ie that living men at a given moment do not recollect when the usual practice began — ensuring that everyone remembers that it has always been as thus”: Diogo Freitas Do Amaral and Ravi Afonso Pereira, *Manual de Introdução ao Direito I* (Almedina 2014) 373. Although the notion of time in our contemporary society seems to point to a greater speed, as everything moves faster, for these purposes, the idea of a reasonable duration remains relevant, ie although a very long duration or a firm or deep-seated remoteness in time may not be required, it is clear that a custom cannot be constituted rapidly, from *yesterday*’s practice, as such immediacy would perhaps be unsteady and contentious.

customary fact. In other words: the constitutive acts of a custom are performed with the conviction that such acts must be performed.”²⁰⁹ However, he immediately highlights a proviso: “This conviction presupposes, however, an act of individual or collective will, the subjective meaning of which is that we must conduct ourselves in accordance with the custom.”²¹⁰

A word now in particular to constitutional customs: ‘One says that are constitutional those customs that are established by virtue of the constitutional bodies interactions with each other’²¹¹, hence a specific delimitation regarding its origins (constitutional bodies) is needed in order to label a certain customary rule as a constitutional customary one.

Regardless of whether the express acceptance of custom, as a source of law, by written laws is deemed unnecessary, the Civil Code indeed omits any reference thereto, when establishing the sources of law in Macau.²¹²

In the Basic Law, there is but a single reference to custom²¹³ and it emerges out of place *vis-à-vis* the constitutional framework on the sources of Law (Article 8 of the Basic Law).²¹⁴

In contrast, the HKSAR Basic Law establishes: “The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation

²⁰⁹ Hans Kelsen, *Teoria Pura do Direito* (Arménio Amado Editora 1984) 314.

²¹⁰ *ibid.*

²¹¹ Riccardo Guastini, ‘Costumbre Y Convenciones Constitucionales’, in *Estudios de teoría constitucional* (FONTAMARA 2007) 241.

²¹² João Gil de Oliveira and José Cândido de Pinho, *Código Civil de Macau — Anotado e Comentado*, Livro I, vol I (CFJJ 2018) 84 et seq.

²¹³ Article 42: “The interests of residents of Portuguese descent in Macau are protected, under the terms of the law, by the Macau Special Administrative Region. Their customs and cultural traditions must be respected.”: following a similar provision in the Joint Declaration. Underlining this fact, Jorge Bacelar Gouveia, ‘Macau no Direito Constitucional de Língua Portuguesa’ in *Direito Constitucional de Macau* (IDILP 2012) 95–96, the author states that the treatment of custom by the Basic Law is “enigmatic” in multiple aspects. Affirming that this constitutional norm may be faced with “The possibility of limiting the law by custom”: João Gil de Oliveira and José Cândido de Pinho, *Código Civil de Macau — Anotado e Comentado*, Livro I, vol I (CFJJ 2018) 86. One should recall that in other legal orders, including some from the same legal family, it is possible to find examples of references to custom in the specific subject-matter of the sources of law, for example, in the Constitution of East-Timor, Article 2, paragraph (4): “The State recognises and values the norms and customary usages of East-Timor that do not contravene the Constitution and the special legislation on customary law.”; see Jorge Bacelar Gouveia, ‘Macau no Direito Constitucional de Língua Portuguesa’ in *Direito Constitucional de Macau* (IDILP 2012) 501 et seq.

²¹⁴ “Laws, decree-laws, administrative regulations and other normative acts previously in force in Macau are maintained, except to the extent that any contravene this Law or are subject to amendments in accordance with legal procedures, by the legislative body or by other competent bodies of the Macau Special Administrative Region.” In the residuary category “other normative acts”: I believe one should include other formal written sources or types of enactments, first of all due to the wording used. Examples: (normative) resolutions, the (former) Legislative Diploma, the (former) (Provincial Decree), etc See also Article 11 of the Basic Law: “No law, decree-law, administrative regulation or normative act of the Macau Special Administrative Region shall contravene this Law.”

and **customary law**²¹⁵ shall be maintained”.²¹⁶ (boldface added). This situation is entirely to be expected, as the neighbouring region’s legal system belongs to the Common Law family, wherein custom has a totally different relevance as a source of law.

Moving along, deeper, into the discussion.

In relation to the *default* source²¹⁷ of our legal system (law in a substantive sense), customs may be positioned, in their intent, as either *secundum legem*, *praeter legem* or *contra legem* norms. These three types of customs have different outcomes.

The *secundum legem* (ie in accordance with written law) customs, even though they may in fact exist (or have existed), namely by having arisen prior to the written norm or law into which they were replicated, shall not be relevant to my study. Such customs do not modify, create, nor derogate any written norm *already* in existence, whichever the latter may be and whatever its antiquity.

As to the *praeter legem* (ie outside of written law) customs, I accept their possible existence and validity. Specifically, they could serve as a possible source of rules that emerged for the interpretation of, and the filling of *lacunae* detected in written norms of the Basic Law and of the Rules of Procedure. These customs might act as instruments for the “clarification, development and adaptation to the needs of social evolution.”²¹⁸ In a later chapter I shall extol a few examples, like the formal subsequent versions (second, third, fourth, and so forth) of Government bills, a reality not foreseen under the Rules of Procedure. This discussion may highlight the functionality of customs in the broader context of the Basic Law as integral elements of constitutional law application.²¹⁹

Turning to the *contra legem* (ie against written law) customs,²²⁰ one must, among other steps, to *calibrate* the custom in question. In theory, if one does not reject the constitutionality of *contra legem* customs, the result would be the supremacy of the customary rule over the Rules of Procedure. The resulting validity and normative force of such a scenario seems suspect, especially when considering the Basic Law’s status as a formal constitutional text.

As the sentiment goes, “The legal force of the formal Constitution repels it in

²¹⁵ On the meaning of custom as a source of law and its application in Hong Kong: Yash Ghai, *Hong Kong’s New Constitutional Order* (Hong Kong University Press 1999) 347 et seq.

²¹⁶ Article 8 of the HKSAR Basic Law. See also, with some similarity with the aforementioned Article 42 of the Basic Law of Macau, Article 40: “The lawful traditional rights and interests of the indigenous inhabitants of the “New Territories” shall be protected by the Hong Kong Special Administrative Region.”

²¹⁷ Note that this abundantly used tripartite classification of customs, as a source of law, rests on the relationship *vis-à-vis* written law; as if loosening, or such classification thus conveying, the idea of custom as a fully autonomous source.

²¹⁸ Jorge Miranda, *Manual Direito Constitucional II* (Coimbra Editora 2007) 149.

²¹⁹ Gomes Canotilho, *Direito Constitucional e Teoria da Constituição* (7th edn, Almedina 2003) 862. According to this scholar, a custom *contra constitutionem* shall not cease to be an unconstitutional custom; the constitutionalisation thereof shall require an amendment to the Constitution.

²²⁰ This may be a positive phenomenon, ie both in the creation of norms, and in the derogation of written norms — be these constitutional, legal or procedural — which shall thus fall into disuse.

principle,”²²¹ and it’s worth noting that the Rules of Procedure predominantly effectuate the fundamental framework contained in the Basic Law. This powerful argument is not, however, absolute; certain scenarios might allow *contra legem* customs to take root, such as if there are norms in the Basic Law that yield more than one meaning. In a graver scenario, due to the lack of a veritable system of judicial review for constitutional conformity, deviations from the Basic Law’s constitutional framework might persist over time, potentially morphing into customs.²²² Still, even if a *contra legem* customary rule were to emerge, an outstanding issue would remain: assessing the admissibility thereof in light of our formal constitution called Basic Law.

I continue to lean towards the refusal of said admissibility, ie to a departure from the concept of customs as a source of law endowed with normative-constitutional force. Instead, I prefer to reduce their legitimacy to that of usages, the validity of which would depend on conformity with the fundamental law. As GOMES CANOTILHO rightly declares, “the existence of unwritten rules derogating constitutional procedural norms is peremptorily excluded even if the intent is to confer unto such rule the degree and strength of constitutional custom.”²²³ On usages in non-compliance with the parliamentary rules of procedure, he adds: “with the consensus of the entire Assembly, there is the possibility of single derogations of a few procedural rules, excepting those codified in the Constitution itself.”²²⁴

In other words, even if there might possibly come into being a parliamentary custom contrary to a norm or principle of the Basic Law — for example, an alleged custom (which I shall later deny herein) that there is no supervening legislative initiative by Members with respect to any and all Government bills — such custom would be unconstitutional. The constitutionalisation and full effectiveness of said custom could only be carried out by means of an amendment to the Basic Law itself, irrespective of modifications to other sources of legal norms.

The constitutionalisation of parliamentary law creates a space of normative unavailability to parliaments themselves, pertaining to the constitutionally enshrined parliamentary norms, thus entailing the eradication “of normative or customary mutations. The contravening procedural norm²²⁵ or usage may not prevail over the letter of the

²²¹ Jorge Miranda, *Manual Direito Constitucional II* (Coimbra Editora 2007) 149, and Jorge Miranda, ‘Caducidade de normas constitucionais’ (2014) 146 *O Direito* 285.

²²² Miranda, *Manual Direito Constitucional II*, 150.

²²³ Gomes Canotilho, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 85.

²²⁴ Gomes Canotilho, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 85. See also Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario (ponencia general)’ in *Estudios de Derecho Constitucional* (CEPC 2009) 673.

²²⁵ In the sense of procedural rule.

constitutional norms.”²²⁶

The extreme rigidity of the Basic Law, characterised by its inherent statism, might theoretically pave the way for the emergence of customs. However, when anchored to the Joint Declaration and Article 31 of the Chinese Constitution,²²⁷ this rigidity seems to indicate a prohibition against *other alternative means* of constitutional norm-making, that was ponder and considered by the lawmakers.

Finally, we shall address the issue of the duration²²⁸ of a practice. Notwithstanding modern dynamics have somewhat relaxed this criterion, making it less stringent and less rooted in ancient traditions, its significance remains intact. Given the MSAR’s brief history, meeting this criterion, especially concerning the Basic Law and the Rules of Procedure of the Legislative Assembly, seems more daunting.

If an alleged custom *contra constitutionem* is at issue, it may not *ever* be admissible as such, if there is a discrepancy *vis-à-vis* not only an isolated constitutional norm, but also a series of constitutional norms, or if said purported custom involves subverting the Legal Status of the Members of the Legislative Assembly and the constitutional structuring principles of the MSAR’s legal-constitutional order.²²⁹

However, within a limited type of situations, there may occur a possible opening for the admissibility of a custom *contra constitutionem vis-à-vis* the Basic Law. As already alluded to, my position is that the constitutional order of Macau is multi-composed and multileveled.²³⁰ While the Basic Law serves as the cornerstone of the

²²⁶ Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario (ponencia general)’ in *Estudios de Derecho Constitucional* (CEPC 2009) 673.

²²⁷ These three elements, taken together, constitute the constitutional order of the MSAR.

²²⁸ Cf Jorge Miranda, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 99; Diogo Freitas Do Amaral and Ravi Afonso Pereira, *Manual de Introdução ao Direito I* (Almedina 2014) 373.

²²⁹ Jorge Miranda, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 100. Such would be the case in Macau, I believe, for example, in the event of a total and absolute restriction to the Members’ power to introduce amendment proposals to any Government bills. In effect, Article 75 of the Basic Law would come into play, in all its breadth, along with Articles 1, subparagraph (b), 102, paragraph (2), 106, 107 and 124, paragraph (2) of the Rules of Procedure, which, as a whole, implement the Basic Law in this matter.

²³⁰ As I have already written, “Macau’s bloc de constitutionnalité is multi-composed because it is based on norms resting on differentiated legal instruments. On the other hand, I must warn, at the outset, that my position is subject to profound criticism, in particular (or almost solely) regarding the Joint Declaration as a constitutive and constituent element of the Macau Constitution. The multi-origin of norms with a constitutional value and function also results from an (almost necessary) multilevelled constitution. Ie the *bloc de constitutionnalité* emerges in a differentiated order and does not have a homogeneous legal force. Finally — also accustomed to dissent — the normative document called Basic Law corresponds, at least to some extent, to the formalised Constitution of Macau. The Basic Law is the main constitution of Macau, rather than the supreme one: it is the main normative source or supplier — in terms of quantity and scope, as well as the structuring, articulation and stabilisation of values and principles — of Macau’s constitutional order. The other sources of this higher order are either sparse (Constitution of the PRC), or have a guiding function or contain (rich) principles, although scarce in normative development (Joint Declaration).”: Paulo Cardinal, ‘Fragmentos em torno da constituição

MSAR's constitutional fabric, it isn't the sole or primary source. Within the set of sources of constitutional order, the Basic Law isn't preeminent. Instead, it's subordinate to both the Constitution of the People's Republic of China and the Sino-Portuguese Joint Declaration.

If one were to contemplate, for instance, the formation of a *praeter legem* custom by reference to the Joint Declaration,²³¹ with respect to the development or implementation of the principles “*the current social and economic systems in Macau will remain unchanged, as well as the respective way of life*”,²³² and such custom were to be revealed, incidentally, *contrary to the Basic Law*, I would be persuaded to accept such custom, based on the principle of hierarchy within the multi-composed constitutional order of the MSAR.²³³

For the purposes of studying the legislative procedure, one needs to investigate customs which contravene procedural norms:²³⁴ ie a parliamentary custom “*that is a custom related to the Rules of Procedure*”.²³⁵ I shall only address the issue of *contra legem* customs, applying hereto that which I mentioned above regarding the other two modalities of customs.²³⁶

First, recalling that there are norms in the Rules of Procedure that replicate constitutional norms, one may immediately, in this case, exclude the creation of true

processual penal de Macau — do princípio da continuidade ao princípio da dignidade humana’ in Manuel da Costa Andrade and Susana Aires de Sousa and Maria João Antunes (eds), *Estudos em Homenagem ao Prof. Doutor Jorge de Figueiredo Dias*, vol III (Coimbra Editora, 2010) 759–60.

See also, in navigating this idea of multi-composition of the constitutional order (although not including the Joint Declaration), Lok Wai Kin, ‘A Constituição e a Lei Básica são base constitucional da Região Administrativa Especial’ (2010) 88 *Administração* 393, “Therefore, the Basic Law is also one of the constitutional bases of the Special Administrative Region.”; and “The fundamental position on which we must insist is: the Constitution and the Law Basic constitute the constitutional basis of the Special Administrative Region. In principle, in the context of “a country” regulated by the Constitution, we must apply the rules of the Constitution and the Basic Law; only within the scope of the “two systems”: not regulated by the Constitution, do the rules of the Basic Law apply.”: 394–395.

²³¹ Given that “the Joint Declaration is the Grundnorm of the Basic Law”, as I defended in ‘Fragmentos em torno da constituição processual penal de Macau — do princípio da continuidade ao princípio da dignidade humana’ in Manuel da Costa Andrade and Susana Aires de Sousa and Maria João Antunes (eds), *Estudos em Homenagem ao Prof. Doutor Jorge de Figueiredo Dias*, vol III (Coimbra Editora, 2010), 763; for further on this, Armando Isaac, ‘The Constitutional Framework for Legal Co-operation between the “Two Systems” of the “One Country”: the Case of Macau’ (Conference on Mutual Legal Assistance under ‘One Country, Two Systems’, Hong Kong, 1999).

²³² Or other principles enshrined in the twelve fundamental policies for Macau and reaffirmed in the clarification of the Government of the People's Republic of China on the Fundamental Policies Regarding Macau, eg on the principle of a high degree of autonomy, the continuity of fundamental rights or the regional legislative power based on a regional legislative body.

²³³ Perhaps in this case the custom would not exactly become a source of law *per se* but would rather be an expression of the constitutional framework in force, as understood in the fullness of its dimensions and fundamental underlying impetuses.

²³⁴ One could also refer here to the issue of *contra legem* custom in the strict sense, within the scope of the *legislative procedure*, by taking into account, for example, the norms contained in the law on forms and templates of legal enactments.

²³⁵ Miguel Galvão Teles, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 148.

²³⁶ The issue of admissibility of *secundum* and *praeter legem* customs.

customs. A usage, if at all exercised, shall not be transformed into a custom. Second, when examining norms within these Rules intended to develop or implement the Basic Law, a custom in contravention of such procedural norms may be admissible, provided that it does not antagonise the developed or implemented constitutional norm. In other words, it shall not distort, disfigure, nor reduce the function of the latter norm. Third, with respect to other norms of the Rules of Procedure, customs in contravention thereof may also be admissible, provided that the twin elements of a custom are verified: the substantive one and the *opinio juris vel necessitatis*.²³⁷

This discourse inherently underlines the basic principle of the hierarchy of the sources of norms. While a customary norm at the legal or procedural level (as outlined in the Rules of Procedure) may supplant a written norm of the same nature, it cannot derogate a norm with a higher legal value or located at a superior level.

A closing remark to say is that customs, as sources that may reveal norms, are justiciable, in the same way as legal and procedural norms, namely as to their constitutional conformity. The judiciary system's role is of cardinal importance, with special emphasis on the CFA, and without omitting the work that the CSI has performed in such matters, albeit in view of written norms. It remains to be seen how the law, and case-law, will evolve — whether we might, in the future, see *erga omnes* declarations of non-conformity with the Basic Law, with such unconstitutional norms being nullified and voided.

11.3 Usages

Parliamentary usages, similar to customs, rest upon or constitute a repetition or reiteration of determinate behaviours or practices within a certain circle of subjects — specifically, within the bodies and Members of the Legislative Assembly, and perhaps, extending to third parties correlating thereto, within the scope of their functions. Such behaviors predominantly exhibit mere internal or in-house effectiveness,²³⁸ without exerting any

²³⁷ It is appropriate to pose the following question: if there is a usage, and if a conviction of bindingness is created therefrom, yet based on an error about the respective pre-requisites, can such be equated as an error in the formation of the subjective will? Is the *opinio juris vel necessitatis* requires a prior conviction that the written norms — of the Basic Law, of the Rules of Procedure — had already created a certain norm with a definite meaning. In these cases, the custom arises from an erroneous perception of a previously written norm, absent an autonomous conviction of its mandatory nature. For example, Article 75 of the Basic Law, on bills, establishes an area of reserved legislative initiative in favour of the Executive, only mentioning, the latter, the original legislative initiative. What if, erroneously, there is a usage prohibiting the introduction of supervening initiatives in these matters since said norm of the Basic Law also refers to amendment proposals and not solely to the Government's bills? Can a custom be created *contra* the Rules of Procedure in this instance? I believe not. I refuse to countenance such an outlook, as it would truly represent a custom against the constitution and, on the other hand, one should not forget that the alleged custom would have been defectively created in its subjective element, tainted with an error in the *opinio juris vel necessitatis*, particularly in what concerns the conviction on the lawfulness of this behaviour and the root of the mandatory conduct. There may be a mere appearance of a custom here, corresponding to a purported compliance with a norm, which is misinterpreted, thus misleading the relevant actors.

²³⁸ Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 166.

extramural influence. An essential point is the absence of any conviction of a mandatory or compulsory adherence to such behaviours. In opposition to custom, there is a “weakened manifestation of the current trend to attach legal significance to facts”.²³⁹

In other words, “Usages are mainly behavioural habits that acquire relevance as routines adopted in the processing of functional communication between parliamentary operators.”²⁴⁰

“Therefore, because it lacks its own legal quality, the usage does not constitute an autonomous way of creating the Law. It only applies insofar as the law accepts it and to the exact extent of such acceptance.”²⁴¹

Usages may constitute a step in the creation of customs. Until such an event is verifiable, that is, as long as they remain as mere usages, they may be observed or disregarded without any legal sanction or penalty, barring instances when the law mandates compliance therewith. The non-compliance with a usage shall not affect a given legislative procedure, nor may it be justiciable. In any case, as VIEIRA DE ANDRADE opined, “a current procedural praxis contrary to the constitutional text [...] cannot be legitimate if it involves disfiguring or mischaracterising the procedure, such as it has been conceived.”²⁴²

The motivating force for adherence to a usage is rooted “in a certain ‘psychic coercion’ that tradition, and the foreseeable adoption thereof as an exemplary pattern of conduct, exercise”²⁴³ *vis-à-vis* a Member of the Legislative Assembly.

In this regard, the Committee on the Rules of Procedure and Members’ Mandates is competent to “*suggest to the Plenary the modifications [to the Rules of Procedure] that the practice may advise*”, as per Article 26 (e) of said Rules. This norm instils the idea that, until they are inserted into the Rules, by sovereign decision of the Plenary, the usages are devoid of binding effect — even internally. Such a conclusion would reinforce my understanding on the value of usages: these are not mandatory; yet they may be *converted* into *normal* norms, to be contained in the Rules of Procedure.

Conclusively, an exemplification of usage in action during the legislative procedure is as follows: should a Member opt not to introduce a proposal to amend a Government bill, the rationale behind such behaviour may be traced to the unusual or politically sensitive nature of such an intervention, and not due to any purported recognition of the (non-existent) illegality of such introduction, nor to any alleged

²³⁹ Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 166.

²⁴⁰ César Delgado-Guembes, *Teoría de las Fuentes del Derecho Parlamentario* (PERU 2009) 118.

²⁴¹ Marcelo Rebelo De Sousa and Sofia Galvão, *Introdução ao estudo do Direito* (Lex 2000) 155.

²⁴² Vieira de Andrade, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 211.

²⁴³ Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 166.

conviction of a (non-existent) prohibition in doing so. Several reports of the Legislative Assembly's committees precisely highlight this aspect.

Moreover, some distinguished Members have, in fact, introduced amendment proposals to Government bills. Such amendments have not seen the light of day, either because the respective proposals were not approved or, worse still, were thwarted by the President of the Legislative Assembly, through the issuance of orders of rejection. This non-admission of amendment proposals by the President is in breach of Article 75 of the Basic Law and of several procedural rules, as I shall detail below.

11.4 Practices

Practices are basically usages: “The parliamentary practices, in short, are usages detached from any conviction of mandatory behaviour.”²⁴⁴ In the field of parliamentary law, it has perhaps become commonplace to speak of usages as practices. I have made this autonomous reference to practices, not because one should see them under different guises, but precisely to point out that they are often confused or belong to a single typology.²⁴⁵ There are, however, scholars who distinguish between parliamentary practices from the usages, under a “logic that, in each period, befits the processes and the organisation according to the vision of the parliamentary alliances or majorities”, ie based on a limited period and on the political chessboard.²⁴⁶

I would like to remind the reader of the competence of the CRPMM to “*suggest to the Plenary the changes [to the Rules of Procedure] that the practice may advise*”, as per Article 26, subparagraph (e) of said Rules. This norm instils the idea that, until they are inserted into the Rules, the practices are devoid of binding effect. Such a conclusion would reinforce my understanding of practices as mere usages.²⁴⁷

11.5 Conventions

Defining conventions proves elusive, as their implications fluctuate dependent upon the

²⁴⁴ Diogo Freitas Do Amaral, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 41. See also Gomes Canotilho, *Direito Constitucional e Teoria da Constituição* (7th edn, Almedina 2003) 864, referring to constitutional practices “*mere usages*”.

²⁴⁵ See, for example, Jorge Miranda, *Manual Direito Constitucional II* (Coimbra Editora 2007) 156, and, in a joint assessment, Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 166, et seq.

²⁴⁶ César Delgado-Guembes, *Teoría de las Fuentes del Derecho Parlamentario* (PERU 2009), 117.

²⁴⁷ Cf the case of the modification of Article 110, paragraph (1), regarding the timing of the cancellation of a legislative initiative, ie determining the moment up until which a legislative initiative may be withdrawn. Some practices, shall we say, have allowed the withdrawal of Government bills after the end of the general debate — even after its approval on the whole and after the conclusion of the committee's work, in clear violation of the solution in force until 2017. At present, the regulatory procedural norms have followed that practice, henceforth legitimising cases of cancellation after approval of a bill on the whole.

matrix of the legal system into which they are inserted.²⁴⁸

In any event, inherent to the idea of a convention is precisely an agreement involving two parties²⁴⁹. These bilateral agreements do not create legal obligations, but only political ties that may be expressed or implied. They may serve to implement vacuous spaces left by legal regulation, to overcome difficulties in the specific application of a given constitutional, legal, or procedural norm, or even to seek to replace the application of constitutional, legal, or procedural norms with a new, alternative, *political regulation*,²⁵⁰ if such is possible. I do not recognise any legal value stemming from conventions; with respect to the last example, the principle of constitutionality and the principle of legality would be jeopardised.

On the legislative procedure,

“It is important to start by emphasising a firm point — the flexibility of the parliamentary legislative procedure, whether by written rules of procedure or by unwritten parliamentary conventions, encounters a first and insurmountable limit in the norms and principles of the Constitution”.²⁵¹

In Macau, it will not be impossible to uncover conventions of the first type, namely concerning the manner in which the presence of the Chief Executive in Plenary unfolds. Within the scope of the legislative procedure, it may be possible to detect conventions relating to the timing of introduction, the pace, and the priority for appraisal/examination, regarding a given Government bill. Or conventions on the simultaneous introduction and debate of several Government bills related to each other, for the proponent’s convenience. Perhaps, finally, in the event of *late or untimely withdrawals* of Government bills — essentially, a misnomer for the cancellation of the respective legislative initiative.²⁵²

11.6 Precedents

Precedents, inherently non-judicial in this discourse, can be characterised as “practices

²⁴⁸ Cf. Jorge Miranda, *Manual Direito Constitucional II* (Coimbra Editora 2007) 156, Gomes Canotilho, *Direito Constitucional e Teoria da Constituição* (7th edn, Almedina 2003) 863, et seq; Diogo Freitas Do Amaral, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 40, Riccardo Guastini, ‘Costumbre Y Convenciones Constitucionales’, in *Estudios de teoría constitucional* (FONTAMARA 2007) 244 et seq.

²⁴⁹ Either an express one or a tacit agreement, many times these last ones being, in practice, more common, as said by Riccardo Guastini, ‘Costumbre Y Convenciones Constitucionales’, in *Estudios de teoría constitucional* (FONTAMARA 2007) 244.

²⁵⁰ See Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 167 et seq.

²⁵¹ Diogo Freitas Do Amaral, ‘Parecer’, in Diogo Freitas Do Amaral and Gomes Canotilho and Jorge Miranda and others (eds), *O Presidente da República e o Parlamento: O procedimento legislativo* (Assembleia da República 2004) 23.

²⁵² Precisely what happened with the Government bill entitled “Framework for guarantees applicable to the holders of the office of Chief Executive and the principal officials, before assuming office, while in office and after leaving office.”: as I shall show below.

relative to specific questions of the jurisdictional-political procedure, legislative procedure”²⁵³, ie they originate from the solution decided upon a given case to become the basis for deciding similar situations. It is unnecessary to have a reiterated practice, which may or may not exist, “because a simple episodic fact,²⁵⁴ a single conduct, may give rise to an enabling or legitimising precedent for a future similar behaviour in view of a similar factual scenario.”²⁵⁵

A precedent is a self-binding behaviour practiced by a body or the holder of an office. I consider that the nature of a precedent is political, rather than legal.²⁵⁶ Therefore, a precedent shall not be positioned to contradict written norms, be they constitutional, legal, or procedural. There are, consequently, wide areas, vast matters, which are forbidden to conventions.²⁵⁷

In this category one may include the acceptance of bills — with delayed distribution thereof, until they are rendered fully bilingual, in the event of introduction by the proponent in only one of the official languages of the MSAR — and, possibly, in between this typology and that of the usages, the submission of bills for *prior assessment* by the Legislative Assembly’s Legal Advisory Staff, in order to determine their conformity with the applicable parametric normative levels.

11.7 Intra-Parliamentary Case-Law

This concept may somehow be seen as an upshot from the previous notion of precedent, especially when viewed as an isolated episode, being embodied in “the sum of precedents that establish unitary decisions [...] arising in parliamentary life”.²⁵⁸ Decisions live in parliament and its constituent bodies.

Another angle of approach would be to grant true jurisdictional — in the sense of decision-making on cases — competence, mainly as a way of filling *lacunae* or establishing stable interpretations of norms in certain circumstances. Differently from the precedents, in these cases one would see the allocation of specific competences to clarify any doubts and solve conflicts.

The decisions thus made would constitute *intra-parliamentary case-law*, with

²⁵³ Francisco Zúñiga Urbina, ‘Fuentes del Derecho Parlamentario (Apuntes acerca del Reglamento Parlamentario)’ (1997) 18 Revista de Derecho de la Universidad Católica de Valparaíso 277, 279. See also Fabio Pascua Mateo, *Fuentes y control del Derecho Parlamentario y de la Administración Parlamentaria* (Centro de Estudios Políticos y Constitucionales 2014) 79, et seq.

²⁵⁴ Hence it is not to be confused with a custom.

²⁵⁵ Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 170.

²⁵⁶ Admitting cases of legal bindingness, Paulo Otero, *Direito Constitucional Português Volume II – Organização do Poder Político* (Almedina 2010) 170.

²⁵⁷ Cf although with a categorisation that may not be entirely coincidental, Fabio Pascua Mateo, *Fuentes y control del Derecho Parlamentario y de la Administración Parlamentaria* (Centro de Estudios Políticos y Constitucionales 2014) 87, et seq.

²⁵⁸ Cf Francisco Zúñiga Urbina, ‘Fuentes del Derecho Parlamentario (Apuntes acerca del Reglamento Parlamentario)’ (1997) 18 Revista de Derecho de la Universidad Católica de Valparaíso 277, 279–280.

the proviso that such are in-house decisions, taken in parliaments and their bodies, in the Legislative Assembly.

The second perspective has a normative basis in the Legislative Assembly's Rules of Procedure, in several aspects and with different actors.

In effect, Article 159²⁵⁹ of the Rules of Procedure establishes:

“(Interpretation and solving of omitted cases)

1. The Board is competent to interpret the present Rules and to solve the omitted cases, being able, for this purpose, to consult the Committee on the Rules of Procedure and Members' Mandates.

2. The deliberations of the Board taken under the previous paragraph, when written, are published in the Series II of the Legislative Assembly's Official Bulletin”.

This is the main seat of intra-parliamentary case-law in the MSAR, and the Board of the Legislative Assembly is the competent body. The express admissibility of unwritten intra-parliamentary case-law is in the letter of the norm — “deliberations, when written” — allowing, therefore, for non-formalised decisions.

There are a few known cases of the exercise of this competence in the Legislative Assembly's procedural practice. The immediate limit of this *intra-parliamentary case-law* is provided by the norm, constricted in its scope to matters relative to the application of the Rules of Procedure: interpretation shall follow the normal rules, eg one may not interpret a norm without a minimum support in the respective text;²⁶⁰ and the solving of omitted cases shall require the real existence of lacunae that need to be filled.

Another lane of *intra-parliamentary case-law* should be pointed out, with a different protagonist, and which may, laterally, impact the legislative procedure: Article 26, subparagraph (f) of the Rules of Procedure: the Committee on the Rules of Procedure and Members' Mandates is competent *“To decide, at the request of the President of the Legislative Assembly, the Board, or the President of any committee, on conflicts of competences between committees.”*

²⁵⁹ See also Article 18, subparagraph (b) of the Rules of Procedure.

²⁶⁰ For example, in the former wording of Article 110 of the Rules of Procedure, *“Once any bill has been accepted, [...], its authors or authors may withdraw it until the end of the general debate [...]”*. Under this norm, which was replaced under Resolution No. 2/2017 — bringing profound changes to the Rules of Procedure — the proponent could not have withdrawn — or should not have been authorised to do so by the Legislative Assembly — the Government bill entitled *“Framework for guarantees applicable to the holders of the office of Chief Executive and the principal officials, before assuming office, while in office and after leaving office.”*: since such bill had already been subject to general debate and been approved on the whole. Precisely with the modifications made in 2017, the aforementioned norm, paragraph (1) of Article 110 (paragraph [2] was unfortunately repealed) has a new wording: *“The authors of a bill may withdraw it until the debate on the specifics thereof commences”*: thus enshrining into the body of the Rules of Procedure a previous practice, which was devoid of any legal or procedural grounding — there was neither a *lacuna*, nor did the text then in force allow for the solutions that were practised.

At the level of these informal sources, one could, perhaps, also draw two additional spheres into this reflection: **legislative ethics**²⁶¹ and **rules of courtesy**.²⁶²

12. Final Remark

At the end of this chapter, one of my key ideas shall have been ingrained: the regulation of the MSAR's legislative procedure does find its centrality and fulfilment in the Rules of Procedure of the Legislative Assembly, but not exclusively therein.

There is, as I have tried to show, a constellation of other normative acts that converge in the governing of the legislative procedure, especially when the legislative procedure is seen as the set of all the norms that regulate all the parliamentary acts²⁶³ and all the moments that result, ultimately, in the normative act designated as Law, as a *complete* and effective legislative act.

²⁶¹ In addition to the legal rules established in Law No. 3/2000 (On the Legislature and the Legal Status of the Members of the Legislative Assembly), especially Articles 34 et seq and Article 38, which establish ethic-based rules. See, for an overview, although seemingly suggesting that the rules of parliamentary ethics must all be contained in written norms, namely laws, Efrén Chávez Hernández, 'Ética En El Poder Legislativo' *"Parliamentary ethics shall not be but ethics applied to the representative institution, which one may designate as parliament, congress [...] assembly, inter alia."* (2006) 115 Boletín Mexicano de Derecho Comparado 109.

²⁶² Cf Jorge Miranda, *Manual Direito Constitucional II* (Coimbra Editora 2007) 157, Fabio Pascua Mateo, *Fuentes y control del Derecho Parlamentario y de la Administración Parlamentaria* (Centro de Estudios Políticos y Constitucionales 2014) 103, et seq. I refer here to norms of social conduct, of civility, of correction that, prima facie, have very little impact within the scope of the legislative procedure, but should not be absolutely excluded therefrom. For example, in the name of courtesy, the Committee Reports are sent to the Government as soon as signed, ie before the general procedural deadline of five days. It could also be under a rule of courtesy that, in addition to Members, everyone who takes the floor in a Plenary meeting should do so standing; it is a behaviour that does not occur, perhaps because, under the terms of Article 70, paragraph (2) of the Rules of Procedure, *"When addressing, Members may speak standing or seated."*

²⁶³ On this notion of *parliamentary act*, ie an act that manifests itself within the scope of the constitutionally established parliamentary faculties, functions and powers, including acts by third parties, within the scope of the parliament (eg external legislative initiative, and speaking of procedurally recognised subjects in parliamentary processes), César Delgado-Guembes, 'Teoría del Acto Parlamentario' in *Derecho Parlamentario* (USMP 2009) 352 et seq. The author also refers to acts in Parliament and acts before Parliament, which, according to his notion, would no longer be parliamentary acts.

