



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

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## **Committee against Torture**

### **Forty-fifth session**

1-19 November 2010

### **List of issues prior to the submission of the fifth periodic report of the Macao Special Administrative Region (CAT/C/MAC/5)\***

### **Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations**

#### **Articles 1 and 4**

1. In the light of the Committee's previous concluding observations (paras. 4 and 5),<sup>1</sup> please provide information on efforts made by the Macao Special Administrative Region (Macao SAR):

(a) To adopt a definition of the term "public official" fully in line with article 1, paragraph 1, of the Convention, so as to include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity;

(b) To use a wording of the definition of torture similar to that used in the Convention so as to ensure that all elements contained in article 1, including discrimination of any kind, are covered in the definition;

(c) To define and criminalize torture in its Criminal Code in full conformity with articles 1 and 4 of the Convention.

2. Please clarify the status of the Convention in the domestic legal system. Have there been any cases of direct application of the Convention by the courts, including application of the definition of torture in compliance with article 1? Have the rights contained in the

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\* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies to this list of issues will constitute the next periodic report under article 19 of the Convention.

<sup>1</sup> Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/MAC/CO/4.

Convention been invoked by domestic courts, either as a ground for a case or as interpretative guidance for legal norms?

## Article 2<sup>2</sup>

3. Please elaborate on the steps taken towards the establishment of a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

4. Please provide information on the measures taken or envisaged to strengthen the efforts of Macao SAR, including allocated resources, in adequately preventing, combating and punishing all forms of violence against women and children, notably trafficking in persons. In the light of the Committee's previous concluding observations (para. 9), please elaborate on the measures taken or envisaged:

(a) To investigate all cases of human trafficking, including of non-residents, and strengthen its efforts to prosecute and punish the perpetrators;

(b) To increase protection, including recovery and reintegration, to trafficked persons, especially women and children. What are the types of compensation and protection provided to victims and what are the relevant procedures?

(c) To strengthen cooperation, including multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for trafficking as well as strategies for supporting the victims, with the authorities of countries from or to which individuals are trafficked in order to combat this practice;

(d) To fully implement Law 6/2008 on the fight against trafficking in persons.

5. Further to the follow-up replies of Macao SAR (CAT/C/MAC/CO/4/Add.1), please respond to the following questions.

(a) Please provide further details on the cases of trafficking in persons, including: (i) the reasons why 7 of the 19 cases of trafficking identified in 2008 were dismissed; (ii) the punishments meted out to the perpetrators of the 5 cases confirmed as cases of trafficking; (iii) the outcomes of the cases that were pending at the time of the follow-up submission; and (iv) measures of redress, including compensation, provided to the victims identified in these cases;

(b) Please elaborate on the measures taken to ensure that two 24-hour hotlines for victims of trafficking are fully operational. Please indicate how these hotlines are advertised and how accessible they are to possible victims of trafficking. Please provide detailed information on the number of cases of trafficking reported to both these hotlines each year since their creation, how many of these were reported to law enforcement personnel for investigation, and the outcomes of any such investigations;

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<sup>2</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2, paragraph 3, states: "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chap. V of the same general comment.

(c) Please explain the discrepancy between the number of registered incidents and the overall incidents of trafficking;

(d) Please indicate whether the services provided for victims of trafficking, such as counselling, medical care and financial assistance, are available for foreigners. What efforts have been made to improve the protection of foreign victims; do repatriation efforts include an assessment of the safety and security of victims, especially child victims, following return home? Please provide further information on the availability of special assistance programmes provided for victims of trafficking including their location and the length of time for which victims are eligible to receive such services;

(e) Please provide updated information as to the status and terms of the bilateral agreement between Macao SAR and Mongolia, under negotiation at the time of the follow-up submission, as well as the number of cases of trafficking that have been uncovered as a result of it. In addition, does Macao SAR have any other such bilateral agreements with other countries from which there are many reported cases of trafficking, such as the Philippines, the Russian Federation, Thailand, Viet Nam, and countries in central Asia?

### **Article 3**

6. Please provide up-to-date information on any steps taken to ensure that Macao SAR fulfils all its non-refoulement obligations under article 3 of the Convention, in particular to consider all elements of an individual case, and provides, in practice, all procedural guarantees to the person expelled, returned or extradited.

### **Articles 5 and 7**

7. Since the consideration of the previous report, please indicate whether Macao SAR has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.

8. With reference to the Committee's previous concluding observations (para. 6), please provide information on the measures taken by Macao SAR to establish its jurisdiction for all acts of torture committed abroad, in accordance with article 5, paragraph 2, of the Convention. What progress has been made to amend article 234 of the Criminal Code? In addition, please provide examples of current practice with regard to domestic legislation establishing jurisdiction over the offence of torture.

### **Article 10**

9. In the light of the Committee's previous concluding observations (para. 7) and further to the follow-up replies of Macao SAR, please provide information on:

(a) The training provided for medical personnel involved with detainees on the guidelines to detect and document signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Please provide updated statistical information regarding these trainings, specifically as to how many medical practitioners have undergone such trainings to date, disaggregated by medical degree, as well as information on the substance of the trainings. Who carries out such trainings and how often do they take place?

(b) The specialized training for the frontline medical staff of the Public Hospital. Please clarify the process for determining which medical staff are considered “frontline” for the purposes of receiving the specialized trainings cited in the follow-up replies of Macao SAR. Have such trainings been provided also for frontline medical staff carrying out patient examinations in all health-care facilities, including private ones?

(c) Details on the “information on torture” to be disseminated to frontline medical staff of the Prison Establishment, and private hospitals and medical practitioners;

(d) Safeguards in place to ensure that medical personnel are not subject to police intimidation and are able to examine victims independently of the police;

(e) Efforts made to promote, disseminate and use the Istanbul Protocol;

(f) The nature and frequency of the instruction and trainings provided by the Legal and Judicial Training Centre or any other relevant departments (HRI/CORE/CHN/2010 (Part III), para. 91). Please provide further information on training programmes for judges and prosecutors on the specific obligations under the Convention as well as for law enforcement staff on the absolute nature of the prohibition of torture and the treatment of detainees;

(g) Training for law enforcement staff at all levels in areas such as non-coercive investigatory techniques and gender-sensitive training covering the issues related to violence against women, domestic violence and trafficking;

(h) The number of law enforcement personnel who have undergone trainings aimed at combating trafficking in persons. Please indicate who carries out such trainings.

10. Please indicate if Macao SAR has developed a methodology to assess the effectiveness and impact of training/educational programmes on the reduction of cases of torture, violence and ill-treatment, and, if so, please provide information on the content and implementation of such methodology as well as on the results of the implemented measures.

## **Article 11**

11. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report, and the frequency with which they are reviewed, with a view to preventing any cases of torture or ill-treatment.

12. With reference to the Committee’s previous concluding observations (para. 8) and further to the follow-up replies of Macao SAR, please provide updated information on the practical steps taken to align the application of solitary confinement with international standards, ensuring that solitary confinement remains in all cases a measure of limited duration and of last resort. Please provide information on:

(a) Steps taken to provide guidance to those implementing solitary confinement regarding minors (i) by order of a court, (ii) for medical reasons and (iii) as a special security measure;

(b) Data on the frequency, duration and causes of (i) placement of minors between the ages of 12 and 16 in “an individual sleeping room” and (ii) placement of minors ages 17 and 18 into solitary confinement;

(c) Measures taken to fully implement Order 91/DSAJ/2009 (relating to minors aged 12 to 16) and Order 19/SS/2009 (relating to minors aged 17 and 18). Has a monitoring

mechanism been established to ensure adherence to these Orders? In relation to the number of days of the disciplinary measure mentioned in Order 91/DSAJ/2009, is there a requisite length of time imposed between placements in an individual sleeping room or a maximum number of days per year during which a minor can be placed in such a room?

13. Please provide updated information on the number of imprisoned children and the occupancy rate of the accommodation capacities for children since the consideration of the previous periodic report.

14. With reference to the Committee's previous concluding observations (para. 3), please provide information on the practical implementation of the Commission for Disciplinary Control of the Security Forces and Services of Macao. This information should include, if any, the number of complaints lodged, the number and status of investigations, and the findings in relation to those complaints.

### **Articles 12 and 13**

15. Please provide detailed statistical data, disaggregated by crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, prosecutions, convictions and on the penal or disciplinary sanctions applied.

16. Please provide detailed information and the statistical data on complaints, investigation, prosecution and conviction, including the applied punishment, relating to the following:

- (a) Violence against women;
- (b) Domestic violence;
- (c) Trafficking in persons. Please include the number of investigations, prosecutions and convictions under Law 6/2008.

### **Article 14**

17. Please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report in 2008. This information should include the number of requests made, the number granted, the amounts of compensation ordered and those actually provided in each case.

### **Article 16**

18. Please elaborate on progress made by the reform of the juvenile justice system on the basis of restorative justice principles under Law 2/2007 (HRI/CORE/CHN/2010 (Part III), para. 81 (iv)). Has such reform included expanded alternative sentences such as probation, community service or suspended sentences as well as services to assist juvenile offenders with social reintegration?

19. What safeguards are there in place to end the practice of corporal punishment in all settings, including the family and schools?

**Other issues**

20. Please provide updated information on the measures taken by Macao SAR to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

21. Please provide detailed information on the National Security Law, especially with regard to its impact in law and practice on the effective implementation of the Convention. Please comment on reports that vague and broad terms in the National Security Law, *inter alia*, “other grave illegal acts” in article 3, might be misused to criminalize a wide range of activities and need to be defined in accordance with international human rights standards. How many persons have been charged under this legislation?

22. Please comment on reports of negative impacts of the Internal Security Law on human rights activists, given that this law grants the police the authority to prevent entry and to deport non-residents regarded as unwelcome, suspected of transnational crimes or considered a threat to internal security and stability. Please respond to allegations about more than 20 individuals from Hong Kong SAR who had been turned away when they attempted to participate in a demonstration connected to the “national security bill” in December 2008.

23. In the light of the Committee’s previous concluding observations (para. 10), please indicate to what extent the relevant documents have been widely disseminated. Please explain efforts made by Macao SAR to ensure that laws and judgments are available in both Chinese and Portuguese and to deal with the shortage of bilingual lawyers.

**General information on the domestic human rights situation, including new measures and developments relating to the implementation of the Convention**

24. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the domestic level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

25. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the domestic level since the previous periodic report, including on any domestic human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

26. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee’s recommendations since the consideration of the previous periodic report in 2008, including the necessary statistical data, as well as on any events that occurred in Macao SAR and are relevant under the Convention.