



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

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

**Follow-up responses of Macao, China, to the concluding
observations of the Committee against Torture
(CAT/C/MAC/CO/4)***

[8 March 2010]

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

Responses of the Macao Special Administrative Region of the People's Republic of China to the Concluding Observations of the Committee against Torture

Response to the issues raised in paragraph 4 of the concluding observations of the Committee against Torture (CAT/C/MAC/CO/4)

1. In view of the Committee's recommendation and the Macao SAR's concrete situation, specialized training on how to recognize and detect features and signs that may suggest the occurrence of torture shall be provided to the associated frontline medical staff of the Public Hospital (*Centro Hospitalar Conde de São Januário*). This training shall be based on the Istanbul Protocol and other relevant educational and training materials.
2. Furthermore, to ensure that persons who allege or are suspected of being victims of torture are immediately transferred to the Emergency Department of the Public
3. Hospital, and thus enhance both their prompt assessment in conformity with the highest medical and ethical standards and the effective investigation and documentation of such cases, information on torture shall also be extended to the frontline medical staff of the Prison Establishment and of emergency service of private hospitals as well as to private medical practitioners.

Response to the issues raised in paragraph 8 of the concluding observations of the Committee against Torture

4. Paragraphs 115 to 130 of the Macao SAR's part of the reply of China to the Committee's list of issues contain detailed explanations on the application of confinement measures (including to minors). As therein referred, confinement measures are limited to exceptional cases expressly provided for in the law (which clearly states their nature of last resort), their duration is limited (within the Macao SAR's criminal system, there are no unlimited measures of whatever nature) and they are closely monitored (they are under medical control and judicial supervision) (in what concerns minors, please refer in particular to paragraph 129 of the said reply).
5. Indeed, and as also mentioned in the quoted document (see paragraph 37), the key principles of the Macao SAR's criminal justice system are the principles of legality, subsidiarity and necessity. All procedural measures are subject to the *numerus clauses* rule, and must be applied in accordance with the principles of adequacy and Proportionality.
6. Nevertheless, upon consideration of the Committee's recommendation, two written instructions on how to construe the existing legal provisions regarding the application of confinement measures to minors were laid down.

1. In relation to minors from 12 to 16 years old, Order 91/DSAJ/2009, of 9 September, issued by the Director of the Justice Affairs Bureau, reads as follows:

7. "Taking into account that the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish rules that should be complied with within the scope of measures applicable to young offenders, any disciplinary measure that could be interpreted as a cruel, inhuman or degrading treatment, including the measure of solitary confinement, is strictly prohibited;

8. Equally considering that, under Law 2/2007 (Educational Supervision Regime for Juvenile Delinquency), in case a young offender confined at the Young Offenders Institute commits a disciplinary offence during the implementation of this measure of confinement, the Young Offenders Institute may apply to this young offender the corresponding security measures, such as the placement of that young offender in an individual sleeping room for a period that cannot exceed one month;

9. Also bearing in mind that the interpretation of “placement of a young offender in an individual sleeping room” taken literally might instigate the misunderstanding that the legal intention behind it is to place the young offender in an individual sleeping room during the entire day, thus not allowing him/her to participate in any activity, it is therefore important, in order to avoid conflicting interpretations, to clarify the actual substance of the disciplinary measure of “placement of a young offender in an individual sleeping room”:

10. The decision on the application of the measure of “placement of a young offender in an individual sleeping room” should be made with due regard to the seriousness of the offence, the behaviour and the personality of the young offender. This measure can only be applied when the offence committed by the detained young offender is serious and when other types of disciplinary measures are not sufficient to amend his/her error in an efficient manner.

11. The application of the referred measure merely implies placing the young offender to sleep in an individual sleeping room, therefore only during the evening period, and not in one of the collective rooms (please consult the annexed document) so that he/she might better reflect on his/her wrongdoings.

12. The “placement of a young offender in an individual sleeping room” cannot prevent the young offender from continuing to be accompanied and counselled according to his/her educational necessities, nor prevent him/her from participating with other minors in normal activities during daytime (for example, curricular or extra-curricular activities).

13. The Young Offenders Institute should reduce, as much as possible, the number of days of this disciplinary measure that the detained young offender must be subject to, taking specially into account his/her attitude of repentance and his/her behaviour.

Annex

14. Transcript of the contents of page 76 of Opinion 1/III/2007, of the 2nd Permanent Commission of the Legislative Assembly:

15. “The Commission and the proponent have accorded to modify the array of the types of the disciplinary measures, in order to give compliance to the relevant guidelines pertaining to international law that prohibit, in terms of disciplinary matter, the loss of the concessions given to minors or young persons and, moreover, the measures of solitary confinement, which are as follows: (...) (iii) the disciplinary measure foreseen by paragraph 6) of the original version of the Proposal of Law was substituted - ‘solitary confinement in an individual sleeping room for up to one month’ – by a new measure: ‘placement of the young offender in an individual sleeping room, for up to one month.’ The proponent explained to the Commission that this new disciplinary measure implies placing the young offender to sleep in an individual room, therefore only during the evening period, and not in one of the collective rooms used by young offenders.”

(b) In relation to minors from 17 to 18 years old, Order 19/SS/2009, of 31 March, issue by the Secretary for Security, reads as follows:

16. “Taking into account the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is applicable to the Macao Special Administrative Region, as well as the fact that such provisions prevail over internal ordinary law;

17. The Secretary for Security, considering that the Regime on the Implementation of Measures that Deprive Liberty allows for the application of the disciplinary measure of confinement to prisoners, regardless of whether or not they reached 18 (eighteen) years old, which is forbidden by the provisions of the Convention,

Recommends that –

1. The disciplinary measure of confinement referred to in Articles 65(c), 70, 75(1)(g) of Decree Law 40/94/M, of 25 July, all in conjunction, which approves the Regime on the Implementation of Measures that Deprive Liberty, should not be applied to prisoners less than 18 years old;
2. When the opportune revision of the referred Decree Law will take place, it should be considered to better adapt its legal framework to the international law provisions applicable to the Macao Special Administrative Region.

Response to the issues raised in paragraph 9 of the concluding observations of the Committee against Torture

18. The Macao SAR continues to endeavor its best efforts to combat trafficking in persons, especially women and children.

19. As a result of the entry into force of the new law to combat the crime of trafficking in persons, Law 6/2008, of 23 June, the investigation and consequent prosecution of cases of trafficking were intensified.

20. According to available data, the police registered 19 occurrences of trafficking in persons in 2008. After further investigation, 7 of those occurrences were dismissed, 3 were reclassified as crimes of procurement, 5 were confirmed as constituting crimes of trafficking and the corresponding accusations took place, and 4 are pending. From the referred 5 confirmed trafficking cases, one of the resulting criminal proceedings already reached its term in first instance, and led to the conviction of one person for 2 crimes of trafficking.

21. Sexual exploitation was the purpose of trafficking in all cases (confirmed and pending). Some of them involved multiple victims. The alleged victims (14) were all young females (with ages ranging from 16 to 24 years) from Asia (12 from Mainland China and 2 from the Macao SAR). The trafficking suspects (12 persons, 7 males and 5 females) were also all from Asia (10 from Mainland China and 2 from the Macao SAR).

22. As of October 2009, 4 occurrences of trafficking in persons were registered. From those, one occurrence was dismissed, one was reclassified as crime of procurement, and 2 are pending.

23. In what relates to the protection of trafficked persons, especially women and children, it should be noted that, under the auspices of the *Commission to Follow Up the Implementation of Dissuasive Measures against Trafficking in Persons* (Commission against Trafficking), several actions were carried out, such as training, awareness campaigns, setting up of hotlines, assistance programmes for victims of trafficking, setting up of operational guidelines.

24. Specific training has been – and still is – being provided to law enforcement agents, social welfare staff and health care professionals.

25. The said training comprises methods of identification of victims, how to deal with victims, including ethical and safety recommendations for interviewing and interviewing skills, possible physical and psychological health impact, *etc.* Training materials from the United Nations and other international organizations are being used.

26. Simultaneously, two 24-hour hotline services were launched; one is operated by the Public Security Police (PSP) and the other by the Women's General Association of Macao, a local NGO, but financed by the Social Welfare Bureau. Calls are handled by experienced social workers and, if appropriate, screened by the relevant law enforcement authorities or judiciary.

27. To increase efficiency, police officers are trained to improve their skills in how to deal with alleged victims' phone calls. A training programme entitled '*Psychological status and handling of victims of human trafficking and of sexual abuse*' was conducted by a clinical psychologist from the Social Welfare Bureau; 226 police officers from the '*Action and Control Centre*' of the PSP attended that training.

28. It should be pointed out that false documents detecting techniques were also improved through training courses organized in cooperation with the European Union (e.g. Detection of Forged Travel and Identification Documents, held under the ANEAS programme) and training on the improvement of skills to identify victims of trafficking in persons was provided by the International Organisation for Migration.

29. A special team within the PSP was set-up to combat the crime of trafficking; 11 of its police officers completed a specific programme on protection and assistance to victims of trafficking.

30. In 2008, a new module on the law, prevention, investigation and suppression of the crime of trafficking in persons and related crimes was introduced in the course for the professional promotion of police officers. A total of 150 police officers of the PSP attended this course. The said module was also introduced in the curricula of the Police Academy. In 2009, specialized training on the subject-matter was also organized for 286 police officers.

31. In addition, the Paediatric Department of the Public Hospital and the Macao Paediatric Society co-organized a training session, aimed at topics of child abuse. Paediatrics and other medical staff are prepared to report any suspicious case of child abuse to the relevant law enforcement agencies.

32. To improve the coordinated performance of the different Government entities in charge of protection to victims, an arrangement was concluded between the law enforcement agencies, the Social Welfare Bureau and the Health Bureau. This arrangement pertains to referral of victims for purposes of assistance and/or protection, training of specialized staff on how to deal with victims, *etc.*

33. In this respect, the Commission against Trafficking has been fostering partnership with and between public entities, institutions and local NGOs in order to increase mutual understanding of trafficking issues and the sharing of information. By stimulating a community's response, it expects to help to build in the Macao SAR the necessary capacity to collect data and better assess the problem.

34. Special assistance programmes for victims were designed following the new law on trafficking.

35. Assistance to victims is focused on the particular needs of victims, including the facilitation of their physical and psychological recovery and social reintegration. Under the available assistance programmes, the necessary clinical, psychological, social, financial and legal assistance, as well as counselling, shelter, occupational training and assurance of personal safety are ensured to victims.

36. The Social Welfare Bureau being the main entity responsible to provide such assistance has within its staff specialized personnel and works in close cooperation with other governmental departments and NGOs (e.g. the Women's General Association of Macao, the Macao Association against Child Abuse and the Good Shepherd Centre).

37. The Health Bureau also plays an important role in what concerns assistance to victims. The Social Work Division of the Public Hospital deals with cases of abuse and

assistance requests. It provides psychological support and counselling to victims and child victims, assesses their family situation, examines whether they are in danger, *etc.* This Division may refer certain cases to other entities for follow-up, in order to assure the safety of victims or any other special need and care.

38. Victims of trafficking are entitled to protection, including special police protection if their lives are in danger, to stay in the Macao SAR while investigation and proceedings are taking place, to an interpreter, legal counselling and aid and to compensation.

39. In relation to international cooperation, it should be mentioned that Article 94 of the Basic Law allows the Macao SAR, with the assistance and authorization of the Central People's Government, to make appropriate arrangements with foreign States for reciprocal judicial assistance.

40. As such, a bilateral agreement between the Macao SAR and Mongolia on cooperation to combat trafficking in persons is under negotiation.

41. Yet, it should be stressed that mutual legal assistance in criminal matters may be afforded or requested even in the absence of any bilateral agreement.

42. Mutual legal assistance in criminal matters with foreign jurisdictions is regulated under Law 6/2006. This law establishes the rules concerning the surrender of fugitive offenders, the transfer of criminal proceedings, the execution of criminal sentences, the transfer of sentenced persons, the surveillance of sentenced persons or persons on parole, as well as other forms of legal assistance. The said law is based on principles such as the primacy of international law, reciprocity, speciality and *non bis in idem*.

43. Other forms of possible mutual legal assistance include service of judicial documents, provision of documents, gathering of evidence, searches and seizures; examination of objects and sites, experts evaluations, effecting service of accused persons, witnesses or experts; taking testimony or statements of accused persons, witnesses or experts and transit of persons.

44. At law enforcement level, it should be underscored that a contact system between the Macao SAR and neighbouring regions has been set in place (designation of liaison officers) so as to collect intelligence concerning several aspects of police co-operation, including trafficking in persons. The Customs Department has set up a communication system with the border checkpoint of the Gong Bei Public Security Police and the Hong Kong SAR Police Force to exchange intelligence. A GPS system to monitor ships was installed, so as to better control their conditions and to better track down potential smuggling of migrants and trafficking in persons.

45. Furthermore, the topic of fighting against trafficking in persons and related crimes was also on the agendas of this year's Beijing-Macao SAR Police Meeting and the Guangdong-Macao SAR Police Meeting. In addition, joint operations under this mechanism were discussed at the Meeting of the Criminal Investigation Chiefs of Guangdong, Hong Kong SAR and Macao SAR.
