Human Rights Committee

List of issues in relation to the second periodic report of Macau, China*

General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Please provide information on specific training on the Covenant for government officials, members of Parliament, prosecutors, judges and lawyers. In light of the Committee’s previous concluding observations (CCPR/C/CHN-MAC/CO/1, para. 5), please provide information on the application of the Covenant by courts of Macao, China, including specific cases in which provisions of the Covenant have been invoked or applied by courts and the remedies provided for individuals claiming a violation of their rights as enshrined in the Covenant. Please also indicate whether Macao, China has taken any step to review its position on the declaration and reservation made to Articles 12(4), 13 and 25(b) of the Covenant.

2. In light of the Committee’s previous concluding observation (para. 6), please indicate the extent to which Macao, China has made an effort to ensure that the exercise of the power of interpretation of the Basic Law by the Standing Committee of the National People’s Congress does not undermine its obligations under the Covenant, particularly articles 2 and 14 of the Covenant, or conflict with the rule of law principle. Please also clarify how Macao, China deals with a situation in which the interpretation of the Standing Committee is not in conformity with the provisions of the Covenant and share concrete examples, if any. Furthermore, please provide information on the interpretations of the Basic Law provided by the Standing Committee since the last review of the Committee.

National human rights institution

3. Please provide information on the steps taken to establish an independent human rights institution fully in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by strengthening the independence and mandate of the Commission against Corruption and other existing institutions to promote and protect the rights enshrined in the Covenant, as indicated in Macao, China’s periodic report (CCPR/C/CHN-MAC/2, paras. 48-52).

Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

4. Please provide information on the measures taken to ensure that its anti-discrimination legislation prohibits all forms of discrimination, including direct, indirect and multiple discrimination, in all spheres, in both the public and the private sectors, on all the grounds

* Adopted by the Committee at its 129th session (29 June to 24 July 2020).
prohibited under the Covenant and indicate whether Macao, China is considering developing comprehensive anti-discrimination legislation in this regard.

5. Please indicate any steps taken to legally recognize transgender persons and to allow them to change the gender marker on their birth records and identity documents, and provide information on the outcome of the study carried out by the Legal Reform Advisory Committee (法律改革諮詢委員會) in this regard. Please also indicate the extent to which Macao, China has taken steps to provide legal recognition of and protection for same-sex couples, and the measures taken or envisaged to extend the purview of Law No. 2/2016 to protect same-sex couples under the law.

Gender-based violence (arts. 2, 3, 6, 7 and 26)

6. Please comment on reports that cases of domestic violence are often reclassified from the crime of domestic violence to that of simple assault in the legal proceedings due to the vague definition of domestic violence provided in the Law; and indicate the measures taken to enhance the enforcement of Law No. 2/2016. In view of the minimal number of complaints on sexual harassment in the workplace (periodic report, para.114), please clarify the effectiveness of the amendments made to the Criminal Code, article 164-A in particular, which provides for sexual harassment as an autonomous crime.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person (arts. 6, 7, 9, 10 and 14)

7. Please clarify the status of the draft law on inter-regional legal assistance in criminal matters and indicate the provisions of the draft law that protect the offenders transferred from Macao, China to mainland China from the risk of the death penalty or ill-treatment upon return. Please also provide updated information on the negotiations with mainland China on the arrangement for the surrender of fugitive offenders and indicate the provisions included in the agreement, which ensures the compliance of the agreement with articles 6 and 7 of the Covenant. Furthermore, please clarify reports that Macao officials have deported criminal suspects to mainland China despite the rulings of the Court of Final Appeal and provide information on such transfer cases, including the number of cases and the charges faced by the suspects.

8. Please provide information on the legislative and institutional measures taken to establish or strengthen an independent mechanism with adequate investigative powers to handle complaints about and monitor the conditions and treatment in prisons, psychiatric institutions and other places of detention. Please clarify the reasons for the high ratio of foreigners in the prison population. Furthermore, in view of the high prison occupancy rate, please provide information on the measures taken to mitigate the impact of the COVID-19 pandemic and to reduce the risk of infection of the virus in prisons and other places of detention.

Treatment of aliens, including migrants, refugees and asylum seekers (arts. 7, 9, 12, 13 and 24)

9. Please clarify the status of the two applications for refugee status (periodic report, para. 193), which have been pending decision for a considerable number of years. Please also provide information on the steps taken to expedite the process and on the protection provided to the asylum seekers in these cases.

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8 and 26)

10. In light of the Committee’s previous concluding observations (para. 17), please indicate the measures taken to enhance the effectiveness of the legislative framework and mechanisms put in place to protect the rights of migrant workers (periodic report, paras. 59-60). Please comment on reports that, despite the Decree-law No. 32/94/M, recruitment agencies charge domestic workers two-month’s salary and that some employers of domestic workers deduct their wages to pay commission fees to recruitment agencies. Furthermore, please indicate the extent to which Macao, China has taken measures to strengthen the
enforcement of labour laws, including Decree-law No. 32/94/M and minimum wage legislation, to protect the rights of migrant workers.

11. Please provide information on the measures taken to address the difficulties in prosecuting and sentencing perpetrators for the crime of trafficking in persons due to the lack of evidence (periodic report, para. 135). In light of the Committee’s previous concluding observations (para. 13), please specify the measures taken to guarantee adequate protection, reparation and compensation to victims, including rehabilitation, and to provide the legal alternatives to removal of victims from Macao, China in order to protect them from retribution. Please also provide information on the protection and assistance for victims of trafficking in persons in the agreements that Macao, China has concluded or is negotiating with other parts of China and other countries in order to combat trafficking in persons and/or to provide legal and judicial assistance.

Access to justice, independence of the judiciary and fair trial (arts. 2 and 14)

12. Please provide information on the effectiveness of the measures taken so far to reduce the backlog, including Law No. 9/2013 and the instructions of the Judicial Council (periodic report, paras. 212-213), and provide updated data on the backlog of cases and the average time for adjudicating cases, at all levels of courts. Please also indicate the measures taken or envisaged to further reduce the backlog of cases at all levels of court. Please also provide information on the measures taken to further promote bilingualism in court proceedings, particularly in civil and labour proceedings, and to provide interpretation services for individuals whose native languages are not Chinese or Portuguese. Furthermore, please specify the progress made in improving the effectiveness of the legal aid system since the enactment of Law No. 13/2012 and the establishment of the Legal Aid Commission.

13. Please comment on allegations that Article 19-A of Law No. 4/2019, which provides that for the pre-selection of prosecutors and judges by the Prosecutor General and the Council of Judicial Magistrates for the crimes defined in the national security law, would violate the principles of independence and impartiality of the judiciary and that the pre-selection of Chinese judges would amount to the creation of a special court for certain types of crimes. Please also provide information on the criteria applied for the pre-selection of judges and prosecutors under Article 19-A of Law No. 4/2019.

Right to privacy (art. 17)

14. In view of the increased number of complaints filed before and of investigations carried out by the Office for Personal Data Protection (periodic report, para. 222), please specify the measures taken to improve the enforcement of Law No. 8/2005. Please also provide information on the legal safeguards against the abuse of wiretapping by law enforcement officials and the mechanisms put in place to monitor the practice of wiretapping, and clarify the status of the Government’s proposal for a new regime for interception and protection of communications in accordance with article 17 of the Covenant. In view of Macao, China’s plan to introduce a facial recognition system (“Sky Eye”) to the public CCTV system, please indicate the safeguards against the abuse of data collected through Sky Eye and the restrictions on the use of Sky Eye, provided in legislation.

Freedom of expression (arts. 19 and 20)

15. Please clarify whether Macao, China has taken any steps to decriminalize defamation, particularly defamation of public officials, disinformation, and insults to the national flag, emblem and anthem. Please also clarify the status of a draft Law of Bases of Civil Protection and any intention of Macao, China to remove the provisions criminalizing disinformation in article 25 of the draft.

16. Please comment on reports that there have been an increased number of entry refusals for journalists from Hong Kong based on security reasons and an increased number of incidents of threats and harassment experienced by local journalists, particularly around politically sensitive events, including the Chinese President’s visit to Macao, China in December 2019. Please provide information on the number of journalists whose entry into Macao, China was refused based on security reasons in the recent five years.
17. Please provide information on the measures taken to provide an enabling environment for the media, civil society and political groups to freely express their opinions, including dissenting ones. Please also comment on reports that:

(a) The polls and mock referendum organized by civil society organizations and political groups to consult the public on the political system have been forced to close down and their organizers were subject to legal proceedings and other threats;

(b) Outspoken academics, namely Bill Chou Kwok-ping and Éric Sautedé, were dismissed by their respective universities in 2014 due to their political opinions and were not able to obtain legal remedies;

(c) Local authorities have interfered with the public expressing support for protests in Hong Kong and criticizing video surveillance, including removing a “Lennon Wall” at Nam Van Lake;

(d) Obstacles have been placed on the ability of online media outlets to obtain access to GovInfo Hub.

Peaceful assembly (art. 21)

18. In light of the decision of the Macao Police and the ruling of the Court of Final Appeal in 2019 to ban a rally protesting against the police brutality in Hong Kong for “purposes contrary to the law”, please provide the definition of “for purposes contrary to the law”, provided for in Article 2 of Law No. 2/93/M and indicate any guidelines provided to the Public Security Police as to how to interpret it. Please also comment on reports that the conditions imposed on assemblies and demonstrations, particularly those of politically sensitive nature, have been more restrictive since the Public Security Police took over the responsibility to deal with the notification for assemblies and demonstrations under Law No. 11/2018; and explain any changes introduced to the notification procedure since the adoption of Law 11/2018 and the criteria applied by the Municipal Affaire Bureau for granting permits to event organizers to use public places.

19. Please comment on reports that the authorities have over-relied on the public health ground to ban assemblies, particularly those of a political nature, including the Tiananmen memorial events on 6 June 2020, during the COVID-19. Please also specify the measures taken to ensure that the restrictions imposed by Macao China on the exercise of the rights of peaceful assembly in the context of combating the COVID-19 pandemic are limited to the extent strictly required under Articles of 4 and 21 of the Covenant. Furthermore, please provide information on the applications for assemblies or scattered vigils and refusals thereof, including relevant statistical data and the purposes of assemblies, during the COVID-19 pandemic.

20. In light of the Committee’s previous concluding observations (para. 16), please indicate the efforts made to ensure that the application of articles 298 and 300 of the Macao Criminal Code is fully in accordance with article 21 of the Covenant. Please also provide information on the cases of arrest and detention made under articles 311 and 312 of the Macao Criminal Code during the reporting period. Furthermore, please indicate the legal safeguards against the abuse and misuse of images and information obtained via video-recording during demonstrations and the avenues for complaints and legal remedies in this regard.

Freedom of association (art. 22)

21. Please provide information on labour legislation that protects the rights to form and join trade unions and to strike, and indicate any plan of Macao, China to enact a trade union law to protect this right. Please also indicate the measures put in place to protect workers involved in trade union activities from discrimination and retaliation.

Participation in public affairs (arts. 25, 26 and 27)

22. In light of the Committee’s previous concluding observations (para.7), please indicate whether any measures have been put in place in connection with the introduction into universal and equal suffrage for all elections – for the Chief Executive, the Legislative Assembly, and the Municipal Council – and to abolish or reduce the ratio in the Assembly of
indirectly elected or unelected seats, if so, provide information thereon. Please also provide information on the criteria used by the Electoral Affairs Commission to disqualify candidates for the Legislative Assembly under Law No. 9/2016. Furthermore, please provide information on the suspension of the office held by Sou Ka Hou, a member of Legislative Assembly.