



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

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Committee against Torture

**Concluding observations on the fifth periodic report of
Macao, China**

Addendum

**Information received from Macao, China on follow-up to the
concluding observations****

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Committee Against Torture-Concluding Observations on the Fifth Periodic Report of China with respect to the Macao Special Administrative Region

17. The Committee urges Macao SAR to:

(a) Establish confidential complaints mechanisms in all places of detention to facilitate the submission of complaints by victims of torture and ill-treatment, including for obtaining medical evidence in support of their allegations, and to ensure in practice that complainants are protected against any reprisals as a consequence of their complaint or any evidence given;

1. In the Macao SAR, the complaint mechanism available to detainees or any other victims of torture or ill-treatment in all places of detention are by their object and nature confidential. Such (legal) confidentiality requirement ensures the impartiality and legality of enquiries as well as the protection of the victims' rights.

2. In general, all law enforcement officers or appointed instructors are under the obligation to ensure the confidentiality of a complaint as well as of the possible internal enquiry following the complaint or they will face disciplinary proceedings. For complaints or reports related to criminal cases, all law enforcement officers must follow the principle of judicial confidentiality (the violation of secrecy in judicial proceedings is punished under Article 335 of the Macao Criminal Code (MCC) and subject to disciplinary action).

3. Moreover, any complaint or request for medical assistance by alleged victim will be taken seriously by all the law enforcement agencies, by appointing personnel to accompany the alleged victim to the hospital for medical assistance. All the medical reports are confidential. In case of suspicion of torture or ill-treatment, the Health Bureau will keep a record of the findings in its database and file a report referring such case to the station (office) of the police at the hospital premises.

4. To guarantee the legitimacy of the evidence obtained through investigations and safeguard the human dignity, physical and mental integrity of the persons under custody, the Judiciary Police (PJ) has introduced some concrete procedures and measures in the detention rooms, such as regular and announced patrols by designated personnel and the installation of CCTV (see paragraphs 71-76 in the CAT report — ref. CAT/C/CHN-MAC/5).

5. CCTV is also a crucial and major tool used by the Public Security Police Force (PSP) to supervise law enforcement actions and prevent the occurrence of torture and inhuman or degrading incidents, particularly in the detention and interrogation rooms.

6. The PJ 2010 Internal Guidelines, the Work Regulations of the Duty Rooms of the PJ and the 993 Crime-Reporting Hotline reiterate that a criminal investigator, during his investigation, especially during the interrogation of a suspect or a detainee, will strictly abide by the law and comply with the substantial and procedural provisions on the prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment. The PSP is also committed to ensure that its officers do not involve in such conduct/crime. To enhance law-abiding awareness, the PSP has disseminated the Convention against Torture on the notice boards of its subordinate units for all the frontline police officers' reference and perusal. In addition, issues on the prohibition on the use of torture by the police forces are debated among police officers on a regular weekly basis.

7. Similar to the PJ Internal Instructions, a duty officer or a PSP supervisory officer or leader will inspect facilities in the detention cells at announced intervals to confirm the

condition of the detainee/victim, and/or accept on-the-spot any complaint that may be lodged by the detainee/victim. Heads of different departments will also check the surveillance footage of the public areas of the cells as a supervisory measure.

8. If the detainee/victim files a report, the statement will be taken in an individual inquiry room to ensure that the reporting process and the substance of the report are kept confidential. PSP police officers of the same gender will be arranged to record the statement of the detainee/victim during the process. In addition, an identification parade room installed with a one-way mirror will be used if an identification parade is needed to protect the complainant.

9. The complaint mechanism of the PSP ensures the confidentiality of the identity of the detainees/victims and the content of the complaints, and designated officers are responsible for handling the complaints individually in strict accordance with relevant provisions, such as the Law on Personal Data Protection (Law 8/2005) and the Statute of Militarized Personnel of the Security Forces (Decree-Law 66/94/M). Such PSP officers are under the obligation of confidentiality and must not leak any relevant information, or they will face disciplinary proceedings, as previously mentioned.

10. To facilitate victims of torture and ill-treatment in obtaining medical evidence in support of their allegations, if a detainee/victim indicates that he/she sustains physical harm or there are features on his/her body suggesting an occurrence of such harm, the PSP will, in accordance with established procedures and the will of the detainee/victim, send him/her to the hospital for an injury assessment immediately. At the same time, the PSP will arrange police officers who are not involved in the case to accompany the detainee/victim to the hospital. The PSP will also inform the hospital in advance to facilitate proper arrangement by the hospital and obtain a medical injury assessment report from the physician for the purpose of ensuring impartial and rigorous investigation. The said medical injury assessment report and the complaint will be sent to the Public Prosecutions Office (MP) for investigation.

11. Simultaneously, the PSP will investigate the detainee/victim and the person(s) involved separately to avoid any contacts between them. Confidentiality and safety of the detainee/victim must be ensured by designating officers independent of the unit(s) involved.

12. PSP officers involved in such cases are liable to criminal sanction, and the PSP will, in accordance with the Statute of Militarized Personnel of the Security Forces, decide whether to take preventive measures (e.g. interdiction from duty/suspension) against the officers to prevent them from interfering with and retaliating against the complainants.

13. The above-described procedure is followed by the other law enforcement agencies.

14. As regards detainees or prisoners at the Coloane Prison, it should be noted that legal means are provided for them to defend their fundamental rights and to ensure that the rules applicable to the Coloane Prison are respected (Article 92 of Decree-Law 40/94/M, on the regime regarding the application of measures of deprivation of liberty, and Article 3 of Order 8/GM/96, that approves the Coloane Prison Regulations).

15. Prisoners may complain of an unlawful order or bring any matter to the Director of the Coloane Prison, prison officers and prison inspectors (Articles 80 to 83 of Decree-Law 40/94/M). This right is reinforced under Article 6 (2) of Order 8/GM/96: prisoners may complain or file a petition to judicial authorities, the Board of the Coloane Prison, prison officers, prison inspectors and other entities who are legally entitled to address the object of the petition.

16. All complaints and petitions, including of torture and ill-treatment, are confidential and must be immediately forwarded to the Secretary for Security, who has the duty to deliver a decision promptly. Prisoners must be notified in writing of the decision as well as

their respective grounds, within eight days (Article 81 of Decree-Law 40/94/M and Article 6 (3) of Order 8/GM/96). Furthermore, in accordance with Articles 13 and 16 of Decree-Law 86/99/M, which governs judicial intervention in the enforcement of prison sentences and security measures involving internment and their respective effects, prisoners can also lodge complaints to the judge during his/her monthly visit to the Coloane Prison.

17. All prisoners may also make requests, claims or complaints in writing to the judicial authorities of the Macao SAR, prison officials at the management level, administrative superiors of the Coloane Prison, Commission against Corruption (CCAC), or consuls of their countries, in the case of foreign detainees or prisoners.

18. In addition, the Coloane Prison has installed a locked complaint box in each cell area for prisoners to put in complaint letters. The box is managed by a specifically-assigned department to ensure that complaints are treated confidentially. For the handling of the relevant complaints, the Coloane Prison has issued a “Work Procedure and Guidelines for Handling Complaints Confidentially”.

19. According to Article 32 (1) of Decree-Law No. 40/94/M, “*A person who, in accordance with the law, has knowledge of any content in a letter written by a prisoner must treat the content in the strictest confidentiality.*” For complaints raised by prisoners, the Coloane Prison will, as per protocol, initiate a case-specific inquiry procedure with investigation conducted by a special investigator. All information must be kept confidential throughout the process.

20. If a prisoner informs the Coloane Prison of having been subject to physical assault, torture or ill-treatment, the Coloane Prison will immediately arrange for a check-up conducted by medical staff for the prisoner concerned. The physician will then assess the prisoner’s health and write a medical report. If the physician deems it necessary, the Coloane Prison will also arrange for the prisoner to be transported to the hospital for treatment.

21. All medical reports will be treated as evidence of investigation. The Coloane Prison will also arrange for written record(s) and collect all evidence as soon as possible.

22. The Coloane Prison provides each new prisoner with an “Important Notice to Prisoners”. It is clearly described in Item 4.8 of the “Important Notice” that “*when faced with illegalities such as extortions or physical assaults, or situations threatening their lives or life of another person, prisoners must immediately notify prison staff.*” It is also mentioned in Item 5.3 that “*Prisoners can apply for meeting with the judge and prosecutor on their monthly visit to the Prison.*” (Please refer to *Attachment I: Important Notice to Prisoners* for details). Furthermore, the social workers of the Coloane Prison will also personally explain to the prisoner about the content of the “Important Notice” to let him/her fully understand his/her right to lodge complaints and the methods of doing so.

23. While a complaint (be it against a prisoner or a prison staff) is being handled, assessment regarding the degree of seriousness of the incident as well as an arrangement avoiding the direct contact between the victim and the offender will always be made, so as to protect the complainant against retaliation.

24. At the Youth Correctional Institution (YCI), pursuant to Article 74 (2 (12)) of Law 2/2007, on the Juvenile System for Young Offenders, detained juveniles have the right to lodge complaints. Targeting complaints about having been subjected to torture, the Institution has formulated the “Measures for Handling Complaints of Detained Juveniles about Being Tortured”.

25. All bedrooms of the detained juveniles are installed with a locked complaint box managed by the Director of the YCI to ensure that letters from detained juveniles are treated in strict confidentiality. Furthermore, in response to a complaint by a detained

juvenile and based on the nature of such a complaint, the Institution will open a case-specific enquiry procedure, with an investigation conducted by a special investigator. All relevant information will be kept confidential throughout the process.

26. If a detained juvenile informs the YCI about having been subjected to physical assault, torture or ill-treatment, the Institution will immediately arrange for a check-up by medical staff for the juvenile concerned. The physician will then assess the juvenile's health and write a medical report. If the physician deems it necessary, the YCI will also arrange for the juvenile to be transported to the hospital for treatment. All medical reports will be treated as evidence of the investigation.

27. In accordance with Article 74 (2 (13)) of Law 2/2007, the YCI has the obligation to notify the detained juveniles about their right to lodge complaints. For this reason, the YCI provides each detained juvenile with a handbook containing the methods and channels of lodging complaints (please see Attachment II for details). Furthermore, the social workers and counseling staff of the YCI also explain to each detained juvenile about the relevant content in person so as to enable him/her to be fully aware of his/her right to lodge complaints and the methods of doing so.

28. The YCI will carry out protective measures to prevent and prohibit the person suspected to have inflicted torture and ill-treatment to come in contact with the complainant, so as to guarantee the protection of the juvenile from threats and retaliation. The relevant provisions are set forth in the said "Measures for Handling Complaints of Detained Juveniles about Being Tortured".

(b) Ensure that all allegations of torture or ill treatment are automatically transmitted to the Public Prosecutions Office to launch investigations and carry out prompt, effective and impartial investigations whenever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed, including of those officials who knew, or should have known, that ill-treatment was occurring and failed to prevent it or report it;

29. Please refer to the previous answer.

30. As stated in the CAT report, torture or ill-treatment are crimes under Articles 234, 235 and 236 of the MCC and whoever uses torture or ill-treatment or gives an order or facilitates the practice of such crimes to persons under their custody are criminally responsible. Superior officials who knew or should have known, that ill-treatment was occurring but failed to prevent or report it within the maximum of three days are also criminally liable under Article 237 of the MCC (see paragraphs 17, 48-51 and 55 in the CAT report — ref. CAT/C/MAC/4).

31. Pursuant to Article 37 of the Criminal Procedure Code (CPC), the MP has the power to initiate criminal proceedings against the alleged offenders whenever the crimes committed are public crimes, such as crimes of torture or ill-treatment (Articles 37, 38 and 39 of the CPC). Crimes that are semi-public depend on a victim's complaint and proceedings will be carried out afterwards by the MP.

32. The MP is an independent and autonomous judiciary organ that carries out its powers and functions independently and free from any interference, as provided for in the law. Such autonomy and independence of the MP are guaranteed by its strict observance of the law (Article 90 of the Basic Law and Article 55 of Law 9/1999, Framework Law on the Judicial Organization of Macao).

33. It is the duty of the MP to file criminal proceedings (e.g. to conduct enquiries, investigations, to accuse, to appeal, to promote execution of security measures and sentences) and to help the court in the discovery of truth and the enforcement of justice in an impartial way as well as to abide strictly by the law (Article 42 of the CPC).

34. The MP may obtain information/reporting on a criminal act by *motu proprio* or via the law enforcement authorities or by anyone (whistle-blowing) (Articles 224 to 230 of the CPC). The law enforcement agents are under the obligation to report all the crimes that they are aware of to the MP (Article 225 (1 (a)) of the CPC). Civil servants also have such duty when it is related to the exercise of their public functions (Article 225 (1 (b)) of the CPC). Any report of a crime should be forwarded to the MP as soon as possible according to Articles 228 and 231 of the CPC. In such case, when the reporting entities are the law enforcement agencies with criminal authority, report may be done by oral communication followed by a written communication, in urgent cases.

35. Any allegation of torture or ill-treatment will be subject to a written report (*Auto de Notícia*) with the key information, such as: (i) facts; (ii) date, hour, place and circumstances of the alleged crime and (iii) any evidence that may help the indication of the agents, of the crime, witness and so on. Such written report (*Auto de Notícia*) if not filed by the MP but by any law enforcement agency should be immediately forwarded to the MP (Article 226 of the CPC).

36. That said, any allegation of torture or ill-treatment must be automatically transmitted/reported to the MP to initiate an enquiry and carry out prompt, effective and impartial investigation whenever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed. This duty to report falls not only on law enforcement authorities but also physicians or social welfare workers within the exercise of their functions (Article 225 (1 (b)) of the CPC).

37. Within this context, it should also be noted that the PJ will carry out a special investigation, whilst the MP will be notified in accordance with the law. The whole investigation dossier will be forwarded to the MP when the department responsible for the investigation has completed the related investigation.

38. Moreover, Article 35 (2) of the MCC provides that “*the duty of obedience stops whenever it would lead to the commission of a crime*”, thus ruling out the possibility of justifying torture with an order from one’s superior. As to the allegation of an order issued from a public authority, Article 312 (1) of the MCC states that the crime of disobedience only takes place where a lawful order or lawful warrant (from a competent authority or official) is not complied with. It is commonly accepted that no obedience is due to orders entailing the perpetration of crimes. The Statute of the Public Administration Employees (ETAPM) accords civil servants the right not to comply with orders leading to the commission of a crime (Article 278 (1 (f))).

39. Hence, PJ officers (or any other law enforcement officer) who knew, or should have known, that ill-treatment was occurring and failed to prevent it or report it may be subjected to an enquiry and disciplinary proceedings (Articles 279 and 290 of the ETAPM). Under Article 290 of the ETAPM, any public servant that is aware that another public servant committed a disciplinary infraction, *inter alia*, the violation of the law of his/her functional duties, must inform or report to his/her superior or to any superior for action.

40. Similarly in the PSP, when a person deprived of his/her liberty files a report of torture or ill-treatment, or upon receipt of the report that the victim has been harmed, the PSP will start investigating and collecting evidence promptly in accordance with the law and record the statement within the statutory time limit and send the statement to the judicial authorities for handling, so as to ensure a fair and impartial enquiry/investigation. Any PSP officers in defiance of the statutory procedures will be liable to relevant criminal sanctions and internal disciplinary proceedings. The PSP refers all allegations of criminal conduct to the MP for handling in strict accordance with the CPC.

41. If there is a complaint or accusation of torture or ill-treatment by any detainee or prisoner of the Coloane Prison, the Prison will, as per protocol, initiate a case-specific

inquiry procedure conducted by a special and independent investigator. All relevant information will be kept confidential throughout the process. Furthermore, the Coloane Prison will forward the relevant file, in written format, directly to the MP for follow-up actions. Similar procedure is adopted by the YCI for detained juvenile offenders.

42. Apart from the internal mechanisms on reports of torture or ill-treatment by law enforcement officials to the MP, the detainee/victim may also report to other independent or supervisory entities that have the task to supervise the law enforcement officers' actions. One is the CCAC which is an independent and autonomous entity, only accountable to the Chief Executive (Article 59 of the Basic Law) and has a dual function: (i) to combat corruption and (ii) as an *Ombudsman* (Article 2 of Law 10/2000) as referred in paragraphs 4-7, and 9 of the response to the 2015 CAT List of Issues).

43. Within the Ombudsman's duties with a view to promote the protection of the rights, freedoms, safeguards and legitimate interests of individuals and to ensure the legality, justice and efficiency in the exercise of public authority, the CCAC may issue recommendations to government entities that are found to be violating human rights in order for the relevant entities to adopt measures to stop such illegal acts (Articles 3 (1 (5)) and 4 (12) of Law 10/2000 as amended by Law 4/2012).

44. The other entity is the Supervisory Committee of the Disciplined Forces and Security Services of Macao (CFD) (Order of the Chief Executive 14/2005), to which any person may lodge a claim or complaint in person, by mail, fax, email about any behavior of the law enforcement officers, including torture and ill-treatment (please refer to paragraphs 57, 58 and 59 of the response to the 2015 CAT List of Issues). Order of the Secretary for Security 8/SS/2005 also reiterates that any complaint related to the legality of police action or to fundamental rights of residents, or when the complainant clearly indicates that the complaint is to be deliberated by the CFD, including when public interests are impaired and/or improper ethics of personnel is involved, the PJ will forward the photocopy of the related complaint to the CFD via the Office of the Secretary for Security within 5 working days. When the proceeding of related complaint is completed, and such results do not violate judicial confidentiality, the PJ will send the decision made on the complaint, including disciplinary sanction or other measures imposed, to the CFD within 5 working days.

(c) Ensure that the Attorney General entrusts the investigation of reports of torture or ill-treatment by law enforcement officials only to independent criminal investigators and that there is no institutional or hierarchical relationship between the investigators and suspected perpetrators of such acts;

45. As mentioned above, in the Macao SAR, the MP is an independent and autonomous judiciary organ free from any kind of interference. Procurators may not be suspended, compulsively retired, discharged, dismissed or removed from their functions, except as provided for by law. These magistrates are guaranteed stability with regard to the duration of their term of office (Article 10 of Law 10/1999, on the *status* of the members of the judiciary).

46. The MP is bound to the strict observance of the law; legality and objectivity criteria are cornerstone principles and rules to handle any case (Article 90 of the Basic Law and Article 55 of Law 9/1999).

47. In accordance with Law 9/1999, the Prosecutor General is the top leader and representative of the MP and directs all criminal investigations. Pursuant to Article 246 of the CPC, investigations will be led by the MP with the assistance of the criminal police (PJ). During investigation, the PJ follows instructions of the MP on criminal investigations and procedures and are subject to supervision thereof (Articles 44 to 45 of the CPC and Article 2 of Law 5/2006, on the PJ).

48. So, the investigation of any alleged case of torture or ill-treatment by law enforcement officers is under the responsibility and supervision of the MP. It is also the MP's duty to ensure that such investigation is carried out in an independent, impartial manner and in accordance with the law, meaning that the investigation must only be entrusted to independent criminal investigators and that there is no institutional or hierarchical relationship between the investigators and suspected perpetrators of such acts.

49. Article 11 of Law 10/1999 enshrines the principle of responsibility of the MP, which means that magistrates are liable, in accordance with law, to exercise their duties and to comply with instructions given by their superiors. The failure for a Procurator to perform, in particular, his duty of independence and impartiality may give rise to disciplinary actions.

50. Procurators are held accountable under disciplinary rules. The law classifies as a disciplinary infraction any conduct by judges or Procurators, including negligent acts, which constitutes a breach of their professional duties or any actions or omissions in their public life or with repercussions thereto which are incompatible with the required dignity of their functions (Article 65 of Law 10/1999). The disciplinary action is carried out by the Judicial Council and by the Council of Magistrates of the MP exclusively, and respectively, for members of each Magistracy. The following penalties are applicable in accordance with the seriousness of the offence: (a) reprimand; (b) fine; (c) suspension; (d) inactivity; (e) compulsory retirement; and (f) dismissal (Article 64 et seq. of Law 10/1999).

(d) Ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, subject to the observance of the principle of presumption of innocence;

51. Law enforcement officers that are allegedly the perpetrators of torture and ill-treatment are subject to a preliminary enquiry and, in case of sufficient evidence, to disciplinary actions. During proceedings, the principle of presumption of innocence and confidentiality will be respected as well as other criminal procedural guarantees of the defendant provided for in the Macao SAR criminal law (Article 277 of the ETAPM, *vide* Article 50 of the CPC). One of the immediate outcomes of such substantiated report or accusation is the suspension of the alleged perpetrator(s) from duties during the investigation period.

52. In the PJ, under the proposal of the instructor or from the PJ itself, the alleged PJ officer maybe suspended from his/her functions for 90 days in accordance with Article 331 of the ETAPM. Nevertheless, the 90-day period will be extended for all the time necessary for the procedures to complete and to have a final decision in accordance with Articles 287 and 328 (2) of the ETAPM.

53. The PSP also follows a similar procedure such as the principle of presumption of innocence and confidentiality requirements for PSP officers allegedly the perpetrators of torture and ill-treatment (Article 259 of Decree-Law 66/94/M). Also as a preventive measure, the instructor of a case of disciplinary action may suspend the functions of the alleged perpetrators (Article 271 of Decree-Law 66/94/M). Suspension will be of 90 days and may be extended for all the time necessary for the procedures to complete and to have a final decision under Article 271 (7) of Decree-Law 66/94/M.

54. The correctional or prison officers will also be subject to preliminary enquiry in case of sufficient evidence to disciplinary actions (Article 15 of Decree-Law 60/94/M, on the Disciplinary regime of the correctional officers and Article 21 of Law 7/2006, rules governing the status of the prison officer's status of the correctional facilities of the prison). The ETAPM is also supplementarily applicable to correctional or prison officers, including the temporary suspension of functions while disciplinary proceedings are pending (Article 21 of Law 7/2006).

55. Moreover, according to Directive of the Secretary for Security 4/GSS/2015, when it is mandatory by law or when the alleged police officer will clearly affect the operation of the law enforcement agency, suspension of functions will be imposed as a preventive measure. When there is suspension of functions, the procedures have to be expeditiously completed without delay.

(e) Ensure that the suspected perpetrators are duly tried and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts

56. Of some of the cases that have been subject to trial, the suspects have been duly tried and convicted. It should be noted that law enforcement officers may subject to imprisonment and fine penalties as well as to accessory penalties, including suspension and prohibition of public functions (Articles 61 to 63 of the MCC). Apart from criminal proceedings and criminal sanctions, the perpetrators may be subject to disciplinary actions that may lead to suspension or even resignation (Article 300 (1 (c), (e)) of the ETAPM).

57. For instance, from 2013 till June 2016, the Macao SAR courts tried and convicted two cases of physical assault committed by law enforcement officers to detainees/prisoners.

58. On 1 February 2013, the First Instance Court acquitted one PSP officer of the crime of physical assault to a detainee in the PSP premises without CCTV recording (Article 137 of the MCC). The related civil action request was judged unfounded. The victim filed a civil appeal for remedies. On 12 February 2015, the Court of Second Instance ruled that the defendant must pay a damage compensation of MOP\$ 37,480 to the victim.

59. On 22 February 2013, the First Instance Court sentenced four defendants (prison officers) to an imprisonment of seven years for serious physical assault (Articles 138 and 139 of the MCC). This sentence was subject to appeal and it is still pending.