



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

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COMMITTEE AGAINST TORTURE  
Forty-first session  
3 – 21 November 2008

**List of issues to be considered during the examination of the  
fourth periodic report of Macao (CAT/C/MAC/4)**

**Article 1**

1. Please clarify whether the author of a crime of torture can be any public official or other person acting in official capacity or with the consent or acquiescence of public officials according to article 1 of the Convention, or whether this is limited – as it would appear from article 234, paragraph 1 of Macao Special Administrative Region (MSAR) Criminal Code - to acts committed by persons “charged with the function of prevention, follow-up, investigation or knowledge of criminal infractions, or disciplinary infractions, the application of related sanctions, or the protection, guard or supervision of a detainee or prisoner”.
2. Please also clarify the difference between the crimes provided for by the Criminal Code in articles 234 (torture) and 236 (serious torture). Please elaborate on the difference contained in paragraph 2 of article 234 between intense suffering (*sofrimiento agudo*) and severe fatigue (*cansaço grave*).

**Article 2**

3. Please provide further information on the basic legal safeguards of persons detained in police custody, in particular their right of access to legal counsel and to an independent doctor, to be informed of their rights and to inform a relative promptly of their detention.
4. Please provide further information with respect to the law and practice related to the length of custody and pre-trial detention.
5. Please explain whether MSAR’s authorities would have jurisdiction over Chinese military present in Macao for violation of the rights protected under the Convention. If so, please clarify

under which jurisdiction (i.e. civil or military) and where (i.e. in Mainland China or in Macao) such persons would be eventually tried and prosecuted.

6. With reference to paragraphs 96 and 97 of the MSAR's report, please clarify whether the right of necessity or the exculpatory state of necessity (arts. 33 and 34 of the Criminal Code) may be considered as grounds for excluding criminal responsibility also in case of acts of torture.
7. Please clarify how the independence and impartiality of the judiciary is maintained.

### **Article 3**

8. Please provide information on:
  - (a) The number of asylum requests registered, the number of requests granted and the number of expulsions/deportations/removals since the review of the last periodic report, disaggregated by age, sex and nationality, and country to which returned;
  - (b) Whether there is a provision prohibiting return or expulsion if a person faces a risk of torture, how often persons have made such claims, and with what result;
  - (c) Whether asylum-seekers and/or irregular migrants are held in detention and, if so, indicate their number and whether they are separated from convicted persons or persons detained pending trial;
  - (d) Whether an appeal filed against a decision of expulsion/deportation/removal has suspensive effect;
  - (e) Whether foreign persons charged with an administrative or criminal offence enjoy in practice the right to be informed promptly and in a language they understand of the nature and cause of the charge against them.

### **Article 4**

9. With reference to question No. 2 above, please clarify the criteria used by the investigative and judicial authorities to legally qualify and distinguish in practice the crimes referred to in articles 234 (torture) and 236 (serious torture) of the Criminal Code.
10. With reference to paragraph 116 of the MSAR's report and article 22, paragraph 1 of the Criminal Code, please clarify whether all attempts to commit torture (in all the forms provided for by articles 234, 235 and 236 of the Criminal Code) are punished in practice, and please provide relevant statistics on actual practices for the period since the review of the last periodic report.
11. Please provide information, disaggregated by sex, age and nationality of victims, on the number of investigations, convictions and sanctions that have been applied in cases of human trafficking, commercial sexual exploitation, or sexual violence since the review of the last periodic report. Is there any form of rehabilitation or assistance programme in place for persons subject to these forms of violence, including for children?

### **Article 5**

12. Please clarify whether Macao can establish its jurisdiction over acts of torture committed abroad according to article 5, paragraph 2 of the Convention, even if these acts are not punishable under the legislation in force where the act has been committed. Also, please indicate whether MSAR has ever prosecuted anyone present in its territory who has committed a crime of torture outside of Macao.

### **Articles 6, 7, 8, 9**

13. With reference to paragraph 104 of the MSAR's report, please update the Committee on the progress of the ongoing negotiations with respect to bilateral agreements on mutual legal assistance in criminal matters with Mainland China and HKSAR.

14. Please provide information on cases, if any, where MSAR rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus has engaged its own prosecution as a result.

### **Article 10**

15. Please provide more detailed information on the instruction and training provided to law enforcement officials and other public officials with respect to human rights and specifically the treatment of detainees and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Please also provide information on training in areas such as non-coercive investigatory techniques. What monitoring and evaluation is used to assess the impact of these programmes, if any?

16. Please indicate further the nature of programmes to train medical and health personnel to identify and document cases of torture and assist in the rehabilitation of victims. Please comment on any training to develop more gender-sensitive treatment both in legal and medical institutions.

### **Article 11**

17. Please provide updated information on the number of persons and the occupancy rate of the places of deprivation of liberty in the criminal justice system, disaggregated by gender, ethnicity or nationality, and age.

18. Please further specify the cases when solitary confinement of a prisoner may be applied and clarify what is its maximum length possible. Can solitary confinement be applied to persons below 18?

19. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably women, migrants, persons suffering from mental illness and children.

### **Articles 12 and 13**

20. Please elaborate on the mandate and activity of the Judicial Police (JP) and the Public Security Police (PSP). Is there any independent body tasked with receiving complaints of police

misconduct, including excessive use of force and abuse of powers, with the power of external oversight and monitoring? If so, please provide information as to its composition, mandate and activities.

21. Please provide the following updated information since the review of the last periodic report:
- (a) With reference to the tables contained in paragraphs 190 and 191 of the MSAR's report, on any specific complaint of torture, the authorities before which they are pending, the status and the outcome of the investigations;
  - (b) With reference to the table contained in paragraph 189 of the MSAR's report, on the number of complaints related to police misconduct in Macao and inform on whether investigations have been opened as well as on the number of disciplinary and /or criminal proceedings initiated as a result of those complaints, and their results, if known;
  - (c) With reference to paragraph 74 and following the MSAR's report, on the number of complaints from person deprived of their liberty, the results of the investigations and the number of disciplinary and /or criminal proceedings initiated as a result of those complaints, and the results, if known.

22. Please explain whether Macao has taken, or envisages to take, any steps to establish a fully independent national human rights institution in conformity with the Paris Principles (General Assembly Resolution 48/134 of 20 December 1993) with, inter alia, investigative, oversight and monitoring powers. Are there limitations in the present oversight mechanisms, for instance the ombudsperson? What independent oversight mechanism has authority regarding inspection of jails and other places of detention or confinement. Please provide information on the findings of these mechanisms.

#### **Article 14**

23. Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred since the last periodic report. Please also indicate whether the right to compensation depends on the existence of a judgment in criminal proceedings ordering compensation. Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment the perpetrator of which has been subjected to a disciplinary, but not to a penal, sanction?

24. Please indicate in further detail what services exist for the treatment of trauma and other forms of rehabilitation of victims of torture or other cruel, inhuman or degrading treatment.

#### **Article 16**

25. Please clarify the difference between torture and other cruel, inhuman or degrading treatment according to article 234 of the Criminal Code, since – at it is stated in the MSAR's report – this provision does not draw any distinction between the two concepts. In this respect, please also clarify

the criteria used by investigative and judicial authorities to legally qualify and distinguish between acts of torture and other cruel, inhuman or degrading treatment in practice.

26. Please inform the Committee of measures undertaken to prohibit the use of corporal punishment in all settings.

**Other**

27. Please clarify what measure, if any, Macao has taken to inform citizens of their right to petition the Committee under article 22, as discussed in previous reviews.

28. Is Macao considering adhering to the Optional Protocol to the Convention against Torture?

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