



International Covenant on Civil and Political Rights

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Human Rights Council

Concluding observations on the initial report of Macao, China

Addendum

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

[Date received: 5 April 2017]

* The present document is being issued without formal editing.



Paragraph 7

Reply

1. The Macao SAR acknowledges the work carried out by the Human Rights Committee (HRC) and welcomes all the valuable and constructive observations in relation to the implementation of the ICCPR in the Macao SAR.
2. Without prejudice to some of the information provided to the HRC before, it is, however, crucial to highlight the unique legal status of the Macao SAR within the framework of China's "one country, two systems" policy. On 20 December 1999, as China resumed the exercise of sovereignty over Macao, the Macao SAR was established, in accordance with Articles 31 and 62 (13) of the Constitution of the People's Republic of China.
3. The Basic Law was adopted at the First Session of the Eighth National People's Congress of the People's Republic of China on 31 March 1993. The Basic Law establishes the rules that govern the Macao SAR's electoral system, including that for the Chief Executive and the Legislative Assembly.
4. Moreover, pursuant to Article 144 of the Basic Law "The power of amendment of this Law shall be vested in the National People's Congress. The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council, and the Macao Special Administrative Region. Amendment bills from the Macao Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region. Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Macao Special Administrative Region shall study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Macao."
5. Foreign and defence affairs are the responsibilities of the Central People's Government of the People's Republic of China (Articles 13 and 14 of the Basic Law). Bearing in mind that the ICCPR only binds sovereign States, China notified the Secretary-General of the United Nations that, from 20 December 1999, its provisions as applied to the Macao SAR would be implemented through the laws of the Macao SAR and that China would assume the responsibility for the international rights and obligations placed on a party to the ICCPR.
6. At that time, China made a reservation to Article 25 (b) of the ICCPR in relation to the Macao SAR making express reference to the Macao SAR's Basic Law and to the bilateral agreement between Portugal and China wherein the composition of elected bodies and the method of choosing and electing Macao SAR's officials are defined.
7. It is also important to note that the ICCPR does not prohibit nor does it impose any kind of restrictions to reservations. In addition, no objection was made to China's reservation at the time of notification (Articles 19 and 20 of the Vienna Convention on the Law of the Treaties).
8. Furthermore, the content of China's reservation does not differ substantially from the reservation made by the Portuguese Government in 1992, when it extended the application of the Covenant to Macao. Indeed, Article 25 (b) of the Covenant was the object of a reservation by Resolution 41/92 of the Portuguese Parliament that determined that such a provision should not apply to Macao with respect to the composition of elected bodies and the method of choosing and electing their officials as defined in the Constitution of the Portuguese Republic, in the Organic Statute of Macao and in the provisions of the Joint Declaration on the Question of Macao.

9. In accordance with the Basic Law as well as the interpretation by the Standing Committee of the National People's Congress of the Basic Law and its decision, the Macao SAR has been smoothly improving its electoral system, steadily promoting its democratic political development. As a final observation, the non-sovereign status of the Macao SAR should not be disregarded within the framework of the unitary State and the indivisible sovereignty of China of which the Macao SAR is an inalienable part.

Paragraph 11

Reply

10. The Arrangement for the Surrender of Fugitive Offenders between the Macao SAR and the Mainland is a legal cooperation arrangement between different jurisdictions within China and is different from extradition cooperation between countries, without involving the application of the provisions of the ICCPR. Following the "one country, two systems" principle, the Macao SAR formally started its negotiations with Mainland China on the Arrangement for the Surrender of Fugitive Offenders in February 2015. At present, the two Parties have conducted several rounds of negotiations on the specific provisions of the aforementioned Arrangement and have reached a general consensus on the content of the Arrangement.

11. The two Parties are now studying several issues and are keeping close contact, with the expectation of reaching a final consensus on the content of the Arrangement, with the prerequisite of respecting different characteristics of different legal systems.

Paragraph 17

Reply

- Measures taken to protect the labour rights and interests of non-resident workers

12. The Labour Affairs Bureau, in the performance of labour inspection duties, continues taking proactive measures such as preventive labour inspections, in order to safeguard the labour rights and interests of workers, including non-resident workers.

13. In addition to routine labour inspections, the Bureau also conducts preventive labour inspections, sending staff to carry out inspections at various sites and requesting employers to provide information, so as to actively monitor employers' compliance with labour legislation, particularly regarding the payment of wages of non-resident workers. During the preventive inspections, relevant information on workers is collected, including labour contracts, payroll slips, bank transfer records, attendance records, and so forth.

14. Meanwhile, the Bureau has also adopted a "door-to-door" approach to conduct talks at construction sites for subcontractors and non-resident workers to explain their labour rights and interests when they are laid off.

15. In addition, to enhance non-resident workers' awareness on their rights and interests in the Macao SAR, since August 2015, the Bureau and the Chinese Employment Agency Association (Macau) have jointly organized training courses for Mainland construction workers working in Macao to explain their labour rights, obligations and guarantees, including legislation on wages, rights and interests, among others. Between August 2015 and December 2016, a total of 145 classes were held and 16,404 persons attended such classes.

16. Besides the preventive labour inspections, the Bureau has been proactively carrying out dissemination of laws to enhance employers' and workers' awareness on labour rights and interests. In addition to continuing to work with social partners and associations to organize different types of talks on legal issues, the Bureau has also used multichannel marketing tools such as mobile App, WeChat, Facebook, YouTube, video advertising on buses and in lobbies of residential and commercial buildings, and so forth, to enable employers and workers (including non-resident workers) to clearly know their labour rights and interests, in order to maintain harmonious labour relations.

- Supervision on employment agencies

17. Article 16 of Decree-law 32/94/M, Licensing System on Employment Agencies, explicitly forbids employment agencies to charge any fees from their registered job-seekers on grounds of job placing, to act as an intermediary to pay the remuneration to workers, and also to collect any kind of payment from employers as a deduction on workers' wages. If an employment agency, after investigation, is found to have violated the law, especially charging fees to non-resident workers or deducting non-resident workers' wages, the Bureau will certainly punish the relevant employment agency in accordance with the law.

18. Moreover, the Bureau continues to supervise employment agencies through education and inspection patterns and puts efforts to strictly monitor their operation, particularly on the fees charging from non-resident workers. Meanwhile, the Bureau also conducts "door-to-door" promotional work, i.e. explains legal rights and obligations to employment agency operators on the spot to deepen their knowledge on labour legislation, in order to enable them to know and comply with the legislation. In 2016, a total of 146 inspections were conducted on 132 employment agencies.

19. In addition to monitoring employment agencies under education and inspection patterns as mentioned, the Bureau, regarding legislative work, is closely following up the amendments to Decree-law 32/94/M, Licensing System on Employment Agencies. The amendments include introduction of employment service instructor system, improvement of service fee system, formulation of strict requirements for the issuance of employment agency permit, clear prohibition on employment agencies to provide job referral services to non-residents (including visitors and non-resident workers) who stay in the Macao SAR, heavier penalties for violations, as well as the establishment of additional penalties, such as closure of business premises and prohibition on engaging in employment agency business, in order to further regulate the operation of the industry and to enhance the quality of service provided by employment agencies, as well as to safeguard the rights and interests of service users, in response to the development needs of the society.

- From 2013 to 2016, labour dispute cases involving non-resident workers were as follows:

	2013		2014		2015		2016	
No. of complaints	638		819		1 337		1 156	
No. of non-resident workers	1 243		1 834		4 175		2 832	
First 10 complaint subjects (sorted by 2016 results)	No.	%	No.	%	No.	%	No.	%
Wages	486	12%	938	18%	2 596	19%	1 239	15%
Mandatory holidays	327	8%	395	7%	1 496	11%	1 076	13%
Weekly rest	374	9%	530	10%	1 671	12%	1 013	12%
Overtime work compensation	514	13%	654	12%	1 515	11%	1 011	12%
Annual leave	187	5%	288	5%	934	7%	690	8%
Dismissal compensation	308	8%	455	9%	894	6%	644	8%
Work suspension	199	5%	343	6%	1 098	8%	602	7%
Prior notice	315	8%	385	7%	687	5%	444	5%
Accommodation	206	5%	440	8%	887	6%	441	5%
Transportation cost to return to home country	228	6%	258	5%	483	3%	249	3%
Others	908	22%	665	12%	1 665	12%	746	9%

	2013		2014		2015		2016	
Total	4 052	100%	5 351	100%	13 926	100%	8 155	100%
Case results	No.	%	No.	%	No.	%	No.	%
Resolved by administrative authority	3 952	98%	5 264	98%	11 297	81%	5 645	69%
Sent to judicial authority	100	2%	77	1%	647	5%	130	2%
Under investigation	0	0%	10	0%	1 982	14%	2 380	29%

20. As mentioned above, the Bureau has strengthened its preventive labour inspections to proactively monitor employers' compliance with the labour laws, and has adopted a "door-to-door" approach, to organize talks on the spot for employers and non-resident workers to explain their labour rights and interests when the workers are laid off.

- From 2013 to 2016, non-resident workers' complaints on extra fees charged by employment agencies (violation of Article 16(a) of Decree-law 32/94/M) were as follows:

	2013	2014	2015	2016
No. of cases opened	3	0	5	5
Extra fees	3	0	5	5
Case results:				
Substantiated and punished	0	0	2	0
Unsubstantiated	3	0	3	2
Under investigation	0	0	0	3

21. From 2013 to 2016, a total of 13 cases on complaints about extra fees charged by employment agencies were received. After investigation, two cases were found substantiated and the Bureau imposed penalties on the infringing agencies according to the law. Eight cases were found unsubstantiated and the remaining three cases are still pending.