



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the initial report of Macao, China, adopted by the Committee at its 107th session (11–28 March 2013)

1. The Committee considered the initial report of the Macao Special Administrative Region of the People's Republic of China (Macao, China) (CCPR/C/CHN-MAC/1) at its 2962nd and 2963rd meetings (CCPR/C/SR.2962 and 2963), held on 18 and 19 March 2013. This is the first report for Macao submitted by the People's Republic of China following the return of Macao to Chinese sovereignty on 20 December 1999. At its 2975th meeting (CCPR/C/SR.2975), held on 27 March 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the Macao Special Administrative Region of the People's Republic of China (Macao, China), while regretting that it was submitted late. It expresses appreciation for the opportunity to start its constructive dialogue with the high-level delegation on the measures taken by Macao, China, to implement the provisions of the Covenant since the transfer of sovereignty over Macao from Portugal to the People's Republic of China on 20 December 1999. The Committee expresses its satisfaction with the constructive dialogue with the delegation of Macao, China. The Committee appreciates the detailed written replies to the list of issues (CCPR/C/CHN-MAC/Q/1/Add.1) which were supplemented by the oral responses provided by the delegation during the dialogue, as well as the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the ratification of the following international instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 3 December 2002;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 February 2008;

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 8 February 2010;

(d) The Convention on the Rights of Persons with Disabilities, on 1 August 2008.

4. The Committee welcomes the following legislative and other measures taken by Macao, China, since the consideration of the fourth periodic report of Portugal relating to Macao (CCPR/C/POR/99/4):

(a) The adoption of Law No. 1/2004, establishing the legal framework on the recognition and loss of refugee status, which provides for the set up of the Commission for Refugees to assess asylum claims, in cooperation with the United Nations High Commissioner for Refugees (UNHCR);

(b) The adoption of Law No. 2/2007, on the juvenile justice system, which introduced restorative justice principles;

(c) The adoption of the Law No. 6/2008, on the fight against trafficking in persons, which define and criminalize trafficking in accordance with international standards;

C. Principal subjects of concern and recommendations

5. The Committee notes that the Covenant forms part of the legal order of Macao, China, and takes precedence over local law, and that its provisions may be directly invoked in court. Nonetheless, the Committee is concerned at the apparently limited level of awareness of the provisions of the Covenant among the judiciary, the legal profession and the general public, resulting in a restricted number of cases in which the provisions of the Covenant have been invoked or applied by courts in Macao, China (art. 2).

Macao, China, should continue its efforts to raise awareness among judges, the legal profession and the general public of the rights set out in the Covenant, and their applicability under local law. In its next periodic report, Macao, China, should include detailed information on the application of the Covenant by its courts and the remedies provided for individuals claiming a violation of their rights as enshrined in the Covenant.

6. The Committee notes with concern that under article 143 of the Basic Law, the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress, a fact that may weaken and undermine the rule of law and the independence of the judiciary (arts. 2 and 14).

Macao, China, should ensure the proper functioning of judicial structures in accordance with the Covenant and with principles governing the rule of law. It should also ensure that interpretations of the Basic Law are in full compliance with the Covenant.

7. The Committee takes note of the recent amendments adopted in 2012 by Macao, China, to the method for the selection of the Chief Executive (annex I to the Basic Law), according to which membership of the Election Committee mandated to elect the Chief Executive has been extended from 300 to 400. The Committee recalls that article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Furthermore, article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant (Committee's general comment No. 25, para. 1). While recognizing the reservation to article 25 (b) of the Covenant, the Committee regrets that Macao, China, has not expressed its intention to institute universal suffrage to ensure the right of all persons to vote at genuine elections and to stand for election without unreasonable limitations, nor has it indicated a timeline for the introduction of such an electoral system. The Committee is also concerned about Macao,

China's position in maintaining its reservation to article 25 (b) of the Covenant (arts. 2, 25 and 26).

Macao, China, should consider taking all preparatory measures with a view to introducing universal and equal suffrage in conformity with the Covenant, as a matter of priority. It should outline a clear and comprehensive plan of action and set timelines for the transition to an electoral system based on universal and equal suffrage that will ensure enjoyment by all its citizens of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's general comment No. 25 (1996). The Committee recommends that Macao, China, consider steps leading to the withdrawal of the reservation to article 25 (b) of the Covenant.

8. While noting the dual mandate of the Commission against Corruption to fight corruption and to fulfil the function of ombudsman, the Committee regrets the lack of concrete information on the effective functioning of the ombudsman's mandate, the capacity to investigate individual complaints and to take measures to remedy attested violations. The Committee is also concerned that the Commissioner is appointed by the Chief Executive, which might affect the independence of the institution in relation to the executive power (art. 2).

Macao, China, should ensure that the ombudsman's mandate of the Commission against Corruption is independent and in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex). Alternatively, Macao, China, should establish a new, independent statutory human rights institution, with a broad human rights mandate, and provide it with adequate financial and human resources, in line with the Paris Principles. It should also raise awareness among the general public of the ombudsman's mandate so that anyone can submit complaints to seek remedies for the violation of their rights as protected under the Covenant.

9. While the Committee welcomes the measures taken to eliminate inequalities in salaries between men and women, the Committee is still concerned at the persistent wage gap between women and men in Macao, China, especially in the private sector (arts. 2, 3, and 26).

In the light of the Committee's previous recommendation (CCPR/C/79/Add.115, para. 10), Macao, China, should pursue and strengthen measures to reduce the wage gap which persists between women and men, and give full effect to the principle of equal pay for work of equal value, in practice. It should also address all the causes that widen said gap.

10. While welcoming the efforts made by Macao, China, to combat and eliminate domestic violence, the Committee is concerned that, despite the decrease in the number of investigated cases of domestic violence, the magnitude of the domestic violence phenomenon remains unclear. The Committee also regrets the lack of specific legislation proscribing sexual harassment in all settings, including at workplace (arts. 7 and 14).

Macao, China, should continue its efforts to eliminate domestic violence; adopt the law on prevention of domestic violence; strengthen the services available to victims and the remedies provided and conduct studies on the magnitude and root causes of domestic violence in Macao, China. It should also enact specific legislation prohibiting sexual harassment in all settings, including in the workplace; thoroughly investigate such cases; sanction perpetrators; provide adequate remedies to victims and take measures to raise awareness of the sexual harassment phenomenon.

11. While the Committee welcomes the actions of the judiciary in blocking the transfer of an offender to mainland China (case No. 12/2007, decision of the Court of Final Appeal of Macao), it is concerned that, despite its previous recommendation (CCPR/C/79/Add.115, para. 14), Macao, China, has not adopted any specific regulations regulating the transfer of offenders from Macao, China, to mainland China to protect them against the risk of the death penalty or ill-treatment upon return. The Committee takes due note of Macao, China's assertion that negotiations with mainland China on this matter are ongoing (arts. 6, 7, 9, 10 and 14).

The Committee reiterates its previous recommendation and urges Macao, China, to pursue negotiations with mainland China with a view to reaching a firm agreement on the transfer of offenders from Macao to the mainland, as a matter of priority. Macao, China, should ensure that the agreement is in line with its obligations under articles 6 and 7 of the Covenant.

12. While commending Macao, China, for the adoption of the law on juvenile justice, the Committee is concerned at the excessive length of solitary confinement that may be applied in respect of juvenile offenders during nighttime. It also notes Macao, China's commitment to reconsider this practice (arts. 7, 10 and 24).

Macao, China, should review the overall period of nighttime solitary confinement for juveniles, taking due account of articles 7 and 10 of the Covenant.

13. While appreciating the various efforts made by Macao, China, to address and combat trafficking in persons, the Committee is concerned about the persistence of the phenomenon in Macao, China, as well as about the low number of cases of trafficking in persons that come to the attention of the authorities and the limited number of convictions. The Committee also regrets the lack of information on the existence of any legal alternatives to removal of victims to countries where they may face hardship and retribution (art. 8).

Macao, China, should intensify its efforts to combat trafficking in persons; systematically and vigorously investigate and prosecute perpetrators, and ensure that, when convicted, they are adequately sanctioned. Macao, China, should also guarantee adequate protection, reparation and compensation to victims, including rehabilitation. It should ensure that legal alternatives are available to victims that may face hardship and retribution upon removal.

14. While noting the efforts made by Macao, China, regarding the training and employment of more judges and magistrates, the Committee remains concerned about inadequate staffing of the court system; the substantial backlog of cases; the delays in proceedings; and the reported difficulties non-Portuguese-speakers may face due to inadequate interpretation during court proceedings (art. 14).

In the light of the Committee's previous recommendation (CCPR/C/79/Add.115, para. 9), Macao, China, should increase the number of qualified and professionally trained judicial personnel, as a matter of urgency; continue efforts to reduce the backlog of court cases; and decrease delays in proceedings. It should also ensure that adequate compensation is awarded in cases related to lengthy proceedings. Macao, China, should also ensure true bilingualism in the administration of justice.

15. The Committee is concerned at measures taken against journalists and social activists that create an environment discouraging the expression of critical positions or of critical media reporting on matters of valid public interest, and adversely affect the exercise of freedom of expression in Macao, China. In particular, the Committee expresses concern at reports of media self-censorship; application of the Internal Security Law to impose immigration bans against Hong Kong journalists and activists, on the grounds that they

“constitute a threat to the stability of internal security”; police use of identity checks to justify detention of social activists and journalists up to six hours; as well as reports that journalists may face arbitrary arrest and confiscation of their material. The Committee also regrets the lack of clarification regarding the crime of abuse of freedom of the press and criminalization of defamation (arts. 9, 14 and 19).

Macao, China, should ensure that journalists, social activists and individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression. Macao, China, should refrain from profiling foreign journalists as threats to internal security, and abstain from applying its Internal Security Law to ban their entry into Macao, China. It should also refrain from any measures taken against journalists and individuals aimed at deterring or discouraging them from freely expressing their opinions. Any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant. Macao, China, should consider decriminalizing defamation and, in any case, it should countenance the application of criminal law only in the most serious of cases.

16. Regarding the right to freedom of assembly, the Committee is concerned, in particular, at reports of application of the section of the Penal Code establishing the offences of “inciting, in a public gathering or by any means of communication, collective disobedience of public order or law, with an intention to destroy, alter or overturn the established political, economic or social system”, and of spreading “false or demagogic information that may frighten or unsettle the residents” against those exercising their right to freedom of assembly and freedom of expression. It is also concerned at reports of systematic use by police of cameras and video-recordings during demonstrations, as well as other methods to deter individuals from participating in any type of street actions (art. 21).

Macao, China, should take all measures to ensure that individuals fully enjoy their rights under article 21 of the Covenant and that the right to freedom of assembly is safeguarded in practice. It should abstain from any unjustified interference with the exercise of this right and ensure that any restrictions imposed are in compliance with the strict requirements of article 21 of the Covenant.

17. While welcoming the legal framework in place for the protection of the rights of migrant workers, the Committee remains concerned at the practice of employing migrant workers without formal contracts; the excessive fees that may be requested from them by recruitment agencies; and the payment of lower wages compared to local workers. All these factors make migrant workers vulnerable and expose them to abuses and exploitation. The Committee is also concerned at the lack of effective legal recourse against unfair dismissal or unpaid wages (arts. 2, 8 and 26).

Macao, China, should strengthen the protection of rights of migrant workers against abuses and exploitation and establish affordable and effective mechanisms to ensure that abusive employers or recruitment agencies are held accountable.

18. Macao, China, should widely disseminate the Covenant, the text of the initial report, the written replies it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations, so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the region, as well as the general public. The Committee also requests Macao, China, when preparing its second periodic report, to broadly consult with civil society and non-governmental organizations.

19. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, Macao, China, should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 7, 11 and 17 above.

20. The Committee requests Macao, China, in its next periodic report, due to be submitted on 30 March 2018, to provide specific, up-to-date information on all its recommendations and on the Covenant as a whole.
