

Distr.  
GENERAL  
CAT/C/MAC/CO/4  
21 November 2008  
Original: ENGLISH

COMMITTEE AGAINST TORTURE  
Forty-first session  
Geneva, 3-21 November 2008

**ADVANCE UNEDITED VERSION**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture**

**Macao Special Administrative Region**

**A. Introduction**

1. The Committee against Torture (“the Committee”) considered the fourth periodic report of China with respect to the Macao Special Administrative Region (Macao SAR) (CAT/C/MAC/4) at its 844<sup>th</sup> and 846<sup>th</sup> meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), and adopted, at its 864<sup>th</sup> meeting on 21 November 2008 (CAT/C/SR.860), the following concluding observations.

**B. Positive aspects**

2. The Committee welcomes the submission of the report of Macao SAR, included in the fourth periodic report of the State party China. It also welcomes the written replies to the list of issues (CAT/C/MAC/Q/4/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken for the implementation of the Convention.

3. The Committee notes with appreciation:

- a) the new Law 6/2008 on the Fight Against Trafficking in Persons, which define and criminalize trafficking in accordance with international standards;
- b) Law 1/2004, establishing the Legal Framework on the Recognition and Loss of Refugee Status, which set up a Commission for Refugees to assess asylum claims in cooperation with UNHCR; and
- c) the creation, in 2005, of the Commission for Disciplinary Control of the Security Forces and Services of Macao, which has, *inter alia*, the mandate to consider complaints lodged by individuals who consider that their rights have been infringed.

### **C. Main issues of concerns and recommendations**

#### **Definition and criminalization of torture**

4. The Committee takes note of the Macao SAR's explanation with respect to the term "public official" contained in article 234 read in conjunction with article 235 of the Criminal Code. Nonetheless, the Committee is concerned that the restriction mentioned in article 234 (1) of the Criminal Code regarding the scope of the crime to the mentioned public officials is not fully compliant with the definition of torture contained in article 1 (1) of the Convention.

**The Macao SAR should adopt a definition of the term "public official" fully in line with article 1 (1) of the Convention, so as to include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity. The Committee further recommends that Macao SAR consider using a wording of the definition of torture similar to that used in the Convention so as to ensure that all elements contained in article 1, including discrimination of any kind, are covered in the definition.**

5. The Committee takes note of the difference between the crimes provided for by the Criminal Code in articles 234 (torture) and 236 (serious torture) as illustrated in the Macao SAR's report and replies to the list of issues. The Committee is concerned that this distinction may lead to the perception that there are more and less serious crimes of torture, a distinction which not only is wrong but can create obstacles to effective prosecution of all cases of torture.

**The Macao SAR should define and criminalize torture in its Criminal Code in full conformity with article 1 and 4 of the Convention. To this end, the Committee recommends that the crime of torture constitute a single offence subject to the relevant aggravating circumstances applicable to the crime of torture.**

## **Jurisdiction**

6. The Committee is concerned that while Macao SAR's jurisdiction can always be established over acts of serious torture committed abroad (article 236 of the criminal code), the exercise of extra territorial jurisdiction with respect to other torture offences (article 234 of the criminal code) is conditional to the requirement of double criminality.

**The Macao SAR should establish its jurisdiction for all acts of torture committed abroad, in accordance with article 5 (2) of the Convention.**

## **Training**

7. The Committee welcomes information about the training given to police officers, prison wardens and other law-enforcement officials regarding human rights and the prohibition of torture, but is concerned that there appears to be no special training programs for health professionals aiming at identifying and documenting cases of torture and provide rehabilitation for the victims.

**The Macao SAR should ensure that health care professionals are equipped with the necessary training to recognize and detect features and signs that may suggest the occurrence of torture. To this end, the Macao SAR should, *inter alia*, further promote, disseminate and use the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol).**

## **Solitary confinement**

8. The Committee is concerned that children as young as 12 can be potentially subjected to solitary confinement to up to 1 month.

**The Macao SAR should ensure that persons under the age of 18 should not be subjected to solitary confinement; if applied, it should be limited to very exceptional cases and closely monitored. The Macao SAR should also ensure that solitary confinement remains in all cases a measure of limited duration and of last resort, in accordance with international standards.**

## **Trafficking in persons**

9. While noting the measures taken in order to reduce trafficking, including new legislation, as well as the intensification in investigation and prosecution of this crime, the Committee is still concerned at the incidence of trafficking in Macao SAR, notably in women and children, especially for the purpose of sexual exploitation.

**The Macao SAR should continue to take measures to combat trafficking in persons, notably women and children. To this end, it should:**

- a) **investigate all cases of trafficking and strengthen its efforts to prosecute and punish the perpetrators;**

- b) increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized; and**
- c) strengthen cooperation with the authorities of countries from or to which individuals are trafficked in order to combat this practice; such cooperation should include multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible of trafficking as well a strategies for supporting the victims.**

10. The Macao SAR should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

11. The Committee invites the Macao SAR to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

12. The Committee requests that the Macao SAR provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 8 and 9 above.

13. The Macao SAR is invited to submit its next periodic report, which will be included in China's fifth periodic report, by 21 November 2012.