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Summary record of the 3899th meeting*

Held at the Palais Wilson, Geneva, on Thursday, 14 July 2022, at 10 a.m.

Chair: Ms. Pazartzis

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* No summary record was issued for the 3898th meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Second periodic report of Macao, China (continued) (CCPR/C/CHN-MAC/2;
CCPR/C/CHN-MAC/Q/2; CCPR/C/CHN-MAC/RQ/2)

1. *At the invitation of the Chair, the delegation of Macao, China, joined the meeting.*
2. **Ms. Sancin** said that she would appreciate information about progress in respect of the two applications for refugee status that had been pending for over a decade, a situation that seemed inconsistent with Law No. 1/2004 on the Legal Framework on the Recognition and Loss of Refugee Status. She would like to know what was causing the excessive delays and whether, in addition to receiving accommodation and financial assistance, the applicants and their families had been guaranteed the access to legal aid, health services and schooling for their children to which they were entitled. An explanation as to why none of the eight applications for refugee status submitted before 2016 had been granted would be useful, as would statistics on applications received between 2016 and 2022 and their outcomes.
3. In the light of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, she wished to know whether the Government of Macao, China, would be willing to take any steps towards decriminalizing defamation, in particular defamation of public officials and insults to the national flag, emblem and anthem, or at least towards abolishing imprisonment as a punishment for such offences. It would be useful to know the number of cases of defamation that had been prosecuted to date and the penalties handed down to those convicted. She would also appreciate a response to concerns raised about the lack of an exhaustive definition of the offence of "insult" – a lacuna that allowed for the relevant legislation to be used abusively to unduly restrict the expression of critical opinions – and the fact that the penalty was disproportionate to its equivalent in mainland China. She would also like to know the justification for the distinction made in the Criminal Code between private citizens who had suffered defamation, who had to bring a private prosecution at their own expense, and civil servants, on whose behalf prosecutions were brought at the State's expense.
4. Given that knowledge or intent was required in order for an offence against public security, order and peace in sudden incidents of a public nature, as defined in the Civil Protection Law, to be deemed to have been committed, she would appreciate an explanation of the standard of evidence applicable in such cases. Data on the number of individuals prosecuted for the offence to date, the outcomes of their cases and the penalties imposed would be helpful. She also wished to know what had necessitated the arrest, in 2017, of two older persons who had shared on social media a rumour about the Government of Macao, China, covering up deaths in the aftermath of a natural disaster. It was unclear how those arrests were compatible with individuals' rights under the Covenant, in particular article 19. Lastly, she wondered whether any legislation in Macao, China, provided for the protection of whistle-blowers.
5. **Mr. Furuya**, noting that the information on the number of complaints and labour disputes involving non-resident workers contained in the second periodic report (CCPR/C/CHN-MAC/2, para. 63) covered the period 2011–2016 only, said that he would appreciate up-to-date figures. He would like to know how the Government of Macao, China, received complaints from migrant workers and what measures had been taken to proactively encourage them to report unlawful employment and recruitment practices. In the light of reports that employers unlawfully deducted recruitment agency fees from workers' wages, any data attesting to the impact of the new Employment Agency Activity Law in terms of improving migrant workers' situations would be helpful. He would also like to know why Law No. 5/2020 on the Minimum Wage for Workers established different methods of calculating the minimum wage for resident and non-resident workers on the one hand and non-resident domestic helpers on the other, and what measures were being taken to protect the rights of migrant domestic helpers.
6. Since the data on trafficking in persons provided in the report all related to the years 2011 to 2016, he would appreciate updated figures for investigations, prosecutions and

convictions and the number of victims who had received protection. In view of reports that government officials apparently believed – erroneously – that victims of trafficking could consent to their exploitation, he would like more detail about the definition of trafficking in persons established in Law No. 6/2008 on the Fight against the Crime of Trafficking in Persons, including an indication as to whether the practical application of the Law was consistent with the relevant provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol). Lastly, he would appreciate information on measures taken to enable victims or potential victims of trafficking to submit complaints and reports directly, and on the number of complaints and reports received in that manner.

7. **Mr. Gómez Martínez**, referring to the State party's replies to the list of issues ([CCPR/C/CHN-MAC/RQ/2](#), para. 37), said that the information provided on the reduction in the backlog of court cases covered the period to 30 June 2020 only and that more up-to-date figures were needed. He would appreciate an explanation of reports that the majority of court cases took place in Portuguese even though most of the population was Chinese-speaking and citizens apparently had the right to use either of the territory's official languages in court proceedings. Noting that the National Security Law failed to provide a definition of the "preparatory acts" referred to in the articles of the Law addressing treason, secession and subversion, and that that omission could leave the door open for abuse of police power, he urged the delegation to explain how the term should be interpreted and to provide disaggregated data on the application of the relevant articles.

8. Despite the State party's assertion, in paragraph 41 of the replies to the list of issues, that article 19-A of Law No. 4/2019 did not have the effect of creating a special court for certain types of offence, the offences in question could only be tried by preselected judges. Could the delegation therefore explain how that article was in line with article 85 of the Basic Law, which provided for the continuation of the former single jurisdiction criminal prosecution system? He would also like to know how many judges had been appointed and how many cases had been tried under the aforementioned article 19-A.

9. **Ms. Abdo Rocholl**, noting that the figures for investigations by the Office for Personal Data Protection provided in paragraph 222 of the second periodic report covered the years 2011 to 2016 only, said that updated figures were needed for the number of investigations, the nature of the violations, the punishments imposed and the redress provided to victims. She would also appreciate information on any legal safeguards in place to restrict the use of the "Sky Eye" closed-circuit television system in combination with facial recognition technology. She wondered whether there was any mechanism capable of independently verifying the compliance of police mass surveillance practices with national law and international human rights standards, including the Covenant, and whether the use of the "Sky Eye" system was in line with Law No. 2/2012 on the Legal Regime for Video Surveillance in Public Spaces, data protection law, international human rights standards and, in particular, the Covenant. More information on the bill to expand the number of covert surveillance methods that the police force was permitted to use to intercept text messages, photographic images and the exchange of information of any nature would also be useful, as would details of the legal avenues through which residents of Macao, China, might challenge unlawful wiretapping. Lastly, in the light of leaked emails showing that, in 2015, the Judiciary Police had expressed an interest in the intrusive surveillance software marketed by the company Hacking Team, she asked whether that software had actually been acquired.

The meeting was suspended at 10.30 a.m. and resumed at 10.40 a.m.

10. **A representative of Macao, China**, speaking via video link, said that the two refugees whose applications had been pending for years received 4,350 Macanese patacas per month – enough to cover their basic needs – and accommodation. They also received free medical care. Moreover, they were free to move around Macao, China, as they pleased.

11. **A representative of Macao, China**, speaking via video link, said that the main reason why Law No. 5/2020 on the Minimum Wage for Workers applied to foreign workers but not to domestic helpers was that families employing domestic helpers were creating jobs but were not profiting from the labour of their helpers. With a view to guaranteeing foreign

domestic helpers' basic rights, employers' applications were only approved if they met a certain standard.

12. **A representative of Macao, China**, speaking via video link, said that the Criminal Code set out a clear definition of the term "insult" as used in relation to the offence of defamation. The Government of Macao, China, believed that there should be limits on citizens' right to freedom of speech; while that right needed to be protected, consideration must also be given to others' right to privacy and the protection of their reputation. Law enforcement agencies' involvement in defamation cases made it easier for citizens to exercise their right to freedom of speech. As for insults to the national flag, emblem and anthem, perpetrators would be held accountable if they were deemed to have intentionally insulted symbols of the State. The Government of Macao, China, had no plans to legislate to decriminalize defamation or insults.

13. The judicial system had been reformed and internal procedures had been improved in order to enhance the efficiency of courts, expedite proceedings and address the backlog of cases. In addition, the Criminal Procedure Code, the Civil Procedure Code, and the Law on Judicial Organization had been revised to facilitate access to justice and simplify procedures. Provision had also been made to increase the number of judges. Training had been stepped up and internal guidelines had been developed to enhance efficiency. Suspects who did not speak the language of the court were provided with simultaneous interpretation throughout the proceedings. The Court of First Instance typically operated in Chinese, while the Court of Second Instance conducted some of its proceedings in Portuguese. Further details on language use in court proceedings would be provided in writing.

14. **A representative of Macao China**, speaking via video link, said that, pursuant to the Civil Protection Law, which contained a clear definition of the offence, those found guilty of defamation were liable to receive a term of imprisonment not exceeding two years or to a corresponding fine. One person had been prosecuted under the defamation provisions since the Law's entry into force and that person had been sentenced to 6 months' imprisonment in February 2022. Thus far, no sentences had been imposed for acts criminalized under the National Security Law. The Law on Judicial Organization contained no specific provisions concerning the selection of judges and prosecutors entrusted with the adjudication of cases involving national security issues and, to date, those judges had been selected from a pool of Chinese nationals residing in the Macao Special Administrative Region. In the biennium 2021–2022, 14 judges had been designated to hear cases involving national security at the three levels of court.

15. The "Sky Eye" video surveillance system was regulated by Law No. 2/2012 on the Legal Regime for Video Surveillance in Public Spaces and the use and retention of data collected during surveillance activities was monitored by the Office for Personal Data Protection, which duly investigated all complaints of violations. If a violation was found, the perpetrators were punished accordingly. Facial recognition technology was not a component part of the "Sky Eye" system, although the technology had been used since 2018. Its use was monitored by the authorities. Personal data protection was also regulated under Law No. 2/2012. Wiretapping required the authorization of a judge and was monitored by the prosecution service. The draft legislation on the interception and protection of communications, once adopted, would enhance the effective oversight of surveillance activities. However, such activities were already under the close scrutiny of judges and prosecutors and any additional mechanism would only duplicate and potentially undermine those functions.

16. In the biennium 2011–2022, the Office of Personal Data Protection had received over 1,500 complaints of violations of privacy and sanctions had been imposed on those responsible in 219 cases. A series of measures had been taken to increase public awareness of the right to privacy and enhance personal data protection.

17. **A representative of Macao, China**, speaking via video link, said that there was not always sufficient evidence to corroborate offences of trafficking in persons. Victims of trafficking and similar offences were afforded financial and other support, without distinction on the basis of gender. There was a 24-hour complaints hotline, which also operated in English, and complaints could also be submitted by email. Any victims identified were

transferred to the police for follow-up but, if the victims had initially given consent, it was more difficult to process alleged trafficking cases. In such cases, the judge reviewed all available evidence before deciding whether the fact that the victim had initially consented was sufficient to disprove the trafficking allegations.

18. **A representative of Macao, China**, speaking via video link, said that the Social Welfare Bureau provided victims of trafficking with financial support, medical treatment, accommodation and interpretation services, among others. Special counselling was available for minors. The Bureau cooperated with the International Organization for Migration in the Hong Kong Special Administrative Region in conducting security assessments for the repatriation of victims, and two minors had been repatriated since 2020. Victims at risk of retaliation were afforded protection and assistance. Updated statistics on trafficking in persons would be provided in writing.

19. **Ms. Sancin** said that the status of the two pending applications for refugee status remained unclear. It would be useful to know the reasons for the excessive delay in processing those cases and to have details of any measures taken to expedite the process and prevent such situations in future. The delegation might also wish to explain why none of the applications for asylum submitted to date had been granted.

20. Given that the State party seemed unwilling to consider the decriminalization of defamation, she wondered whether it might at least agree to review the appropriateness of imprisonment as a penalty. The delegation might also indicate how many persons had been prosecuted for defamation and what penalties had been imposed, and explain why the cost of defamation proceedings instituted by private individuals must be borne by the victims whereas proceedings brought by civil servants were free of charge.

21. The delegation had yet to explain the necessity of the arrest of two older persons, in 2017, who had apparently shared on social media a rumour about government cover-ups relating to deaths that had occurred in the aftermath of a natural disaster, given that the Civil Protection Law provided that, in order for such actions to be prosecuted, there must be knowledge or intent of causing chaos among the general public. She also wished to hear about any legislation protecting whistle-blowers that was in place .

22. **Mr. Gómez Martínez** said that, while the Committee welcomed the reduction in the backlog of cases, more up-to-date data was needed to ascertain whether the positive trend continued. It would also be helpful to know whether civil proceedings were primarily conducted in Chinese or Portuguese. It remained unclear whether the absence of specific provisions on the selection of judges and prosecutors in the Law on Judicial Organization applied to the selection process in general or only to the selection of judges entrusted with the adjudication of cases under the National Security Law. It would be helpful if the delegation could provide additional details on the two procedures.

23. **Ms. Abdo Rocholl** said that, while the State party's desire to keep the supervision of data privacy in the context of surveillance within the judiciary was certainly legitimate, in 2018 the Court of Final Appeal had acknowledged that Macao courts lacked adequate processes and capacity to carry out that function. She therefore wondered whether the State party might consider establishing an independent monitoring mechanism to close that gap and dispel public uncertainties. It would be helpful if the delegation could provide disaggregated data on investigations conducted by the Office of Personal Data Protection in writing.

24. **Mr. Furuya** said that, based on his reading of the Basic Law of the Macao Special Administrative Region, human rights were only extended to residents. Articles 25 and 28, for example, appeared to reserve the rights to equality before the law and freedom from torture and ill-treatment to Macao residents. Clarification as to the legal framework that safeguarded the human rights of the State party's many non-resident migrant workers was therefore important. He wondered how many victims of trafficking in persons who would be at risk of retaliation if they returned to their country of origin had applied for residence status, and how many resident permits had been granted on that basis. Was that avenue also available to trafficking victims from mainland China?

25. **Mr. Cheong Weng Chon** (Macao, China), speaking via video link, said that the most recent statistics attesting to the reduction in the backlog of cases would be submitted in writing.

26. The population of the Macao Special Administrative Region was predominantly Chinese speaking. Accordingly, most court proceedings were conducted in Chinese; for example, 92 per cent of the 10,715 proceedings before the Court of First Instance had been conducted in Chinese, 0.4 per cent in Portuguese and the remainder in Chinese and Portuguese simultaneously. Simultaneous interpretation between Chinese and Portuguese was available in all civil proceedings.

27. **A representative of Macao, China**, speaking via video link, said that the authorities were working to process the two long-standing asylum applications to which Ms. Sancin had referred, which had each been submitted on different grounds. In the meantime, the applicants could access support from the Government of Macao, China. While defamation proceedings against private individuals must be brought by the victims themselves, proceedings in which the victim was a public official were brought by the authorities because such offences threatened the credibility of a public office. Surveillance operations were subject to clearly established privacy protection measures. For example, video footage captured via the “Sky Eye” system was deleted after 60 days and all persons whose communications had been intercepted had the right to review the corresponding records. Furthermore, the draft legislation on the interception and protection of communications provided for legal remedies. All mechanisms relating to surveillance complied with the Covenant’s provisions on privacy, and since the transfer of Macao from Portugal to China there had been no cases of illegal interception of communications.

28. **A representative of Macao, China**, speaking via video link, said that all labour relations, including those involving non-resident workers, were subject to the law. Non-resident workers enjoyed the same rights as resident workers, including equal pay for equal work, and employers were required to provide accommodation and cover the cost of their return to their country of origin when the employment contract ended. Penalties were imposed for illegal acts affecting non-resident workers, and they had also benefited from measures such as free vaccination during the coronavirus disease (COVID-19) pandemic.

29. **A representative of Macao, China**, speaking via video link, said that the protection of minorities must be balanced against mainstream views when it came to the complex matters of same-sex relationships and transgender persons. The rights of those groups were upheld, and education on respect for individuals’ choices with regard to gender identity was provided in schools. A working group had been established to study how other countries addressed the matter, and work was under way to build a social consensus that would inform legislation. Individuals could only change their gender identity for official purposes through the courts, and such requests were thus dependent on the judge’s ruling.

30. There had been several women presidents of the Legislative Assembly and many deputies had been women. The Government of Macao, China, endeavoured to tackle the root causes of inequality in all its work, particularly in areas such as education and housing. The draft law on interregional legal assistance in criminal matters had been withdrawn owing to technical difficulties and the matter’s complexity but work to improve legislation in that area and strike a balance between tackling crime and protecting human rights would continue.

31. **A representative of Macao, China**, speaking via video link, said that the Government of Macao, China, had no plans to establish a national human rights institution because that role was fulfilled by the Commission against Corruption, which undertook its work independently. The publication of the Commission’s 2021 report had been delayed owing to the COVID-19 pandemic and technical issues, but the report would be available in the near future.

32. **A representative of Macao, China**, speaking via video link, said that aggravated offences of domestic violence carried harsher penalties. For an act to constitute an offence of domestic violence, the perpetrator and victim must be relatives and the violence must occur repeatedly, although in more serious cases only once instance was required.

33. **Mr. Cheong Weng Chon** (Macao, China), speaking via video link, said that 5 of the 33 members of the current Legislative Assembly were women, that low proportion being attributable to the results of the election. Women represented more than 40 per cent of senior leaders in administrative bodies and roughly half of judges, and 14 of the 40 prosecutors were women.

34. **A representative of Macao, China**, speaking via video link, said that domestic violence and the offence of domestic violence were two separate concepts. While violent acts among family members constituted domestic violence, particularly when one member sought to oppress and dominate another, an offence was committed only when murder or serious injury occurred. Domestic violence legislation was in line with the provisions of the Declaration on the Elimination of Violence against Women.

35. **Mr. Gómez Martínez** said that it would be useful for the Committee to see the text of the withdrawn draft legislation on an extradition treaty with mainland China. He wondered whether the commission of a crime by a man motivated by a desire to mark his sense of superiority over a woman constituted an aggravated offence.

36. **Mr. Bulkan** said that he wished to know whether legislation provided for quotas for female candidates in elections. Clarification of the education given in schools on individuals' "choices" with regard to gender identity was required; gender identity was not a choice.

The meeting rose at 11.55 a.m.