

**WRITTEN QUESTIONS & ANSWERS TO THE LIST
OF ISSUES TO BE TAKEN UP IN CONNECTION
WITH THE CONSIDERATION OF THE INITIAL
REPORT OF THE PR OF CHINA CONCERNING
RIGHTS COVERED BY ARTICLES 1 TO 15 OF THE
ICESCR * ****

(PART III)

MACAU SPECIAL ADMINISTRATIVE REGION

**I. General legal framework within which the Covenant is
implemented**

1. Please provide information on the extent to which the

* E/C.12/Q/CHN/1,7 of June.

** HR/CESCR/NONE/2004/9.

public at large is aware that the ICESCR may be invoked before the courts of the Macau SAR. Please cite cases in the past five years when the Covenant has actually been invoked before the courts.

As previously mentioned in Part III of China's report, the ICESCR has been widely disseminated in the Macau SAR. And it is undoubted that in recent years the Macau SAR population is increasing its ability to understand the nature and extent of individual rights and freedoms.

In fact, apart from the publication of the ICESCR in the *Official Gazette* in both official languages, several other means of dissemination such as television broadcastings, radio advertisements, newspapers articles, publication and distribution of free brochures and leaflets, fun fairs, school promotion and seminars, *etc.*, have been used by the Macau SAR Government in order to enlarge public awareness of the rights provided for therein.

Furthermore, there is specific entity within the Macau SAR Government, the Division of Legal Dissemination of the Legal Affairs Department, whose primary responsibility is to promote and disseminate the Law to the general public, including the Covenant and other applicable international treaties, which are an integrant part of the Macau SAR legal system.

In accordance with Article 40 of the Basic Law, the provisions of the ICESCR are implemented through the laws of the Macau SAR. Indeed, most of the rights enshrined in the ICESCR already existed under the Macau legal system and were — and still are — fully safeguarded. For instance, civil law regulates equality of rights between men and women, such as freedom of marriage, freedom to contract and equal right to succession, while labour law ensures, *inter alia*, equal working conditions, equal

remuneration for men and women workers and the legal framework on educational policy ensures the right to free education without discrimination, *etc...*

Within this context, it should be pointed out that both residents and non-residents have the right to resort to law and to access to the courts, to lawyers' help and to judicial remedies. Access to Law and to the courts comprises legal information, legal protection, legal consultation and legal aid. No one is restrained or obstructed to seek justice.

All persons, without discrimination, who demonstrate that they do not possess sufficient financial means to support lawyer fees or to support, in full or in part, the legal expenses of a legal case are entitled to legal assistance, which can either take the form of legal advice or legal aid. The legal aid system covers the full or partial exemption of the payment of legal expenses, or its postponement and the appointment of a lawyer free of charge.

Concretely in relation to cases which have been invoked before the Macau SAR courts within the past five years, it should be stressed that, as the rights provided for in the ICESCR are also enshrined in other laws which also regulate their exercise, litigants tend to invoke before the Courts the latter.

Nevertheless, since 20/12/1999, the Court of Second Instance has judged 2 cases whereby the provisions of the Covenant were directly invoked, although in a very abstract manner.

Those 2 cases were criminal appeals involving a request to invalidate an accessory penalty. The defendants worked at a casino and were accused of illegal lending of money. Under the due process of law, they were judged and sentenced. The accessory penalty of prohibition to enter into any casino in Macau for a fixed period of time was also applied. The ICESCR

provisions on the right to freely choose one's occupation were directly quoted in the appeals. However, the Court considered that the accessory penalty did not contravene the right to freely choose one's occupation and, thus, the appeals were denied.

2. Please indicate which institutions in Macau SAR are responsible for the protection of the rights stipulated in the Covenant.

The main Macau SAR institutions responsible for the protection of the rights stipulated in the Covenant are the following:

— Publication, public awareness and dissemination of the ICESCR — Legal Affairs Department;

— Right to work — Labour Department and the Public Administration and Service Department;

— Right to social security — Macau Pensions Fund and the Social Security Fund;

— Protection of the family — Social Welfare Institute, Education and Youth Affairs Department and the Minors Institute;

— Right to an adequate standard of living — Social Welfare Institute, Civic and Municipal Affairs Institute, Health Department and the Housing Institute;

— Right to health — Health Department, Civic and Municipal Affairs Institute and the Environment Council;

— Right to education — Education and Youth Affairs Department, Social Welfare Institute, Civic and Municipal Affairs Institute, Macao Polytechnic Institute, Minors Institute, Macao University of Science and Technology and the University of Macao;

— Right to cultural life and science progress — Cultural Institute, Historical Archive, Civic and Municipal Affairs Institute.

II. Issues relating to general provisions of the Covenant (Articles 1 to 5)

Article 2.2: Non-discrimination

3. Please provide information on the conditions in which migrant workers work and live in Macau SAR and whether there are special measures taken by the Government to protect the full range of their economic, social and cultural rights.

One of the main characteristics of the Macau SAR is being highly populated. People of different nationalities live together and share a wide variety of ethnic, religious, linguistic and cultural backgrounds. Every ethnic group has the same dignity and its entitled to its own cultural life, to profess and practise its own religion and to use its own language.

As stated in Part III of China's report, all persons in the Macau SAR other than the Macau residents, including migrant workers, enjoy in accordance with law the rights and freedoms of Macau SAR residents prescribed in Chapter III of the Basic Law.

There are no special measures on the protection of the economic, social and cultural rights of migrant workers. Equality and non-discrimination are cornerstone principles of the Macau SAR legal system that bind legislative, administrative and jurisdictional powers. Discrimination is censured at all levels, including by means of criminal law. Several criminal offences related to hatred and discrimination based on nationality, ethnicity, race or religion are provided for and severely punished.

Complains, being it administrative or judicial, lodged by migrant workers are dealt in the exact same manner as any other complain lodge by residents.

4. Please describe the practical application of Article 25 of the Basic Law, which prohibits all forms of discrimination including on the grounds of sex, and describe the difficulties encountered in the implementation of the law, if any.

As mentioned, all individuals are equal before the law and enjoy the same rights and freedoms, regardless, particularly of the gender. Several examples and concrete information was provided in Part III of China's report related to the full enjoyment of the rights established in the Covenant.

The fundamental right of non-discrimination, including on the grounds of the gender, contained in Article 25 of the Basic Law is reproduced and regulated in many other laws. Theoretically there are no difficulties in their implementation. In practice, as in any other free and developed society, it depends upon the individuals themselves, and their will of exercising their own rights.

At present, the persistence of gender inequalities is due solely to cultural factors, mainly the population's level of education. In this respect, it should be stressed that, since long, the Macau SAR Government has adopted a strong policy of supporting education, in particular through the institution and enlargement of the compulsory education system, allocation of funds to schools and students as well as the granting of other benefits.

The situation is improving gradually. Women achieved more and better means of education. In recent years, the total percentages of female and male students in the various education levels are almost the

same and the female drop out percentage is much lesser than that of male students. As a result, the proportion of men and women in top positions at work became more equitable. In regard to unskilled jobs the trend is not yet inverted.

Article 3: Equality between men and women

5. What legislative provisions are in place to address sexual harassment in the workplace in Macau SAR?

There is no specific law on sexual harassment in the workplace. However, the Criminal Code provides for and punishes some criminal coercion, sexual abuse, practice of exhibitionist acts, etc... Moreover, Article 171 of the Criminal Code, which applies to all criminal offences against sexual freedom and sexual auto-determination, foresees the aggravation of the respective penalties, *inter alia*, whenever the victim is in a situation of dependence in the framework of an hierarchical, economical or of a work relationship and the criminal offence is committed by taking advantage of that relationship.

There is no registry of complaints or participations of sexual harassment in the workplace.

III. Issues relating to specific provisions of the Covenant (Articles 6 to 15)

Article 8: Trade union rights

6. Please provide information on the decrees introduced in 1999 which replaced the laws protecting workers' rights to collective bargaining and their freedom of association

No legislation concerning workers' rights to collective bargaining and association was enacted after the establishment of the Macau SAR. Law 2/99/M, of 9 August, which regulates the right of association, is still in force.

Nonetheless, it is worth mentioning that the labour law is currently under revision, and it will include a new chapter on collective bargaining.

Article 10: Protection of the family, mothers and children

7. Please provide updated information on the issue of family reunification

In the Macau SAR, the issue of family reunification is closely linked to the issues of the status of residence and of the right of abode.

According to Article 24 of the Basic Law, the concept of Macau residents includes permanent residents, who have the right of abode and are qualified to obtain Macau permanent identity cards, and non-permanent residents, who are qualified to obtain Macau identity cards in accordance with the laws of the Region but have no right of abode. Subsequently, it was adopted Law 8/1999 on the permanent residents and the right of abode, Law 8/2002 and Administrative Regulation 23/2002 that establish respectively the regime and the regulations on the resident identity card, Law 4/2003 and Administrative Regulation 5/2003 that establish respectively the general framework principles and regulations on entry, stay and residence in Macau SAR.

The Macau SAR Government cautiously planned for the smooth operation of these laws, especially in what concerns children from Mainland China born to permanent residents (at the time of the child's birth) of the Macau SAR. In 2000, both competent authorities of the

Central People's Government and the Macau SAR Government agreed to establish a separate quota of 400 persons per month for this category of migration and an efficient channel of eligibility confirmation. The first child arrived in Macau SAR in 2001 and the operation so far is satisfactory. Various relevant departments of the Macau SAR Government (Health Department, Social Welfare Department, Housing Department, Migration Department and Identification Department) met and adopted measures to enhance coordination and cooperation to help the integration of all the new migrants from Mainland China (including the above-mentioned children) in the Macau SAR society.

According to the above-mentioned laws, children of Macau residents who were:

— born in Macau are residents of Macau if either the father or the mother, at the time of their birth, was resident of Macau; if both the father and the mother were not residents of Macau at that time, and if they are at present residents of the Mainland, they may apply to the Public Security Department in their domicile for departing to Macau for the purpose of settlement; if, both the father and the mother were not residents of Macau at that time, and if they are at present residents in other regions or countries, they may request to the Macau SAR Chief Executive/Migration Department for an authorization of residence.

— born outside Macau (excluding the Mainland) and have been verified to have the status as permanent residents may directly apply for the Macau permanent resident identity card, while those who have been verified not to have the status as permanent residents may apply to the Macau SAR Chief Executive/Migration Department for an authorization of residence;

— born in the Mainland but without the status of Mainland residents, if they have been confirmed to have the status as permanent residents of Macau, may request directly the permanent resident identity card in the Macau SAR, while those who have been confirmed not to have the status as permanent residents of Macau may request to the Chief Executive/Macau SAR Migration Department for an authorization of residence;

— born in the Mainland with the status of Mainland residents may apply to the Public Security department in their domicile in the Mainland for departing to Macau for the purpose of settlement.

Regarding other persons, applications for authorization to reside in the Macau SAR must state, *inter alia* the applicant's professional activity or the one that he/she wishes to perform in the Region, aims and feasibility of stay, means of subsistence, nuclear family (if any) and must include, among other documents, a valid travel document, a former residence certificate, a criminal record, and a formal declaration that he/she shall abide by the Macau SAR laws.

Furthermore, the Macau SAR Chief Executive can grant a special authorization of stay, *inter alia*, for purposes of family reunification or other situations duly substantiated as well as an exceptional authorization of residence for humanitarian reasons or for exceptional cases duly substantiated.

In conclusion, from 20/12/1999 to 17/6/2004, 48,257 persons obtained their first Macau resident identity card. Among them, 30,440 persons (i.e. 63% of the total of 48,257) are due to reunification with their families. The subtotals of these 30,440 persons are as follows:

— 15,040 persons were born in Macau to the parents of Macau residents;

— among those (*14,000 persons*) who held Single Departure Permit issued by the Authorities in Mainland China to come to reside in the Macau SAR, 5,500 entered to reunify with their father or mother and 8,100 entered to reunify with their spouse or other family members (children);

— among those (*2,000 persons*) who live in the Macau SAR by means of an authorization of residence, 300 entered to reunify with their father or mother and 1,500 entered to reunify with their spouse or other family members (children).

8. Please indicate the extent of the problem of trafficking of women into Macau SAR from the neighbouring Asian countries and provide information on the initiatives taken by the Government to address the situation.

It is very difficult to assess the extent of the problem of trafficking in women into the Macau SAR as it is well known that, in this Region, such phenomenon is connected to prostitution, and prostitution does not constitute a criminal offence under the Macau SAR law. Therefore, in the absence of complains and/or of the commission of a crime, only estimation is possible.

Nevertheless, procurement is a criminal offence and by means of repressing procurement the law enforcement authorities have been actively committed in the fight against the traffic in human-beings, in particular women. In addition, effective measures to strengthen border control have also been implemented. It was also created a working group with the neighbouring regions of Hong Kong and Guangdong with the purpose of sharing information regarding criminal investigations as well as specific training on cross-border activities.

The penalty foreseen for the criminal offence of procurement, which consists of instigating, favouring or facilitating the practice of prostitution or of relevant sexual acts by another person, exploiting their state of abandonment or necessity, for the purposes of profit or as a way of life is of 1 to 5 years of imprisonment. If the offender uses violence, serious threat, trick or fraudulent manoeuvre, or takes advantage of the mental incapacity of the victim, it constitutes another criminal offence — aggravated procurement — and the penalty is of 2 to 8 years of imprisonment.

Complaints lodged regarding sexual crimes against women				
Crimes/Years	2000	2001	2002	2003
Rape (Article 157 of the Criminal Code)	6	9	13	13 ⁽¹⁾
Procurement (Article 163 of the Criminal Code)	23	20	22	18 ⁽²⁾
Sexual Coercion (Article 158 of the Criminal Code)	0	2	1	1
Others crimes against sexual liberty	2	3	0	0
Total	31	34	36	32

Source: Office for Security Co-ordination, 2004.

Notes: ⁽¹⁾ 13 cases involving 14 victims: 4 from Macau SAR, 3 from Vietnam and 7 from Mainland China. ⁽²⁾ 18 cases involving 41 victims: 8 cases of procurement connected with voluntary prostitution and involving 21 women from Mainland China and 2 from Vietnam; and 10 cases of procurement connected with involuntary prostitution (misleading or tricking with false promises of work), involving 11 women from Mainland China and 7 women from Vietnam.

9. In Macau SAR the rights of children are currently protected only in the general framework of civil and political rights legislation that is aimed to protect all citizens at large. Please indicate whether

the state party intends to introduce legislation that is specifically aimed to protect children.

The Macau SAR Government intends to introduce some new legislation specifically aimed to protect children.

At the moment, the legal framework of adoption is being revised in order to modernize it as well as to ensure its compliance with the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. The main aspects are the following:

— to ensure that the consents for adoption are not induced by payment or compensation of any kind and is not withdrawn;

— to ensure that the consent of the mother, where required, is given only after the birth of the child;

— to criminalize the inducement of undue consent and the sale for adoption, including the extension, under certain circumstances, of the Macau SAR criminal jurisdiction to offences carried out abroad.

It is also being drafted a law on pornographic content materials aiming to fulfil the obligations arising from the 2000 Optional Protocol on the Rights of the Child, on Sale of Children, Child Prostitution and Child Pornography. Special sanctions related to child pornography and rules forbidding the production, distribution, import, export, exhibition, publicity, sale, offer, possession or any other form of making available the disclosure or commercial exploitation of this material shall be foreseen.

10. To what extent does the Government provide access to education for children of migrant workers, including immigrants without official papers?

In the Macau SAR, the right to education is guaranteed to all residents. Children of legal migrant workers are entitled to the Macau

SAR educational system. Persons without official papers are illegal immigrants. As in any other territory or State, the Macau SAR law does favour situations of illegality.

Notwithstanding, under Article 8 (1) of the above mentioned Law 4/2003, the stay in the Macau SAR may be exceptionally authorized for purposes of pursuing studies in high education institutions, family reunification or other analogous purposes considered justified.

The Macau SAR Government, in compliance with the international applicable treaties, including the ICESCR, assumes that to ensure the right to education to children is a responsibility of the Region. In this context, and in line with the Order of the Macau SAR Secretary for Social Affairs and Culture, the Department of Education and Youth Affairs has issued a specific Guideline, dated 16 January 2002, informing all educational institutions of the Region that any person staying in the Macau SAR for a period of time exceeding 90 days is authorized to enrol in non-high level education institutions of the Region for the period of time of his/her legal sojourn, being all educational expenses supported by the concerned person.