

Submission to the **Committee on Economic, Social and Cultural Rights** of the New Macau Association on the implementation of the **ICESCR in Macao, China** and on the Reply to List of Issues by the government of Macao, China **at the 52<sup>nd</sup> Session** (28 April - 23 May 2014)

#### **New Macau Association**

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The New Macau Association hereby makes the following submissions to the Committee on Economic, Social and Cultural Rights with regard to the ratification of the International Covenant on Economic, Social and Cultural Rights (hereinafter “the Covenant”) by the Government of the Macao Special Administrative Region of the People’s Republic of China (hereinafter “the Government”) and on the Government’s Reply to the List of Issues (E/C.12/CHN/Q/2/Add.3) (hereinafter “the Reply”) raised by the Committee.

### **Article 3 of the Covenant**

1. Concerning the Reply on Article 3 about equal rights of men and women, please note the following:
  - a. Maternal leave for women working in private sector only lasted for 56 days (and 90 days for those working in public sector). After the maternal leave is over, employers have no legal obligation to provide no-pay leave. Furthermore, there was severe inadequate supply of nurseries, child care centres, elderly centres, and schools for students with special needs, and centres for handicapped. Since it is usually women to assume greater responsibilities of family status, women had to sacrifice either their career development or personal care of their families. As a result, as indicated in the Reply, many women had to work on part-time basis, and had fewer chances to promote to the senior managerial and professional positions.
  - b. Although the Labour Affairs Bureau (DSAL) had been claimed by the Government as an entity handling the complaints against sexual harassment in workplace, the authorities have hardly promoted anti-sexual harassment in workplace. There are no guidelines provided to public and private sectors on the ways of fighting against sexual harassment. Both the employers and employees do not have clear ideas about what constitute sexual harassment. Nor do any firms set up gender equality / anti-sexual harassment committee or designate senior female managers to be gender equality / anti-sexual harassment officers.
  - c. **As a result of the above observations, we request the Committee to ask the Government for the following information:**
    - i. **The schedule of increasing the period of maternal leave, nurseries, child care centres, elderly centres, and schools for students with special needs, and centres for handicapped; and**
    - ii. **The schedule of legislation on anti-sexual harassment.**

### **Article 7 of the Covenant**

2. Concerning the Reply on Article 7 about the right to just and favourable conditions of work, please note the following:

- d. Local employees, especially the low-skilled workers, frequently complain about being displaced by migrant workers who are paid at a rate below the market level. Employers are reported to overstate the salary of migrant workers in the employment contracts in order to convince the government that migrant workers do not displace local workers, but take up the jobs unwanted by local workers. The government does not appear effective in investigating the complaints and charging the law-breaking employers.
- e. Although the government has imposed on casino resorts a threshold of maximum number of migrant workers as a proportion to the total number of their employees, the threshold is not legally binding.
- f. No minimum wage was set for migrant workers. The salary level of most of them is below the monthly median income. Some domestic maids are paid as low as one-fifth of the monthly median income.
- g. The Reply reads, “the Macao SAR Government’s outsourced security guards and cleaners have been protected with statutory minimum wages since 2007, with the amounts adjusted to MOP 26.00 per hour, MOP 208.00 per day and MOP 5,408.00 per month since June 2013”. Currently, the median monthly income of local residents is MOP 14,500. The outsourced security guards and cleaners whose incomes are decided by the government and are less than one half of the median income may be considered poor in employment caused by government policies.
- h. Concerning the maximum working hours, the Reply states overtime work requires the consent of both the employers and employees. However, employees have little say if employers insist on working overtime: Labour Relations Law allows employers to arbitrarily dismiss the employees without a just cause.
- i. Despite petitions from civil society organisations and trade unions for a universal minimum wage for all industries during the public consultation on the minimum wage bill in November 2013, the government insisted in early 2014 that the upcoming legislation on minimum wage would not be universal but would merely cover security guards and cleaners.
- j. **As a result of the above observations, we request the Committee to ask the Government for the following information:**
  - i. **The measures of preventing migrant workers from displacing local employees;**
  - ii. **The measures of obliging the casino resorts to the threshold of migrant workers employed;**
  - iii. **The schedule of introducing an universal minimum wage for all industries and for migrant workers; and**
  - iv. **The measures of preventing poor in employment.**

### Article 8 of the Covenant

3. Concerning the Reply on Article 8 about protection of workers from retribution following trade union activity or taking part in a strike, please note the following:
  - a. Although it is written in the Basic Law, the constitutional law of Macau, that Macau citizens have the right to strike, no local legislation has been enacted to protect workers from retribution following trade union activity, a strike or an industrial action. In practice, workers organising / participating in a strike are vulnerable to the risk of unilateral dismissal by the employer “without just cause” as long as the employer compensates the employees with an adequate remedy in compliance with Article 70 of the Labour Relations Law (Law No. 7/2008).
  - b. Several attempts by a legislator to introduce the “Trade Union Law” as a private bill have been vetoed in plenary sessions of the Legislative Assembly. The bill, if approved, would entitle workers to the rights to collective bargaining and protection from retribution after engaging in trade union activities or industrial actions. It must be noted that only 14 (less than a half) out of 33 seats of the Legislative Assembly of Macao were selected by equal and universal suffrage. The absence of genuine democracy in the formation of the Legislative Assembly made the interests of the business sector and employers being overrepresented.
  - c. Employers are not required by law to engage in collective negotiation with the organisation that represents their employees. The Government showed no intention to legislate on workers’ the right to collective bargaining.
  - d. **As a result of the above observations, we recommend the Committee to urge the Government to introduce a legislation that ensures workers’ rights to strike, collective bargaining and protection from retribution after taking part in industrial actions.**

### Article 10 of the Covenant

4. Concerning the Reply on corporal punishment, please note the following:
  - a. In School setting: The “Disciplinary Regime for Students of Official Educational Institutes”, as mentioned in Paragraph 67.3 of the Reply, is only applicable to public schools. No regulation is in place to explicitly require private schools, including those fully or partially subsidised by the government, to disallow corporal punishment.
  - b. In Home setting: The use of corporal punishment is common. The government is not active in raising awareness among parents and guardians about the alternatives to corporal punishment in raising a child.
  - c. In Paragraph 67.2 of the Reply, Article 146 of the Macao Criminal Code (or “the Penal Code”, if literally translated from Portuguese) refers to brutal abuses or aggravated maltreatments. Less serious forms of abuse are not covered by this article.

- d. In Paragraph 67.1 of the Reply, the offence to physical integrity (Article 137 of the Macao Criminal Code), serious offence to physical integrity (Article 138 of the Macao Criminal Code) and aggravated offence to physical integrity (Article 139 of the Macao Criminal Code) are crimes for physical assaults in general and are not specialised in prohibiting or deterring corporal punishment.
- e. It must be noted that Article 137 of the Macao Criminal Code (the offence to physical integrity) is a “semi-public crime” which prosecution of the offenders depends on whether or not the victim files a complaint. In other words, the authorities have no legitimacy to step in the case unless the victim reports to the police or the public prosecutor. In the case of children suffering from non-fatal abuses in home setting, the victims’ lack of knowledge to seek assistance from the authority effectively deprives them from legal protection.
- f. Minors (children and teenagers) are not informed of their rights enshrined in the Covenant to be free from corporal punishment as well as the law and complaint procedures which may protect them from corporal punishment.
- g. As a result of the above observations, we recommend the Committee to require the Government to proactively raising awareness among children and teenagers about the ways to protect them from corporal punishment. School teachers, parents and guardians should be warned of the illegality of corporal punishment.**
- h. Also, we recommend the Committee to urge the Government to legislate to explicitly outlaw corporal punishment in school and home settings, namely, by extending the scope of the “Disciplinary Regime for Students of Official Educational Institutes” to private schools.**

### **Article 11 of the Covenant**

5. Concerning the Reply on the supply of public social housing, please note the following:
  - a. The supply of public housing in Macao consists of Social Housing flats and Economic Housing flats. The government pledged the supply of at least nineteen thousand units (social and economic housing flats combined) by the end of 2012. However, as of April 2014, seven thousand units, among the pledged, are still under construction.
  - b. The revised Economic Housing Law (Law No. 10/2011), as proposed by the Government, made the queue of applications for economic units to be formed on an ad-hoc basis and the provisions of maintaining a long-term (or permanent) queue were repealed. The revised law of ad-hoc queues has been heavily criticised by civil society organisations and pro-democracy activists.

- c. The application period for economic housing is not always open. In June 2013, the Government offered 1,540 units but received 13,299 applications. In March 2014, 42,000 applications were made to compete for 1,900 units available. The applications outnumbered the units available by 863% and 2210% respectively. Since the queues were formed in ad-hoc according to the revised law, once all units available are allocated, the remaining applicants will be dismissed and will have to apply again in the next application period. Ad-hoc queue relieves the burden on the Government of the demand for public housing. The system of a permanent queue must be restored to reflect the real demand for economic housing.
- d. Macao has the 16th highest Property Price to Income Ratio in the world (<http://www.numbeo.com/property-investment/rankings.jsp>). Unaffordable housing is a priority livelihood issue for Macao citizens. Most young people live with their parents before marriage due to high property prices. Rents are so high that a growing number of grassroots citizens have to rent a flat in the neighbouring city of Zhuhai (outside the jurisdiction of the Macao SAR government) and have to cross border checkpoint every day to commute to work in Macao.
- e. **Therefore, we urge the Committee to require the Government to supply adequate units to cope with citizens' demand for public housing, to amend the Economic Housing Law to restore a permanent queue for applications, to stipulate a maximum waiting time for every application and to require both social and economic housing to be always open for applications.**