

**Civil Society Submission to the
UN Committee on Economic, Social and
Cultural Rights at its
68th Session (Pre-Sessional Working Group) for its
Adoption of List of Issues on
Macau, China**

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Contents

Public housing (Article 11)	3
Discrimination on the grounds of sexual orientation and gender identity (Articles 2 - 3).....	5
Recognition of transgender persons' gender marker (Articles 2 - 3)	8
Migrant workers' vulnerability to exploitation (Articles 6 - 7)	9
Absence of local law protecting the right to join a trade union and to strike (Article 8).....	10
Domestic violence	11
Problem 1: Case reclassification (Article 10).....	11
Problem 2: Discrimination against same-sex intimate partners (Articles 2, 10).....	12

Public housing (Article 11)

The shortage of affordable housing is a major issue affecting Macau residents' livelihood. Not only was the supply of public housing slow to materialise, the Macau government tried to suppress the number about the demand for public housing.

In 2020, the Macau government amended the economic housing law¹ to make access to public housing even harder, especially for young residents.

The minimum age of individual applicants² for economic housing was raised from 18 to 23.³ This change is preventing young adults to apply for economic housing on their own before they reach 23.

The amendment also abolished the “queue” for economic apartments which could reflect the demand for economic housing. Under the amended law, in each round of applications, once all the available apartments are exhausted, “the queue” is dispersed and all unsuccessful applicants will not “queue up” for the next round of applications automatically.⁴ Rounds of applications for economic housing have not been open on a regular basis. Unsuccessful applicants have no idea when they will have a chance to apply for economic apartments next time. This trick erases any official number of residents “waiting to be housed” and obscures the problem of shortage in the supply of economic apartments.

The problem of shortage in the supply of economic apartments is evident, in the latest round of applications for economic housing opened in 2019, 35,765 qualified applicants⁵ competed for 3,011 apartments⁶. In other words, more than 90% of the eligible applicants could not be allocated an economic apartment.

¹ Law no. 13/2020 “Amendment to Law no. 10/2011 ‘Economic housing law’”

² Individual applicants are distinguished from household applicants. The new minimum age of 23 does not apply to household applicants.

³ Law no. 10/2011 “Economic housing law” amended by law no. 13/2020, art. 14(2)(2).

⁴ Ibid, art. 25.

⁵ “Dados estatísticos sobre a apreciação preliminar do concurso de habitação económica de 2019,” Instituto de Habitação, http://www.ihm.gov.mo/link_change?link=/uploads/attachment/2020-10/346455f9a9a5f56cc7.pdf&name=2019%E5%B9%B4%E7%B6%93%E6%BF%9F%E6%88%BF%E5%B1%8B%E7%94%B3%E8%AB%8B%E5%88%9D%E6%AD%A5%E5%AF%A9%E6%9F%A5%E7%B5%B1%E8%A8%88

⁶ “Sorteio informático para elaboração da lista com a ordenação dos candidatos de habitação económica de 2019,” Instituto de Habitação, 29 October 2020, <https://www.gov.mo/pt/noticias/242372/>

Furthermore, the amendment exhibited a tendency to align the pricing of economic apartments with the pricing in the private property market. The calculation of the selling price no longer takes into account the residents' affordability but the "construction cost", "administrative cost" and "land concession premium".⁷ Before the passage of the amendment, Macau officials projected that under the new provision on pricing, the economic apartments would be 30% more expensive.⁸

The authors of this submission recommend that the CESCR asks Macau, China to **explain the housing policy which raised the minimum of age of individual applicants to 23, abolished the "queue" for economic housing and raised the price of economic apartments.** We also ask the Committee to ask Macau, China to **provide information on the method of estimating the demand for public housing and a concrete plan to meet the demand.**

⁷ Law no. 10/2011 "Economic housing law" amended by law no. 13/2020, art. 32.

⁸ "經屋售價推算或貴三成," Macao Daily, 5 May 2020, http://www.macaodaily.com/html/2020-05/05/content_1432242.htm

Discrimination on the grounds of sexual orientation and gender identity (Articles 2 - 3)

In Macau, legal protection against discrimination is inadequate on sexual orientation ground and non-existent on gender identity ground. Currently, only in the following two areas gays, lesbians and bisexuals enjoy equality before the law.

- Treatment of job seekers and employees by employers (Article 6 of Law 7/2008: Labour Relations Law)
- Treatment of people by the officers of the Commission Against Corruption (Article 31-A of Law 10/2000 amended by Law 4/2012: Organisation Law of the Commission Against Corruption)

Macau officials and some community leaders have, for a significant amount of repetitions, invoked the notion of “a lack of social consensus” to respond to the call for equal rights for the LGBT people. The so-called “a lack of social consensus” may be no more than an excuse for the state party to evade the responsibilities of rectifying discriminatory laws.

The main ideas about minority rights as in the United Nations Minorities Declaration also apply to the LGBT+ people.⁹ A “social consensus” must not be a prerequisite for the protection of minority rights. In lieu of which, the state party should proactively promote the protection of the minorities.¹⁰

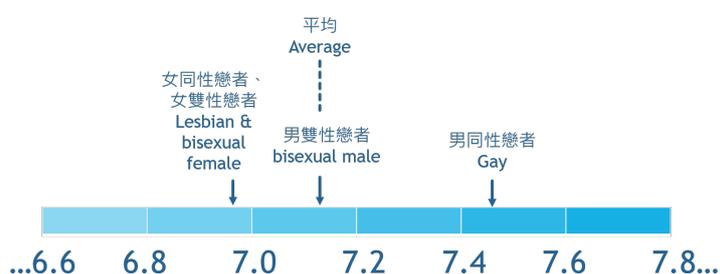
According to the 2019 Macau LGBT+ Survey¹¹ – a study conducted by NGO “Rainbow of Macau”, the LGBT+ people in Macau perceive a high level of discrimination. On a scale of 1 to 10, the mean for the level of subjective discrimination against LGBT+ is 7.17. In particular, gay people experience higher discrimination (7.43) compared to other sexual orientation groups.

⁹ United Nations, *Minority Rights: International Standards and Guidance for Implementation*, p. 8.

¹⁰ *Ibid*, p. 3.

¹¹ “Results of 2019 Macau LGBT+ Survey,” Rainbow of Macau, 25 November 2019, <https://rainbow.mo/?p=377&lang=en>

Figure 1. Level of Subjective Discrimination by Sexual Orientation



In the same study, LGBT+ respondents overwhelmingly agree that the law and policy in the areas of housing, education, healthcare, public administration, gender recognition, and criminal law should be updated to provide equal or higher protection of the LGBT people.

Table 1. Change of law and policy for the protection of equality

Survey year	Totally disagreed	Disagreed	Neutral	Agreed	Totally Agreed
2019	1.9% (19)	0.5% (5)	9.8% (97)	41.2% (410)	46.6% (463)
2016	3.6%	0.8%	4.3%	25.5%	65.7%
2013	0		6%		94%

Note. The 2013 survey only represented three options - “agree”, “disagree” and “not sure”.

Table 2. Areas of law and policy which should be updated for the protection of equality

	Year 2019
Housing	86.1% (856)
Education	89.4% (889)
Healthcare	90.8% (903)
Public administration	85.0% (854)
Gender change	73.0% (726)
Protection in criminal law	79.6% (791)

It is noteworthy that Macau government’s official position on non-discrimination on the basis of sexual orientation and gender identity is unclear. In 2018, in a press interview, deputy director of Education and Youth Affairs Bureau (DSEJ) said that students who show “indications of homosexuality” would be referred to psychiatrists for clinical

examination.¹² During the same interview, the deputy director also promoted abstinence¹³. After a public outcry, the education bureau issued a statement promising “the promotion of respect for diversity”.¹⁴

The authors of this submission recommend that the CESCR requests Macau, China to **provide a list of laws in Macau that include a provision on the principle of equality or non-discrimination in which sexual orientation or gender identity is not a protected characteristic.**

¹² “Clinical exams for homosexual students,” Macau Closer (August 2018), <https://macaucloser.com/en/magazine/clinical-exams-homosexual-students>.

¹³ Verbatim “Men do not like their future wives to have had sexual relations before marriage”.

¹⁴ “教青局尊重多元價值 協助學生健康成長,” DSEJ, 19 August 2018, <https://www.gov.mo/zh-hant/news/251738/>.

Recognition of transgender persons' gender marker (Articles 2 - 3)

In 2015, the Macau government announced that the Legal Reform Consultation Committee was to commence a study about allowing transgender persons to change the gender marker on their birth records and identity documents.¹⁵ However, no more updates followed since.

Nonetheless, the Macau Special Administrative Region ("SAR") is the only jurisdiction in the People's Republic of China that does not allow transgender people to have their gender identity reflected on the identity documents.

The authors of this submission recommend that the CESCR to request Macau, China to **provide a timeline for enacting necessary legislation to allow transgender persons to change the gender marker on their birth records and identity documents.**

¹⁵ “法律改革諮詢委員會第十八次全體會議”, DSRJDI, 1 July 2015, <https://www.gov.mo/zh-hant/news/153237/>.

Migrant workers' vulnerability to exploitation (Articles 6 - 7)

Despite the legal prohibition of recruitment agencies taking a share of the salaries of migrant workers for commission fees, in reality, wages of domestic workers, who are predominantly migrant workers, are deducted by the employers to pay the recruitment agencies to cover the commission fees. Migrant workers told authors of this submission that the recruitment agencies would charge two times their monthly salary. Very often domestic workers are paid only a few hundred Macau Patatas (less than one hundred CHF) in the first two months.

Household employers are also urging the Macau government to revise the law to require all domestic workers to live with them.¹⁶ Such requirement, if imposed, would be detrimental to the health and well-being of domestic workers.

Furthermore, the Macau government expressly excluded domestic workers from the statutory minimum wage¹⁷.

The authors of this submission recommend that the CESCR asks Macau, China **whether it has proactively reached out to the community of migrant workers to receive complaints against unlawful employment/recruitment practices. We suggest the Committee ask Macau, China to clarify whether or not it plans to require domestic workers to live with the household employers.**

¹⁶ “意見盼修法加強監管,” Exmoo, 20 June 2019, <https://www.exmoo.com/article/111955.html>.

¹⁷ Law no. 5/2020 “Minimum wage for workers,” art. 2.

Absence of local law protecting the right to join a trade union and to strike (Article 8)

Despite stipulation in article 27 of the Basic Law of Macau that Macau residents enjoy “the right and freedom to form and join trade unions, and to strike”, there is no local legislation ensuring workers’ enjoyment of these rights free from retaliation.

Private bills presented by members of the Legislative Assembly to enact a trade union law which sought to establish collective bargaining rights and protection from retaliation have been voted down for 11 times. In March 2020, Secretary for Economy and Finance affirmed that the Macau government has no plan to introduce a trade union law to protect these rights.¹⁸

Leaders of trade unions said colleagues had been sacked for involvement in a trade union.¹⁹ Workers taking part in rallies prefer putting on facemasks to avoid being identified by their employers.²⁰ Union leaders acknowledge that they face reduced or no chance of promotion once they get involved in the work of a trade union.²¹

The authors of this submission recommend that the CESCR asks Macau, China to **clarify the legal measures protecting workers for the enjoyment of the right to strike and to join trade unions. We also suggest the Committee ask Macau, China to clarify whether or not it plans to enact a law which will materialise the right to strike and accord protection to workers taking industrial actions from retaliation.**

¹⁸ “It should be the Gov’t to introduce a trade union law – Secretary for Economy,” Macau Business, 13 March 2020, <https://www.macaubusiness.com/it-should-be-the-govt-to-introduce-a-trade-union-law-secretary-for-economy/>.

¹⁹ “疫下員工維權雪上加霜 冇工會法更憂秋後算帳 博彩工會：公司政府雙重夾擊好大壓力,” Macau Concealers, 18 April 2020, <https://www.facebook.com/153478958054547/posts/2844844045584678/>.

²⁰ Ibid.

²¹ Ibid.

Domestic violence

Problem 1: Case reclassification (Article 10)

In practice, the implementation of the domestic violence law²² enacted in 2016 might not be as effective as expected by the community. Within the meaning of the domestic violence law, the crime of domestic violence is defined²³ as “any physical, psychological or sexual abuse that is committed in the context of a family or similar relationship”²⁴. The expression “physical, psychological or sexual abuse” is vague and very often leads judicial officers to interpret that the requirement of gravity of bodily harm of the crime of domestic violence must be higher than that of simple assault²⁵.

At every stage of the proceedings, a domestic violence case may be reclassified as simple assault. The possibility of reclassification as simple assault deviates from the object of the domestic violence law. The continuation of the prosecution for the crime of simple assault is dependent on the victims’ complaint.²⁶ In cases which the crime of domestic violence is reclassified as simple assault, victims are informed of the option to discontinue the proceedings. Such reclassifications effectively leave them to the time before the enactment of the domestic violence law. Reclassification is only desirable when a more serious offence²⁷ applies.

Furthermore, the issue of reclassification had an impact not only on the gravity of the offence but also on the protections and assistance available to the victims, e.g. free medical treatment. There were reports²⁸ that a public hospital sought payment from

²² Law no. 2/2016 “Law to prevent and combat domestic violence”

²³ Ibid, art. 4.

²⁴ In Portuguese, it reads “*maus tratos físicos, psíquicos ou sexuais que sejam cometidos no âmbito de uma relação familiar ou equiparada*”.

²⁵ Article 137 of Criminal Code of Macau defines simple assault as “offend[ing] another person's body or health”.

²⁶ Criminal Code of Macau, art. 137(2).

²⁷ Such as, homicide (art. 128 of Criminal Code of Macau) and aggravated homicide (art. 129 of CCM).

²⁸ “家暴=普通傷人罪？受害人質疑家暴法形同虛設,” All About Macau, 3 February 2021, <https://aamacau.com/2021/02/03/%E5%AE%B6%E6%9A%B4%E6%99%AE%E9%80%9A%E5%82%B7%E4%BA%BA%E7%BD%AA%EF%BC%9F-%E5%8F%97%E5%AE%B3%E4%BA%BA%E8%B3%AA%E7%96%91%E5%AE%B6%E6%9A%B4%E6%B3%95%E5%BD%A2%E5%90%8C%E8%99%9B%E8%A8%AD/>

a victim after the court had decided to convict the perpetrator of simple assault instead of domestic violence. The victim was originally eligible for free medical treatment under the domestic violence law²⁹. The reclassification by the court prompted the hospital to retroactively seek payment from the victim for the treatment of injuries arising from domestic violence.

The authors of this submission recommend that the CESCR asks Macau, China to **provide the numbers of cases in which the classification is changed from the crime of domestic violence to another crime at all stages of domestic violence cases (from the social workers to police to the public prosecutor to the court).**

Problem 2: Discrimination against same-sex intimate partners (Articles 2, 10)

Compared to heterosexual intimate partners, same-sex intimate partners are deprived of protection under the Domestic Violence Law (Law no. 2/2016). The Macau government initially proposed the inclusion of “same-sex co-habitants” in the scope of the domestic violence law in 2011. However, the Macau government decided to drop the reference to same-sex partners in 2012. In defiance of the recommendation³⁰ made by the Committee against Torture (CAT), the Macau government insisted on the exclusion in 2016. For same-sex partners, the heterosexual counterparts enjoy protection under the domestic violence law as legal recognition of a union or marriage is not a prerequisite³¹ for eligibility for protection. Therefore, there is a strong reason to accord the same level of protection to same-sex couples, notwithstanding the lack of legal recognition of same-sex marriage. To this date, the Macau government still declines to rectify the exclusion of same-sex partners.

The Social Welfare Bureau (IAS) claimed that assistance would be provided to all victims of domestic violence without discrimination, notwithstanding the legal definition of domestic violence. However, the information provided to authors of this submission

²⁹ Law no. 2/2016 “Law to prevent and combat domestic violence”, art. 16(1)(4).

³⁰ CAT/C/CHN-MAC/CO/5, para. 25(a).

³¹ Law no. 2/2016, art. 4(2)(3).

suggests that frontline social workers and police officers are not trained to recognise intimate violence peculiar to same-sex partners.

In 2015, NGO “Rainbow of Macau” wrote to the Committee against Torture (CAT) about the Macau government’s plan to exclude same-sex partner from the proposed Domestic Violence Law when it was reviewing the implementation of Convention against Torture in China, in which the Macau SAR is included.³² In CAT’s concluding observations³³, Macau was urged to enact a Domestic Violence Law without discrimination. Still, in early 2016, the Macau government declined to reinstate the reference to same-sex partners in the final text of the Domestic Violence Law.

The LGBT+ people’s experience of domestic violence was studied by NGO “Rainbow of Macau” in its 2019 Macau LGBT+ Survey. In the study, RM enumerated the abuses which might be classified as domestic violence. 22.1% of respondents reported experiencing domestic violence perpetrated by intimate partners.

Table 3. Forms of domestic violence

	2019
Control	12.8% (127)
Physical abuse	2.8% (28)
Sexual abuse	0.8% (8)
Emotional abuse and intimidation	7.0% (70)
Verbal abuse: coercion, threats and blame	9.7% (96)
Economic abuse	1.9% (19)
Never	77.9% (774)

³² “Civil Society Report on Depriving Persons in Same-sex Relationship of Equal Protection in Domestic Violence Legislation of Macau, China,” Rainbow of Macau, 1 October 2015, https://www.ecoi.net/en/file/local/1138071/1930_1449136642_int-cat-css-mac-22165-e.docx

³³ CAT/C/CHN-MAC/CO/5, para 25(a).

Figure 2. Forms of domestic violence (number of cases)

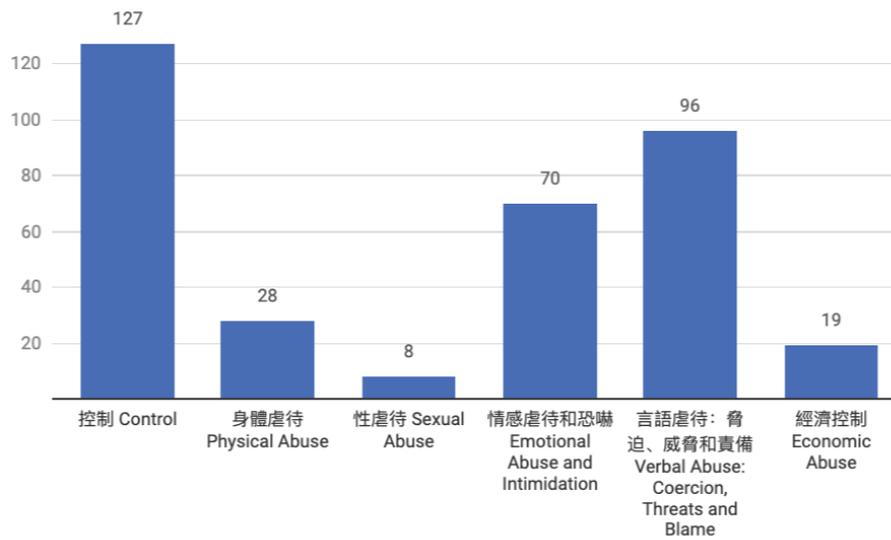
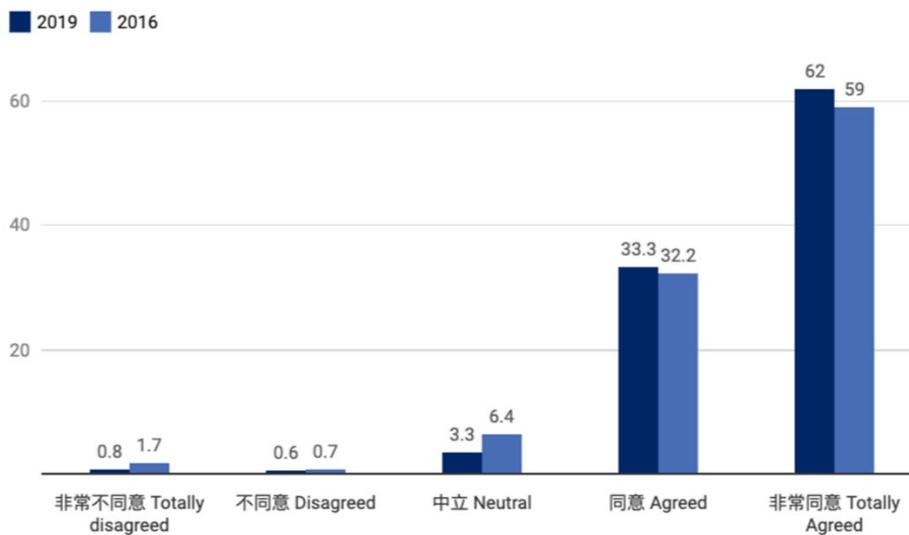


Table 4. Attitude towards the call for inclusion of same-sex co-habitants in domestic violence legislation

Survey year	Totally disagreed	Disagreed	Neutral	Agreed	Totally Agreed
2019	0.8% (8)	0.6% (6)	3.3% (33)	33.3% (331)	62.0% (616)
2016	1.7%	0.7%	6.4%	32.2%	59.0%

Figure 3. Attitude towards the call for inclusion of same-sex co-habitants in domestic violence legislation (percentage).



The authors of this submission recommend that the CESCR requests Macau, China to:

- **Explain the non-compliance with the Committee against Torture's recommendation that the Domestic Violence Law should be enacted without discrimination;**
- **Provide information on training provided to frontline social workers and police officers concerning the detection of intimate violence between same-sex partners; and**
- **Clarify whether or not the state party has the will to accord equal protection to victims of domestic violence without discrimination on the basis of sexual orientation.**