

Joint submission on Macau, China to the **Committee against Torture** at its 56th Session in October 2015 by

Macao Anti-Domestic Violence Coalition

Alliance against Gender-based and Sexual Violence of Macau

Macao Domestic Violence Legislation Concern Group

Rainbow of Macau – LGBT Rights Concern Group

Macao Domestic Violence Survivors’ Mutual Support Group

Macao Youth Dynamics

Christians’ Concern Justice and Peace Group

Macao Live Net Association

Macao Gender Education Association

New Macau Association

Macao Conscience

Macao Gender Studies Association

Macao Social Work Students Domestic Violence Concern Group

Concerning Article 2 of the Convention against Torture

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I. DOMESTIC VIOLENCE

Despite the fact that domestic violence is identified as a key issue in the List of Issues by the Committee against Torture and in the Concluding Observations by the Committee on the Elimination of Discrimination against Women, the legislative process of criminalization of domestic violence remains very slow and suffers setbacks. The Domestic Violence Prevention Bill proposed in 2012, which is currently under review in the Legislative Assembly (hereinafter, the Bill), lists the domestic violence as a public crime¹, except for “cases with minor consequences”². One of the purposes of enacting a specific law against domestic violence is to ensure the government’s proactive and early intervention in such cases. Leaving cases of “domestic violence with minor consequences” as semi-public crime will compromise the original intent of domestic violence legislation. Moreover, the legislative process is slowed down by the concerns voiced by the prosecutors and judges, who argue that the bill contradicts the principles of existing criminal laws. We urge the government and the legislators to prioritize effective protection to domestic violence victims and pass the Bill as soon as possible.

Some prosecutors, judges and law-enforcers have expressed concerns over the problematic definition of “domestic violence with non-minor consequences”. Some law professionals hold the opinion that the criminal law should not interfere with family affairs. Some even regard corporal punishment on children as parental rights. We are concerned that the lack of clear definition of domestic violence will give law enforcers excuse to ignore or trivialize domestic violence cases.

It is an encouraging sign that the Social Welfare Bureau (IAS) of the Macau SAR Government has started training social workers to specialize in responding to domestic violence cases. However, there exists no protocol and training in handling gender-based, domestic and sexual violence in the police force. Without the involvement of the frontline law-enforcers, the social workers have no authority in providing effective intervention and protection. In some cases, the social workers are also subjected to violence.

We are also concerned that the same-sex relations are excluded from the definition of the Bill.

We recommend the Committee against Torture to urge the Macau SAR Government to:

1. List all forms of domestic violence irrespective of the severity of consequence as public crime;

¹ In line with the criminal justice system of Portugal, criminal offenses are classified into three types: 1. Public crime – the state proactively initiates investigation and prosecution notwithstanding victims’ complaint; 2. Semi-public crime – Launch of criminal proceedings depends on victims’ complaint; 3. Private crime - Victims have to hire a lawyer to file a private prosecution.

² The Macau SAR Government proposes that only domestic violence with “non-minor consequence” will be listed as public crime. In other words, domestic violence with “minor consequence” will remain as semi-public crime. In the latter case, the public prosecutor has no obligation to intervene in a domestic violence case if the victim decides not to go ahead with the criminal complaint.

2. Educate judicial officers and law-enforcers gender-based and sexual violence by organizing compulsory training courses; and
3. Ensure that all individuals in an intimate relationship regardless of gender and sexual orientation are protected in domestic violence legislation.

II. SEXUAL ABUSE

Sexual harassment is widespread in Macau, particularly in the workplace. There are neither laws expressly prohibiting sexual harassment nor official guidelines on handling the complaints of the sexual harassment in educational institutions and workplace. The Macau SAR Government has not promised a timetable for outlawing sexual harassment.

The current law on rape is gender-biased. Paragraph 1 of Article 157³ of the Criminal Code of Macau implies that only women can become victims of rape in sexual (vaginal) intercourse. However, in Paragraph 2 of the same article, the reference to victims of forced anal intercourse is gender-neutral. It makes Article 157 (Rape) inapplicable to cases in which a woman forces a man to engage in a vaginal intercourse.

We recommend the Committee against Torture to urge the Macau SAR Government to:

1. Enact law against sexual harassment as soon as possible which business and educational organisations shall be required to have in-house mechanism against sexual harassment, in addition to making sexual harassment a criminal offence; and
2. Revise Article 157 of the Criminal Code to ensure that all individuals are legally protected from rape regardless of sex.

³ Non-official English translation: Crimes against sexual freedom - Article 157 (Violation) - 1. Who a) have intercourse with women through violence, serious threat, or after, to perform copulation, having become unconscious or made it impossible to resist, or b) by the same means constrain woman to have intercourse with a third party shall be punished with imprisonment 3-12 years. 2. The same penalty shall apply to those, in a way prescribed in the preceding paragraph, have anal intercourse with another person, or to constrain having it with third parties.

Original text in Portuguese: Crimes contra a liberdade sexual - Artigo 157.^o (Violação) - 1. Quem a) tiver cópula com mulher por meio de violência, ameaça grave, ou depois de, para realizar a cópula, a ter tornado inconsciente ou posto na impossibilidade de resistir, ou b) pelos mesmos meios, constranger mulher a ter cópula com terceiro, é punido com pena de prisão de 3 a 12 ano. 2. Com a mesma pena é punido quem, nos termos previstos no número anterior, tiver coito anal com outra pessoa, ou a constranger a tê-lo com terceiro.