

# Human Rights Issues in Macau 2013

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## Political rights

At the 5th Election of the Legislative Assembly which took place on 15 September, Macau citizens who had registered to vote could elect 14 out of 33 seats in the Assembly. In other words, only 42% of the members are selected by direct election and almost all Macau citizens are denied from electing the majority, the rest of 58%, of the members in the legislature.

In March, Macau underwent a review by the Human Rights Committee (HRC) of the United Nations (UN) on Macau's ratification of the International Covenant on Civil and Political Rights (ICCPR). In the concluding observations made by the HRC, the Macau government was required to report within a year (due March 2014) a plan to "set timelines for the transition to an electoral system based on universal and equal suffrage that will ensure enjoyment by all its citizens of the right to vote and to stand for election." However, as of 10 December 2013, the government has not started any form of public consultation on neither the political system nor the report to be submitted to the HRC of UN.

## The Rule of Law

The inconsistent implementation of law and the lack of predictability of law in Macau are often criticised by activists, legislators and scholars.

High-ranking officials are less likely held accountable as it is to ordinary civil servants in the public administration. A civil servant is subject to a disciplinary procedure for minor mistakes while those at high level are effectively exempted from meaning punishment. For instance, a new police officer took a picture of the CCTV depicting a drunk deputy police commander imposing corporal punishment on his or her fellow police officers. The whistleblower, the officer who took the picture and revealed the case to public, would be discharged from the police forces while the drunk police commander was just given a written warning.

Furthermore, the lack of legal protection for whistleblowers leaving the civil servants or citizens who expose restricted information in the interests of the public vulnerable to disciplinary procedure or lawsuits.

The Commission against Corrupt (CCAC), the agency in Macau in the role of the Ombudsman, was claimed by the Macau was a statutory organisation protecting human rights. The technical independency of the CCAC is highly questionable, as a number of cases have shown that the CCAC's bias towards the Executive branch and its associated interest groups is obvious, in particular, the CCAC's distortion in its interpretation of the

No. 2/99/M law in favour of the status quo – not enforcing the legal requirement for the beneficiaries of government subsidies to publish their accounts annually.

The government does not have a centralized department responsible for providing uniform interpretation of law. Individual bureaus depend on in-house legal advisers who are subject to the pressure of bureau directors. For instance, CCAC accused the Transport Bureau of violating the contract laws in the introduction of new bus service.

The language of Portuguese is the major working language used in court proceeding. Commonly Chinese is used only if all parties involved in court proceeding, including the judges, lawyers, prosecutors, plaintiffs, and accused understand Chinese. Since the court usually does not provide timely and official Chinese translations of the judgements written in Portuguese, to understand the judgement, non-Portuguese speaking parties either listen to the verbal interpretation in Chinese of the judgement by their lawyers (in this case they cannot “read” the judgment) or translate the judgments into Chinese at their own cost. A genuine bilingualism does not exist in the judicial system of Macau.

Judicial system is plagued by lack of judges and space. Plaintiffs and accused are kept waiting for a couple of years (or several years in some cases) for their turn of court proceeding.

There is no effective administrative organ to hold the administration responsible for power abuse and inconsistent implementation of law. The decisions by Ombudsman CCAC on the suspected cases of power abuse are not binding. Furthermore, its inaction towards public complaints is not disciplined. The Police Monitoring Committee does not have investigative power nor is it authorized to initiate investigations. Victims of the abuse of power ultimately can only rely on the expensive and inefficient judicial system.

## Freedom of Press

The government proposed to revise the Press Law. The proposed version removed two provisions that protected press freedom. Journalists may lose the right to approach the sources of information if official secrets are involved. However, there is no Freedom of Information Law to define what official secrets are, who have the authority in classifying documents into confidential, and the procedure for citizens to appeal the government’s decision not to provide the information requested. The administration classifies arbitrarily documents into confidential and arbitrarily decline requests from journalists and the public for information access.

The government-owned TV and radio broadcast TDM is not set up according to UN Standard of Public Service Broadcast. The source of funding and formation of the Board of Directors are not institutionalized by law. The Chief Executive has a free hand in deciding the level of funding and the composition of Board of Directors. This affects the independence of the news editorship. News reports with implication on public policies and of social activism are often downplayed. The citizens’ right to information access is compromised.

In June, the Court of Second Instance (TSI) ruled that the Macau Cable TV was the only licensed operator of TV signal transmission in Macau. All other operators were outlawed as the receiver and transmitter of TV signal. The channels viewable by citizens not subscribed to the Macau Cable TV were reduced by a half.

Self-censorship is apparent. Some editors and senior professional journalists were co-opted into National People’s Congress and CPPCC at various levels. Foreign and Hong Kong journalists who are not vulnerable to

the pressure of Macau government may be denied entry into Macao arbitrarily for news coverage or even vacation under the Internal Security Law.

The Government Information Bureau (GCS) attempted to deny the Macau Concealers (MC) - a pro-democracy media outlet - access to its Information Broadcast System (IBS). This technically excluded the media outlet from all press conferences and events organized by the government for the media to participate. The GCS refused to give MC the application form for using IBS until MC's repeated protests. The Director of the GCS even lied to a Portuguese journalist that the GCS had not received any application from the MC for an IBS account.

The Director of the MC was taken into police custody near the Macau Tower in February when he filmed two social activists. The Judiciary Police (PJ) confiscated his camcorder. After getting back his camcorder at the moment of his release, the Director of MC found that the video files recorded that day in the camcorder had been erased. The Director of the MC was not given a reason for his detention. During the detention, he was treated like a criminal with his fingerprints captured and his mug shots taken. The MC filed a complaint to the Public Prosecution Office (MP) – about PJ's illegal access to computer systems and arbitrary detention. In October, the MP decided no PJ officer be sued but advised the MC to seek compensation from the PJ by civil lawsuit.

## Freedom of Expression

There are signs that the government is tightening the citizens' freedom of expression.

In June, the police banned citizens to host an assembly in Jardim da Penha situated close to the residences of the principal officials of the Macau government. Six citizens were arrested en route to Jardim da Penha and were charged with serious crimes such as aggravated physical assault of law enforcers. The police did not process the six citizens in accordance with due process in ways of beating them out of the sight of cameras, physically abusing them, preventing them from contacting the outside world, and refusing to tell them their status (being arrested or not) and their right to consult lawyers. An appeal was sent to the Court of Final Instance (TUI) arguing that the private residences of the officials do not enjoy an extra protection. The TUI accepted the appellant's arguments and overruled the police's ban on holding an assembly in Jardim da Penha. Later the MP dropped the case against the six arrested citizens, citing that the TUI did not accept the police's reasoning behind prohibiting an assembly in Jardim da Penha.

In August, The Legislative Assembly Electoral Affairs Commission (CAEAL) redacted sentences (related to demanding a principal official to step down) in the election platforms of two candidate lists in a compiled booklet of the election platforms of all candidate lists published by the CAEAL as required by law. In this case, the CAEAL, chaired by a judge, abused its power to infringe the freedom of expression of the candidates. Furthermore, throughout the campaign period of the Election of the Legislative Assembly, the CAEAL and CCAC were very passive in tackling the alleged electoral corruption or a breach of the election law. Without the election law fully enforced at the election this year, a fair election has not been ensued.

It is of grave concern that the head of Judiciary Police (PJ) has vowed to establish a system of genuine ID registration for every internet user. The PJ was reported to have apprehended some citizens in their home for their online speeches. In November, the bureau director of the PJ admitted that PJ officers "were on routine patrol online" and "gather evidence" in preparation for any "litigation by victims (for a defamation case)". Under Macau's legal system, defamation is a "private crime" that requires the victim to file a

complaint, to prove with evidence and to hire a lawyer at his or her own cost in legal proceedings. The PJ's practice of archiving online speeches, without an effective public check, is worrying enough that it may grow into an authority capable of performing the role of a secret police. In the light of the lack of transparency on the so-called "internet patrol" journalists and activists who often criticize the wrongdoings of the influential figures may easily fall into "defendants" in defamation lawsuits. Since just the litigation (the existence of a criminal case) can be agonizing enough regardless of the result of the verdict, the "patrol" may deter or discourage citizens from criticising public figures online.

## Labour Rights

In March, a legislator presented a bill to the legislature a trade union bill which would grant the right of collective bargaining to workers. The bill was defeated in legislature.

## Domestic Violence

The government has insisted making the domestic violence a "semi-public crime", rather than a "public crime", in its future legislation against domestic violence. Victims of domestic violence are not adequately protected by the definition of a "semi-public crime": The victims may drop the case under the pressure from peers or families and "free the authorities from the responsibility in intervening in the case". Despite the repeated campaign by social workers, the government showed no sign of reconsidering the definition. In October, a legislator presented a private bill of making domestic violence a public crime but was unfortunately disapproved by the legislature.

## Migrant workers

Migrant workers, especially those from mainland China, have to pay a certain percentage of their wages to the employment agency on a monthly basis. Knowing that the government is planning to impose heavier regulation on the operations of the employment agencies, the Chinese government only authorises 19 employment agencies in close relationship with the Chinese government to become the middlepersons for the importation of workers from mainland China to Macau, thus freeing Chinese migrant workers from systemic exploitation is unforeseeable.

There have been reports that the government has not been active in providing both migrant workers and their employers with legal advice for the protection of their rights. Noting that the employment law in Macau is relatively liberal, migrant workers may be employed without the involvement of an employment agency. Jobs seekers from other countries may freely enter Macau on tourist visas to find jobs and then apply for a work visa (blue card). In the absence of an active provider of legal information migrant workers and their employers who are not well informed of the law may find themselves helpless in a conflict scenario.

## LGBT

The government withdrawn the coverage for "same-sex cohabitants" in the future legislation against domestic violence. The bill covers parents, children, grandparents, grandchildren, spouses of marriages, spouses of de-facto marriages and people have common children. Despite LGBT groups' dialogues with the government, Director of the Social Welfare Bureau told the press that domestic violence bill would not cover "same-sex cohabitants" as long as same-sex marriage remained unlawful in Macau.

Civil partnerships and same-sex marriages were not legally recognised. LGBT couples were denied with the rights and benefits entitling heterosexual couples, such as inheritance, application for public housing (social housing and economic housing), minimal life-support subsidy and other social benefits, pension fund, taxation, property regime, legitimate reasons for leaves and absences, health insurance, and access to health care.

Under the current Code of Administrative Procedures, officials are not required to recuse themselves from the decision making process if there is a conflict of interest with their intimate partners of the same sex. This may affect the impartiality of the public administration.

Transgendered individuals' newly assigned gender is not yet recognised by the Macau government.

## Cultural Rights

The Macanese dialect or Macau Creole is dying. UNESCO estimated that only around 50 people can speak the dialect. Many built heritages are under the threat of tourists. Inscribed in the UNESCO World Heritage List in 2005, the Historic City of Macau composed of over 20 historic architectures of Chinese and Portuguese styles is widely promoted by the Tourism Development Board for diversifying Macau's casino-based tourism. In 2012, almost 29,000,000 visitors came to Macau. Many of them flocked to the popular places of visit such as Ruins of San Paulo and A-ma Temple. The government does not restrict the number of visitors to enter the heritages.

## Prison Conditions

Inmates in the Prison of Macau (EPM) reported that prison guards exercise corporal punishment on inmates (beating by rods out of the sight of CCTV surveillance) for minor misbehaviour. The authority also turned a blind eye to the existence of gangs and abuses between the inmates.