

LGBT Rights in the Macau SAR of P.R. China - March 2013

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Issues:

1. “Same Sex Cohabitants” Dropped in Domestic Violence Legislation

The Social Affairs Bureau (IAS) of the government of the Macau Special Administrative Region (SAR) launched a consultation on the legislation of the “Combating Domestic Violence Law” in 2011. In the initial version of the bill, paragraphs defining the relationships between the abuser and the victim were as follows:

(Translated from the Portuguese version of the bill)

- (1) The ascendants or descendants, eg, parents, children, grandparents and grandchildren, etc.;
- (2) The spouse or former spouse and their ancestors and descendants, who cohabit;
- (3) The person with whom the agent maintains or has maintained a relationship analogous to that of spouses, and their ancestors and descendants, who cohabit;
- (4) A person of the same sex with whom the agent maintains or has maintained a close relationship, and their ancestors and descendants, who cohabit;**
- (5) The person with whom the agent has common children, and
- (6) The person with diminished capacity by reason of age, disability, illness, pregnancy or economic dependence, which cohabits with the agent.

Months after the public consultation period, the IAS published in November 2012 the “Conclusion of Public Consultation Report” which stated that the “same sex” relationship (paragraph 4) was to be removed from the next version of the bill. The reason given was that “there is no social consensus that same sex cohabitants (couples) are considered as family members.”

The Macau LGBT Rights Concern (LGBT Macau) was formed in December 2012 by citizens in favour of LGBT equality and started to petition the government to “restore” same sex relationships (originally the paragraph 4) to the bill.

In a reply to the interpellation by a legislative deputy on the domestic violence bill, the IAS said the removal of it was to prevent “changing the existing legal system,” since “there is no existing law mentioning the relationship of ‘same sex cohabitation’.”

The LGBT Macau has had two meetings with the officials of the IAS to demand the restoration of same sex relationships under the umbrella of the bill. At one meeting, the IAS said they feared that the inclusion of same sex relationships might stir up a debate in the society that would “obstruct” the legislation process. The LGBT Macau requested the IAS to help convince the public to understand the importance of the inclusion and criticized the

government's reluctance to achieve LGBT-inclusiveness and LGBT equality.

Up to now, the government has shown no sign of a plan to restore the paragraph of same sex relationship to the bill, which is awaiting submission to the Legislative Assembly for approval.

2. Education

The Education and Youth Affairs Bureau (DSEJ) has not yet included a comprehensive sexual education in its guidelines for private schools or in its official curriculum. The the teaching of topics such as sexual orientation, gender identity and safe sexual intercoueses (regardless of sexual orientations) is not mandatory in schools.

3. Unequal Laws

The government of the Macau SAR has not announced an intent or a plan to amend laws that discriminate individuals on the grounds of sexual orientation or gender identity, including but not limited to the following areas:

2a. Marriage

2b. De-facto Marriage

The denial of the above mentioned statuses to same sex couples deprives them equal access to social benefits and other rights such as applying for public and social housing as "a household" required by the law.

In fact, the articles of the Civil Code about de-facto marriage do not explicitly require a relationship to be between a man and a woman. Jason Teng Hei Chao, a co-founder of LGBT Macau, enquired with the Legal Affairs Bureau (DSAJ) in December 2012 about the legality of de-facto marriage between two individuals of the same sex. According to DSAJ's reply, despite the fact that heterosexuality is not mentioned in article that defines de-facto marriage - "...relationship held between two people who voluntarily live in conditions similar to those of spouses," "spouses" is interpreted as a reference to that of marriage (between a man and a woman) as defined in subsequent articles of the Civil Code.

4. Absence of Legal Protection

The government of the Macau SAR has not announced an intent or a plan to make or amend laws to protect individuals from discrimination on the grounds of sexual orientation or gender identity, including but not limited to the following area:

3a. Administrative Procedures (technically by incorporating sexual orientation and gender identity into the article of "Principle of Equality" of the Code of Administrative Procedures)

5. No Recognition of Transition of Gender

The government of the Macau SAR has not announced an intent or a plan to make or amend laws to allow transgendered individuals to update their official record of gender.