

**Submission of Rainbow of Macau to
United Nations
Committee on Economic, Social and Cultural Rights
52nd Session**

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Shadow Report - Macau, China

**Ratification of the International Covenant on Economic,
Social and Cultural Rights (ICESCR) in respect to
LGBT Equality**

Established in April 2013, Rainbow of Macau is the first openly pro-LGBT rights NGO registered with the government. The LGBT Rights Concern Group – an entity subordinated to the Rainbow of Macau – is dedicated to the research on and advancement in human rights and equality for LGBT individuals in the territory.

Rainbow of Macau

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Article 8 of the ICESCR

Issue 1. LGBT individuals are virtually denied to the economic (public) housing programme

According to Article 24 of the Economic Housing Law (Law No. 10/2011), the allocation of economic housing units to applications is subject to an order of priority:

- 1) Nuclear household (family formed by virtue of a marriage);
- 2) Non-nuclear household (family formed by virtue of a de facto marriage); and,
- 3) Individual applicant.

The supply of economic housing units is very limited. **In reality, individual applicants, the group to which LGBTs (whether or not in a “spouse-like” relationship) are considered belong, virtually have barely any chance to gain access to economic housing. It is recommended that the Committee urge the Macau government to resolve Issue 2 (as below) to ensure the rights of LGBTs to the fair and realistic allocation of public housing units.**

Article 10 of the ICESCR

Issue 2. No recognition of any form of same-sex civil union, de-facto marriage or marriage

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: marriage and 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 (as referred to in Issue 1).

Additionally, such denial also results in possible delay in emergency medical attention. Providing LGBT relationships are not legally recognised in Macau, the consequences can be fatal when an agreement has to be made between medical staff and a patient’s closest relatives before critical

health situation, for instance, an emergency operation. In such a case an LGBT partner may be the only legitimate, in realistic sense, signee to approve of the operation. Without the legal recognition to LGBT relationships, such scenario is going to happen.

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 Chao, a co-founder of Macau LGBT Rights Concern Group, enquired the Legal Affairs Bureau (DSAJ) in December 2012 for the legality of de-facto marriage between two individuals of the same sex.

*Article 1471, Chapter 2, Macau SAR Civil Code:

União de facto é a relação havida entre duas pessoas que vivem voluntariamente em condições análogas às dos cônjuges.

Literally translated into English as:

De-facto Union is the relationship held between two people who live voluntarily in conditions analogous to those of spouses.

However, the DSAJ's reply, even though it is a fact that the relationship is gender-neutral in the text maintains an interpretation to the Article that the term "cônjuges" is a reference to that of marriage (which is between a man and a woman in local law) as defined in subsequent articles of the Civil Code.

As a reference, the Article was initially written in Portuguese before the transfer of sovereignty and then translated into Chinese. Thus, the Portuguese text should be deemed having preserved the original meaning in case of dispute.

The lack of recognition of unions of same-sex domestic partners deprive them of the rights enjoyed by their heterosexual counterparts, inter alia, access to public housing, common property regime, access to the partner's medical information and inheritance.

Issue 3. "Same Sex Cohabitants" was dropped in the proposed legislation against domestic violence.

The Social Affairs Bureau (IAS) of the Macau government 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, e.g., 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 Group (LGBT Macau) was formed in December 2012 by citizens in favour of LGBT equality and started to petition to 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 social LGBT-inclusion 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.

Same-sex domestic partners will remain vulnerable to domestic violence if the reference to same-sex cohabitants is not restored in the scope of the domestic violence bill. We urge the Committee to require the Macau government to store “same-sex cohabitants” in the domestic violence bill to be presented to the Legislative Assembly.

Article 12 of the ICESCR

Issue 4 - Sex-reassignment surgery or proper medical treatment is not accessible by transgender persons

Neither the public nor private medical system in Macau provides dedicated services to the gender dysphoric population considering sex-reassignment. No local hospital has the will or capability of handling the mentioned population’s request to undergo an assessment and sex-reassignment surgery.

We recommend the Committee to ask the Macau government to confirm the concrete steps the latter will take to ensure that persons with gender dysphoria can be received as service targets and are accessible to sex-reassignment surgery and its related assessment services.

In circumstances that no local hospital is competent to handle such cases, the concerned individuals may be referred to a capable medical institution in neighbouring cities for services.