

Information on **Macau, China** for the **follow-up** to the
concluding recommendations (CAT/C/CHN-MAC/CO/5)
made by the Committee against Torture at its 56th
Session

Submitted by

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Domestic violence legislation

Despite the Committee's concern over the uninclusive scope of the draft law and the recommendation about the adoption of legislation that protects all victims of domestic violence without discrimination, the Macau government insisted on the exclusion of same-sex relationships from the final draft of the domestic violence law.

The domestic violence law without the protection of individuals in same-sex relationships was approved by the Legislative Assembly on 20 May 2016 and came into force on 05 October 2016. Rainbow of Macau, a local LGBT+ rights advocacy group, issued the following statement on the final draft of the domestic violence law without equal protection prior to the final reading.

Rainbow of Macau's Response to Enactment of Discriminatory Domestic Violence Law

08 May 2016, Macau - Rainbow of Macau received the Legislative Assembly's official reply that the government had decided to exclude same-sex relationships from the scope of domestic violence legislation because of the "controversy" of same-sex partners being considered as "family members." Before the final reading of the bill on 20 May 2016, the Rainbow of Macau would like to make the following statement.

The United Nations Committee against Torture issued its concluding observations in December 2015 that the Macau government should protect victims of domestic violence without discrimination. Therefore, it is Macau's government obligation under international law to accord equal protection to persons in same-sex relationships against domestic violence. Rainbow of Macau regrets that the Macau government knowingly enacts a discriminatory law that is against the superiority of international law.

Furthermore, Rainbow of Macau is deeply concerned that the ratification of a discriminatory law will send a harmful message to Macau communities that discrimination on the ground of sexual orientation is justifiable. The authorities attempted to defend themselves from the accusation of "discrimination" by claiming that the Social Work Institute would also provide domestic violence-related services to persons in same-sex relationships regardless of the inclusion in the domestic violence law. However, the authorities have failed to exhibit truthfulness and sincerity in protecting LGB people from domestic violence. Since the announcement in late 2012 about the removal, the authorities changed its arguments backing exclusion from

time to time. “The lack of social consensus,” “inconsistency of laws,” “later resolving same-sex issues in the revision of Civil Code” were all used by the authorities to justify the exclusion but were refuted by Rainbow of Macau and other concerned groups.

In the latest version of the domestic violence bill, the relationship between the predator and victim is defined as “relatives and its equivalents.” The relationship is no longer narrowly defined as “family members” as in the previous version of the bill. The latest version of the bill makes the inclusion of people in same-sex relationships even easier. Also, in respect of intimate partners, marriage is not a prerequisite for protection. “Relationship similar to that of spouses” is included. An intimate relationship does not depend on marriage registration nor necessarily develops into marriage. The deprivation of same-sex partners of the same protection is hardly justifiable.

The enactment of law specifically to handle domestic violence is to require the state to prevent tragedies by their early intervention in violence between persons in intimate relations or with economic dependency.

It is widely known that in the absence of a domestic violence law, victims may be bound by traditional ideas not to seek legal help. The inability to effectively take the predators to justice may make the occurrence of violence more frequent and severe. The reality of stigmatisation of same-sex relationship puts gay, lesbian and bisexual victims in an extremely vulnerable position. In fear of revealing their sexual orientation, gays and lesbians are less likely to seek help even in the face of violence.

Contrary to heterosexual counterparts, gay, lesbian and bisexual victims may have difficulties talking about their same-sex relationship with their family in the very first place, not to mention domestic violence. When reporting the case to authorities, one may have to endure a tremendous amount of stress when he or she has to disclose the stigmatised relationship and experience of violence.

Due to the stipulation of the mandatory secrecy, a domestic violence law inclusive of same-sex relationships will make gay, lesbian and bisexual victims feel comfortable to seek help. In this case, the law will require frontline social workers to proactively identify and follow same-sex domestic violence cases, resulting in effective protection of the LGB members against violence.

A domestic violence law excluding the same-sex population will leave same-sex victims in the status quo in which experience of violence from their intimate same-sex partners may not have to be reported to the authorities.

Transfer of Fugitives

The Macau government presented its draft of the Regional Assistance in Criminal Matters Law, which concerned the procedure of Macau's transfers of fugitives to and from mainland China and Hong Kong, to the Legislative Assembly in late December 2015 but declined to make the full text of the draft available to the public. Instead, the Macau government only issued a brief statement about the "main ideas" of the draft law to the press. After studying the "main ideas", the New Macau Association raised its concerns in the following statement on 03 February 2016. Also, it must be noted that the unavailability of the full text has made civil society actors unable to examine any further the draft law's compatibility with the Committee's recommendations.

At the Executive Council's press conference on the "Regional Assistance in Criminal Matters Bill" which took place in December 2015, the government put an emphasis on the bill's consistency with "internet standards." However, upon scrutiny, according to the press material about the law proposal, there will be an exception clause allowing the exemption of "acts committed in the Mainland, involving the military or endangering interests of national defence" from the requirement of "double criminality."

In other words, Macau residents may be transferred to mainland China to stand trial for allegations connected to "the military or interests of national defence" in the absence of equivalent offences in Macau laws. Such devil in the details is deeply worrying because, in the recent arrests of human rights lawyers in China, lawyers were held in custody or tried for allegations of "inciting subversion of state power." There is a trend that the Chinese government's abuse of "crimes against national security" in political persecutions is becoming more like a routine.

The New Macau Association (NMA) urges for an immediate and full disclosure of the complete text of the "Regional Assistance in Criminal Matters Bill" and the Macau government's agreements with mainland China and Hong Kong under negotiation for public scrutiny.

In September 2015, the NMA openly demanded the Macau government to disclose the agreement on the transfer of fugitives under negotiation with the Hong Kong government but to no avail. On 29 January 2016, in an exclusive interview with Secretary for Security Wong Sio Chak by the ATV, Wong revealed that "a consensus" had been reached by the Hong Kong and Macau governments, but he did not elaborate on the "consensus". The NMA urges Wong to make the "consensus" public for scrutiny.

Lastly, in the light of the Causeway Bay Bookshop incident, residents of Hong Kong and Macau are concerned about the issue of unlawful transfer of residents of the SARs to mainland China. Once again, the NMA calls for transparency of the bill relating to the transfer of fugitives and the negotiation of those agreements.

Unexpectedly, in June 2016, the Macau government officially announced that it had withdrawn the draft law. An excerpt of the Government Information Bureau press release about the withdrawal published on 20 June 2016 is as follows:

Regional legal cooperation bill withdrawn to allow further study

The Government's decision to withdraw from the Legislative Assembly a bill – on regional cooperation with the mainland and Hong Kong regarding legal matters – was a strategic one taken for internal administrative reasons relating to the legislative process.

The Secretary for Administration and Justice, Ms Chan Hoi Fan, on Saturday (18 June) said the Government would need more time than had been anticipated, in order to address the question of the significant differences between the legal systems of the three jurisdictions. The Government needed to study carefully those differences; in particular regarding issues relating to maintaining the coherence of Macao's own legal system.

The discussion on regional legal cooperation was not yet at a final stage, she said. The Government would continue working closely with authorities from the mainland and from Hong Kong. This was in order to address the differences between the three jurisdictions; while at the same time adhering to the principle aims of the proposed legal cooperation, and thus improve the effectiveness of this specific law.

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