

# Report on Human Rights in Macau 2022

Submission  
of the **Macau Research Group**  
to the UN Human Rights Committee  
for its Review on the Implementation of the International Covenant  
on Civil and Political Rights (ICCPR)  
in **Macau, China**  
at its 135<sup>th</sup> Session

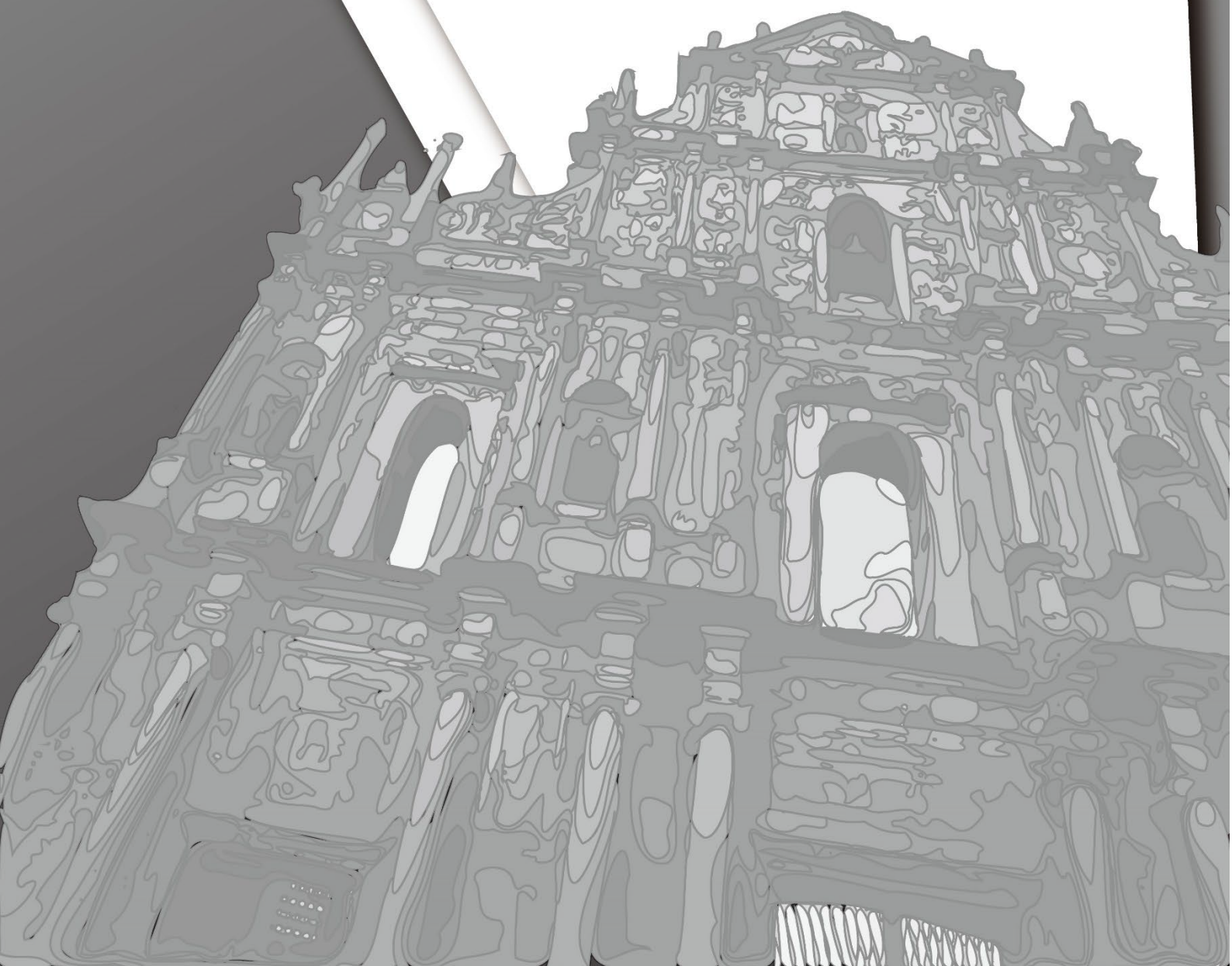
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## Section I. Important Update on Macau, China

### Disqualification of election candidates (ICCPR arts. 25 & 26)

1. In July 2021, the Legislative Assembly Electoral Affairs Commission (CAEAL) disqualified 21 candidates in the Legislative Assembly Election on the grounds of being “not loyal to the Macau Special Administrative Region (SAR)” and “not upholding the Basic Law” provided in article 6(8) of Law no. 3/2001 as amended by Law no. 9/2016: Electoral Regime of Legislative Assembly of Macau SAR. The Liaison Office of the Chinese Central Government in Macau openly “supported” the disqualifications.<sup>1</sup>
2. Amongst the 21 disqualified candidates, three were members of the Legislative Assembly and had never been prevented from running for the legislature in any of the previous elections. They were not disqualified from the 2017 Legislative Assembly Election, which took place several months after the entry of article 6(8) of “Electoral Regime of Legislative Assembly of Macau SAR” into force.
3. Upon the candidates’ request, CAEAL released to each of the candidates a copy of the surveillance material on which CAEAL relied to justify the disqualifications. The surveillance materials on the candidates were prepared by the Judiciary Police (PJ) without the candidates’ knowledge. The PJ aggregated social media posts, press interviews and photos taken at demonstrations about each disqualified candidate. The surveillance materials also contained accusations made by the PJ that the candidates in question had not been “not loyal to the Macau SAR” and “not upholding the Basic Law”.
4. The disqualified candidates complained that the surveillance materials contained not only false descriptions but also conspiracy theories taken out of context.<sup>2</sup> The author of this submission reviewed some of the materials and would like to highlight some of the accusations.

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<sup>1</sup> “澳門中聯辦：堅決支持立法會選管會依法認定部分參選人無被選資格,” XinHua, 13 July 2021, [http://www.xinhuanet.com/2021-07/13/c\\_1127652299.htm](http://www.xinhuanet.com/2021-07/13/c_1127652299.htm)

<sup>2</sup> “Macau democrat banned from election over pics with Hong Kong opposition, Taiwan tour, and Tiananmen Massacre vigils,” Hong Kong Free Press, 14 July 2021, <https://hongkongfp.com/2021/07/14/macau-democrat-banned-from-election-over-pics-with-hong-kong-opposition-taiwan-tour-and-tiananmen-massacre-vigils/>

5. Participation in events mourning Nobel Peace laureate LIU Xiaobo and victims of the 1989 Tiananmen Square Movement were framed as “organising or engaging in activities subverting the constitutional order established by the [Chinese Constitution] and the [Macau Basic law]”.
6. Meeting with Taiwanese politicians and taking part in pro-democracy conferences overseas were framed as “supporting activities against the ‘One China’ principle” and “colluding with secessionists”.
7. Promoting a mock referendum on Macau’s political system was framed as “viciously attacking the constitutional order established by the [Chinese Constitution] and the [Macau Basic law]”.
8. Three candidate lists, which concerned 15 disqualified candidates, lodged an appeal to the Court of Final Appeal (TUI). In the judgement of TUI case no. 113/2021, the TUI upheld CAEAL’s decision of disqualifications.
9. The Hong Kong and Macau Affairs Office (HKMAO) of the Chinese Central Government issued a statement “supporting” TUI’s ruling and CAEAL’s decision.<sup>3</sup> The HKMAO statement pointed out that the principle of “patriots administering Macau” underlies “One Country Two Systems” and “anti-China elements” are not allowed to “sneak into the governance structure of Macau SAR”.<sup>4</sup>
10. The disqualifications deprived Macau residents of a free choice of candidates at the 2021 Legislative Assembly Election. The election recorded an all-time-low turnout (42.2%) and an all-time-high percentage of blank votes (2.29%) since Portugal’s handover of Macau to China in 1999 (Table 1).

Year of LA Election	Turnout (%)	Blank vote (%)
2021 <sup>5</sup>	42.4%	2.29% <sup>6</sup>
2017 <sup>7</sup>	57.2%	0.54%
2013 <sup>8</sup>	55.0%	0.71%
2009 <sup>9</sup>	59.9%	0.48%

<sup>3</sup> HKMAO, “國務院港澳辦發言人：堅決支持澳門特別行政區嚴格依法組織選舉,” XinHua, 13 July 2021, [http://www.xinhuanet.com/2021-07/13/c\\_1127652298.htm](http://www.xinhuanet.com/2021-07/13/c_1127652298.htm)

<sup>4</sup> Ibid.

<sup>5</sup> CAEAL, “直接選舉投票情況,” [https://www.eal.gov.mo/zh\\_tw/AFL\\_2021.html](https://www.eal.gov.mo/zh_tw/AFL_2021.html)

<sup>6</sup> “DQ 案激起反抗 廢票、白票逾五千 投票率創回歸最低,” All About Macau, 13 September 2021, <https://aamacau.com/2021/09/13/dq%E6%A1%88%E6%BF%80%E8%B5%B7%E5%8F%8D%E6%8A%97-%E5%BB%A2%E7%A5%A8%E3%80%81%E7%99%BD%E7%A5%A8%E9%80%BE%E4%BA%94%E5%8D%83-%E6%8A%95%E7%A5%A8%E7%8E%87%E5%89%B5%E5%9B%9E%E6%AD%B8%E6%9C%80%E4%BD%8E/>

<sup>7</sup> CAEAL, “2017 選舉活動綜合報告,” 60, [https://www.eal.gov.mo/pdf/report/EALReport\\_2017.pdf](https://www.eal.gov.mo/pdf/report/EALReport_2017.pdf)

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

2005 <sup>10</sup>	58.4%	0.51%
2001 <sup>11</sup>	52.3%	0.66%

Table 1. Turnouts and blank vote shares in the direct elections of the Legislative Assembly of Macau post-1999

11. The disqualifications were a flagrant violation of articles 25 and 26 of the ICCPR.
12. This submission recommends that the UN Human Rights Committee (HRC) urge Macau (China) to:
  - a. Ensure that election candidates are not disqualified for their political opinion or their exercise of freedom of expression; and
  - b. Repeal the second part of article 6(8) of Law no. 3/2001 as amended by Law no. 9/2016.

## **Denial of the right to peaceful assembly to migrant workers (ICCPR arts. 2, 21 & 26)**

13. Migrant workers were told by the police that they did not enjoy the right to assembly.<sup>12</sup> In February 2021, the Public Security Police Force (CPSP) refused to accept a prior notice of assembly submitted by Burmese migrant workers who wanted to organise a protest against the Burmese military coup.
14. Later, in a statement, the CPSP said that article 1(1) of Law no. 2/93/M: Right of Assembly and Demonstration accords the right to peaceful assembly to Macau residents only, but not migrant workers who are, technically, “non-residents”. Jurists criticised the CPSP’s narrow interpretation of the applicability of the right to peaceful assembly.<sup>13</sup> According to the jurists, article 43 of the Basic Law extends certain rights to anyone who lawfully stays in Macau, and the right to assembly is a fundamental right enshrined in the ICCPR. In a second statement, the CPSP said that “the ICCPR is not applied directly in Macau and must be applied indirectly through local legislation” on the basis of article 40 of the Basic Law.<sup>14</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> “Non-resident workers never held the right to hold protests – Police,” Macau Business, 1 March 2021, <https://www.macaubusiness.com/non-resident-workers-never-held-the-right-to-hold-protests-police/>

<sup>13</sup> Ibid.

<sup>14</sup> CPSP, “就有關在澳非居民是否受第 2/93/M 號法律《集會權及示威權》保障的問題,” 1 March 2021, <https://www.gov.mo/zh-hant/news/367049/>

15. Resolution 24/5 of the UN Human Rights Council has reminded all the states of their obligations to “fully protect the rights of all individuals to assemble peacefully [...] including migrants”<sup>15</sup>. The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association is also of the view that legislation governing freedom of peaceful assembly should not contain “explicitly discriminatory provisions”.<sup>16</sup> International human rights law does not link the protection of the right to freedom of peaceful assembly to citizenship.<sup>17</sup>
16. This submission recommends that HRC urge Macau (China) to Respect the right to freedom of assembly of migrant workers regardless of residency status and nationality.

### **Resignations of journalists of the public broadcaster following imposition of “patriot” editorial guidelines (ICCPR arts. 19 & 20)**

17. In March 2021, fourteen<sup>18</sup> Portuguese/English-speaking journalists resigned from Macau’s public broadcaster Teledifusão de Macau (TDM).<sup>19</sup> The resignations happened after TDM’s Executive Committee had issued editorial guidelines requiring journalists “to promote patriotism” and “not to disseminate information or opinions contrary to the policies of China and Macau SAR”.<sup>20</sup> The journalists were warned of the consequence of dismissal in the event of their non-compliance with the guidelines.<sup>21</sup>

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<sup>15</sup> A/HRC/RES/24/5, para. 2.

<sup>16</sup> A/HRC/26/29, para. 22.

<sup>17</sup> Guidelines on Freedom of Peaceful Assembly (3rd edn, OSCE/ODIHR 2017), para. 107.

<sup>18</sup> The precise number of Portuguese/English-speaking journalists who left TDM as a result of the imposition of the guidelines was not public information. The author of this submission got in touch with one of the resigned journalists and was told that fourteen journalists had chosen to resign from TDM or not to renew employment contracts.

<sup>19</sup> “Demissões portuguesas na emissora pública de Macau após exigência de patriotism,” *Lusa*, 23 March 2021, <https://www.publico.pt/2021/03/23/mundo/noticia/demissoes-portuguesas-emissora-publica-macau-apos-exigencia-patriotismo-1955609>

<sup>20</sup> *Ibid.*

<sup>21</sup> “疑被收窄新聞自由 TDM 葡文部六記者辭職,” *All About Macau*, 25 March 2021, <https://aamacau.com/2021/03/25/%E7%96%91%E8%A2%AB%E6%94%B6%E7%AA%84%E6%96%B0%E8%81%9E%E8%87%AA%E7%94%B1-tdm%E8%91%A1%E6%96%87%E9%83%A8%E5%85%AD%E8%A8%98%E8%80%85%E8%BE%AD%E8%81%B7-%E6%96%B0%E8%81%9E%E5%B1%80%E9%95%B7%E5%85%BC/>



18. Reporters Without Borders (RSF) condemned the editorial interference of TDM's management.<sup>22</sup> RSF Southeast Asia director expressed his concern that Macau's public broadcaster would become a "propaganda organ" of the state.<sup>23</sup>
19. This submission recommends that HRC urge Macau, China to:
- a. Retract the editorial guidelines that effectively undermine the editorial independence of journalists of the public broadcaster;
  - b. Guarantee that the public broadcaster reports the diverse voices of Macau; and
  - c. Guarantee that the public broadcaster would not engage in suppressing or downplaying dissent.

### **No right to strike in the planned trade union law (ICCPR art. 22)**

20. In late 2021, the Labour Affairs Bureau (DSAL) launched a public consultation on the recognition and the rights of trade unions.<sup>24</sup> However, the right to strike, which is a key element in trade union laws around the world, is absent from the consultation document. The questionnaire prepared by DSAL focused on regulatory issues, such as registration and representation. The consultation was at the "ideation" level without presenting any provisions of a draft law.
21. Moreover, the consultation paper suggests a tendency for over-regulation. DSAL proposed a "supervision mechanism" that will monitor the trade unions that affiliate with international labour alliances or engage in international events out of "national security" concerns.
22. This submission recommends that HRC urge Macau, China to:
- a. Establish the right to strike in conformity with international standards in the planned trade union law; and
  - b. Refrain from ideas of restricting trade unions' freedom to affiliate with international labour alliances or engage in international events in the planned trade union law.

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<sup>22</sup> RSF, Hong Kong and Macau public broadcaster independence threatened by management censorship, 19 March 2021, <https://rsf.org/en/hong-kong-and-macau-public-broadcaster-independence-threatened-management-censorship>

<sup>23</sup> "Teledifusão de Macau pode tornar-se 'órgão de propaganda chinesa alertam Repórteres Sem Fronteiras," LUSA, 23 March 2021, [https://www.rtp.pt/noticias/mundo/teledifusao-de-macau-pode-tornar-se-orgao-de-propaganda-chinesa-alertam-reporteres-sem-fronteiras\\_n1306567](https://www.rtp.pt/noticias/mundo/teledifusao-de-macau-pode-tornar-se-orgao-de-propaganda-chinesa-alertam-reporteres-sem-fronteiras_n1306567)

<sup>24</sup> DSAL, 工會法公開諮詢, 31 October 2021, <https://www.gov.mo/zh-hant/policy-consultation/829226/>

## Planned revision of the national security law (ICCPR arts. 2, 9, 14, 15 & 17)

23. There is a concern that Macau's national security law will be aligned with those of mainland China and Hong Kong. The Chief Executive announced a plan to revise Law no. 2/2009: Law on Safeguarding State Security in his 2022 policy address. In April 2022, Secretary for Security hinted that he intended to introduce a new special criminal procedure similar to that in Hong Kong's national security law.<sup>25</sup> It is noteworthy that Hong Kong's national security law removed the presumption of bail,<sup>26</sup> conferred intrusive investigative powers to the police authorities<sup>27</sup> and allowed suspects to be tried by the courts of mainland China in some cases.<sup>28</sup>
24. As regards the definitions of the crimes, Macau's current national security law was passed in 2009 and was heavily influenced by the state security laws of civil law jurisdictions in Europe. There is a legitimate concern that the revision of the national security law will lower the bar for prosecution in alignment with the national security laws in mainland China and Hong Kong. For example, a connection with either violence or unlawful means is a requirement for one to be convicted of secession and subversion under the current national security law.<sup>29</sup> It is unclear whether the requirement of a connection with violence or illegal means will be removed so that advocating for a change to China's political system by peaceful means will be criminalised, in line with the national security laws of Hong Kong.
25. This submission recommends that HRC urge Macau, China to:
- a. Ensure that the planned revision of Law no. 2/2009 will fully comply with the ICCPR;
  - b. Refrain from the idea of introducing special procedure or intrusive investigative powers similar to those specified in Hong Kong's national security law that international human rights experts deem incompatible with the ICCPR by; and

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<sup>25</sup> “擬參照港國安法增程序法,” All About Macau, 15 April 2022,

<https://aamacau.com/2022/04/15/%E6%93%AC%E5%8F%83%E7%85%A7%E6%B8%AF%E5%9C%8B%E5%AE%89%E6%B3%95%E5%A2%9E%E7%A8%8B%E5%BA%8F%E6%B3%95-%E9%BB%83%E5%B0%91%E6%BE%A4%EF%BC%9A%E4%BF%AE%E5%9C%8B%E5%AE%89%E6%B3%95%E4%BB%8A%E5%B9%B4%E5%85%AC/>

<sup>26</sup> Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, art. 42.

<sup>27</sup> Ibid, art. 43

<sup>28</sup> Ibid, art. 55

<sup>29</sup> Law no. 2/2009: Law on Safeguarding State Security, arts. 2 - 4



- c. Refrain from any idea of expanding the current definitions of the crimes in Law no. 2/2009.

### **Restriction on unskilled migrant workers looking (ICCPR arts. 12 & 26)**

26. The 2020 amendment to Law no. 21/2009: Law on Hiring Non-resident Workers introduced a new requirement that unskilled migrant workers will only be granted a work permit if they arrive in Macau on a work visa. This new requirement effectively prevents unskilled workers from visiting prospective employers in Macau to look for a job on a tourist visa.<sup>30</sup> Requiring migrant workers who wish to work in Macau to find a job from outside Macau is counterintuitive. Moreover, this requirement discriminates against unskilled workers as it does not apply to skilled migrant workers.
27. This submission recommends that HRC urge Macau, China to:
  - a. Allow unskilled migrant workers to find a job in Macau as a visitor; and
  - b. Repeal article 4(2) of Law 10/2020 as amended by Law 10/2020.

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<sup>30</sup> Law no. 21/2009: Law on Hiring Non-resident Workers as amended by Law no. 10/2020, art. 4.

## **Section II. Further Information for the List of Issues (LOI) on Macau, China and Comments on the State Party's Reply**

### **Interpretation of the law in conformity with the ICCPR (LOI para. 1; ICCPR art. 2):**

28. This submission wishes to remind the HRC that in politically sensitive cases, judicial officials have handed down rulings that deviated from the jurisprudence of the HRC and the usual interpretation of the ICCPR. Some notable cases are as follows:
- a. Court of Final Appeal (TUI) case no. 81/2021: The TUI upheld the police's ban on a vigil for the 1989 Tiananmen Square Incident. TUI considered that "provocative" terms like "horrible" and "massacre" that the organisers had put on display in the past were both "unacceptable in any public event" and "excessive". Article 18 of the ICCPR was cited by the TUI to justify the imposition of restrictions on the display of these terms.
  - b. Court of Final Appeal (TUI) case no. 113/2021: The TUI upheld the disqualifications of candidates for being "not loyal to the Macau SAR" and "not upholding the Basic Law" from the 2021 Legislative Assembly Election. In complete disregard of articles 18, 19, 21 and 25 of the ICCPR, the TUI held that participating in vigils about the 1989 Tiananmen Square Incident and a mock referendum on Macau's political system constituted being "not loyal to the Macau SAR" and "not upholding the Basic Law".
  - c. Court of Final Instance (TUI) case no. 94/2019: The TUI upheld the Macau police's ban on a demonstration against the inhuman treatment of peaceful protesters by the Hong Kong police. In complete disregard of articles 18, 19 and 21 of the ICCPR, the TUI held that the event organisers' right to assembly was not protected because their criticism of the Hong Kong police was "unfounded".
29. This submission recommends that HRC urge Macau, China to:
- a. Familiarise the judicial officials with the concluding observations and the jurisprudence of HRC; and
  - b. Ensure that judicial rulings are in full compliance with the ICCPR regardless of the political sensitivity of the cases.

**Paris Principles (LOI para. 2; ICCPR art. 2):**

30. None of the institutions mentioned in the state party's reply to LOI has the mandate to function as a national institution as described in UN General Assembly (GA) resolution 48/134 of 1993. This submission wishes to reiterate that the competence of the Commission against Corruption (CCAC) does not meet points 1, 3(a)(i), 3(a)(iii), 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g) listed under "Competence and responsibilities" in Annex "Principles relating to the status of national institutions" to GA resolution 48/134.
31. This submission recommends that HRC urge Macau, China to broaden the mandate of the CCAC, or to establish a new body, in order to comply with the Paris Principles in full, in particular, points 1, 3(a)(i), 3(a)(iii), 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g) listed under "Competence and responsibilities" in the Annex to GA resolution 48/134.

**Anti-discrimination legislation (LOI para. 4; ICCPR arts. 2, 3, 25 and 26)**

32. The claim that Macau has "comprehensive anti-discrimination [laws]"<sup>31</sup> made by the state party in its reply to LOI is highly misleading. Macau's anti-discrimination legislation falls short of international standards, especially for the protection of lesbian, gay, bisexual and transgender (LGBT+) people. Legal protection against discrimination on the ground of sexual orientation is very limited and only exists in the two following areas:
- a. Treatment of job seekers and employees by employers (article 6 of Law no. 7/2008: Labour Relations Law); and
  - b. Treatment of people by the officers of the Commission Against Corruption (article 31-A of Law no. 10/2000 amended by Law no. 4/2012: Organisation Law of the Commission Against Corruption).
33. Furthermore, there is no protection against discrimination on the grounds of gender identity.
34. Macau officials and some community leaders have repeatedly used the claim of "a lack of social consensus"<sup>32</sup> to respond to the calls for equal rights for LGBT+ people.

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<sup>31</sup> CCPR/C/CHN-MAC/RQ/2, para. 12.

<sup>32</sup> CCPR/C/CHN-MAC/RQ/2, paras. 13 – 14.

By international standards, a social consensus is not a prerequisite for the protection of minority rights.<sup>33</sup> Unfortunately, the Macau SAR Government has taken no action to promote social acceptance and understanding of LGBT+ people.

35. This submission recommends that HRC urge Macau, China to:
- a. Recognise the international standards that “social consensus” is not a precondition for protecting LGBT+ people from discrimination;
  - b. Incorporate the grounds of sexual orientation and gender identity in Macau laws in which there is an anti-discrimination (principle of equality) provision; and
  - c. Proactively promote social acceptance of LGBT+ people and the diversity of sexual orientation and gender identity.

### **Recognition of transgender persons (LOI para. 5; ICCPR arts. 2, 3, 25 and 26)**

36. The Macau SAR is the only jurisdiction in the People’s Republic of China that does not allow transgender people to have their gender identity reflected on their identity documents.
37. Since 2015, the Macau SAR Government has made no announcement about the progress of changing the law to recognise transgender persons. The “working group on gender identity recognition” that the state party claimed to have established in 2017<sup>34</sup> was not publicly known until the revelation in its reply to the LOI.
38. This submission would like to point out that the Macau SAR Government’s “social consensus” pretence is incompatible with HRC’s recognition<sup>35</sup> of transgender persons’ right to change the gender marker on identity documents.
39. This submission recommends that HRC urge Macau, China to:
- a. Change the law to allow transgender persons to change the gender marker on birth certificates and identity documents; and
  - b. Proactively promote social acceptance of transgender people and the diversity of gender identity.

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<sup>33</sup> United Nations, *Minority Rights: International Standards and Guidance for Implementation*, 8.

<sup>34</sup> CCPR/C/CHN-MAC/RQ/2, para. 13.

<sup>35</sup> CCPR/C/119/D/2172/2012, para. 7.15.

## **Reclassification of domestic violence cases (LOI para. 6; ICCPR arts. 2, 3, 6, 7 and 26)**

40. The expression “physical, psychological or sexual abuse” in article 4 of the domestic violence law is vague. Very often, judicial officers consider that the requirement of the gravity of bodily harm for the crime of domestic violence must be higher than that of simple assault.<sup>36</sup> Reclassifying domestic violence crimes as simple assault (article 137 of the Macau Penal Code (CPM)) deviates from the objective of the domestic violence law. The continuation of the prosecution for the crime of simple assault is dependent on the victims’ complaint.<sup>37</sup> In cases where the crime of domestic violence is reclassified as simple assault, victims are informed of the option to discontinue the proceedings. Such reclassifications effectively remove the protections accorded by the domestic violence law from the victims. Reclassification is only desirable when a more serious crime, such as homicide (article 128 of CPM) or aggravated homicide (article 129 of CPM), applies.
41. Unfortunately, in the state party’s reply to the LOI, the Macau SAR Government sidestepped the question about the number of domestic violence cases reclassified as a less serious crime. It is noteworthy that the state party conceded that “it is particularly necessary to consider whether the relevant violent acts are committed continually” for the crime of domestic violence in its reply to the LOI.
42. This submission recommends that HRC urge Macau, China to fix the loophole of case reclassification by removing vagueness from the definition of the crime of domestic violence.

## **Exclusion of same-sex couples from the scope of domestic violence law (LOI paras. 4 & 6; ICCPR arts. 2, 3, 6, 7 and 26)**

43. The state party’s narrative that domestic violence victims in same-sex relationships can rely on article 137 (simple assault) of the Macau Criminal Code (CPM) is synonymous with depriving them of effective protection. The crime of simple assault has not been an effective response to domestic violence. It was the main avenue of

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<sup>36</sup> Article 137 of CPM defines simple assault as “offend[ing] another person's body or health”.

<sup>37</sup> CPM, art. 137(2).

protection available to all domestic violence victims before the enactment of the domestic violence law in 2016. The continuation of the prosecution for the crime of simple assault is dependent on the victims' complaint.<sup>38</sup> Furthermore, it is noteworthy that the domestic violence law provides not only criminal sanctions but also the rights to temporary shelter, financial assistance, legal aid and medical care to the victims.<sup>39</sup>

44. Even if victims in same-sex relationships chose to let the public prosecution charge the perpetrators with simple assault, the protective measures and services under the domestic violence law would not apply to these same-sex victims.
45. Furthermore, the state party's claim that "Social Welfare Bureau ([IAS]) and social service institutions also might provide domestic violence assistance services to victims in same-sex cohabitation relationships"<sup>40</sup> is highly misleading. The case report form<sup>41</sup> and the statistics<sup>42</sup> published by the IAS had no references to same-sex partners at all. It is highly questionable whether the officers and social workers of the IAS and other institutions may recognise domestic violence cases involving same-sex intimate partners.
46. In the concluding observations<sup>43</sup> on Macau, China by Committee against Torture (CAT) in 2015, the CAT urged Macau to enact a domestic violence law without discrimination. Still, in early 2016, the Macau SAR Government declined to reinstate the reference to "same-sex cohabitants" in the final text of the Domestic Violence Law.
47. This submission recommends that HRC urge Macau, China to include same-sex intimate partners within the scope of the domestic violence law.

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<sup>38</sup> CPM, art. 137(2).

<sup>39</sup> Law no. 2/2016: Law to Prevent and Combat Domestic Violence, arts. 16 – 17.

<sup>40</sup> CCPR/C/CHN-MAC/RQ/2, para. 15.

<sup>41</sup> IAS, "懷疑家庭暴力個案通報表," [http://www.ias.gov.mo/wp-content/uploads/2018/03/2018-05-09\\_120958\\_25.pdf](http://www.ias.gov.mo/wp-content/uploads/2018/03/2018-05-09_120958_25.pdf) accessed 30 May 2022

<sup>42</sup> IAS, 家庭暴力個案中央登記系統 2021 年全年簡報, 4 May 2022, [https://www.ias.gov.mo/wp-content/uploads/2016/08/2022-05-03\\_102958\\_27.pdf](https://www.ias.gov.mo/wp-content/uploads/2016/08/2022-05-03_102958_27.pdf)

<sup>43</sup> CAT/C/CHN-MAC/CO/5, para. 25(a).



## **Surrender of fugitives to mainland China (LOI para. 7; ICCPR arts. 6, 7, 9, 10 and 14)**

48. The state party's claim that "since the Court of Final Appeal handed down the ruling on case No. 3/2008, there has been no case of surrendering fugitive offenders from the Macao SAR to Mainland China"<sup>44</sup> is highly misleading if not outright false. It is a matter of public record that Macau has surrendered fugitives to mainland China by extrajudicial means.<sup>45</sup> The transfers were carried out in the name of deportation<sup>46</sup> without safeguards from the deportees facing the death penalty and life imprisonment, which are unlawful forms of criminal penalties<sup>47</sup> in Macau. The following cases are information in the public domain.
49. In 2015, the Macau police arrested a former Chinese official who had temporary residence status in Macau.<sup>48</sup> The authorities stripped the arrestee of temporary residence status and then deported him to mainland China to face corruption charges.<sup>49</sup> It is noteworthy that in mainland China, the crime of graft is punishable by life imprisonment and death.<sup>50</sup>
50. The Court of Final Appeal (TUI) case no. 3/2008 mentioned by the state party in the reply to LOI is an instance of unlawful transfer. The police handed a Hong Kong resident on Interpol Red Notice over to mainland China before the TUI could decide on the application for habeas corpus.<sup>51</sup> The transfer was executed after the TUI had received the application for habeas corpus and before the TUI could hand down a ruling.<sup>52</sup>
51. This submission recommends that HRC urge Macau, China to refrain from transferring fugitives to mainland China without following the law governing the surrender of fugitives.

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<sup>44</sup> CCPR/C/CHN-MAC/RQ/2, para. 21.

<sup>45</sup> "Macau handed Hong Kong residents to mainland authorities, despite court declaring it illegal," South China Morning Post, 21 February 2016, <https://www.scmp.com/news/hong-kong/politics/article/1914649/macau-handed-hong-kong-residents-mainland-authorities>

<sup>46</sup> Ibid.

<sup>47</sup> CPM, art. 39(1).

<sup>48</sup> "One of 100 most-wanted fugitives caught in Macao," China Daily, 25 July 2015, [http://www.chinadaily.com.cn/china/2015-07/25/content\\_21404738.htm](http://www.chinadaily.com.cn/china/2015-07/25/content_21404738.htm)

<sup>49</sup> "Allegedly corrupt Chinese official deported from Macau," Macau Business Daily, 29 July 2015, <https://www.macaubusiness.com/allegedly-corrupt-chinese-official-deported-from-macau-2/>

<sup>50</sup> Criminal Law of the People's Republic of China, art. 383(3).

<sup>51</sup> TUI Case no. 3/2008

<sup>52</sup> Ibid.

## **Taking agency fees from domestic workers' wages (LOI para. 10; ICCPR arts. 2, 7, 8 and 26)**

52. The state party, in its reply to the LOI, sidestepped the question about the practice of employers deducting the wages of domestic workers, who are predominantly migrant workers, to pay agency fees.
53. This submission recommends that HRC urge Macau, China to:
- a. Proactively reach out to the communities of migrant workers and encourage them to file complaints about exploitative practices; and
  - b. Raise awareness amongst employers of domestic workers regarding lawful and unlawful employment practices.

## **Pre-selection of judges for national security cases (LOI para. 13; ICCPR arts. 2 & 14)**

54. The pre-selection of judges for hearing national security cases may not be simply based on the criteria of nationality (that is, Chinese citizenship) and the status of definite appointment, as the state party suggested in its reply to LOI. The Macau SAR Government never officially announced the identity or the number of the pre-selected judges. In February 2021, local news media reported that 14 judges had been pre-selected to hear national security cases.<sup>53</sup> However, there has been no official acknowledgement of this number. As of May 2022, Macau's judiciary system has 46 judges.<sup>54</sup> Four of the judges are Portuguese (non-Chinese). If the number of "14" was correct, 30% of all judges (or one-third of the Chinese judges) were pre-selected to hear national security cases.
55. This submission recommends that HRC urge Macau, China to:
- a. Disclose the identities of the judges pre-appointed to hear national security cases pursuant to article 19-A of Law no. 9/1999 as amended by Law no. 4/2019: Law of Judicial Organisation; and

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<sup>53</sup> "14 名法官被指定審理國安案件," TDM, 21 February 2021, [https://www.cyberctm.com/zh\\_TW/news/detail/2690168](https://www.cyberctm.com/zh_TW/news/detail/2690168)

<sup>54</sup> "澳門特別行政區司法機關各級法院法官," Macau SAR Government, <https://www.gov.mo/zh-hant/apm-info-page/estrutura-politica-da-regiao-administrativa-especial-de-macau/orgaos-judiciarios-da-regiao-administrativa-especial-de-macau/juizes-dos-tribunais-das-diferentes-instancias/> accessed 30 May 2022

- b. Revoke article 19-A of Law 9/1999 as amended by Law no. 4/2019: Law of Judicial Organisation.

### **Mass surveillance - Public CCTV system “Sky Eye” and facial recognition technology (LOI para. 14; ICCPR art. 17)**

56. The combination of the public CCTV system “Sky Eye” and facial recognition technology has given the police the capability to locate individuals automatically through mass surveillance. The state party’s claim that “[t]he facial recognition technology has nothing to do with the ‘Sky Eye’; it is not a component part of the ‘Sky Eye’ system” may be highly misleading. In a press statement, the Unitary Police Service (SPU) said the police’s use of facial recognition technology in conjunction with the public CCTV System “Sky Eye” had produced “satisfactory results”.<sup>55</sup> The question of whether or not the facial recognition component is an integral part of “Sky Eye” technically speaking is irrelevant.
57. It must be noted that automatic surveillance technology should not be understood as an innocuous replacement for non-automatic means of surveillance, especially in the advent of data mining technology.<sup>56</sup> The state party’s claim that the facial recognition technology was only meant to replace manual review of CCTV footage<sup>57</sup> was an understatement. The scalability of automated facial recognition makes its use much more intrusive than manual review.
58. Furthermore, there are no mechanisms that can independently verify whether the use of automatic recognition technology is strictly confined within the scope and the purposes declared by the police authorities.
59. This submission recommends that HRC urge Macau, China to establish a mechanism that has the power to independently verify the compliance of the police’s mass surveillance practices with the law.

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<sup>55</sup> SPU, “天眼”人臉及車牌識別測試達預期效果, 21 January 2021, <https://www.gov.mo/zh-hant/news/361460/>

<sup>56</sup> Council of Europe, T-PD(2016)18rev, 19 August 2016, 8.

<sup>57</sup> CCPR/C/CHN-MAC/RQ/2, para. 47.

## **Covert surveillance - Wiretapping legislation (LOI para 14; ICCPR art. 17)**

60. In December 2021, the Legislative Assembly passed the first reading of the draft “Regime for Interception and Protection of Communications”. Although the draft law proposes criminal penalties for the misuse of the data collected through authorised covert surveillance, there will still be no mechanisms that can independently verify whether the collection, retention and destruction of the surveillance data are carried out in accordance with the law.
61. In December 2018, the President of the Court of Final Appeal (TUI) admitted that Macau’s courts have no way to monitor whether the police’s wiretapping operations are carried out within the permitted scope.<sup>58</sup> Although wiretapping is subject to judicial approval, there is no independent watchdog tasked with verifying the compliance of the police authorities’ surveillance practices with the law.
62. In theory, evidence not obtained lawfully is inadmissible in legal proceedings. However, it must be noted that interception of communications does not necessarily serve the sole purpose of obtaining evidence to be admitted by the courts.
63. This submission recommends that HRC urge Macau, China to establish a mechanism that has the power to independently verify the compliance of the police’s covert surveillance practices with the law.

## **Denial of entry to Macau to non-local journalists (LOI para. 17; ICCPR arts. 19 & 20)**

64. In the state party’s reply to the LOI, the Macau SAR Government recited the narrative that the occupation of individual visitors (journalists) was “irrelevant to” entry bans, despite overwhelming evidence to the contrary. It is a matter of the fact that an increasing number of non-local journalists were denied entry to Macau on the ground of “endangering the public security of Macau” in the past few years, especially around politically sensitive dates such as visits of the Chinese state leaders to Macau.<sup>59</sup> For the journalists who worked for Hong Kong media outlets which published stories critical of the Macau authorities, the experiences of entry refusal

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<sup>58</sup> “岑浩輝回應截取通訊 法院只有事後監督,” Cheng Pou, 21 December 2018,

<http://www.chengpou.com.mo/dailynews/2618.html>

<sup>59</sup> “More Hong Kong activists, journalists denied entry to Macau,” Macau Daily Times, 19 December 2019, <https://macaudailytimes.com.mo/more-hong-kong-activists-journalists-denied-entry-to-macau.html>

were quite consistent. Even the production of press passes issued by the Government Information Bureau (GCS) of Macau did not help Hong Kong journalists to pass through the immigration control.<sup>60</sup>

65. This submission recommends that HRC urge Macau, China to refrain from considering that journalists pose a potential threat to security.

### **Suppression of opinion polls on the political system of Macau (LOI para. 17(a); ICCPR arts. 19 & 20)**

66. It is a matter of fact that the organisers of opinion polls on the political system of Macau experienced police harassment and threat to personal safety in 2014 and 2019, respectively.

67. In 2014, despite a court ruling<sup>61</sup> that a vote without any legal effect is considered an opinion poll that is not prohibited by the law, the Office for Protection of Personal Data (GPDP) abused the data protection law to issue a ban on the processing of personal data for the purpose of a mock referendum on Macau's political system. The police arrested the organisers of the mock referendum for their non-compliance with GPDP's order. Only after more than five years later were they officially acquitted by the public prosecution. Despite the eventual acquittal, the initiation of the criminal proceedings irreversibly impeded the Macau residents' right to express their view on universal suffrage back in 2014.

68. In 2019, a vote organiser was forced to prematurely close a similar vote as its members encountered threats to their personal safety originating in Macau and mainland China.<sup>62</sup>

69. This submission recommends that HRC urge Macau, China to:

- a. Respect Macau residents' right to freely express their opinions on the political system of Macau; and
- b. Refrain from interfering with opinion polls, including mock referendums, regardless of the political sensitivity of the subjects.

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<sup>60</sup> Hong Kong News Executives' Association, "Statement", 18 December 2019, <http://www.nea.org.hk/eng/newsdetail.php?id=353>.

<sup>61</sup> TUI case no. 100/2014

<sup>62</sup> "Macau poll finds support for universal suffrage to elect city's chief executive; vote organisers faced threats and attacks," South China Morning Post, 26 August 2019, <https://www.scmp.com/news/asia/article/3024425/macau-poll-finds-support-universal-suffrage-elect-citys-chief-executive>.

## Abuse of “for purposes contrary to the law” (LOI paras. 17(c) & 18; ICCPR art. 21)

70. The police have abused article 2 of Law no. 2/93/M: Right of Assembly and Demonstration to ban assemblies related to politically sensitive topics. This provision prohibits assemblies “for purposes contrary to the law” (*para fins contrários à lei*). Unfortunately, in light of the ruling in Court of Final Appeal (TUI) case no. 94/2019, the police are backed by the court to arbitrarily interpret “purposes contrary to the law” to ban any assembly that the Macau SAR Government deems politically intolerable.

## Low tolerance for peaceful protests (LOI para. 20; ICCPR art. 21)

71. The broad definition of “assembly” adopted by the police and the criminal sanction<sup>63</sup> for holding an assembly without prior notice could become a tool for oppression. The police considered the mere display of placards in public places as “an assembly”. Nearly all peaceful assemblies and demonstrations without prior notification to the police were dispersed. Exercise of restraint is not the norm.

72. In November 2021, migrant workers from the Philippines held placards and took photos in two public places in Macau to show their support for candidates in the Philippine Presidential election.<sup>64</sup> 16 Filipino migrant workers were taken to the police station for questioning.<sup>65</sup> Subsequently, some were referred to the Public Prosecution Office and the Immigration Services for further questioning.<sup>66</sup>

73. In September 2019, two students held placards in the vicinity of their school to show support for the pro-democracy movement in Hong Kong.<sup>67</sup> The police openly warned

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<sup>63</sup> Law no. 2/93/M: Right of Assembly and Demonstration, art. 14(1).

<sup>64</sup> “多名外僱涉集會撐候選人被警方邀請協助調查,” All About Macau, 10 November 2021, <https://aamacau.com/2021/11/10/%E5%A4%9A%E5%90%8D%E5%A4%96%E5%83%B1%E6%B6%89%E9%9B%86%E6%9C%83%E6%92%90%E4%BE%AF%E9%81%B8%E4%BA%BA%E8%A2%AB%E8%AD%A6%E6%96%B9%E9%82%80%E8%AB%8B%E5%8D%94%E5%8A%A9%E8%AA%BF%E6%9F%A5-%E8%8F%B2%E9%A0%98/>

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> “Local student protest at IFT is an illegal gathering – Secretary for Security,” Macau Business, 3 September 2019, <https://www.macaubusiness.com/local-student-protest-at-ift-is-an-illegal-gathering-secretary-for-security/>



the students and the public of the legal consequences of having an illegal assembly.<sup>68</sup>

74. This submission recommends that HRC urge Macau, China not to interfere with public gatherings that pose no threat to public order, notwithstanding the existence of prior notice about the gatherings to the police.

### **Images and videos of demonstrations recorded by the police (LOI para. 20; ICCPR art. 21)**

75. There is no limit to the length of retention of the images of demonstrations recorded by the police. In the surveillance files prepared by the Judicial Police (PJ) for the Legislative Assembly Electoral Affairs Commission (CAEAL) to justify CAEAL's disqualifications of election candidates, some pictures were taken 11 years ago. These decade-old pictures showed that some candidates had taken part in a vigil for the Tiananmen Square Incident back in 2010. It suggests that the police have kept the material for at least 11 years. There exists no effective avenue to challenge the Macau SAR Government's use and the retention of the pictures and videos of demonstrations recorded by the police.
76. This submission recommends that HRC urge Macau, China to regulate the use, retention and destruction of images and videos of demonstrations recorded by the police.

### **Democracy (LOI para. 22; ICCPR arts. 25, 26 and 27)**

77. This submission recommends that HRC urge Macau, China to allow Macau residents to elect the Chief Executive, all members of the Legislative Assembly and all members of the Municipal Council by universal and equal suffrage.

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<sup>68</sup>黃司：防非法集會維護社會安寧，Jornal do Cidadão, 4 September 2019,

<http://www.shimindaily.net/v1/news/macau/黃司%EF%BC%9A防非法集會維護社會安寧/>.