

# Submission

by the **New Macau Association** and the **Macau Research Group**  
to the UN Human Rights Committee at its 129<sup>th</sup> Session  
for the Adoption of List of Issues on **Macau, China**

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## Contents

Article 2 - Rights to Equal Protection Before the Law and Remedies .....	3
Revocation of the “support appeal” ( <i>recurso de amparo</i> ) .....	3
The Paris Principles .....	4
Article 7 - Prohibition of Torture.....	4
Police watchdog without investigatory powers.....	4
Article 14 - Right to Fair Trial .....	5
Pre-selection of Chinese judicial officials for national security cases.....	5
Legal aid for criminal defendants .....	5
Article 17 - Right to Privacy.....	6
Secret surveillance - weak safeguards against unlawful wiretapping .....	6
Mass surveillance - automatic facial recognition technology.....	7
Article 19 - Freedom of Expression .....	8
Macau authorities’ hostility towards non-local journalists .....	8
Chinese authorities’ hostility towards non-local journalists.....	8
Hostility towards local news media .....	9
Discrimination against online news publishers.....	9
Defamation and political criticism .....	9
Criminalisation of disinformation .....	10
Criminalisation of insulting national symbols .....	11
Suppression of opinion polls on the political system of Macau .....	11
Dismissal of academics .....	12
Suppression of public display of political messages .....	13
Article 21 - Freedom of Peaceful Assembly .....	13
Strict control over assemblies and protests .....	13
Abuse of “purposes contrary to the law” .....	14
Low tolerance for peaceful protests.....	15
Article 22 - Freedom of Association.....	16
No local law protecting the right to join a trade union and to strike .....	16
Article 23 - Protection of Family .....	17
Domestic violence – problem 1: case reclassification .....	17
Domestic violence – problem 2: discrimination against same-sex intimate partners.....	17
Article 24 - Non-Discrimination.....	18
Gender mark change for transgender people .....	18
Discrimination on the grounds of sexual orientation and gender identity .....	18
Migrant workers’ vulnerability to exploitation.....	19

Article 25 - Democracy.....	19
Chief Executive not elected by universal and equal election .....	19
More than half of members of the Legislative Assembly not directly elected.....	20
Political screening in Legislative Assembly elections.....	20
Municipal council members not selected by direct election.....	21
Suspension of Legislative Assembly member’s mandate and power .....	21
Political censorship of manifestos of election candidates.....	22

## Article 2 - Rights to Equal Protection Before the Law and Remedies

### Revocation of the “support appeal” (*recurso de amparo*)

The support appeal was an important human rights protection mechanism introduced to Macau in 1991. The support appeal mechanism was effectively revoked on 20 December 1999. Upon the return of Macau to China, the provisions on the support appeal<sup>1</sup> of the old judicial organisation law were not transferred to the new one<sup>2</sup>.

The Committee was informed of the significance of the mechanism of support appeal when the Committee first reviewed the ratification of the Covenant in Macau. In a 1996 report on the ratification of the Covenant in Macau<sup>3</sup>, Portugal wrote to the Committee that:

“One of the innovations created by the new judicial organisation is the support appeal (*recurso de amparo*) [...] any decision by a court of Macau may be appealed in the Superior Court of Justice on the basis of a claim of a violation of the fundamental rights [...] This provision does not rule out the right to judicial review in the administrative courts in cases involving administrative action or simply de facto action by the public authority basing the appeal on a violation of the fundamental rights [...]”<sup>4</sup>

The discontinuation of support appeal was by no means a trivial change in the availability of remedies for violation of fundamental rights. However, China did not update the Committee on this important change.

In the early 1990s, jurists in Macau expressed an expectation for the subsistence of the support appeal beyond Macau’s return to China.<sup>5</sup> The revocation of the mechanism was inconsistent with the principle of continuity of fundamental rights.<sup>6</sup>

**We suggest the Committee request Macau, China to clarify the revocation of the support appeal (*recurso de amparo*) and whether or not there is a plan to refill the vacuum created by the revocation.**

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<sup>1</sup> Law no. 112/91 “Law of Judicial Organisation of Macau,” art. 17. [Repelled]

<sup>2</sup> Law no. 9/1999 “Law of Judicial Organisation”.

<sup>3</sup> “Report on the Application of the Covenant in Macau,” CCPR/C/70/Add.9.

<sup>4</sup> Ibid, para. 155.

<sup>5</sup> Gomes Canotilho, “As palavras e os homens,” O Direito (October 1994), <https://www.odireitoonline.com/as-palavras-e-os-homens.html>.

<sup>6</sup> Paulo Cardinal, “The Constitutional Layer of Protection of Fundamental Rights in the Macau Special Administrative Region,” *Revista de Direito Publico* (no. 3, 2010), 240.

## **The Paris Principles**

Contrary to the claim made by the state party,<sup>7</sup> the Commission against Corruption (CCAC) does not have a mandate to function as a national institution as described in General Assembly (GA) resolution 48/134 of 1993. To be precise, the competence of the 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.

The organisation law of the CCAC does contain a reference to “the rights [...] of people”.<sup>8</sup> However, the interest in “rights of people” is confined to the CCAC’s power of making recommendations upon its discovery of deficiencies in the laws and regulations.<sup>9</sup> To the best of our knowledge, the CCAC has not made any recommendation to the Chief Executive on the basis of human rights or an obligation under the human rights treaties applicable to Macau, nor does any evidence suggest that the CCAC regularly follows the international development of the soft law and the jurisprudence on human rights protection.<sup>10</sup>

**We suggest the Committee ask Macau, China whether or not it has a plan to broaden the mandate of the CCAC, or establish a new body, 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.**

**We also suggest the Committee request Macau, China to clarify in what regards the CCAC has ever issued a recommendation on the ground of the protection of human rights pursuant to article 4(9) of law no. 10/2000 as amended by law no. 4/2012.**

## **Article 7 - Prohibition of Torture**

### **Police watchdog without investigatory powers**

In theory, the Commission for Disciplinary Control of the Security Forces and Services (CFD) has the power to receive complaints about police misconduct and launch summary inquiries.<sup>11</sup> Despite a restructuring in 2019, the role of the CFD remains advisory. The CFD is heavily reliant on the information prepared by the police forces. As acknowledged by the state party<sup>12</sup>, the CFD has no investigatory powers. In other words, the CFD has no powers to cross-examine evidence and initiate disciplinary proceedings. The main form of CFD’s supervision is to offer comments, suggestions and

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<sup>7</sup> “Second periodic report submitted by Macau, China under article 40 of the Covenant,” CCPR/C/CHN-MAC/2, para. 48.

<sup>8</sup> Law no. 10/2000 “Law of Organisation of the Commission against Corruption of Macau Special Administrative Region” as amended by Law no. 4/2012, art. 4(9).

<sup>9</sup> Ibid.

<sup>10</sup> At least one Macau government agency does follow the international development of human rights protection closely. However, that agency is not the CCAC. The Office for Personal Data Protection (GPDP) regularly publishes documents about the development of the protection of personal data in the European Union.

<sup>11</sup> Chief Executive Order no. 160/2019, art. 5(1).

<sup>12</sup> CCPR/C/CHN-MAC/2, para. 124.

recommendations<sup>13</sup> which do not bind the police authorities. CFD's effectiveness and independence are highly questionable. It falls short of being an independent police watchdog that meets international standards.

**We suggest the Committee to request Macau, China to clarify in what manner members of the CFD may independently examine the information provided by the police forces, in the exercise of their duties to monitor the police forces.**

## **Article 14 - Right to Fair Trial**

### **Pre-selection of Chinese judicial officials for national security cases**

In 2019, the Law of Judicial Organisation (LBOJ) was amended<sup>14</sup> to exclude the possibility of non-Chinese judicial officials dealing with criminal cases concerning national security. Article 19-A of the amended LBOJ<sup>15</sup> provides that for the crimes defined in the national security law, the prosecutors and judges are pre-selected by the Prosecutor General and the Council of Judicial Magistrates.

Article 87 of Basic Law allows for the appointment of foreign nationals as judges in all levels of courts. The Lawyers' Association of Macau (AAM) opposed the amendment. The AAM argued that the then-proposed article 19-A of LBOJ would violate the principles of independence and impartiality of the judiciary set forth in articles 19, 83 and 89 of the Basic Law.<sup>16</sup> The pre-selection of Chinese judges would amount to the creation of a special court for a certain type of crimes and thus transgress article 85 of the Basic Law.<sup>17</sup>

Article 19-A of the amended LBOJ impedes the right to fair trial. The judicial decisions on sensitive matters such as the national security may be vulnerable to manipulation since the criteria in the pre-selection are opaque. Article 19-A of LBOJ is not only discriminatory against non-Chinese judicial officials but also structurally impairs the independence of the judiciary.

**We suggest the Committee request Macau, China to clarify the criteria in the pre-selection of judicial officials dealing with national security crimes and how the right to fair trial can be protected in cases concerning the national security.**

### **Legal aid for criminal defendants**

The lawyers who are appointed by the court<sup>18</sup> to represent defendants in criminal cases receive an exceptionally low amount of compensation.<sup>19</sup> The low fee does not justify the allocation of a reasonable level of attention to a criminal defendant's case.

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<sup>13</sup> Chief Executive Order no. 160/2019, art. 5(2) – 5(3).

<sup>14</sup> Law no. 4/2019 "Amendment to Law No. 9/1999."

<sup>15</sup> Law no. 9/1999 "Law of Judicial Organisation," art. 19-A.

<sup>16</sup> 3<sup>rd</sup> Permanent Committee of the Legislative Assembly, Opinion No.2/VI/2019, para. 72.

<sup>17</sup> Ibid.

<sup>18</sup> Criminal Procedure Code, art. 51(2).

<sup>19</sup> Fully licensed lawyers are paid one-fifth of an amount in the range of standard legal aid service fees. Trainee lawyers are paid two-fifteenths of an amount in the range of standard legal aid service fees. A table of the

Moreover, for the sake of accuracy, the legal aid system created by law no. 13/2012 does not connect people to pro bono lawyers. The references to “pro bono”<sup>20</sup> in the English version of the state party’s report should be a mistake. Pro bono lawyers should not be confused with legal aid lawyers. Pro bono lawyers intervened in the proceedings following the same procedure as they were privately appointed by the plaintiffs or defendants<sup>21</sup>.

**We suggest the Committee ask Macau, China to provide information on the median for payments to legal aid lawyers who are appointed by the courts to represent defendants in criminal cases and the market rate for representing defendants in criminal cases.**

## Article 17 - Right to Privacy

### Secret surveillance - weak safeguards against unlawful wiretapping

Safeguards against the abuse of secret surveillance or unlawful forms of surveillance are virtually non-existent. The Macau residents who speculate about the existence of unlawful surveillance on them have no effective legal remedies. The Judicial Police (PJ) officially rejected the call for setting up a commission to monitor the police’s wiretapping practices.<sup>22</sup>

In December 2018, the President of the Court of Final Appeal (TUI) admitted that Macau courts have no way to monitor whether the police are wiretapping within the permitted scope<sup>23</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. In theory, evidence not obtained lawfully is inadmissible in legal proceedings. It must be noted that interception of communications does not necessarily serve the sole purpose of obtaining evidence to be admitted by the courts.

In 2015, leaked emails of spyware company “HackingTeam” revealed that the PJ expressed an interest in intrusive surveillance software which could not be lawfully used by the police authorities in Macau.<sup>24</sup> The email exchange suggested that “HackingTeam” was providing assistance to PJ in the installation

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standard legal aid service fees and the relevant calculation rules were published in Annex to Chief Executive Dispatch no. 59/2013.

<sup>20</sup> CCPR/C/CHN-MAC/2, para. 198 and 200.

<sup>21</sup> In a number of criminal cases against social activists, the lawyers who offered to provide free legal representation got involved in the cases in the same way as they would have been hired and paid by the activists. No government intermediary was involved.

<sup>22</sup> Judicial Police, “回應傳媒關於澳門會否借鑑‘香港截取通訊及監察事務專員’模式的查詢,” 3 October 2018, <https://www.gov.mo/zh-hant/wp-content/uploads/sites/4/2018/10/回應傳媒關於澳門會否借鑑“香港截取通訊及監察事務專員”模式的查詢 20181003.pdf>.

<sup>23</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>24</sup> Jason Chao, “Hackers’ Trade Tool — Latest addition to PJ’s Arsenal, suggests WikiLeaks,” 16 July 2015, <https://medium.com/jason-chaos-depository/hackers-trade-tool-latest-addition-to-pj-s-arsenal-suggests-wikileaks-84bcd39def96>.

of the software.<sup>25</sup> The PJ denied the purchase of the surveillance software.<sup>26</sup> The public prosecution dismissed the complaint about the PJ's alleged use of the software on the basis of the verbal promise made by the Secretary for Security of no acquisition of the software.

In 2019, the Macau government presented a law proposal<sup>27</sup> which seeks to expand the allowed means of secret surveillance. If passed, the police will be allowed to intercept text messages, photos, and exchange of information of any nature.

**We suggest the Committee ask Macau, China to clarify what mechanisms are in place to allow for independent detection of irregularities in the interceptions of communications carried out by the police. We also suggest the Committee ask Macau, China to provide information on the legal avenues available to Macau residents to challenge unlawful wiretapping.**

### **Mass surveillance - automatic facial recognition technology**

The government's use of automatic facial recognition with the public video surveillance system (CCTV system) is not authorised by law. No provisions in law no. 2/2012 "Legal regime of video surveillance in public spaces"<sup>28</sup> authorise coupling automatic facial recognition technology with the public CCTV system, not to mention any legal restrictions on the use of the facial recognition capability.

In 2019, the Macau government announced a plan to install facial recognition capability on the public CCTV system in the first quarter of 2020. In response to questions on the legality, the Unitary Police Service (SPU) said that the use of facial recognition technology is just a replacement for the manual work to playback surveillance footage to identify individuals.<sup>29</sup>

It must be noted that automatic surveillance technology should not be simply reduced to a replacement for non-automatic means of surveillance, especially in the advent of data matching and mining technology.<sup>30</sup> Nonetheless, 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.

**We suggest the Committee to ask Macau, China to clarify which government body has the power to independently oversee the compliance of the police's practices of secret surveillance (e.g. wiretapping) and mass surveillance (e.g. the operation of surveillance cameras in public places) with the law. We also suggest the Committee ask Macau, China to clarify the legality of the deployment of automatic facial recognition capability on the public video surveillance system.**

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<sup>25</sup> "Macau activists fear state snooping amid Hacking Team leaks," Hong Kong Free Press, 20 July 2015, <https://hongkongfp.com/2015/07/20/macau-activists-fear-state-snooping-amid-hacking-team-leaks/>.

<sup>26</sup> "Police 'did not buy spying software'. Says Wong Sio Chak," Macau Daily Times, 3 August 2015, <https://macaudailytimes.com.mo/police-did-not-buy-spying-software-says-wong-sio-chak.html>.

<sup>27</sup> Draft "Regime for Interception and Protection of Communications"

<sup>28</sup> The law that regulates the installation and operation of surveillance cameras in public places

<sup>29</sup> Unitary Police Service, "' 天眼' 的後台人臉識別應用測試模式," 22 November 2019, <https://www.gov.mo/zh-hant/news/308787/>.

<sup>30</sup> Council of Europe, T-PD(2016)18rev, 19 August 2016, 8.

## Article 19 - Freedom of Expression

### Macau authorities' hostility towards non-local journalists

From time to time, journalists from Hong Kong are refused entry to Macau at the border checkpoints on the ground of “endangering the public security of Macau”, especially around “politically sensitive dates.”<sup>31</sup> For the journalists who work for Hong Kong media outlets which published stories critical of the Macau authorities, the experiences of denied entry are quite consistent. Even, the production of press passes issued by the Government Information Bureau of Macau did not help Hong Kong journalists clear the immigration control.<sup>32</sup>

In a few days leading up to Chinese President's visit to Macau in December 2019, reporters of Portuguese public TV were questioned by the Macau police twice at a border checkpoint for hours.<sup>33</sup> Their filming materials were seized.<sup>34</sup> The materials were later returned to the journalists at the request of the Portuguese Consul General.<sup>35</sup>

Officially, the Macau government denies the existence of “an immigration blacklist”. Officials have recited the claim that the occupations of individual visitors were “irrelevant to” the entry ban. However, overwhelming evidence contradicts the government's claim.<sup>36</sup>

Despite the Committee's concern over the very same issue<sup>37</sup>, the situation of press freedom in Macau has deteriorated to a further extent in the past few years.

### Chinese authorities' hostility towards non-local journalists

In March 2020, the Foreign Ministry of the Chinese Central Government revoked the press credentials for American journalists who work for the New York Times, Washington Post and Wall Street Journal.<sup>38</sup> The Ministry also announced that journalists of these newspapers would not be permitted to work in China, including Hong Kong and Macau.<sup>39</sup>

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<sup>31</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>.

<sup>32</sup> Hong Kong News Executives' Association, “Statement”, 18 December 2019, <http://www.nea.org.hk/eng/newsdetail.php?id=353>.

<sup>33</sup> “RTP team questioned, material seized at Macau border,” Plataforma, 14 December 2019, <https://www.plataformamedia.com/en-uk/news/society/rtp-team-questioned-material-seized-at-macau-border-11617400.html>.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> “《蘋果》記者被拒入境澳門 周庭希：證明港府製作黑名單,” Apple Daily, 30 April 2015, <https://hk.news.appledaily.com/local/realtime/article/20150430/53690605>.

<sup>37</sup> CCPR/C/CHN-MAC/CO/1, para. 15.

<sup>38</sup> “China Announces That It Will Expel American Journalists,” The New York Times, 17 March 2020, <https://www.nytimes.com/2020/03/17/business/media/china-expels-american-journalists.html>.

<sup>39</sup> Ibid.

The Chinese Foreign Ministry's announcement is a blatant transgression of not only article 19 of the Covenant but also article 27 of the Basic Law of Macau. It also undermines Macau's autonomy over immigration control.

### **Hostility towards local news media**

In the days leading up to the Chinese President's visit to Macau in December 2019, a number of local journalists reported experience of stalking and harassment.<sup>40</sup> One journalist was forced to leave Macau before the arrival of the Chinese President.<sup>41</sup> Power supply to one journalist's home was cut off.<sup>42</sup> Through informal contacts, they were warned to "be cautious with their speech" during the Chinese President's visit.<sup>43</sup>

**We suggest the Committee request Macau, China to explain the blatant defiance of the Committee's recommendation<sup>44</sup> about the cessation of measures against journalists.**

### **Discrimination against online news publishers**

The Government Information Bureau (GCS) attempted to prevent online news publisher "Macau Concealers" (MC) from getting access to "GovInfo Hub" - the government's "media-only" information service.<sup>45</sup> Although the present publishing law, which was enacted in 1990, has yet to recognise the status of online media outlets<sup>46</sup>, the MC has registered as a publication pursuant to the publishing law and does publish news in print. The MC appealed against the GCS's decision to the Chief Executive. The appeal was eventually granted. From the application for access (August 2018) to the grant of appeal (May 2019), it took MC eight months to finally gain access to "GovInfo Hub".

**We suggest the Committee request Macau, China to explain its position on online news publishers. We also suggest the Committee request Macau to clarify the treatment for online media *vis-à-vis* print media.**

### **Defamation and political criticism**

The crimes against honour defined in articles 174 – 182 of the Criminal Code of Macau (CCM) are incompatible with paragraphs 38 and 47 of the Committee's General Comment no. 34. More severe penalties<sup>47</sup> and a lower economic threshold for prosecution<sup>48</sup> apply to libel cases in which "civil

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<sup>40</sup> "習總訪澳門前夕 多名記者被恐嚇騷擾," Radio Free Asia, 16 December 2019, <https://www.rfa.org/cantonese/news/htm/control-12162019091341.html>.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> CCPR/C/CHN-MAC/CO/1, para. 15.

<sup>45</sup> "Decision to block media outlet from gov't info revoked," Macau Daily Times, 16 May 2019, <https://macaudailytimes.com.mo/macau-concealers-decision-to-block-media-outlet-from-govt-info-revoked.html>.

<sup>46</sup> Law no. 7/90/M "Publishing Law," art. 2.

<sup>47</sup> Criminal Code of Macau, art. 178.

<sup>48</sup> The threshold for suing someone for defamation, in an economic sense, is lower for officials. In general, defamation (art. 174 of Criminal Code of Macau (CCM)) is a private crime which means that victims must hire a lawyer to bring a private prosecution at the victims' own cost (art. 182 of CCM). It constitutes an aggravation if

servants”, including public officials<sup>49</sup>, are the victims. Some public officials, by virtue of their “civil servant” status under the CCM, took advantage of the “aggravating circumstances” to bring defamation charges against political critics<sup>50</sup> at no cost.

Furthermore, the public interest is not expressly recognised as a defence. Article 174(2)(a) of CCM provides for “the realisation of legitimate interest” as a defence though it is up to the court to decide whether the public interest is a legitimate interest.

**We suggest the Committee to ask Macau, China to clarify whether there is a plan to repeal or reform articles 174 – 182 of CCM in line with paragraphs 38 and 47 of the Committee’s General Comment no. 34. We also suggest the Committee ask Macau, China to clarify whether public officials are advised to exercise restraint in the face of political criticism in light of paragraph 47 of General Comment no. 34.**

### **Criminalisation of disinformation**

Macau is introducing a bill which is set to control the spread of disinformation during contingencies through criminalisation. Article 25 of the draft Law of Bases of Civil Protection (LBCP) proposes that while a civil protection alert<sup>51</sup> is in force “the production and dissemination of false information [...] concerning public incidents” which “objectively causes public panic” will be punishable<sup>52</sup> by 2 years’ imprisonment.

Even in the absence of article 25 of the draft LBCP, the police have used the existing criminal law<sup>53</sup> to combat disinformation concerning the authorities. In 2017, the police relied on article 181 of CCM to arrest two elderly people<sup>54</sup> who shared on the social media a rumour about the government covering up deaths in the aftermath of a natural disaster.<sup>55</sup>

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civil servants, including government officials, are “defamed” in their official capacity (art. 178 of CCM). Aggravated defamation is a semi-public crime which the public prosecution can bring a charge against the defendant based on the victims’ complaint, at no cost to the victims. In other words, while officials may pay nothing to bring a defamation charge, private individuals have to “pay” to bring a defamation charge.

<sup>49</sup> Within the meaning of the Criminal Code of Macau (CCM), public officials are considered “civil servants”. See art. 336(2)(a) of CCM.

<sup>50</sup> In October 2018, the Judicial Police (PJ) openly threatened to press a defamation charge against opposition politician Mr Au Kam San unless he offered an apology. Mr Au, in a media interview, speculated that the police had been wiretapping on his phone without court authorisation. Mr Au pointed out that the Macau police had gained a piece of intelligence which could not have possibly been obtained without tapping on a phone conversation between him and his constituent. Au declined to apologise to the PJ. Then, the PJ filed a complaint against Au to the public prosecution for defamation.

<sup>51</sup> The draft civil protection law provides five classes of civil protection alerts: moderate, prevention, immediate prevention, rescue and catastrophe.

<sup>52</sup> The punishment will only apply while the alert of immediate prevention or higher is in force. In the context of Macau, for example, the anticipation of a tropical cyclone might trigger such an alert.

<sup>53</sup> Article 181 of CCM prohibits the circulation of untrue facts capable of offending the credibility of a public authority.

<sup>54</sup> A 73-year-old man and a 68-year-old woman

<sup>55</sup> “Macau Arrests Elderly Siblings for Spreading 'False Information' About Typhoon Hato,” TIME, 29 August 2017, <https://time.com/4919727/macau-typhoon-hato-arrests/>.

If the draft LBCP becomes law, article 25 of LBCP would inevitably create a chilling effect and deter whistleblowing. Private individuals are less able to verify the authenticity of a piece of information. The aversion of risks of criminal proceedings associated with article 25 of the draft LBCP might discourage journalists from reporting the aspect of a natural disaster that the government wants to downplay and thus impair Macau residents' right to seek and impart such information.

**We suggest the Committee ask Macau, China to provide information on the mitigation of the chilling effect which article 25 of the draft LBCP, upon its entry into force, will create. We also suggest the Committee request Macau, China to clarify whether the activation of a civil protection alert in conjunction with article 25 of the draft LBCP would constitute a derogation according to articles 4 and 5 of the Covenant.**

### **Criminalisation of insulting national symbols**

Insult to the national flag, emblem and anthem of the People Republic of China was criminalised through the enactment of law no. 5/1999 "Use and protection of the National Flag, Emblem and Anthem" on the day of Macau's return to China. As noted by the Committee<sup>56</sup>, an expression "considered to be insulting to a public figure is not sufficient to justify the imposition of penalties" and that principle applies to national symbols as well. Law no. 5/1999 does not provide an exhaustive definition for "insult". It could be abused to crack down on expression of opinions critical of the Central Chinese authorities. Furthermore, the penalty for the offence is disproportional. In mainland China, minor cases are punished by administrative detention. While in Macau, it is punishable by three years' imprisonment.

**We suggest the Committee ask Macau, China to explain the compatibility of the definition of the crime of insulting national symbols and representations (article 13 of law no. 5/1999 as amended by law no. 1/2019) with paragraph 38 of the Committee's General Comment no. 34.**

### **Suppression of opinion polls on the political system of Macau**

The Macau authorities abused the personal data protection law and criminal procedures to suppress a poll aimed at consulting the general public on the political system of Macau. In 2014, three civil society organisations<sup>57</sup> hosted a mock referendum on the election of the Chief Executive (CE).<sup>58</sup> Macau citizens were invited to cast a vote on their wish for universal suffrage and their confidence in the sole candidate in the official CE election. Despite a court ruling<sup>59</sup> that a vote without any legal effect is considered an opinion poll not prohibited by the law, the Macau authorities abused the data protection law to issue a ban on the processing of personal data for the purpose of the mock referendum. Physical polling stations were forced to close down.<sup>60</sup> The police arrested organisers for

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<sup>56</sup> General comment No. 34, CCPR/C/GC/34, para 38.

<sup>57</sup> The Macau Conscience, the Macau Youth Dynamics and the Open Macau Society

<sup>58</sup> Jason Chao, "Review of the 2014 Civil Referendum on Chief Executive Election of Macau," 2016, <https://medium.com/jason-chaos-depository/review-of-the-2014-civil-referendum-on-chief-executive-election-of-macau-93709e75a6ce>.

<sup>59</sup> Court of Final Appeal (TUI) case no. 100/2014

<sup>60</sup> "Unofficial Macau referendum won't feature polling stations," South China Morning Post, 28 August 2014, <https://www.scmp.com/news/hong-kong/article/1581410/more-7000-vote-unofficial-macau-referendum-despite-police-crackdown>.

defying the ban.<sup>61</sup> Not until more than five years later, were organisers of the mock referendum officially acquitted by the public prosecution. Despite the eventual acquittal, the initiation of the criminal proceedings effectively and irreversibly impeded the Macau citizens' right to express their wish for the materialisation of political rights enshrined in article 25 of the Covenant. Nevertheless, the Chinese authorities took even more coercive measures to suppress a civil society vote on the political system of Macau. In 2019, the New Macau Association was forced to prematurely close a similar vote as its members encountered threats to their personal safety originated in Macau and mainland China.<sup>62</sup>

**We suggest that the Committee request Macau, China to clarify whether mock and unofficial referendums - votes without any legal effect - on the political system of Macau are permissible under the law of Macau.**

### **Dismissal of academics**

Two outspoken scholars – Prof Bill Chou Kwok-ping at the University of Macau and Prof Éric Sautédé at the University of Saint Joseph – were dismissed by their respective universities in 2014.

In the case of Sautédé, the University of Saint Joseph – a privately owned Catholic university – acknowledged that Sautédé's political commentary was behind the decision of his dismissal.<sup>63</sup> Sautédé is seeking compensation from the university for the breach of the principle of equality<sup>64</sup> under Macau's labour law. Macau courts initially refused to admit his case. In April 2020, the Court of Final Appeal (TUI) reversed the lower court's decision of inadmissibility.<sup>65</sup> At the time of writing, a new trial at the Court of First Instance (TJB) is pending.

In the case of Chou, the University of Macau – a public university – launched disciplinary action against him for the accusation of “imposing his political beliefs on students”.<sup>66</sup>

A chilling effect is evident. Macau-based scholars<sup>67</sup> told authors of this submission that the cases of Chou and Sautédé caused them to avoid engaging in political debates or associating with the political opposition.

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<sup>61</sup> “Macau Referendum Organizers Arrested,” Voice of America, 25 August 2014, <https://www.voanews.com/east-asia/macau-referendum-organizers-arrested>.

<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>.

<sup>63</sup> “Hong Kong, Macau academics seek meeting over firing of Eric Sautede,” South China Morning Post, 29 July 2014, <https://www.scmp.com/news/hong-kong/article/1561331/hong-kong-macau-academics-seek-meeting-over-firing-eric-sautede>.

<sup>64</sup> “Political belief” is one of the protected characters in the principle of equality, see art. 4 of Law no. 7/2008 “Labour Relations Law”.

<sup>65</sup> “TUI manda julgar despedimento de Sautédé da USJ,” Radio Macau, 18 April 2020, [https://port.tdm.com.mo/c\\_radio/index.php?ra=nd&id=22177](https://port.tdm.com.mo/c_radio/index.php?ra=nd&id=22177).

<sup>66</sup> “Macau academic sacked for 'imposing his political beliefs on students',” South China Morning Post, 18 August 2014, <https://www.scmp.com/news/china/article/1575637/macau-activist-bill-chou-lose-academic-job-after-suspension>.

<sup>67</sup> They cannot be named in this submission because in fear of retaliation they do not wish to be identified.

**We suggest the Committee ask Macau, China to provide information on the protection of free speech and academic freedom in public and private universities. We also suggest the Committee ask Macau, China to clarify the dismissal of Dr Chou and Dr Sautedé.**

### **Suppression of public display of political messages**

A post-it mosaic wall expressing support for the pro-democracy movement in Hong Kong – known as a “Lennon Wall” – was removed by the police in August 2019. Post-it notes with messages showing solidarity with the social movement in Hong Kong were placed on a wall of the Anim’Arte Nam Van space. The police officers held four students for questioning for around one hour<sup>68</sup>.

In October 2019, two residents were arrested by the Police for putting up posters in the city centre against the government’s use of facial recognition technology with the public CCTV system<sup>69</sup>. They were fined by the government.

**We suggest the Committee ask Macau, China to explain whether targeting the public display of opposition political messages is a priority for the law enforcement.**

## **Article 21 - Freedom of Peaceful Assembly**

### **Strict control over assemblies and protests**

Conditions for holding assemblies have become more restrictive in recent years. In 2018, the government department that receives notifications about assemblies and demonstrations was changed from the Civic and Municipal Affairs Institute (IACM) to the Public Security Police (CPSP).<sup>70</sup> Also, the responsibility to consider the legality of assemblies and demonstrations and to impose temporal and spatial restrictions was shifted to the police force.

Despite no significant change in other parts of the assembly law, organisers of assemblies and demonstrations observed that the CPSP placed subtle procedural hurdles<sup>71</sup> in the processing of notifications about an intention to host an assembly or a demonstration. The subtle hurdles may be intimidating to first-time organisers. Furthermore, frequent organisers of assemblies have felt that the conditions imposed on assemblies and demonstrations have become increasingly restrictive<sup>72</sup>.

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<sup>68</sup> “Police remove Lennon Wall installed at Nam Van Lake,” Macau Business, 26 August 2019, <https://www.macaubusiness.com/police-remove-lennon-wall-installed-at-nam-van-lake/>

<sup>69</sup> “Two youths arrested for putting up posters in support of HK protests and against video surveillance,” Macau Business, 3 October 2019, <https://www.macaubusiness.com/two-youths-arrested-for-putting-up-posters-in-support-of-hk-protests-and-against-video-surveillance/>

<sup>70</sup> Law no. 11/2018 “Amendment to Law no. 2/93/M, of 17 May - Right of Assembly and Demonstration”

<sup>71</sup> For example, an organiser who visits the police station to hand in a notification is now required to provide the original identity documents of fellow organisers. In the past, a photocopy of the identity document would suffice. Also, the organisers are asked by the police to provide very detailed personal information and details about the planned assembly or demonstration which are not required by the assembly law.

<sup>72</sup> The areas usable by assemblies are shrinking. The police may limit even the size of banners and other protest materials.

Concerning the practice of recording protest participants at close range, the state party's claim that the images "cannot be used to record a person in particular"<sup>73</sup> is highly misleading if not simply a lie. The circumstances suggest otherwise.

Organisers of and participants in assemblies and demonstrations can tell that the police's measures, such as close-range monitoring and the erection of excessive steel fences, serve much more than the needs for simply maintaining the order.

**We suggest the Committee ask Macau, China to explain what concrete measures she has taken to respect the Committee's recommendations<sup>74</sup> on handling assemblies and demonstrations made in the previous concluding observations.**

### **Abuse of "purposes contrary to the law"**

Political considerations might trump the citizens' right to peaceful assembly and free speech. Article 2 of law no. 2/93/M "Right of Assembly and Demonstration" disallow assemblies "for purposes contrary to the law" (*para fins contrários à lei*). On politically sensitive topics, the phrase "purposes contrary to the law" could be interpreted by the authorities and the court beyond reasonableness.

In September 2019, activists notified the police an intention to organise a rally calling on the police authorities around the world, especially those in Hong Kong, to observe the Convention against Torture.<sup>75</sup> The Macau police issued a ban on the rally for "purposes contrary to the law". In its order banning the assembly, the Macau police considered that the Hong Kong police had not used excessive force in response to protests, "not to mention torture and inhuman treatment".

The organisers appealed the ban to the Court of Final Appeal (TUI).<sup>76</sup> In their submission to the TUI, they reasoned that the prohibition of torture is a peremptory norm (*jus cogens*) under international law. It would be extremely absurd to consider the promotion of a *jus cogens* "contrary to the law".

The TUI sided with the police and upheld the ban. The TUI considered that allegations concerning the practice of torture by the Hong Kong police were "unfounded". The TUI pointed out that if the rally had been allowed to go ahead, it would have led others to interpret that the Macau police also saw the actions of the Hong Kong police amounting to torture and inhumane treatment. One judge on the bench voted against the judgement and made a dissenting statement<sup>77</sup>.

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<sup>73</sup> CCPR/C/CHN-MAC/2, para. 262.

<sup>74</sup> CCPR/C/CHN-MAC/CO/1, para. 16.

<sup>75</sup> English translation of the object of the assembly declared by the organisers reads "Calling on the police authorities all over the world, especially those in Hong Kong, strictly abide by the Convention against Torture, and that they do not use forces that constitute 'torture' and 'cruel, inhuman... treatments...' prohibited by article 1 and article 16 of the Convention, against peaceful demonstrators and individuals deprived of liberty." The original version of the object in Chinese reads "促請各地 (尤其香港) 警察機關嚴格守《禁止酷刑公約》, 不向和平示威者及被剝奪自由之人實施足以構成《公約》第一條所禁止之「酷刑」及第十六條所禁止之「殘忍、不人道... 待遇」之武力".

<sup>76</sup> Court of Final Appeal (TUI) case no. 94/2019.

<sup>77</sup> Justice Viriato Manuel Pinheiro de Lima, in dissent, wrote that "[e]ven if it is understood that the purpose of the demonstration would be to criticize the recent actions of the Hong Kong police authorities, it seems to me

In light of the TUI ruling, activists are concerned that the Macau police are now backed by the court to arbitrarily interpret “purposes contrary to the law” to ban any assembly which the Macau authorities deem politically intolerable.

**We suggest the Committee ask Macau, China to clarify why organising an assembly in Macau for the purposes of promoting the international prohibition of torture - a *jus cogens* - and criticising the alleged police brutality in Hong Kong could be considered “contrary to the law”.**

### **Low tolerance for peaceful protests**

The police show low tolerance for peaceful assemblies. Exercise of restraint is not the norm. Nearly all peaceful assemblies and demonstrations without prior notification to the police were dispersed.

Contrary to the state party’s claim<sup>78</sup> that arrests were made with strong connections to disrupting public order, signs of “arbitrary arrest” were observed. On 19 August 2019, the police took aggressive measures in Senado Square to turn away the people who appear to turn up for a banned assembly supporting the pro-democracy movement in Hong Kong.<sup>79</sup> The police took passers-by who were in black shirts<sup>80</sup>, a symbol for the social movement in Hong Kong, into custody in the name of “identity verification”<sup>81</sup>. The “arbitrary arrest” was widely seen as an attempt to suppress any sign pertaining to the banned rally. The detention of passers-by with little justification terrified the community of dissidents.

In conjunction with the penalty for failing to notify the police of an assembly in advance<sup>82</sup>, the broad definition of “assembly” adopted by the police could become a tool for oppression. The police considered the mere display of placards in public places as “an assembly”. 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>83</sup> The police openly warned the students and the public of the legal consequences of having an illegal assembly, despite no plan to prosecute students.<sup>84</sup>

Nevertheless, in recent years, the authorities are more likely to press charges on peaceful protesters whose actions had caused no disruptions to the road traffic.<sup>85</sup>

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that it does not constitute such an object contrary to the law, for the purposes of the provision of article 2 of Law no. 2/93/M [...]”.

<sup>78</sup> CCPR/C/CHN-MAC/2, para. 261.

<sup>79</sup> “Hongkonger among seven detained in Macau over rally in support of anti-government protests,” South China Morning Post, 20 August 2019, <https://www.scmp.com/news/hong-kong/politics/article/3023509/hongkonger-among-seven-detained-macau-over-rally-support>

<sup>80</sup> Ibid.

<sup>81</sup> “Police confirm 7 questioned over banned assembly, ‘but no arrests’,” Macau News, 21 August 2019, <https://macaunews.mo/police-confirm-7-questioned-over-banned-assembly-but-no-arrests/>.

<sup>82</sup> Holding a peaceful protest without prior notification to the police is punishable by 2 years’ imprisonment, according to articles 5 and 14 of law no. 2/93/M.

<sup>83</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/>

<sup>84</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/>.

<sup>85</sup> In May 2018, member of Legislative Assembly Sou Ka Hou and Scott Chiang were convicted for gathering on the sidewalk near the Chief Executive’s residence (“Court fines Sou 40,800 patacas for illegal assembly,” Macau

We suggest the Committee ask Macau, China to provide information on the law enforcement's definition of "assembly" and the policy for handling peaceful assemblies with and without prior notification to the police. We also suggest the Committee ask Macau, China to provide the data on the number of ongoing investigations and criminal cases in connection to unlawful assemblies.

## Article 22 - Freedom of Association

### No local law protecting the right to join a trade union and to strike

Despite stipulation in article 27 of the Basic Law of Macau that Macau residents enjoy "the right and freedom to form and join trade unions, and to strike", there is no local legislation ensuring workers' enjoyment of these rights free from retaliation.

Private bills presented by members of the Legislative Assembly to enact a trade union law which sought to establish collective bargaining rights and protection from retaliation have been voted down for 11 times. In March 2020, Secretary for Economy and Finance affirmed that the Macau government has no plan to introduce a trade union law to protect these rights.<sup>86</sup>

Leaders of trade unions said colleagues had been sacked for involvement in a trade union.<sup>87</sup> Workers taking part in rallies prefer putting on facemasks to avoid being identified by their employers.<sup>88</sup> Union leaders acknowledge that they face reduced or no chance of promotion once they get involved in the work of a trade union.<sup>89</sup>

**We suggest the Committee ask Macau, China to clarify the legal measures protecting workers for the enjoyment of the right to strike and to join trade unions. We also suggest the Committee ask Macau, China to clarify whether or not it plans to enact a law which will materialise the right to strike and accord protection to workers taking industrial actions from retaliation.**

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Post Daily, 30 May 2018, <https://www.macaupostdaily.com/article4639.html>). In July 2016, activist Lei Lok Lan was convicted for gathering on the sidewalk outside the Legislative Assembly building after being refused entry to the building to attend a Q&A session. ("MFFR LEADER SENTENCED TO THREE MONTHS," Macau Daily Times, 26 July 2016, <https://macaudailytimes.com.mo/mffr-leader-sentenced-three-months.html>)

<sup>86</sup> "It should be the Gov't to introduce a trade union law – Secretary for Economy," Macau Business, 13 March 2020, <https://www.macaubusiness.com/it-should-be-the-govt-to-introduce-a-trade-union-law-secretary-for-economy/>.

<sup>87</sup> "疫下員工維權雪上加霜 冇工會法更憂秋後算帳 博彩工會：公司政府雙重夾擊好大壓力," Macau Concealers, 18 April 2020, <https://www.facebook.com/153478958054547/posts/2844844045584678/>.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

## Article 23 - Protection of Family

### Domestic violence – problem 1: case reclassification

In practice, the implementation of the domestic violence law<sup>90</sup> enacted in 2016 might not be as effective as expected by the community. Within the meaning of the domestic violence law, the crime of domestic violence is defined<sup>91</sup> as “any physical, psychological or sexual abuse that is committed in the context of a family or similar relationship”<sup>92</sup>. The expression “physical, psychological or sexual abuse” is vague and very often leads judicial officers to interpret that the requirement of gravity of bodily harm of the crime of domestic violence must be higher than that of simple assault<sup>93</sup>.

At every stage of the proceedings, a domestic violence case may be reclassified as simple assault. The possibility of reclassification as simple assault deviates from the object of the domestic violence law. The continuation of the prosecution for the crime of simple assault is dependent on the victims’ complaint.<sup>94</sup> In cases which the crime of domestic violence is reclassified as simple assault, victims are informed of the option to discontinue the proceedings. Such reclassifications effectively leave them to the time before the enactment of the domestic violence law. Reclassification is only desirable when a more serious offence<sup>95</sup> applies. The issue of a difference between the definitions of simple assault and the crime of domestic violence should be addressed.

**We suggest the Committee ask Macau, China to provide the numbers of cases in which the classification is changed from the crime of domestic violence to another crime at all stages of domestic violence cases (from the social workers to police to the public prosecutor to the court).**

### Domestic violence – problem 2: discrimination against same-sex intimate partners

The Macau government initially proposed the inclusion of “same-sex co-habitants” in the scope of the domestic violence law in 2011. However, the Macau government decided to drop the reference to same-sex partners in 2012. In defiance of the recommendation<sup>96</sup> made by the Committee against Torture (CAT), the Macau government insisted on the exclusion in 2016. For same-sex partners, the heterosexual counterparts enjoy protection under the domestic violence law as legal recognition of a union or marriage is not a prerequisite<sup>97</sup> for eligibility for protection. Therefore, there is a strong reason to accord the same level of protection to same-sex couples, notwithstanding the lack of legal recognition of same-sex marriage. To this date, the Macau government still declines to rectify the exclusion of same-sex partners.

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<sup>90</sup> Law no. 2/2016 “Law to prevent and combat domestic violence”

<sup>91</sup> Ibid, art. 4.

<sup>92</sup> In Portuguese, it reads “*maus tratos físicos, psíquicos ou sexuais que sejam cometidos no âmbito de uma relação familiar ou equiparada*”.

<sup>93</sup> Article 137 of CCM defines simple assault as “offend[ing] another person's body or health”.

<sup>94</sup> CCM, art. 137(2).

<sup>95</sup> Such as, homicide (art. 128 of CCM) and aggravated homicide (art. 129 of CCM).

<sup>96</sup> CAT/C/CHN-MAC/CO/5, para. 25(a).

<sup>97</sup> Law no. 2/2016, art. 4(2)(3).

The Social Welfare Bureau (IAS) claimed that assistance would be provided to all victims of domestic violence without discrimination, notwithstanding the legal definition of domestic violence. However, the information provided to authors of this submission suggests that frontline social workers and police officers are not trained to recognise intimate violence peculiar to same-sex partners.

**We suggest the Committee ask Macau, China to explain its refusal to comply with the Committee against Torture’s recommendation that the domestic violence law should be enacted without discrimination. We also suggest the Committee ask Macau, China to provide information on training provided to frontline social workers and police officers concerning the detection of intimate violence between same-sex partners.**

## **Article 24 - Non-Discrimination**

### **Gender mark change for transgender people**

In 2015, the Macau government announced that the Legal Reform Consultation Committee was to commence a study about allowing transgender persons to change the gender marker on their birth records and identity documents.<sup>98</sup> However, no more updates followed since then.

**We suggest the Committee ask Macau, China to provide an update on the progress of revising the law to allow for changing gender markers for transgender persons.**

### **Discrimination on the grounds of sexual orientation and gender identity**

The Macau government’s official position on non-discrimination on the basis of sexual orientation and gender identity is unclear. In 2018, in a press interview, deputy director of Education and Youth Affairs Bureau (DSEJ) said that students who show “indications of homosexuality” would be referred to psychiatrists for clinical examination.<sup>99</sup> During the same interview, the deputy director also promoted abstinence<sup>100</sup>. After a public outcry, the education bureau issued a statement promising “the promotion of respect for diversity”.<sup>101</sup>

In Macau, except in the area of employment<sup>102</sup>, there are virtually no other legal protections from discrimination on the ground of sexual orientation.

**We suggest the Committee ask Macau, China to clarify its position on non-discrimination on the grounds of sex, sexual orientation and gender identity across all government departments.**

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<sup>98</sup> “法律改革諮詢委員會第十八次全體會議”, DSRJDI, 1 July 2015, <https://www.gov.mo/zh-hant/news/153237/>.

<sup>99</sup> “Clinical exams for homosexual students,” Macau Closer (August 2018), <https://macaucloser.com/en/magazine/clinical-exams-homosexual-students>.

<sup>100</sup> Verbatim “Men do not like their future wives to have had sexual relations before marriage”.

<sup>101</sup> “教青局尊重多元價值 協助學生健康成長,” DSEJ, 19 August 2018, <https://www.gov.mo/zh-hant/news/251738/>.

<sup>102</sup> Law no. 7/2008 “Labour Relations Law,” art. 4.

### **Migrant workers' vulnerability to exploitation**

Despite the legal prohibition of recruitment agencies taking a share of the salaries of migrant workers for commission fees, in reality, wages of domestic workers, who are predominantly migrant workers, are deducted by the employers to pay the recruitment agencies to cover the commission fees. Migrant workers told authors of this submission that the recruitment agencies would charge two times their monthly salary. Very often domestic workers are paid only a few hundred Macau Patatas (less than one hundred CHF) in the first two months.

Household employers are also urging the Macau government to revise the law to require all domestic workers to live with them.<sup>103</sup> Such requirement, if imposed, would be detrimental to the health and well-being of domestic workers.

Furthermore, the Macau government expressly excluded domestic workers from the statutory minimum wage<sup>104</sup>.

**We suggest the Committee ask Macau, China whether it has proactively reached out to the community of migrant workers to receive complaints against unlawful employment/recruitment practices. We suggest the Committee ask Macau, China to clarify whether or not it plans to require domestic workers to live with the household employers.**

## **Article 25 - Democracy**

### **Chief Executive not elected by universal and equal election**

The Chief Executive remains undemocratically selected. The incumbent Chief Executive did not reject the possibility of implementing “universal suffrage” but declined to take the initiative.<sup>105</sup> There was only one candidate qualified to run for Chief Executive in 2019. There has been no meaningful competition. As noted in the Committee’s previous concluding observations, Macau, China should outline a clear and comprehensive plan of action and 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, in compliance with article 25 of the Covenant.<sup>106</sup>

The power to approve and implement universal suffrage is vested in the National People’s Congress Standing Committee (NPCSC) of China<sup>107</sup>. Even if there were a plan to introduce “universal suffrage” to Macau, very likely, the NPCSC would impose terms no less restrictive than those already announced for Hong Kong in 2014. Those terms would effectively bar opposition candidates from standing in Chief Executive elections.

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<sup>103</sup> “意見盼修法加強監管,” Exmoo, 20 June 2019, <https://www.exmoo.com/article/111955.html>.

<sup>104</sup> Law no. 5/2020 “Minimum wage for workers,” art. 2.

<sup>105</sup> “獲任命澳門特首感壓力 賀一誠承諾落實競選政綱,” on.cc, 12 September 2019, [https://hk.on.cc/hk/bkn/cnt/news/20190912/bkn-20190912093855216-0912\\_00822\\_001.html](https://hk.on.cc/hk/bkn/cnt/news/20190912/bkn-20190912093855216-0912_00822_001.html).

<sup>106</sup> CCPR/C/CHN-MAC/CO/1, para. 7.

<sup>107</sup> Basic Law, Annex I, art. 7.

**We suggest the Committee follow up on the same issue by asking Macau, China provide an update on the plan of transition to an electoral system based on universal and equal suffrage. We also suggest the Committee ask Macau, China to provide a timeline on the withdrawal of the reservation to article 25(b) of the Covenant.**

### **More than half of members of the Legislative Assembly not directly elected**

The general public can only vote in a fashion enshrined in 25(b) of the Covenant for less than half of the seats of the Legislative Assembly. The Legislative Assembly consists of 14 directly elected seats, 12 indirectly elected seats and seven appointed seats<sup>108</sup>. The indirectly elected seats are elected by a small number of voters in different “sectors”<sup>109</sup>, in which most candidates have run unopposed. Getting qualified to vote or standing in indirect elections for the Legislative Assembly depends on the endorsement of clusters of black-boxed associations. For the vast majority of Macau residents outside the circle of political elites, becoming a voter<sup>110</sup> and standing in the election<sup>111</sup> are beyond their reach.

**We suggest the Committee ask Macau, China to provide an update on a plan to introduce more directly elected seats to ensure the right to take part in public affairs through freely chosen representatives.**

### **Political screening in Legislative Assembly elections**

In late 2016<sup>112</sup>, the Macau government introduced an amendment to the Legislative Assembly Electoral Law<sup>113</sup> which authorised the Electoral Affairs Commission (CAEAL) to disqualify candidates who do not “uphold the Basic Law and swear allegiance to the Macau Special Administrative Region<sup>114</sup>.” In other words, the Macau government wrote into Macau’s election law the very same mechanism used by the Hong Kong government to screen out the candidates who hold political opinions<sup>115</sup> denounced by the Chinese authorities. Although no candidate was disqualified in the 2017 Legislative Election, there was a complaint to the CAEAL against one candidate<sup>116</sup>.

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<sup>108</sup> Basic Law, art. 68 and Annex II.

<sup>109</sup> Law no. 3/2001 “Electoral Law for the Legislative Assembly of the Macau Special Administrative Region,” as amended by Laws no. 11/2008, no. 12/2012 and no. 9/2016, art. 22.

<sup>110</sup> Requirements for associations and bodies to register as legal person voters: 1) Registered with the Identification Services Bureau; 2) Have been recognised (by the Chief Executive) as belonging to the sectors for at least 4 years; and 3) Have acquired legal personality for at least 7 years. see Law no. 12/2000 “Law of Electoral Registration,” art. 26.

<sup>111</sup> Candidates in indirect election must be nominated by 20% of voters within an electoral sector, see Law no. 3/2001, art. 43.

<sup>112</sup> At a time not soon after first two members of Hong Kong Legislative Council involved in an oath-taking controversy were disqualified from office

<sup>113</sup> Law no. 9/2016 “Amendment to Law no. 3/2001”

<sup>114</sup> Law no. 3/2001, art. 6, 30, 33, 47-A.

<sup>115</sup> e.g. Support for independence or self-determination of the region, or constitutional ideas incompatible with the “One Country Two Systems” principle

<sup>116</sup> “收到 1 宗投訴參選人不效忠澳門特區 選管會：不能單靠某些人言論或資訊就斷定事實”，Macau Concealers, 14 September 2017, <https://mcnews.cc/p/17842>.

**We suggest the Committee ask Macau, China to clarify, in precise terms, the objective criteria used in the determination of the ineligibility of a candidate on the basis of article 6(8) of law no. 3/2011 as amended by law no. 9/2016.**

### **Municipal council members not selected by direct election**

In 2018, in the re-establishment of a municipal organ, the Macau government refused to reinstate direct elections. Article 95 of Basic Law of Macau provides for the creation of a municipal organ “without political power”. Before the handover to China, Macau had two municipal councils<sup>117</sup> with directly elected members. The two municipal councils functioned as local governments and provided a limited window for democratic participation. However, they were abolished in 2001<sup>118</sup>.

The Basic Laws of both Hong Kong<sup>119</sup> and Macau have a provision about the “no political power” nature of municipal organisations. The district councils in Hong Kong serve consultative purposes and are directly elected.

Despite public support, the Macau government refused to make the seats on the Consultative Council of the Municipal Affairs Bureau (IAM) - the new municipal organ – open for direct election. The Macau government is totally aware of the constitutionality of the consultative district councils in Hong Kong.<sup>120</sup> It discussed in a broad sense that introduction of direct elections to the IAM, as an entity that provides services, would be incompatible with the “without political power” requirement imposed by the Basic Law.<sup>121</sup> However, it declined to elaborate on the (un)constitutionality of direct elections of the Consultative Council of IAM.

Now, members on the Administrative Council and the Consultative Council of the IAM<sup>122</sup> are appointed by the Chief Executive. The new municipal organ leaves completely no room for democratic participation.

**We suggest the Committee ask Macau, China to clarify why the introduction of direct election to the IAM’s Consultative Council, which has no powers to make any decision, would constitute a contravention of the Basic Law of Macau.**

### **Suspension of Legislative Assembly member’s mandate and power**

In 2017, directly elected member of Legislative Assembly (AL) and opposition politician Sou Ka Hou faced a criminal charge for taking part in an unlawful assembly. Articles 15 of Statute of Deputies to the Legislative Assembly provides for the possibility of suspending the mandate of an AL member who faces criminal charges. According to article 27 of the Statute, a vote of the AL plenary could determine

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<sup>117</sup> Law no. 24/88/M “Legal Regime for Municipalities”, art 1 and 15.

<sup>118</sup> Law no. 17/2001 “Creation of the Civic and Municipal Affairs Bureau,” art. 2.

<sup>119</sup> Article 97 of Basic Law of Hong Kong provides for establishment of “district organizations which are not organs of political power”

<sup>120</sup> “Creation of the Municipal Body without Political Power Final Consultation Report,” 14, [https://www.gov.mo/pt/wp-content/uploads/sites/3/2017/10/Relat%C3%B3rio-Final-de-Consulta-sobre-a-Cria%C3%A7%C3%A3o-do-%C3%B3rg%C3%A3o-municipal\\_20180302.pdf](https://www.gov.mo/pt/wp-content/uploads/sites/3/2017/10/Relat%C3%B3rio-Final-de-Consulta-sobre-a-Cria%C3%A7%C3%A3o-do-%C3%B3rg%C3%A3o-municipal_20180302.pdf)

<sup>121</sup> Ibid, 15.

<sup>122</sup> Law no. 9/2018 “Creation of the Institute for Municipal Affairs,” art. 9, 10, 14 and 15.

whether the mandate of the charged AL member is suspended until the completion of the criminal proceedings, or the criminal proceedings are suspended until the completion of the AL member's term.

In the case of Sou, the AL plenary voted to suspend his mandate. Not only until seven months later, did he resume office upon the completion of the criminal proceedings against him. In other words, Sou could not represent his voters to exercise his powers as a legislator for seven months.

**We suggest the Committee ask Macau, China to clarify the necessity of the suspension of the mandate of an AL member facing criminal charges. We also suggest the Committee ask Macau, China the permissibility of the introduction of legislative immunity which ensures legislators to act freely as an elected representative of the public.**

### **Political censorship of manifestos of election candidates**

In the 2013 Legislative Election, the Electoral Affairs Commission (CAEAL) censored the election manifestos of candidates.<sup>123</sup> In the booklets of candidates' manifesto to be distributed to the voters by the government, the CAEAL redacted paragraphs which it sees politically sensitive<sup>124</sup>.

The manifesto booklets are one of the means of candidates' communications with the electorates. The CAEAL rejected the accusation of exercising political censorship. The CAEAL defended that the redacted paragraphs were "political demands" rather than "political aims".<sup>125</sup>

**We suggest the Committee ask Macau, China to explain the objective criteria in censoring the manifestos of election candidates.**

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<sup>123</sup> Jason Chao, "Objection to CAEAL's refusal to withdraw censorship on Liberals' platform," 21 August 2013, <https://medium.com/jason-chaos-depository/objection-to-caeals-refusal-to-withdraw-censorship-on-liberals-platform-5993dc7ec428>.

<sup>124</sup> These paragraphs concern the demand that principal officials should step down and face criminal investigation for corruption.

<sup>125</sup> In the Portuguese language, it reads "political programme" and resembles the meaning of "platform" or "manifesto" in English. The CAEAL distorted the equivalent "政綱" (zhèng gāng), literally means "political aims", in the Chinese version of the law to exclude the paragraphs that it considers sensitive.