



Civil Society Information on LGBT+ Equality to the United Nations

Human Rights Committee at its 129th session for the Adoption of List of Issues on Macau SAR, China

Submitted by Rainbow of Macau on 1 June 2020

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Rainbow of Macau (hereinafter referred to as “RM”) is the first LGBT-rights non-governmental organization registered in Macau. RM engages with the Macau government and the communities to promote social inclusion of LGBT+ people.

Equality and non-discrimination (Articles 2(1) & 26 of ICCPR)

The constant jurisprudence of the HRC reaffirms that the prohibition against discrimination under article 26 of the ICCPR also comprises discrimination on the basis of sexual orientation and gender identity.¹

In Macau, legal protection against discrimination is inadequate on sexual orientation ground and non-existent on gender identity ground. Currently, only in the following two areas, gays, lesbians and bisexuals enjoy equality before the law.

- Treatment of job seekers and employees by employers (Article 6 of Law 7/2008: Labour Relations Law)
- Treatment of people by the officers of the Commission Against Corruption (Article 31-A of Law 10/2000 amended by Law 4/2012: Organisation Law of the Commission Against Corruption)

Macau officials and some community leaders have, for a significant amount of repetitions, invoked the notion of “a lack of social consensus” to respond to the call

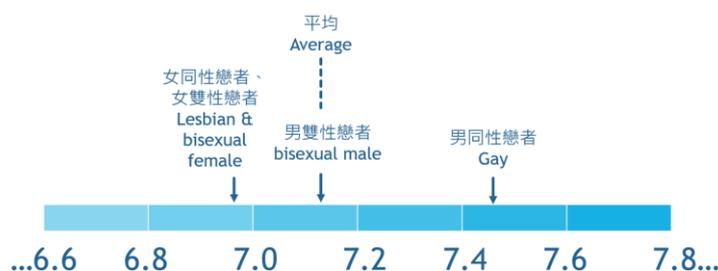
¹ CCPR/C/123/D/2318/2013, para. 7.3.

for equal rights for the LGBT people. RM observes that so-called “a lack of social consensus” is no more than an excuse for the state party to evade the responsibilities of rectifying discriminatory laws.

The main ideas about minority rights as in the United Nations Minorities Declaration also apply to the LGBT+ people.² A “social consensus” must not be a prerequisite for the protection of minority rights. In lieu of which, the state party should proactively promote the protection of the minorities.³

According to the 2019 Macau LGBT+ Survey, which was a survey conducted within the Macau LGBT+ community by RM, the LGBT+ people in Macau perceive a high level of discrimination. On a scale of 1 to 10, the mean for the level of subjective discrimination against LGBT+ is 7.17. In particular, gay people experience higher discrimination (7.43) compared to other sexual orientation groups.

Figure 1. Level of Subjective Discrimination by Sexual Orientation



In the same study, LGBT+ respondents overwhelmingly agree that the law and policy in the areas of housing, education, healthcare, public administration, gender recognition, and criminal law should be updated to provide equal or higher protection of the LGBT people.

² United Nations, *Minority Rights: International Standards and Guidance for Implementation*, p. 8.

³ *Ibid.*, p. 3.

Table 1. Change of law and policy for the protection of equality

Survey year	Totally disagreed	Disagreed	Neutral	Agreed	Totally Agreed
2019	1.9% (19)	0.5% (5)	9.8% (97)	41.2% (410)	46.6% (463)
2016	3.6%	0.8%	4.3%	25.5%	65.7%
2013	0		6%	94%	

Note. The 2013 survey only represented three options - “agree”, “disagree” and “not sure”.

Table 2. Areas of law and policy which should be updated for the protection of equality

	Year 2019
Housing	86.1% (856)
Education	89.4% (889)
Healthcare	90.8% (903)
Public administration	85.0% (854)
Gender change	73.0% (726)
Protection in criminal law	79.6% (791)

RM suggests that Human Rights Committee asks Macau, China to:

Provide a list of laws in Macau that include a provision on the principle of equality or non-discrimination in which sexual orientation or gender identity is not a protected characteristic.



Recognition of transgender persons' gender marker (Articles 2(1), 17 & 26 of ICCPR)

Since its founding, RM has received queries from a growing number of transgender people who had undergone a sex affirmation surgery, after which they wish to change the gender marker on their identity documents. Rainbow of Macau raised this issue to the competent government departments. However, the Macau government could not help them with the matter unless the law is revised to allow for such change.

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.⁴ However, no more updates followed since.

The HRC has recognised the right for transgender people to change the gender marker on identity documents.⁵ The state parties which do not respect such right would contravene article 26 of the ICCPR.

Nonetheless, the Macau Special Administrative Region ("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 the identity documents.

RM suggests that Human Rights Committee asks Macau, China to:

Provide a timeline for enacting necessary legislation to allow transgender persons to change the gender marker on their birth records and identity documents.

⁴ “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/>.

⁵ CCPR/C/119/D/2172/2012, para. 7.15.

Domestic Violence (Articles 2(1), 23 & 26 of ICCPR)

Compared to heterosexual intimate partners, same-sex intimate partners are deprived of protection under the Domestic Violence Law (Law no. 2/2016). A marriage or *de facto* union is not a prerequisite⁶ for eligibility for protection.

In 2015, RM wrote to the Committee against Torture (CAT) about the Macau government's plan to exclude same-sex partner from the proposed Domestic Violence Law when it was reviewing the implementation of Convention against Torture in China, in which the Macau SAR is included. In CAT's concluding observations, Macau was urged to enact a Domestic Violence Law without discrimination. Still, in early 2016, the Macau government declined to reinstate the reference to same-sex partners in the final text of the Domestic Violence Law.

The LGBT+ people's experience of domestic violence was studied by RM in its 2019 Macau LGBT+ Survey. In the study, Rainbow enumerated the abuses which might be classified as domestic violence. 22.1% of respondents reported experiencing domestic violence perpetrated by intimate partners.

Table 3. Forms of domestic violence

	2019
Control	12.8% (127)
Physical abuse	2.8% (28)
Sexual abuse	0.8% (8)
Emotional abuse and intimidation	7.0% (70)
Verbal abuse: coercion, threats and blame	9.7% (96)
Economic abuse	1.9% (19)
Never	77.9% (774)

⁶ Law no. 2/2016, art. 4(2)(3).

Figure 2. Forms of domestic violence (number of cases)

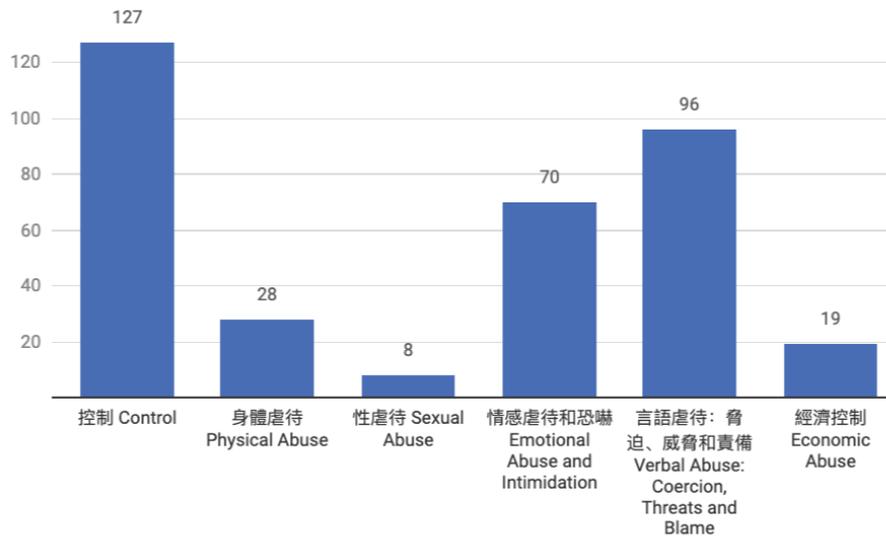
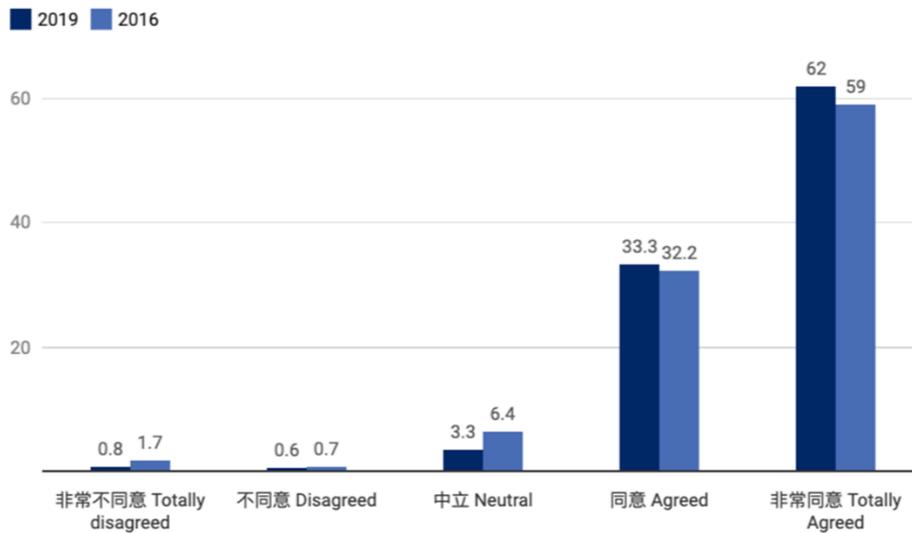


Table 4. Attitude towards the call for inclusion of same-sex co-habitants in domestic violence legislation

Survey year	Totally disagreed	Disagreed	Neutral	Agreed	Totally Agreed
2019	0.8% (8)	0.6% (6)	3.3% (33)	33.3% (331)	62.0% (616)
2016	1.7%	0.7%	6.4%	32.2%	59.0%

Figure 3. Attitude towards the call for inclusion of same-sex co-habitants in domestic violence legislation (percentage).



RM suggests that Human Rights Committee asks Macau, China to:

- **Explain the non-compliance with the Committee against Torture’s recommendation that the Domestic Violence Law should be enacted without discrimination;**
- **Provide information on training provided to frontline social workers and police officers concerning the detection of intimate violence between same-sex partners; and**
- **Clarify whether or not the state party has the will to accord equal protection to victims of domestic violence without discrimination on the basis of sexual orientation.**

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