

Submission

of the **Macau Research Group**

to the UN Committee on Economic, Social and Cultural Rights (CESCR) for its Review of the Implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

in **Macau, China**

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## Proposed Excessive Regulation of Trade Unions (Para. 11 of LOI; Art. 8 of ICESCR)

1. The Executive Council of Macau Special Administrative Region (SAR) presented a draft Trade Union Law to the Legislative Assembly in December 2022.<sup>1</sup> At the time of writing, the draft Trade Union Law is pending the first reading – a vote of on the generality of proposed legislation. The following analysis of the proposed Trade Union Law is based on the text<sup>2</sup> publicised by the Legislative Assembly.
2. The Macau Research Group observes that the proposed Trade Union Law falls short of the realisation of the protection of workers' rights as promised by the Basic Law of Macau SAR, but that it demonstrates a strong tendency for excessive regulation of the formation and functioning of trade unions. The proposed law will impose a number of restrictions and regulatory requirements which will apply only to trade unions and not to ordinary associations. However, there are no references to the right to strike and the right to collective bargaining in the draft law. The new requirements for trade unions that the Macau SAR Government is seeking to introduce into the legislation are concerning.

### Exclusion of migrant workers from managerial roles in trade unions

3. Article 14(4) of the draft Trade Union Law requires that office holders of a trade union must be Macau residents. This requirement effectively prevents migrant workers, which are classified officially as “non-resident workers”, from taking a managerial role in a trade union. It is foreseeable that trade unions to be formed under the proposed Trade Union Law will not fully represent the professions with a high presence of migrant workers, such as construction and security. For domestic workers, forming a trade union will be practically impossible as the overwhelming majority of them are migrant workers.

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<sup>1</sup> Macau SAR Government, ‘行政會完成討論《工會法》法律草案’ (30 December 2022), <https://www.gov.mo/zh-hant/news/953210/> accessed 16 January 2023

<sup>2</sup> Accessible from <https://al.gov.mo/uploads/attachment/2023-01/5063163b7c95d91a87.pdf>

## Limited functions of trade unions in negotiations with employers

### Collective bargaining

4. Under the proposed Trade Union Law, the functions of trade unions will be limited in representing workers in negotiations with employers. The functions of trade unions listed in Article 18 of the draft Trade Union Law mainly concern consultation, training and provision of services. The only reference to trade unions' role in negotiations is found in Article 18(1) of the draft Trade Union Law, which proposes that a trade union may present its members to negotiate on matters relating to "individual employment disputes". Its wording implies the exclusion of collective bargaining as trade unions may only represent workers on an individual basis.

### Industrial actions

5. Although Article 27 of the Basic Law of Macau SAR confers the right to strike on Macau residents, no local laws protect workers or trade union officials from retaliation or liability from breach of employment contracts in connection to strike actions.
6. Not only is any reference to the right to strike absent in the draft Trade Union Law, the draft law implicitly seeks to outlaw unions of public service workers from organising industrial actions. Article 21(1) of the draft Trade Union Law requires that union members who are workers of public and emergency services shall not affect the continuity and the effectiveness of public and emergency services in their participation in the activities of trade unions.

## Monitoring of trade union activities

7. The draft Trade Union Law proposes a wide range of responsibilities for trade unions to report to the Macau SAR Government on affiliating or engaging with international alliances. According to the Labour Affairs Bureau (DSAL), out of "national security" concerns, a "supervision mechanism" will be set up to monitor the trade unions that affiliate with international labour alliances or engage in international events.<sup>3</sup>

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<sup>3</sup> DSAL, '工會法公開諮詢' (12 June 2022), <https://www.gov.mo/zh-hant/policy-consultation/829226/> accessed 16 January 2023; DSAL, '澳門特別行政區工會法諮詢總結報告' (June 2022), p.24, [https://www.gov.mo/zh-hant/wp-content/uploads/sites/4/2021/10/%E5%B7%A5%E6%9C%83%E6%B3%95\\_%E8%AB%AE%E8%A9%A2%E7%B8%BD%E7%B5%90%E5%A0%B1%E5%91%8A%EF%BC%88%E4%B8%AD%EF%BC%89.pdf](https://www.gov.mo/zh-hant/wp-content/uploads/sites/4/2021/10/%E5%B7%A5%E6%9C%83%E6%B3%95_%E8%AB%AE%E8%A9%A2%E7%B8%BD%E7%B5%90%E5%A0%B1%E5%91%8A%EF%BC%88%E4%B8%AD%EF%BC%89.pdf) accessed 16 January 2023.

8. Article 19(4) will require trade unions to submit quarterly reports to the DSAL about their engagement in events organised by, or co-organised with, non-local organisations.
9. Article 19(2) of the draft Trade Union Law proposes that a trade union must inform the DSAL, when it joins an international labour organisation.
10. There will also be a high hurdle for trade unions joining an international organisation not related to labour. Trade unions' affiliation with an organisation not related to labour will require the prior approval of the Chief Executive of Macau SAR, according to Article 14(3) of the draft Trade Union Law.
11. Currently, these requirements do not apply to any association in Macau. If the proposed Trade Union Law were adopted, trade unions would have to comply with these requirements and submit to DSAL's monitoring.

## Recommendations

12. It is noteworthy that in July 2022, the UN Human Rights Committee (HRC) – one of the CESCR's sister treaty bodies – raised concern over excessive regulation in the planned trade union legislation<sup>4</sup> and discrimination against migrant workers<sup>5</sup> in Macau.
13. This submission recommends that CESCR urges Macau, China to:
  - a) Ensure that all workers, including migrant workers, can equally form and take part in trade unions;
  - b) Introduce the rights to strike and to collective bargaining into the proposed Trade Union Law;
  - c) Remove the excessive regulatory requirements concerning joining an international alliance or taking part in international events; and
  - d) Refrain from presuming that trade union' participation in international events or affiliation with an international alliance would endanger national security.

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<sup>4</sup> CCPR/C/CHN-MAC/CO/2, para. 40.

<sup>5</sup> Ibid., paras. 10 & 11(b).

## Vulnerability of Migrant Workers from Exploitation (Paras. 8 & 10 of LOI; Art. 7 of ICESCR)

14. Macau Research Group observes that the Macau SAR Government lacks the will to rectify the exploitative employment practices and conditions affecting domestic workers, who are predominantly migrant workers.

### Exclusion of domestic workers from the minimum wage

15. Domestic workers are not entitled to the minimum wage. Article 2(1) of Law no. 5/2020 “Minimum Wage for Worker” expressly excludes domestic workers from the scope of the law. Deputy Director of the Labour Affairs Bureau (DSAL) justified the exclusion on the grounds that domestic workers do not “do not help families to make profits”, in his oral response to the UN HRC’s question in July 2022.<sup>6</sup>

### Agency fees paid for by migrant workers

16. Law no. 16/2020 “Employment Agency Activities” did not change the fact that the recruitment agencies charge migrant workers a fee higher than that permitted by the law. Before Law no. 16/2020 entered into force, the employers would deduct the first two months’ salary of domestic workers to pay the agencies. After Law no. 16/2020 entered into force, domestic workers are asked to pay the agency fees “upfront”.

17. The level of fees that domestic workers have to pay in reality is much higher than that permitted by the law. Law no. 16/2020 caps the rate at “50% of the salary for the first month”.<sup>7</sup> However, domestic workers interviewed by Macau Research Group said the agencies had charged them around two months’ worth of their salaries. The agencies would decline to process the applications of domestic workers who did not pay fees in advance. According to the domestic workers, the agencies’ change of practice, as a result of the new law, has made them more difficult and vulnerable. In the past, domestic workers could pay the fees after they started to work. They reported that

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<sup>6</sup> Macau Business, ‘Migrant domestic workers already granted fair labour conditions despite exclusion from minimum wage’ (14 July 2022), <https://www.macaubusiness.com/migrant-domestic-workers-already-granted-fair-labour-conditions-despite-exclusion-from-minimum-wage-govt/> accessed 16 January 2023

<sup>7</sup> CCPR/C/CHN-MAC/RQ/2, para 30.

some of their fellow domestic workers had to borrow money from others to cover the agency fees before securing a job.

## Recommendations

18. It is noteworthy that in July 2022, the UN Human Rights Committee (HRC) – one of the CESCR’s sister treaty bodies – raised concern over the abuse and exploitation of migrant workers in Macau.<sup>8</sup>
19. This submission recommends that CESCR urges Macau, China to:
  - a) Recognise that “working for household employers who do not make a profit” is not a justification for exploitation;
  - b) Include domestic workers in the purview of the minimum wage;
  - c) Proactively reach out to the communities of migrant workers and encourage them to file complaints about exploitative practices; and
  - d) Raise awareness amongst employers of domestic workers regarding lawful and unlawful employment practices.

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<sup>8</sup> Ibid., para. 24.

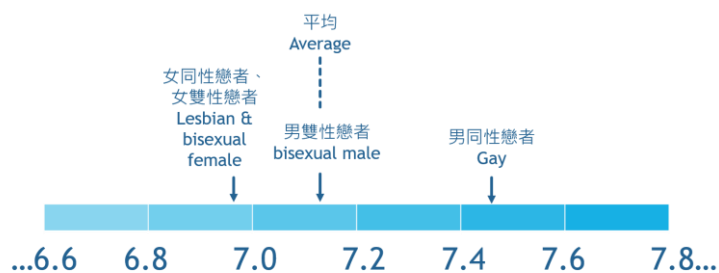
## The Health of LGBT+ People (Para. 16 of LOI; Art. 12 of ICESCR)

20. General Comment No.22 of CESCR recognises that state parties have the obligations to realise the right to sexual and reproductive health of the protection of lesbian, gay, bisexual and transgender (LGBT+) people.

### The prevalence of discrimination

21. Macau Research Group observes that the Macau SAR Government lacks the will to combat discrimination against LGBT+ people. Macau's anti-discrimination legislation falls short of international standards, especially for LGBT+ people. Legal protection against discrimination on the ground of sexual orientation is very limited and only exists in the area of employment<sup>9</sup> and treatment by the anti-corruption agency.<sup>10</sup>
22. The social discrimination against LGBT+ people in Macau impedes their full enjoyment of the right to sexual and reproductive health. According to the 2019 Macau LGBT+ Survey,<sup>11</sup> a survey conducted within the Macau LGBT+ community, 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



23. In the same study, LGBT+ respondents overwhelmingly agree that the law and policy in the areas of healthcare (90.8%), education (89.4%), housing (86.1%), public administration (85.1%), criminal law (79.6%) and gender change (73.0%) should be updated to provide equal or higher protection of LGBT+ people.

<sup>9</sup> Law no. 7/2008 'Labour Relations Law', art. 6.

<sup>10</sup> Law no. 10/2000 amended by Law no. 4/2012 'Organisation Law of the Commission Against Corruption', art. 31-A.

<sup>11</sup> Rainbow of Macau, Results of 2019 Macau LGBT+ Survey (25 November 2019), <https://rainbow.mo/?p=377&lang=en> accessed 16 January 2023.

**Table 1.** 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)

## Exclusion from domestic violence law

24. Same-sex intimate partners do not enjoy the same level of protection against domestic violence as heterosexual counterparts. Same-sex intimate partners are excluded from the scope of the domestic violence law<sup>12</sup>.

## No legal recognition of gender change

25. 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. Also, there is no protection against discrimination on the grounds of gender identity in any local law.

## Recommendations

26. It is noteworthy that in July 2022, the UN Human Rights Committee (HRC) – one of the CESCR's sister treaty bodies – raised concern over the prevalent discrimination against LGBT+<sup>13</sup>, the lack of a legal recognition of gender change<sup>14</sup> and the exclusion of same-sex intimate partners from domestic violence law<sup>15</sup> in Macau.

27. This submission recommends that CESCR urges Macau, China to:

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<sup>12</sup> Law no. 2/2016 'Law to Prevent and Combat Domestic Violence', art. 4(2).

<sup>13</sup> CCPR/C/CHN-MAC/CO/2, paras. 10 - 11.

<sup>14</sup> Ibid., paras. 12 - 13.

<sup>15</sup> Ibid., paras. 12-13.

- a) Proactively promote social acceptance of LGBT+ people and the diversity of sexual orientation and gender identity;
- b) Include same-sex intimate partners in the scope of domestic violence law;
- c) Change the law to allow transgender persons to change the gender marker on birth certificates and identity documents; and
- d) Incorporate the grounds of sexual orientation and gender identity in Macau laws where there is an anti-discrimination (principle of equality) provision.