

Submission of the New Macau Association to the United Nations Human Rights Council for the 31st Session of Universal Periodic Review on Macau, China

28 March 2018

The New Macau Association, a major pro-democracy political organisation in Macau, hereby submits the following information to the United Nations Universal Periodic Review on the Macao Special Administrative Region of the People's Republic of China.

This submission should not be considered as an exhaustive list of human rights issues in Macau. Rather, in line with the submission guidelines, only issues with recommendations that are technically achievable, measurable and time-bound are discussed. The main contributor to this report also takes personal responsibilities for the accuracy of this submission.

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Interpretation

For the purposes of this submission, the following interpretation of expressions and abbreviations shall apply.

| | |
|-------------------|---|
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| China | People's Republic of China |
| Domestic law | Laws enacted by the legislature of Macau or China |
| GA | United Nations General Assembly |
| HRC | United Nations Human Rights Council |
| ICCPR | International Convention on Civil and Political Rights |
| International law | International human rights instruments and UN bodies' resolutions, concluding observations and opinions |
| Macau | Macao Special Administrative Region of the People's Republic of China |
| NMA | New Macau Association |
| UNCAT | United Nations Committee against Torture |

Political rights

International law

- Article 25 of ICCPR
- Paragraph 7 of CCPR/C/CHN-MAC/CO/1

Domestic law

- Annex I to the Basic Law of Macau
- Annex II to the Basic Law of Macau
- Section 5 of the Basic Law of Macau
- Law no. 3/2001 “Electoral Law for the Legislative Assembly of the Macao Special Administrative Region”
- Law no. 3/2004 “Election Law for the Chief Executive”

The right to political participation is limited in Macau. The vast majority of Macau citizens may elect 14 out of 33 members of the Legislative Assembly. Officials of the Macau government have repeatedly denied an introduction of universal suffrage to the elections of the Chief Executive and all members of the Legislative Assembly.

Before the change of sovereignty of Macau from Portugal to China in 1999, Macau citizens had the right to elect members of municipal councils, in addition to the Legislative Assembly. In 2002, the municipal councils comprised of directly elected members were abolished in favour of a centralised municipal authority known as the Civic and Municipal Affairs Bureau (IACM). All members of the Administration Committee of the IACM are selected not by any form of elections but by the Chief Executive’s appointment.

In March 2018, the Macau government published a “final report” on the public consultation on the establishment of a non-sovereign municipal institute (or “municipal organisations without political power” as put in Article 95 of the Basic Law). In the report, the government strongly argued against civil society petitions for nomination by direct elections¹. The government reiterated its position that members of both the Administrative and Consultative Committees of the future municipal institute would not be open for direct elections. Despite the fact that Basic Law defers the formation of the non-sovereign municipal institute to local legislation and contains no provisions prohibiting an election of its members, the government insisted that allowing elections would be incompatible with the Basic Law. The establishment of a municipal institute, which the Macau government is proposing, will not bring any substantial change to allow for greater public participation in municipal affairs.

¹ Annex I - Section 1

The NMA respectfully requests the HRC to urge the Macau, China to:

- **Implement direct elections for**
 - **Chief Executive, no later than 2019;**
 - **All members of the Legislative Assembly, no later than 2021; and**
 - **Members of the municipal institute to be established.**

Freedom of expression and movement

International law

- Paragraph 15 of CCPR/C/CHN-MAC/CO/1
- Articles 19, 12 and 2 of ICCPR

Domestic law

- Law no. 9/2002 “Internal Security Framework Law”

Reports of Macau police denying Hong Kong journalists, lawmakers, social activists, scholars and writers from entering Macau were not infrequent². The Macau police justified the refusal on “internal security” grounds in the “Internal Security Framework Law” - a piece of legislation intended to combat cross-border organised crime and terrorism. The only justification given in the refusal notice is that the visitor in question would “pose a threat to the internal security of Macau”³.

The Macau government claimed the entry bans were carried out “in accordance with the law” and “had nothing to do with the visitors’ profession”⁴. However, people with common sense⁵ would see these claims hardly convincing⁶.

Some of the notable cases are:

- After a devastating tropical storm hitting Macau in late August 2017, Hong Kong journalists were prevented from entering Macau to cover the aftermath of the disaster. Journalist organisations in Hong Kong and Macau issued statements condemning such entry bans⁷.
- In February 2018, the Macau Literary Festival withdrew the invitation of three prominent authors as a result of the event director being suggested by the Liaison Office that the three authors “could not be guaranteed entry to Macau”⁸.

The historical, cultural and economic ties between Macau and its neighbouring regions made the freedom to enter and leave Macau part of people’s lives.

² Annex II - Table

³ Annex II - Section 1

⁴ Annex II - Section 2

⁵ Annex II - Section 3

⁶ Annex II - Section 4

⁷ Annex II - Section 5

⁸ Annex II - Section 6

The NMA respectfully requests the HRC to urge Macau to:

- **Ensure persons denied entry to Macau effective remedies; and**
- **Ensure persons denied entry to Macau access to the real reasons for entry refusal as to defend against authorities' assessment.**

Privacy and surveillance

International law

- GA Resolution A/RES/68/167
- Article 17 of ICCPR

Domestic law

- Law no. 2/2012 “Legal Framework of Video Surveillance in Public Spaces”
- Law no. 8/2005 “Personal Data Protection Law”
- (Draft) Cybersecurity Law - public consultation concluded in January 2018

The capabilities of surveillance technologies being deployed by the Macau police authorities are not currently public information. Although Law no. 2/2012 provides, in theory, restrictions on the scope and purposes of public video surveillance, the public has no means check to what extent the law is respected by the police authorities.

In December 2017, the Macau government announced a cybersecurity legislation proposal which would compel organisations running a “critical infrastructure” to surrender data to the police upon request. Also, according to the proposal, the police would be authorised to have access to real-time internet traffic. Following a similar design of Law no. 2/2012, the government sought to introduce a broad range of new powers without enabling checks by the public⁹.

The mechanism to protect citizens’ personal data from abuse by authorities is weak. Although Macau has adopted a data protection law with its roots in European Data Protection Directive 95/46/EC, the deeds of the Office for Personal Data Protection (GPDP) of Macau have called its sincerity to protect citizens’ privacy into question¹⁰. The GPDP had a history of joining forces with the police to clamp down on civil initiatives and backed the proposed cybersecurity law without reservation. Furthermore, individual complaints against can be stalled indefinitely due to a lack of time limit for investigations carried out by the GPDP. The existing personal data mechanism is impotent in the face of state surveillance in the digital era.

⁹ Annex III - Section 1

¹⁰ Annex III - Section 2

The NMA respectfully requests the HRC to urge Macau to:

- **Oblige the public authorities to publish true and complete information about the capabilities of the network surveillance technologies in use in the upcoming cybersecurity legislation;**
- **Oblige the public authorities to publish true and complete information about the capabilities of the video surveillance technologies in use in an amendment to Law no. 2/2012;**
- **Revise Law no. 8/2005 to provide effective remedies for citizens who are denied access to information being held by public authorities about them; and**
- **Revise Law no. 8/2005 to set a limit time for GDPD's handling of individual complaints against public authorities.**

Gender recognition

International law

- HRC Resolution A/HRC/RES/32/2
- Paragraph 78 of Report A/HRC/22/53
- Article 26 of ICCPR

Domestic law

- Civil Code

Macau has no policies honouring transgender people's gender identity. Requests by two transgender people for changing gender markers on their Macau identity documents were turned down because of a lack of legal basis in early 2015¹¹.

After the two transgender people speaking to the media about their difficulties, in June 2015, the Consultative Committee on Legal Reform announced that it would commission a study on revising the law to allow change of gender marker on identity documents¹². At the time of making this submission since July 2015, the Macau government has no updates on either a transgender draft law or a relevant study.

It is also important to note that a sterilisation survey shall not be made a prerequisite to full gender recognition in a future transgender law in Macau.

The NMA respectfully requests the HRC to urge Macau to:

- **Enact a law to allow transgender people, without undergoing a sterilisation survey, to have their gender identities reflected on official identity documents by 2020.**

¹¹ Annex IV - Sections 1 - 2

¹² Annex IV - Section 3

Domestic violence

International law

- HRC Resolution A/HRC/RES/32/2
- Paragraphs 24 to 25 of CAT/C/CHN-MAC/CO/5
- Articles 10, 12, 13 and 16 of CAT
- Article 26 of ICCPR

Domestic law

- Law no. 2/2016 “Law on Preventing and Combating Domestic Violence”

Despite the UNCAT’s recommendation that Macau should enact a domestic violence law without discrimination, the Macau government declined to accord equal protection against domestic violence irrespective of sexual orientation. The current Law no. 2/2016 law protects unmarried intimate partners of opposite sex. Their same-sex counterparts (unmarried intimate partners of the same sex) are deprived of the same level of legal protection.

Before the current version of domestic violence law was finalised, in December 2015, the Social Affairs Bureau (IAS) denied the allegation of discrimination¹³. The IAS claimed that they would provide “services” to same-sex victims of domestic violence notwithstanding the exclusion of same-sex partners from the law¹⁴.

However, the absence of classification for same-sex partners in the IAS internal domestic violence record form obtained by the NMA failed to support the IAS’s claims of making the service available to same-sex victims. There is no evidence that the Macau authorities had included same-sex intimate partners in the scope of the scope of their work on domestic violence.

Law no. 2/2016 is scheduled for a review in 3 years after its entry into force.

The NMA respectfully requests the HRC to urge Macau to:

- **Amend the domestic violence law in its upcoming review to accord equal protection to intimate partners irrespective of sexual orientation from domestic violence.**

¹³ Annex V - Section 1

¹⁴ Annex V - Section 2

Annexes

- **Annex I - Supplementary information on political rights in Macau**

- Section 1

Moura, N. (2018). Municipal body public consultation report without clear data on opposing views. Macau News Agency. Retrieved from <http://www.macaubusiness.com/macau-municipal-body-public-consultation-report-without-clear-data-opposing-views/>

- **Annex II - Supplementary information on refused entries to Macau**

- Table

Individuals from Hong Kong who were refused entry to Macau based on public information

- Section 1

Cheng, K. (2017). Macau denies entry to member of centrist Hong Kong party, citing 'intention' to jeopardise public security. Hong Kong Free Press. Retrieved from <https://www.hongkongfp.com/2017/12/19/macau-denies-entry-member-centrist-hong-kong-party-citing-intention-jeopardise-public-security/>

- Section 2

Cheng Pou. (2015). 拒港記者入境 黃少澤稱與當事人職業無關. 正報. Retrieved from <https://www.facebook.com/324842487699404/photos/a.324842521032734.1073741826.324842487699404/372981492885503/?type=3>

- Section 3

Ong, L. (2014). HK People: 1-Year-Old Baby Deemed Security Threat, Banned From Macau. Epoch Times. Retrieved from https://www.theepochtimes.com/hk-people-1-year-old-baby-deemed-security-threat-banned-from-macau_1153964.html

- Section 4

MDT. (2017). MACAU DENIED PEOPLE'S ENTRY TO AVOID CHAOS. Macau Daily Times. Retrieved from <https://macaudailytimes.com.mo/macau-denied-peoples-entry-avoid-chaos.html>

- Section 5

IFJ. (2017). Hong Kong journalists denied entry to Macau after deadly storm. International Federation of Journalists. Retrieved from <http://www.ifj.org/nc/fr/news-single-view/backpid/1/article/hong-kong>

- Section 6

MDT. (2018). LIAISON OFFICE SUGGESTED CANCELLATION OF WRITERS VISIT, FESTIVAL DIRECTOR SAYS. Macau Daily Times. Retrieved from <https://macaudailytimes.com.mo/liaison-office-suggested-cancelation-of-writers-visit-festival-director-says.html>

- **Annex III - Supplementary information on privacy and surveillance in Macau**

- Section 1

Chao. (2018). Comment on the Proposed Cyber-security Legislation in Macau. Jason Chao's Depository. Retrieved from <https://depository.jasontc.net/comment-on-the-proposed-cyber-security-legislation-in-macau-43bcdb21eae8>

- Section 2

Chao. (2016). Review of the 2014 Civil Referendum on Chief Executive Election of Macau. Jason Chao's Depository. Retrieved from <https://depository.jasontc.net/review-of-the-2014-civil-referendum-on-chief-executive-election-of-macau-93709e75a6ce>

- **Annex IV - Supplementary information on gender recognition in Macau**

- Section 1

Rainbow of Macau. (2015). Update on the Avery Case – First-ever Application for Changing Gender Marker in Macau. Retrieved from <https://rainbow.mo/?p=277&lang=en>

- Section 2

Silva, A.S. (2015). Ausência de nome feminino no BIR impede tratamentos na saúde. Hoje Macau. Retrieved from <https://hojemacau.com.mo/2015/06/20/caso-bella-ausencia-de-nome-feminino-no-bir-impede-tratamentos-na-saude/>

- Section 3

GSAJ. (2015). 18a Sessão Plenária do Conselho Consultivo da Reforma Jurídica. Gabinete da Secretária para a Administração e Justiça. Retrieved from <https://www.gsaj.gov.mo/pt/news/236>

- **Annex V - Supplementary information on domestic violence legislation in Macau**

- Section 1

Rainbow of Macau. (2016). Rainbow of Macau's Response to Enactment of Discriminatory Domestic Violence Law. Rainbow of Macau. Retrieved from <https://depository.jasontc.net/rainbow-of-macaus-response-to-enactment-of-discriminatory-domestic-violence-law-64fec28225e4>

- Section 2

MDT. (2016). ASSOCIATION SAYS SAME-SEX COUPLES EXCLUDED FROM DOMESTIC VIOLENCE BILL. Macau Daily Times. Retrieved from <https://macaudailytimes.com.mo/association-says-sex-couples-excluded-domestic-violence-bill.html>