Civil Society Report on

**Depriving Persons in Same-sex Relationship of Equal Protection in Domestic Violence Legislation of Macau, China**

submitted by the Rainbow of Macau

to the **UN Committee against Torture** at its **56th Session**

in relation to **Article 2** of the Convention against Torture

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**Summary**

At the moment of submitting this report, the Prevention and Correction of Domestic Violence Bill is being deliberated at the committee stage in the Legislative Assembly of Macau.

The Government of the Macau SAR[[1]](#footnote-1) of the PRC[[2]](#footnote-2) (hereinafter referred to as “the Government” for the sake of simplicity) acknowledges that the present Penal Code[[3]](#footnote-3) has failed to provide adequate protection to victims of domestic violence.

In 2011, the Government launched a public consultation on a law proposal[[4]](#footnote-4) against domestic violence. In the first version of the bill introduced by the Government, a reference to cohabitants of the same-sex was included in the definition of “family members”. However, in November 2012, the Government announced that “same-sex cohabitant” would be removed from scope of the domestic violence bill.

Following the decision to drop the protection of same-sex cohabitants, the Rainbow of Macau[[5]](#footnote-5) repeatedly petitioned the Government to restore “same-sex cohabitant” in the law proposal but to no avail. The Government claimed that listing same-sex cohabitants as family members would be inconsistent with the legal system of Macau.

In January 2015, the Government presented to the legislature the second version of domestic violence bill without a reference to same-sex couples. On 13 January, 2015, the legislature approved the general principles of the bill and moved it to the committee stage.

Rainbow of Macau requested in writing a meeting with the standing committee assigned to deliberate on the details of the bill. Not only did the Chair of the committee turn down the meeting request but also members of the committee have shown a lack of interest in the issue of the absence of protection of same-sex couples under the bill.

The urge by UN entities for actions to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals against violence and discrimination may have not been taken seriously by the Government.

**Rainbow of Macau requests the Committee against Torture to ask the Government to ensure the same level of legal protection against domestic violence to be made available to all persons in an intimate relationship irrespective of sexual orientation.**

**Background**

In 2011, the Social Affairs Bureau (IAS) of the Government launched a consultation on its proposed “Combating Domestic Violence Law”[[6]](#footnote-6). The Government defined relationships between perpetrators (“the agent”) and victims of domestic violence in the initial version of the bill as follows:

(translation from the Portuguese text[[7]](#footnote-7))

(1) The ascendants or descendants, e.g., parents, children, grandparents and grandchildren, etc.;

(2) The spouse or former spouse and their ancestors and descendants, who cohabit;

(3) The person with whom the agent maintains or has maintained a relationship analogous to that of spouses, and their ancestors and descendants, who cohabit;

(4) **A person of the same sex with whom the agent maintains or has maintained an intimate relationship**, and their ancestors and descendants, who cohabit;

(5) The person with whom the agent has common children, and (6) The person with diminished capacity by reason of age, disability, illness, pregnancy or economic dependence, which cohabits with the agent.

In late November 2012, the IAS published a concluding report on the public consultation. In the report, it was announced that the “same-sex cohabitant” element in the bill would be removed because of "complex issues involving traditional culture, morality, religions and values” and “a lack of social consensus on same-sex couples being seen as family members". The IAS mentioned that 12 suggestions had been received during the consultation period. However, the content of the “12 suggestions” has not been made available to the public.

Macau LGBT Rights Concern Group[[8]](#footnote-8) was the first group to openly question the Government’s withdrawal of protection and to advocate the restoration of the paragraph on same-sex cohabitant in the bill. Later, Rainbow of Macau[[9]](#footnote-9) argued that “the lack of social consensus” might not be an excuse to circumvent “the controversy” as the Government has obligation under international law to eliminate discrimination on sexual orientation ground in light of resolution A/HRC/17/L.9/Rev.1 adopted by the UN General Assembly.

In good faith, Rainbow of Macau assumed that the Government would take up a role in combating prejudice. Rather, to further justify the decision of removal, the Government gathered some new technical-legal arguments against the inclusion of same-sex relationship. The IAS claimed that a piece of legislation considering same-sex couples as “family members” would be “inconsistent with the legal system of Macau” because there was no legal recognition of same-sex marriage in Macau.

Rainbow of Macau refuted the Government’s new arguments by pointing out the existing domestic violence laws with same-sex relationship in scope in Hong Kong and Taiwan where cultures were very close to Macau’s one and same-sex marriage was not yet legalised.

It was very regrettable that the Government stayed with the “consistency with legal system” argument despite a year-long dialogue between activists of Rainbow of Macau and the Government officials.

Given the reality of stigmatisation, persons in a same-sex relationship are known to be vulnerable to a form of domestic violence in which one party may easily coerce another party (victim) by threatening to reveal[[10]](#footnote-10) the victim’s sexual orientation to the victim’s family or employer. Victims may not report the case to the police in fear of further exposing his / her sexual orientation. Without the measures promised in the domestic violence bill such as confidentiality and mandatory intervention of Government social workers, same-sex couples will remain vulnerable to this form of coercion.

Rainbow of Macau has informed the Government of the joint statement[[11]](#footnote-11) published by twelve UN agencies in September 2015 calling for an end to violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children, and for actions to protect them against abuses. The joint statement resonates with the demand for the inclusion of same-sex relationship in the scope of domestic violence legislation.

“[E]nding marginalization and exclusion of LGBT people is a human rights priority – and a development imperative,” UN Secretary-General Ban Ki-moon stressed in a speech[[12]](#footnote-12) delivered on 29 September 2015.

Rainbow of Macau worries that the Government’s withdrawal of protection of persons in same-sex relationship against domestic violence will inevitably send a wrong message to the communities that exclusion of LGBTI people is justifiable.

**The Issue**

In January 2015, the government presented the Prevention and Correction of Domestic Violence Bill[[13]](#footnote-13) to the Legislative Assembly. The new definition of “family members” was stated as:

(translation from the Portuguese text[[14]](#footnote-14) of the bill)

spouse or former spouse of the agent, their parents or relatives in the direct line, siblings, adoptive parents or adopted children of the agent or spouse own, person with whom the agent has a guardianship relationship, **person with whom the agent living in a similar situation to that of spouses** and persons of diminished capacity cohabiting with the agent and who are under their care or protection due to age, illness, pregnancy or physical or mental disability.

The clause underlined above refers to unmarried heterosexual couples. The way it was put is almost identical to how de-facto marriage is defined[[15]](#footnote-15) in the Civil Code of Macau. Although the clause appears gender-neutral, the Government has clarified that the term “spouses”[[16]](#footnote-16) as in the clause is a reference to the definition of marriage in the Civil Code and is not applicable to same-sex relationship. In other words, the new definition was expanded to include opposite-sex couples regardless of marital status while same-sex couples remain excluded.

The Government’s decision to deprive same-sex couples[[17]](#footnote-17) of the same level of legal protection that their heterosexual counterparts will be entitled to under the domestic violence bill constitutes a *de facto* discrimination.

At the time of finalising this report, the domestic violence bill is being discussed article-by-article by the First Standing Committee[[18]](#footnote-18) (FSC) of the Legislative Assembly. Rainbow of Macau requested a private meeting with the FSC in hope to explain to its members in person the compelling reasons behind the demand for restoring the reference to same-sex relationship in the scope of domestic violence legislation. Rainbow of Macau was deeply disappointed at the request being turned down by the Chairwoman of the FSC. She said that the FSC had learnt Rainbow of Macau’s opinion on same-sex relationship from written communication.

**Conclusion and Recommendation**

Although the Government has declared the policy of “zero tolerance to domestic violence” and has claimed to respect LGBTI people, the denial of equal protection against domestic violence suggests the otherwise.

The Government may have foreseen an objection from some sectors of the society to the inclusion of same-sex relationship in the proposed domestic violence law. The Government’s insistence on the withdrawal of same-sex relationship from the bill suggests a lack of genuine interest in fulfilling its obligation under the Convention against Torture by taking all effective measures to prevent acts of torture.

Rainbow of Macau recommends the Committee against Torture to:

1. question the government of Macau, China the decision to knowingly deprive same-sex unmarried couples of the same level of legal protection which opposite-sex unmarried couples will be entitled to; and
2. urge the government of Macau, China to take all necessary actions, *inter alia*, revising the law proposal and informing members of the legislature and the public of the obligation under international law, to ensure that same-sex couples shall be entitled to effective and equal protection once the proposed “Prevention and Correction of Domestic Violence Law” comes into force.

- End -

1. “Special Administrative Region” in full [↑](#footnote-ref-1)
2. “People’s Republic of China” in full [↑](#footnote-ref-2)
3. may also be cited as “Criminal Code” in other sources [↑](#footnote-ref-3)
4. interchangeably referred to as “bill” in this report [↑](#footnote-ref-4)
5. formerly known as “Macau LGBT Rights Concern Group” [↑](#footnote-ref-5)
6. later renamed to “Prevention and Correction of Domestic Violence Law” [↑](#footnote-ref-6)
7. 1) A ascendente ou descendente; 2) Ao cônjuge ou ex-cônjuge e respectivos ascendentes e descendentes, com quem coabitem; 3) A pessoa com quem o agente mantenha ou tenha mantido uma relação análoga à dos cônjuges, e respectivos ascendentes e descendentes, com quem coabitem; 4) **A pessoa do mesmo sexo com quem o agente mantenha ou tenha mantido uma relação íntima**, e respectivos ascendentes e descendentes, com quem coabitem; 5) Ao progenitor de descendente comum em 1.º grau; 6) A pessoa com capacidade diminuída, em razão da idade, deficiência, doença, gravidez ou dependência económica, que com o agente coabite; [↑](#footnote-ref-7)
8. the first ever advocacy group for LGBT community in Macau [↑](#footnote-ref-8)
9. the successor to “Macau LGBT Rights Concern Group” [↑](#footnote-ref-9)
10. an act commonly referred to as “outing” [↑](#footnote-ref-10)
11. <http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF> [↑](#footnote-ref-11)
12. <http://www.un.org/sg/statements/index.asp?nid=9064> [↑](#footnote-ref-12)
13. Full text of the bill in Portuguese <http://www.al.gov.mo/proposta/vio-domestica/proposta.pdf> [↑](#footnote-ref-13)
14. The definition of “Family Members” is stated in paragraph 2 of Article 2 in the Portuguese text as “cônjuge ou ex-cônjuge do agente, seus parentes ou afins na linha recta, irmãos, pais adoptivos ou filhos adoptivos do próprio agente ou do cônjuge, pessoa com quem o agente tenha uma relação de tutela, **pessoa com quem o agente viva em situação análoga à dos cônjuges**, e pessoas de capacidade diminuída que coabitam com o agente e que se encontram sob seu cuidado ou protecção por razões de idade, doença, gravidez ou deficiência física ou psíquica.” [↑](#footnote-ref-14)
15. Articles 1471 - 1472 of Civil Code define de-facto marriage as relationship between two persons living voluntarily in conditions similar to those of spouses; under the Domestic Violence Bill, persons living in conditions similar to those of (heterosexual) spouse regardless of years of cohabitation are considered as “family members” thus are under protection [↑](#footnote-ref-15)
16. “cônjuges” in Portuguese [↑](#footnote-ref-16)
17. mostly unmarried or their marriage not recognised in Macau [↑](#footnote-ref-17)
18. “1ª Comissão Permanente” in Portuguese [↑](#footnote-ref-18)