

Submission
of the **Macau Research Group**
to the UN Universal Periodic Review of **China**
in relation to the **Macau** Special Administrative Region
in the 4th Cycle

July 2023

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Proposed Excessive Regulation of Trade Unions

1. The Executive Council of Macau Special Administrative Region (SAR) presented a draft Trade Union Law to the Legislative Assembly in December 2022.¹ At the time of writing, the draft Trade Union Law passed its first reading and is under review by a committee of the legislature. The following analysis of the proposed Trade Union Law is based on the text² 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.

¹ 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

² 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.³
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

³ " 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 accessed 16 January 2023.

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. This submission recommends that UN Member States urge 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.

Vulnerability of Migrant Workers from Exploitation

13. 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

14. 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 2022.⁴

Agency fees paid for by migrant workers

15. 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”.
16. 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”.⁵ 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 some of their fellow domestic workers had to borrow money from others to cover the agency fees before securing a job.

⁴ 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

⁵ CCPR/C/CHN-MAC/RQ/2, para 30.

Recommendations

17. This submission recommends that UN Member States urge 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.

Amendment to the national security law

18. In May 2023, Macau SAR passed Law no. 8/2023 amending Law no.2/2009 Law related to the Defence of State Security (LDSS). The Macau observes that the amendment brought the national security legislation of Macau SAR in alignment with the Hong Kong SAR National Security Law.
19. The amendment the broaden the definitions of secession and subversion by removing the requirement of “violent acts”.⁶ Effectively, speeches asking for reforming the one-party system in China and promoting the right to self-determination in China are now outlawed in Macau SAR. Offenders are punishable by imprisonment for 10 to 25 years.
20. According to Principle 7 in the Johannesburg Principles, peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subject to any restrictions or penalties.
21. The amendment removed the assumption of bail for suspects accused of having committed a crime defined in the LDSS.⁷
22. The amendment established extraterritorial jurisdiction over “any person outside of the Macau SAR” having committed the crimes defined in the LDSS.⁸
23. The Macau Research Group observes that the amendment has created a chilling effect amongst journalists and civil society actors. A local journalist described the current political climate as the “ice age” for journalism in Macau.
24. The Macau Research Group observes that a number of journalists, academics and civil society actors who emigrated from Macau still choose to exercise self-censorship in order to secure safe and untroubled visits to Macau in the future.

⁶ Law no.2/2009 amended by Law no. 8/2023, art. 2.

⁷ Ibid., art. 12-C.

⁸ Ibid., art. 3(3).

Recommendations

25. This submission recommends that UN Member States urge Macau, China to restore the Law no.2/2009 LDSS to its previous state by repelling Law no. 8/2023.

Proposed amendment to the election laws

26. In June 2023, in the name of “ensuring ‘patriots administering Macau’”, the Macau SAR Government published a proposal⁹ to tighten the restriction on standing in the Legislative Assembly Elections and Chief Executive Elections.
27. The proposed changes to the electoral laws for the Legislative Assembly and Chief Executive are as follows:
 - a. The Committee for Safeguarding National Security (CSNS) will be tasked with vetting the candidates in the Legislative Assembly Elections and Chief Executive Elections. The CSNS will determine whether or not an individual “upholds the Basic Law and bears allegiance to the Macau SAR”. The CSNS’ decisions on the eligibility of candidates will be final and will not be subject to judicial review.
 - b. Calling on voters to abstain, cast a blank vote or cast an invalid vote in an election will be made a criminal offence.
28. The Macau Research Group notes that pro-democracy candidates who were disqualified from the 2021 Legislative Assembly Election complained that the Macau SAR Government had compiled surveillance files filled with inaccurate and biased information on them.¹⁰ Yet, the Court of Final Appeal rejected the candidates’ appeal.¹¹
29. The Macau Research Group observes that the proposed changes will effectively establish a “black box” vetting mechanism not subject to external oversight.
30. The Macau Research Group observes that the proposed changes will effectively establish a “black box” vetting mechanism not subject to any external oversight.
31. The Macau Research Group observes that the proposed criminalisation of calls for not voting or blank/invalid votes will stifle criticism of the legitimacy of processes of the Legislative Assembly and Chief Executive elections.

⁹ Macau SAR Government, ‘修改《行政長官選舉法》及《澳門特別行政區立法會選舉法》’ (12 June 2022), <https://www.gov.mo/zh-hant/policy-consultation/992755/> accessed 18 July 2023

¹⁰ Hong Kong Free Press, ‘Macau politician says he fears further action after democrats barred from legislative election’ (3 August 2021), <https://hongkongfp.com/2021/08/03/macau-politician-says-he-fears-further-action-after-democrats-bared-from-legislative-election/>

¹¹ Ibid.

Recommendations

32. This submission recommends that UN Member States urge Macau, China to refrain from introducing the proposed changes to the election laws for the Legislative Assembly and Chief Executive.