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U.S. Department of State

Macau Country Report on Human Rights Practices for 1996

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1997.

MACAU

Macau, a 13 square mile enclave on the south China coast, is recognized by both China and Portugal as Chinese territory under Portuguese administration. The "Organic Statute" of 1976, which serves as the constitution, grants it considerable administrative, financial, and legislative autonomy. Both the Governor and the Legislative Assembly exercise legislative power. The Governor, appointed by the Portuguese President, holds extensive powers under the Organic Statute.

Under the 1987 Sino-Portuguese joint declaration, Macau will become a Special Administration Region (SAR) of China on December 20, 1999, and operate under the principle of "one country, two systems," to remain unchanged for 50 years. The future constitution, a joint Sino-Portuguese document called the "Basic Law," was promulgated on March 31, 1993.

Portuguese metropolitan law serves as the basis for the legal system, which features a judiciary and jury trials. The police force maintains public order and is under civilian control.

The market-based economy is fueled by legalized gambling, which generates approximately one-half of government revenue. A thriving tourist industry and the export of textiles and other light industrial products also contribute to economic growth. An international airport opened in December 1995 and is expected to promote economic growth. The economy provides a high standard of living for its citizens.

Although citizens derive a wide range of rights and freedoms from Macau's status as a Portuguese

territory, they have limited ability to change their government. Voters directly elect only one-third of the legislators, and the territory's future path has been set by Lisbon and Beijing. Legislation, effective in November 1995 provided greater equality in the work force for women. Although China, through the Basic Law, agreed to continue the application of international covenants on civil and political rights and on economic, social, and cultural rights after 1999, human rights activists remain concerned that China made no obligation to submit regular reports in these areas. There are credible reports that media self-censorship continues on issues considered to be sensitive to China.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom from:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Such abuses are prohibited by law, and the authorities respect this in practice. Prison conditions meet minimum international standards, and the Government permits visits by human rights monitors. Human rights groups have expressed concern that there has been no agreement to date within the Sino-Portuguese Joint Liaison Group on the application to Macau of the Covenant against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although both Portugal and China have ratified the covenant.

d. Arbitrary Arrest, Detention, or Exile

Legal prohibitions against arbitrary arrest exist, and the authorities respect them in practice. The examining judge, who conducts a pretrial inquiry in criminal cases, has a wide range of powers to collect evidence, order or dismiss indictments, validate and maintain the detention of suspects, and determine whether to release accused persons. Police must present persons remanded in custody to an examining judge within 48 hours of detention. The accused's counsel may examine the evidence. If the judge is not convinced that the evidence is adequate, he may dismiss the accused.

A 1995 Macau Supreme Court ruling upholding a Portuguese Constitutional Court decision on the unconstitutionality of extraditing individuals to countries that practice the death penalty, clarified policy towards people alleged to have committed commercial or criminal violations in China. This ruling followed international criticism of the involuntary transfer to Chinese authorities of an Australian citizen of Chinese ancestry in 1994. The authorities investigated this matter and claimed to have found no evidence of police misconduct. Human rights activists assert that in numerous cases in the past, the police had "transferred" detainees to China, despite the absence of a Sino-Portuguese extradition treaty. The authorities have suggested that three persons affected by the 1995 court ruling could be tried in Macau for the crimes they allegedly committed in China, using evidence and witnesses furnished by China. Chinese officials on the Sino-Portuguese Joint Liaison Group, however, criticized the decision by the Macau Supreme Court, arguing that because Macau is considered to be a part of China, no formal extradition arrangements are necessary for the transfer of prisoners wanted by China.

Forced exile is not practiced.

e. Denial of Fair Public Trial

Changes to the judicial system in 1993 designed to render the system autonomous from the Portuguese system--required to bring the system into line with the structure for the judicial system specified in the Sino-Portuguese Basic Law--raised some concerns among human rights observers and journalists. Prior to the reorganization, the judiciary had only subordinate (first instance) courts located in the territory. In the first stage of the reforms, new courts, most notably a Supreme Court of Justice, were established to allow appeals to be heard locally.

The Superior Court consists of six magistrates broken down into two panels, one of which hears only administrative, fiscal, and customs duties cases; the other oversees all other cases. An additional judge serves as President of the Court. Cases before the Supreme Court are heard initially by the relevant panel of three judges. In instances where a judgment has been rendered by such a panel and subsequently appealed, the case is then heard by all six judges, with the President voting only in case of a tie. This structure results in a situation where three of the individuals hearing an appeal have already rendered an opinion in the initial judgment, which critics charge calls into question the objectivity of the subsequent ruling. Until full autonomy of the Macau courts is achieved, however, some special appeal cases may still be either presented directly to courts in Portugal or sent to them through a local court.

Journalists and human rights activists have also voiced concerns that, as a result of the 1993 reforms, judges and public prosecutors are now appointed by the Governor based on proposals made by two administrative boards of the judiciary. The Supreme Council of Justice, recommends judges for appointment to the Macau Supreme Court as well as the local attorney general, and the Judiciary Council of Macau, which recommends judges for the common courts and delegates to the public prosecutor's office. In particular, critics charge that the strong ties members of the latter group have to the executive branch and to China raise questions about the independence of the judiciary, particularly as judges and public prosecutors rely on the Judiciary Council to win renewal of their 3-year assignments. The 3-year appointment of judges differs from the practice in Portugal, where appointments are generally for life.

The law provides for a fair trial, and this is generally observed. The Constitution provides for the right access to law and the courts, and the authorities respect this right in practice.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Laws provide for the inviolability of the home and of communication, the right of ownership of private property and enterprises, and the freedom to marry and raise a family. The Government respects these rights in practice.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for these rights, and the Government respects them in practice. However, some journalists and human rights activists believe that the practice of media self-censorship is increasing as reversion approaches. Critics charge that the leading newspapers are pro-China publications that do not

give equal coverage to liberal and pro-democracy voices. Chinese and Portuguese journalists and legislators have expressed concern over a draft law proposed by the Government in June to create a press council to monitor and advise the Government on press issues. Critics charge that the proposed makeup of the press council--a judge from Macau's Judiciary Council, three legislators from the Legislative Assembly, two persons appointed by the Governor, and three individuals chosen by the other members of the council--excludes press professionals, and the closed meetings of the council could lead to an erosion of press freedoms.

b. Freedom of Peaceful Assembly and Association

The law provides for these rights, and the Government respects them in practice.

c. Freedom of Religion

Portuguese law as extended to Macau provides for freedom of religion, and the Government respects this right in practice. Human rights groups have expressed concern, however, that the Legislative Assembly thus far has failed to entrench these rights in local law.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government respects them in practice.

The Government has assisted in the resettlement of Vietnamese boat people. At year's end, there were only six Vietnamese refugees living in Macau. All other boat people have emigrated to host countries.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens have a limited ability to change their government. The 23-member Legislative Assembly is composed of 8 members elected in universal direct elections; 8 indirectly elected by local community interests; and 7 appointed by the Governor. The Consultative Council, an advisory group to the Governor composed of elected and appointed members, also provides some measure of popular representation. By tradition the Government also consults informally on a regular basis with local business and cultural leaders. Although the Legislative Assembly can enact laws on all matters except those reserved for bodies in Portugal or the Governor, in reality the Governor initiates the vast majority of legislation, either directly through "decree-laws" or in the form of "proposals of law" that require that he receive the permission of the Legislative Assembly prior to issuing legislation. While the Legislative Assembly has the legal power to refuse to ratify laws issued by the Governor, in practice this is seldom done.

Elections were held on September 22 for the Legislative Assembly. There was a large voter turnout with nearly 75,000 residents, 64 percent of the electorate, going to the polls. The elections were generally fair and open, although there were some charges of vote buying and other irregularities.

Although women traditionally have played a minor role in local political life, they increasingly are being found in senior positions throughout the administration. The Legislative Assembly currently has three female members including the President of the Assembly, which is the second most senior position. Other high-level positions in the ministries, including education and statistics, are filled by women.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Human rights groups operate without government restriction, investigating and publishing findings on human rights cases.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

While the Constitution does not explicitly proscribe discrimination based on race, sex, religion, disability, language, or social status, it does incorporate the principle of nondiscrimination. Separate laws provide for many of these rights. Access to education, for example, is stipulated for all residents regardless of race, religious belief, or political or ideological convictions under the law which establishes the general framework for the educational system.

Women

Violence against women is not common. For cases that are reported, the authorities enforce criminal statutes prohibiting domestic violence and prosecute violators. Police and doctors report abuses to the Social Welfare Department, which investigates them. If hospital treatment is required, a medical social worker counsels the victim and informs her about social welfare services. Until their complaints are resolved, battered women may be placed in public housing, but no facilities are reserved expressly for them.

Women are becoming more active and visible in business and government, and some enjoy considerable influence and responsibility in these areas. Equal opportunity legislation, enacted in 1995, applicable to all public and private organizations, mandates that women receive equal pay for equal work, states that discrimination based on sex or physical ability is not permitted, and establishes penalties for employers found to be in violation of these guidelines.

Children

The Government has not promulgated any statutes specifically to protect the rights of children, relying on the general framework of civil and political rights legislation to protect all citizens. However, the Government seeks to protect the health and well-being of children, who represent a growing share of the population. The Social Welfare Institute is charged with implementing programs designed to provide services for children. A government-sponsored panel, set up to study the provision of social services to Chinese families, recommended in 1995 that greater effort be expended to address the need for additional educational and other services for children.

Child abuse and exploitation are not widespread problems.

People with Disabilities

The extent to which physically disabled persons experience discrimination in employment, education, and the provision of state services is not known. The Government gives little attention to the subject, and there is little funding for special programs aimed at helping the physically and mentally disabled gain better access to employment, education, and public facilities. The Government has not mandated accessibility for the disabled, legislatively or otherwise.

National/Racial/Ethnic Minorities

Although the governmental and legal systems place a premium on knowledge of the Portuguese language, which is spoken by less than 4 percent of the population, the Chinese language received

official status in 1993, and the use of Chinese in the civil service is growing. By the end of May, local Chinese accounted for only one half of the 951 senior government posts and none of the top 30 positions.

There is considerable public pressure for the Government to speed up the process of making the civil service more representative of the population; however, the pace of adding native-born Chinese speakers to the senior civil service has been very slow.

Section 6 Worker Rights

a. The Right of Association

The Portuguese Constitution recognizes the right and freedom of all workers to form and join trade unions and of private sector unions to strike, and these rights are extended to Macau. The Government neither impedes the formation of trade unions nor discriminates against union members. Human rights groups are concerned that no similar rights and protections have been incorporated into local law.

People's Republic of China interests heavily influence local trade union activities, including the selection of union leadership, and stress the importance of stability and minimum disruption of the work force. Nearly all of the private sector union members belong to a pro-China labor confederation. Many local observers claim that this organization is more interested in furthering the Chinese political agenda than in addressing trade union issues such as wages, benefits, and working conditions. A few private sector unions and two of the four public sector unions are outside Chinese control. Although the Portuguese Constitution provides workers with the right to strike, labor leaders complain that there is no effective protection from retribution should they exercise this right.

Unions may freely form federations and affiliate with international bodies. Three civil services unions are affiliated with the major non-Communist Portuguese union confederation.

b. The Right to Organize and Bargain Collectively

Unions tend to resemble local traditional neighborhood associations, promoting social and cultural activities rather than issues relating to the workplace. Local customs, moreover, normally favor employment without the benefit of written labor contracts except in the case of labor from China. Unions traditionally have not attempted to engage in collective bargaining. Portuguese laws protecting collective bargaining apply, and the Government does not impede or discourage such activity. No rules apply to the setting of wages.

A significant amount of the total work force (approximately 16 percent) is composed of laborers from China and other countries who fill both blue- and white-collar positions. These workers often work for less than half the wages paid to a Macau citizen performing the same job, live in controlled dormitories, work 10 to 12 hours a day, and owe large sums of money to the labor-importing company for the purchase of their job. Labor interests claim that the high percentage of imported labor erodes the bargaining power of local residents to improve working conditions and increase wages.

The law prohibits antiunion discrimination, and there were no complaints of it.

There are no export processing zones; Macau is a free port.

c. Prohibition of Forced or Compulsory Labor

Compulsory labor is illegal and does not exist.

d. Minimum Age for Employment of Children

The law forbids minors under the age of 16 to work, except in businesses operated by their families. The Labor Department enforces this law and refers offending employers to the judicial authorities for prosecution. The Labor Department claims that the incidence of child labor has declined radically since effective enforcement began in 1985. School attendance is not compulsory.

e. Acceptable Conditions of Work

No minimum which exists for local or foreign workers. In the absence of any statutory minimum wage or publicly administered social security programs, some large companies have provided private welfare and security packages.

Labor legislation provides for a 48-hour workweek, an 8-hour workday, overtime, annual leave, medical and maternity care, and employee compensation insurance. Although the law provides a 24-hour rest period for every 7 days of work, worker representatives report that workers frequently agree to work overtime to compensate for low wages. The Department of Labor provides assistance and legal advice to workers on request, but government enforcement of labor laws is lax because of limited resources.

The Department of Labor enforces occupational safety and health. Failure to correct infractions leads to government prosecution. Although a recent law states that employers should provide safe working conditions, no guarantee exists to protect employees' right to continued employment if they refuse to work under dangerous conditions.

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