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U.S. Department of State

Macau Country Report on Human Rights Practices for 1997

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1998.

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 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, the "Basic Law," was promulgated by China's National People's Congress on March 31, 1993.

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

The market-based economy is fueled by textile and garment exports, along with tourism and gambling. A depressed real estate market and stagnant exports have limited economic growth in recent years, a trend that continued in 1997. Despite the economic downturn, most citizens still enjoy a high standard of living.

Although the people of Macau enjoy a wide range of rights and freedoms as residents of a Portuguese-

administered 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 the Governments of Portugal and China. 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 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 detained 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 detainee.

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 conformity with the structure for the judicial system specified in the 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 Superior Court of Justice, were established to appeals to be heard locally.

The Superior Court consists of six magistrates divided 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 Superior Court are heard initially by the relevant panel of three judges. In instances in which 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 in which three of the individuals hearing an appeal have already rendered an opinion in the initial judgment. Critics charge that this calls into question the objectivity of the subsequent ruling. Until full autonomy of the 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 Superior 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. The Criminal Procedure Code expressly provides for, among other things, the accused's right to be present during proceedings, to be heard by a judge, and to choose an attorney or request that one be provided.

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 attention to liberal and prodemocracy voices. Local journalists continue to oppose a government proposal to establish a press council to monitor the press and advise the Government of press issues.

b. Freedom of Peaceful Assembly and Association

The law provides for these rights, and the Government respects them in practice. Under local law, individuals and groups intending to hold peaceful meetings or demonstrations in public places are required to notify the President of the relevant municipal council in writing at least 3 days but no more than 2 weeks in advance of the event; no prior authorization is necessary for the event to take place, however.

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 establish 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. Only seven Vietnamese refugees remain 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 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 bills that require that he receive the permission of the Legislative Assembly prior to issuing legislation. In 1996 The Governor issued 71 percent of all legislation and the Legislative Assembly generated 29 percent; a similar breakdown is likely for the 1997 legislative year. While the Legislative Assembly has the legal power to refuse to ratify laws issued by the Governor, in practice this is seldom done.

Although women traditionally have played a minor role in local political life, they increasingly hold senior positions throughout the administration. The Legislative Assembly currently has three female members including the President of the Assembly, the second most senior position. According to Government statistics, women now hold 38 percent of senior government positions.

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 that 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 provided public housing, but no facilities are reserved expressly for them. The United Nations Human Rights Committee, in responding to the Government's submission on the application of the International Covenant on Civil and Political Rights in April, expressed some concern over trafficking in women for the purposes of prostitution in Macau. The Government responded that it had taken measures to end such exploitation of women by organized crime.

Women are becoming more active and visible in business and government, and some enjoy considerable influence and responsibility in these areas. The Government estimates that women account for 43 percent of the work force. 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 who violate 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. School attendance is not compulsory; however, social services officials report that the vast majority of residents' minor children attend school. Basic education is provided in government-run schools and subsidized private schools, and covers the preprimary year, primary education, and general secondary school education. The Education Department provides assistance to families of those children who cannot pay school fees. The children of illegal immigrants are excluded from the educational system (see Section 6.d.).

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 fully known. In the past, the Government provided little funding for special programs aimed at helping the physically and mentally disabled gain better access to employment, education, and public facilities, and has not mandated accessibility for the disabled, legislatively or otherwise. The Government's lack of attention to this problem was highlighted in an April report of the U.N. Human Rights Committee in response to the Government's submission on the application of the International Covenant on Civil and Political Rights in Macau. According to the Government, these shortcomings are being addressed through newly implemented programs. The Social Welfare Department provides funds to private organizations to help disabled persons. Since 1992 it has instituted four day care centers for children and adults with mental disabilities, providing buildings and technical support while the private groups administer the facilities. A residential halfway house for mentally ill patients after release from institutionalization has also been established.

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. According to Government statistics, by the end of 1996, 64 percent of senior government positions were filled by individuals born in Macau or in the People's Republic of China. Considerable public pressure remains on the Government to speed up the process of making the civil service more representative of the population.

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. The Government, for its part, argues that provisions in the labor law requiring an employer to have "justified cause" to dismiss an employee protects striking employees from retaliation.

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

b. The Right to Organize and Bargain Collectively

Chinese 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 and the Philippines. Chinese 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.

Although the law prohibits antiunion discrimination, and it does not appear to be widespread, representatives from some civil service unions have raised concerns during the year over government practices that they feel disadvantage them.

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

c. Prohibition of Forced or Compulsory Labor

Compulsory labor is prohibited by law, and no cases were reported during the year. Children are covered under the existing legislation prohibiting forced or bonded labor, although they are not specified in the

legislation.

d. Status of Child Labor Practices and Minimum Age for Employment

Forced and bonded labor is prohibited by law; although child labor is not specified in the law, it is covered by the law's provisions and there were no reports of such practices (see Section 6.c.). The law prohibits minors under the age of 16 from working, although there is a provision stating that minors between the ages of 14 and 16 can be authorized to work on an "exceptional basis." The Labor Department enforces this law through periodic and targeted inspections, and refers offending employers to the judicial authorities for prosecution. The incidence of child labor has declined radically since effective enforcement began in 1985, and there are only a few cases reported each year. While local laws do not establish specific regulations governing the number of hours children can work, International Labor Organization conventions are applied.

e. Acceptable Conditions of Work

While local labor laws establish the general principle of fair wages--including the definition and calculation of wages--and mandate compliance with wage agreements, no legislated minimum wage exists. 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 activists charge that the absence of a government-backed social security fund leaves many workers vulnerable.

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.

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. The U.N. Human Rights Committee, in responding to the Government's submission on the application of the International Covenant on Civil and Political Rights, noted the lack of protective measures for working conditions and the absence of social security programs for nonresident workers as an area of concern. 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 Department of Labor enforces occupational safety and health. Failure to correct infractions can lead to government prosecution. Although the law includes a requirement that employers provide a safe working environment, no explicit provisions exist to protect employees' right to continued employment if they refuse to work under dangerous conditions.

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