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1999 Country Reports on Human Rights Practices

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MACAU

Macau, a 13 square mile enclave on the south China coast, was recognized by both China and Portugal as Chinese territory under Portuguese administration until year's end. Under the "Organic Statute" of 1976, which served as the Constitution, Macau had considerable administrative, financial, and legislative autonomy from Lisbon. The Governor, appointed by the Portuguese President, had extensive powers under the Organic Statute. Both the Governor and the Legislative Assembly exercised legislative power. Voters directly elected only one-third of the legislators; the rest were appointed or elected indirectly by interest groups. However, under the principle of "one country, two systems" specified in the 1987 Sino-Portuguese Joint Declaration, Macau became a Special Administrative Region (SAR) of China on December 20, 1999 ("the handover"). The Joint Declaration and Basic Law (the SAR's miniconstitution promulgated by China's National People's Congress (NPC) in March 1993) specify that Macau is to continue to enjoy substantial autonomy and that its economy and way of life are to remain unchanged for 50 years. The Macau SAR government is headed by a Chief Executive, chosen by a 200-member Selection Committee, which was chosen by the Preparatory Committee (60 Macau and 40 mainland representatives appointed by the NPC, and responsible for overseeing the transition). Since December 20, only the legislature has legislative power, but the Chief Executive has great influence over the legislature's activities. There are limits on the types of private member bills that may be tabled. Voters elect only 8 of Macau's 23 legislators in direct elections in geographical constituencies. Eight are elected by interest groups in functional constituencies. Seven are appointed (before December 20 by the Governor; after December 20 by the Chief Executive). On May 15, Edmund Ho Hei-wah was elected Chief Executive by the Selection Committee to take office after the handover. In September the Chief Executive-elect announced the appointment of six new legislators to serve from December 20 until the term of the current legislature expires in 2001, reappointing only one of the Governor's appointees. Portuguese metropolitan law serves as the basis for the legal system. A Joint Liaison Group, composed of representatives from Portugal and China, which served until December 31, was the mechanism for negotiating transition issues and implementing the Joint Declaration. After reversion, most of the laws

in force continued to apply (although the laws defining the structure of the judiciary are a major exception). The judiciary is independent.

The police force is under civilian control. An increase in organized crime-related violence has resulted in a public demand for more law and order. There were no Portuguese troops stationed in Macau. However, the Garrison Law (Macau SAR), passed by the NPC in June, provided for the establishment of a Chinese People's Liberation Army garrison in Macau after the handover. Senior Chinese and Macau SAR officials have said that the garrison has no responsibility for internal security.

The market-based economy is fueled by textile and garment exports, along with tourism and gambling. A depressed real estate market, stagnant exports, and a decline in tourism have limited economic growth in recent years, a trend that continued in 1999. Despite the economic downturn, most citizens still enjoy a high standard of living. Per capita gross domestic product is \$18,000.

The Government generally respects the human rights of its citizens; however, some problems remain, including the limited ability of citizens to change their government, limits on the legislature's ability to initiate legislation, occasional instances of police abuse, inadequate provision for the disabled, lack of legal protection for strikes and collective bargaining rights, and trafficking in women.

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 killings.

During the year, seven prisoners died in custody (see Section 1.c.).

b. Disappearance

There were no reports of politically motivated disappearances.

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

The law prohibits such abuses, and the authorities generally respect these provisions in practice. In 1998, the last year for which figures are available, the Procurator General's office investigated five allegations of police brutality. No details regarding the results of the investigations have been released.

Prison conditions meet minimum international standards, but in the last 5 years the prison population has doubled to 750 and facilities and personnel have failed to keep pace. During the year, seven prisoners died in custody, one as the result of illness, one as the result of suicide, and three as the result of injuries received during fights with other inmates. Two of the deaths in custody still were under investigation at year's end.

The Government permits prison visits by human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest, detention, and exile, and the authorities respect these provisions in practice. An examining judge, who conducts a pretrial inquiry in criminal cases, has a wide range of powers to collect evidence, order or dismiss indictments, 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. The law provides that cases must come to trial within 6 months of indictment. The average length of pretrial incarceration is 3 months.

e. Denial of Fair Public Trial

The judiciary is independent. The Basic Law specifically provides for the continuation of an independent judiciary after reversion; however, the prereversion laws that applied to the structure of the judiciary were some of the few that did not continue in effect after the handover. In addition the need to translate laws and judgments and a severe shortage of local bilingual lawyers (of the 100 lawyers in private practice, approximately 5 can read and write Chinese) and magistrates may hamper the continuation of the present system after reversion. The judiciary also is relatively inexperienced (a law school first opened in Macau in the early 1990's), and the lack of locally trained lawyers is a serious impediment to the preservation of an independent judiciary and the overall development of the legal system. After the handover, the Chief Executive is to appoint judges, acting on the recommendation of an " independent commission" (which he appoints) composed of local judges, lawyers and " eminent persons."

Until June the Superior Court was the highest court in Macau, with the Portuguese Supreme Court of Justice and Constitutional Court serving as courts of final appeal. The Superior Court consisted of six magistrates divided into two panels, one of which heard only administrative, fiscal, and customs duties cases; the other had responsibility for all other cases. An additional judge served as President of the Court. Cases before the Superior Court were heard initially by the relevant panel of three judges. When such a panel's ruling was appealed, all six judges heard the case, with the President voting only in case of a tie. This structure resulted in a situation in which three of the individuals hearing an appeal already had rendered an opinion in the initial judgment. Critics charged that this called into question the objectivity of the subsequent ruling. Beneath the Superior Court were the Courts of First Instance and the Court of Auditors.

In June Portugal unilaterally severed the Superior Court's links with the Portuguese courts, making it the Constitutional Court and court of final appeal for cases affecting Macau. To deal with an increased caseload, some of which was transferred from the Portuguese courts after the change, the number of judges on the Superior Court was increased. Until December 20, judges were appointed by the Governor upon the recommendation of the Supreme Council of Justice (for the Superior Court) and the Judiciary Council of Macau (for the common courts). Before the handover, local judges were appointed for life; expatriate judges were appointed under temporary contracts. A local law is yet to be passed determining the term of office for judges for the SAR. In October the Chief Executive-elect announced the names of three judges (two from Macau and one Portuguese) recommended by the commission, who constitute the SAR Court of Final Appeal. After the handover, the Court of Auditors was replaced by a Commissioner for Auditing.

The law provides for the right to a fair trial and the judiciary vigorously enforces this right. Trials are open to the public. The Criminal Procedure Code provides for the accused's right to be present during proceedings and to choose an attorney or request that one be provided at government expense. A 1997 law on combating organized crime provides that "certain procedural acts may be held without publicity" and that witness statements read in court are admissible as evidence. There are also additional restrictions on the granting of bail and suspended sentences in organized crime cases.

The judiciary provides citizens with a fair and efficient judicial process, although the average waiting period between the filing of a civil case and its scheduled hearing is 12 months. Laws issued between 1976 and 1991 have been translated into Chinese. Since 1991 all legislation has been issued simultaneously in Chinese and Portuguese. However, many administrative regulations have not yet been translated into Chinese.

In September the Chief Executive-elect announced his choice, approved by the Chinese State Council, for the posthandover Chief Procurator, who, on December 20, replaced the Chief Procurator appointed by the Governor. The Chief Procurator enjoys substantial autonomy from both the executive and the judiciary.

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 communications, the right of ownership of private property and enterprises, and the freedom to marry and raise a family, and 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 generally respects them in practice. Local law also protects citizens' right to petition the government and the legislature.

The print media include seven Chinese-language dailies, three Portuguese-language dailies, and a number of weeklies. There is one television station and one radio station, each with a Portuguese and a Cantonese-language channel. In addition Hong Kong and international newspapers are freely available. Although there is no government censorship or intimidation of the press, criminal gangs have sent threatening letters to newspapers warning of retaliation if they cover gang activities. A September 1998 gang bombing deliberately targeted journalists. The dominant newspapers have a pro-China orientation. Critics charge that they 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 on press issues. However, this was not a pressing issue during the year.

Article 23 of the Basic Law obliges the Macau SAR to enact laws that "forbid any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets." Human rights groups are concerned that these and other provisions of Article 23 may restrict fundamental rights and freedoms. They are particularly concerned

because the Penal Code adopted in 1995 does not specify sentences for such crimes, and a legal vacuum was created when an earlier Portuguese law dealing with crimes against state security became null and void on December 19.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly, and the Government respects this right 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; however, no prior authorization is necessary for the event to take place. Local law also provides criminal penalties for authorities who unlawfully impede or attempt to impede the right of assembly and for counterdemonstrators who interfere in meetings or demonstrations.

In the days immediately preceding the handover, the then government took steps to ensure that no demonstrations or security incidents would mar the final days of the colonial regime. On December 18, six foreign Falun Gong practitioners were denied entry on the grounds that they were organizing an illegal demonstration (see Section 2.d.). On December 19, 30 Falun Gong practitioners carrying signs and doing exercises in front of a hotel were rounded up and, after being questioned for several hours, returned to Hong Kong via ferry. A police official explained that the law on the right to assemble and demonstrate gives citizens that right, but not foreigners.

Article 23 of the Basic Law obliges the SAR to enact laws that prohibit foreign political organizations or bodies from conducting political activities in the Region.

The law provides for freedom of association, and the Government respects this right in practice. There is no law prohibiting political parties, but there are no genuine political parties. Both civic associations and candidates' committees may present candidates in the elections by direct or indirect suffrage (see Section 3). However, Article 23 of the Basic Law obliges the Macau SAR to enact laws that " prohibit foreign political organizations or bodies of the region from establishing ties with domestic political organizations or bodies." One international human rights nongovernmental organization expressed concern that 1997 legislation on combating organized crime could be used to curb freedom of association. However, that has not occurred.

c. Freedom of Religion

In July 1998, the Legislative Assembly passed the Freedom of Religion Ordinance, which provides for freedom of religion, and the Government respects this right in practice. The Ordinance, which remained in effect after the handover, also provides for privacy of religious belief, freedom of religious assembly, freedom to hold religious processions, and freedom of religious education. The Basic Law also provides for religious freedom.

The Religious Freedom Ordinance requires the registration of religious organizations. This is handled by the Identification Services Office. There have been no reports of discrimination in the registration process. Religious bodies can apply to use electronic media to preach. The ordinance also stipulates that religious groups may maintain and develop relations with religious groups abroad and provides for freedom of religious

education.

Senior officials have said that, in spite of the banning of Falun Gong in mainland China, the organization is legal and that followers will be allowed to practice without interference.

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. In December six foreign Falun Gong practitioners were denied entry on the grounds that they were organizing an illegal demonstration (see Section 2.b.).

The law includes provisions for handling refugees and asylees in accordance with the provisions of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. There were no reports of refugees being forced to return to a country where they feared persecution. The law makes no provision for first asylum.

The Government has assisted in the resettlement of Vietnamese who fled their country by boat. Only seven Vietnamese refugees remain in Macau. No Vietnamese refugees were repatriated in 1997 or 1998, the last period for which statistics were available. Macau returns an average of 444 illegal Chinese migrants to China each month.

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 before the handover, by the Chief Executive after). Elections are held every 4 years. Fourteen of the 16 elected members chose to serve through reversion until their current terms expire in 2001 (1 was selected Chief Executive). In a May by-election Chui Sai-cheong was elected unopposed to the seat vacated when Edmund Ho was elected Chief Executive. In September the 100-member Preparatory Committee responsible for transition arrangements determined that the same Selection Committee that chose the Chief Executive should choose a legislator to replace one who chose not to serve out his term after the handover. The new legislator took office on December 20. Only one of the seven legislators appointed by the Governor was reappointed by the Chief Executive to serve after the handover. The number of directly elected legislators is to increase gradually in subsequent elections. After 2009 the rules on the Assembly's composition may be altered by a two-thirds majority of the total membership, with the approval of the Chief Executive.

Although until December 20 the Legislative Assembly could enact laws on all matters except those reserved for bodies in Portugal or the Governor, in practice the Governor initiated the vast majority of legislation, either directly through "decree-laws" or through bills approved by the Legislative Assembly. Between January 1 and December 19, the Legislative Assembly passed approximately 20 percent of Macau's new laws. While the Legislative Assembly had the legal power to refuse to ratify laws issued by the Governor, in practice this seldom was done. After the handover, the Chief Executive does not have the power to issue decree legislation. However, Article 75 of the Basic Law stipulates that

legislators may not initiate legislation related to public expenditure, Macau's political structure, or the operation of government. Bills relating to government policies must receive the written approval of the Chief Executive before they are submitted.

The Consultative Council, an advisory group to the Governor composed of indirectly elected and appointed members, also provided some measure of popular representation. After the handover, a 10-member Executive Council, appointed by the Chief Executive, fulfills this role. Municipal Assemblies are elected by direct, universal, secret ballot. These bodies are expected to continue to function; the Basic Law stipulates that the SAR may establish nonpolitical municipal bodies responsible for cultural affairs and public sanitation.

Although women traditionally have played a minor role in local political life and are still underrepresented, they hold a number of senior positions throughout the Government. Three of the 23 Legislative Assembly members, including the President of the Assembly, are 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 their findings on human rights.

International human rights agreements that were formerly applicable to Macau were approved by the Sino-Portuguese Joint Liaison Group and continue to apply to the SAR.

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

While the Organic Statute did not prohibit explicitly discrimination based on race, sex, religion, disability, language, or social status, it incorporated the principle of nondiscrimination. Separate laws provide for many of these rights. For example, under the law that establishes the general framework for the educational system, access to education is stipulated for all residents regardless of race, religious belief, or political or ideological convictions. The Basic Law stipulates that residents shall be free from discrimination, irrespective of their nationality, descent, race, sex, language, religion, political persuasion or ideological belief, educational level, economic status, or social conditions.

Women

Violence against women is not common. For cases that are reported, the authorities enforce criminal statutes prohibiting domestic violence and prosecute violators. However, police and court statistics do not distinguish between spousal abuse and other assault cases. 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. In 1998, the last year for which statistics are available, five cases of rape were brought to court.

Trafficking in women is a problem (see Section 6.f.).

Women are becoming more active and visible in business. 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, prohibits discrimination based on sex or physical ability, and establishes penalties for employers who violate these guidelines. However, there is wage discrimination in some sectors, notably construction. Nonetheless, no cases alleging discrimination have been brought to court.

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. School attendance is not compulsory; however, 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. In the first 9 months of 1998, the last period for which statistics are available, only two cases of child abuse were reported. In 1997 eight such cases were reported.

People with Disabilities

In 1997 the U.N. Human Rights Committee recommended that Macau do more to ensure the economic and social rights of the disabled. Few special programs exist aimed at helping the physically and mentally disabled gain better access to employment, education, and public facilities. Laws do not mandate building access for the disabled. More than two-thirds of the funding for services for the disabled comes from government subsidies. In 1996 the Government subsidized 4 homes and 10 rehabilitation centers for the disabled. Nine schools have programs for the disabled, providing special education programs for 359 students. In December 1997, the Government formed a working group to define the fundamental rights of the disabled and determine the role of social service organizations in assisting them. The extent to which physically disabled persons experience discrimination in employment, education, and provision of state services is not known fully.

National/Racial/Ethnic Minorities

Although no specific laws prohibit discrimination on the basis of racial or ethnic background, the rights of ethnic minorities, particularly the Macanese (Eurasians who comprise roughly 9 percent of the population of 430,000) are respected. Portuguese officials no longer dominate the civil service, but 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. On December 20, Macau residents replaced the government secretaries, the Chief Procurator, and the Chief Justice. Localization of most jobs in the civil service was completed earlier in the year.

Section 6 -- Worker Rights

a. The Right of Association

The Portuguese Constitution recognized the right and freedom of all workers to form and join trade unions, and these rights were extended to Macau. The Government neither impedes the formation of trade unions nor discriminates against union members. The Basic Law stipulates that international labor conventions that applied to Macau shall remain in force and shall be implemented through the laws of the SAR. However, human rights groups are concerned that local law does not have explicit provisions against antiunion discrimination.

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 argues that provisions in the labor law that require an employer to have "justified cause" to dismiss an employee protect striking employees from retaliation. There were no work stoppages or strikes during the year.

Unions may freely form federations and affiliate with international bodies. Three new unions were registered in 1998, the last year for which statistics are available. Three civil service 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

Macau unions tend to resemble local traditional neighborhood associations, promoting social and cultural activities rather than issues relating to the workplace. Moreover, Local customs normally favor employment without the benefit of written labor contracts, except in the case of migrant labor from China and the Philippines. Chinese unions traditionally have not attempted to engage in collective bargaining. The Government does not impede or discourage collective bargaining, but there is no specific statutory protection for this right, since Portuguese laws that protected collective bargaining no longer apply.

Some civil service unions raised concerns during the year over government practices that they believe disadvantage them. Workers who believe that they have been dismissed unlawfully may bring a case to court or lodge a complaint with the Labor Department or the high commissioner against corruption and administrative illegality.

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

c. Prohibition of Forced or Compulsory Labor

Forced and bonded labor is prohibited by law, and there were no reports of such practices, except for cases of trafficking in women (see Section 6.f.). Children are covered under laws prohibiting forced or bonded labor, although they are not specified in the legislation.

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

The law prohibits minors under the age of 16 from working, although minors between the ages of 14 and 16 can be authorized to work on an "exceptional basis." Some children reportedly work in family-run businesses and on fishing vessels, usually during summer and winter vacations. Local laws do not establish specific regulations governing the number of hours these children can work, but International Labor Organization conventions are applied. The Labor Department enforces the law through periodic and targeted inspections and violators are prosecuted. The incidence of child labor is very low and has declined radically since effective enforcement began in 1985. The Labor Department Inspectorate does not conduct inspections specifically aimed at enforcing child labor laws but issues summonses when such violations are discovered in the course of other workplace inspections. No instances of child labor were reported during the year. 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 its use (see Section 6.c.).

e. Acceptable Conditions of Work

Local labor laws establish the general principle of fair wages and mandate compliance with wage agreements, but there is no mandatory minimum wage. Average wages generally provide a decent standard of living for a worker and family. In the absence of any statutory minimum wage or publicly administered social security programs, some large companies provide private welfare and security packages.

Labor legislation provides for a 48-hour workweek, an 8-hour workday, paid overtime, annual leave, and medical and maternity care. Although the law provides for 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.

Migrant workers, primarily from China, make up approximately 16 percent of the work force. These workers often work for less than half the wages paid to a local resident 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 jobs. In 1997 the U.N. Human Rights Committee noted the lack of protective measures for working conditions and the absence of social security programs for nonresident workers as matters 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 regulations. Failure to correct infractions can lead to prosecution. In the first 9 months of 1999, the Labor Department Inspectorate carried out 144 inspections and uncovered 16 violations carrying fines worth a total of \$2,100 (MP16,500). Although the law includes a requirement that

employers provide a safe working environment, no explicit provisions protect employees' right to continued employment if they refuse to work under dangerous conditions.

f. Trafficking in Persons

Specific legislation prohibits trafficking in persons; however, trafficking in women for the purpose of forced prostitution continues to be a problem, although it is difficult to quantify. In October two Vietnamese women were prosecuted in Vietnam for trafficking 15 Vietnamese women to Macau for the purpose of prostitution. There also have been credible reports that women from Vietnam are trafficked into Macau as mail-order brides, with the assistance of organizations purporting to be travel agencies, international labor organizations, or marriage mediating services. Women from Malaysia, who are usually ethnic Chinese, also reportedly have been trafficked into Macau; law enforcement authorities in Malaysia believe that the women are trafficked by Chinese criminal syndicates. In some cases, trafficking victims from Malaysia are lured by promises of well-paying jobs and then are forced to work as prostitutes. In late March, the Korean press reported that a Korean man was arrested on charges of forcing 40 Korean women, recruited as waitresses, into prostitution in Macau.

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