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U.S. Department of State

Macau Country Report on Human Rights Practices for 1998

Released by the Bureau of Democracy, Human Rights, and Labor, February 26, 1999.

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 from Lisbon. The governor, appointed by the Portuguese President, has extensive powers under the Organic Statute. Both the Governor and the Legislative Assembly exercise legislative power. Voters directly elect only one-third of the legislators; the rest are appointed or elected indirectly by interest groups. The judiciary is independent.

Under the principle of "one country, two systems" specified in the 1987 Sino-Portuguese Joint Declaration, Macau is to become a special administrative region of China on December 20, 1999. Its economy and way of life are to remain unchanged for 50 years. After reversion, the "Basic Law," promulgated by China's National People's Congress in 1993, is to serve as Macau's Constitution and most of the laws currently in force will continue to apply. A joint liaison group, composed of representatives from Portugal and China, is the mechanism for negotiating transition issues and implementing the Joint Declaration.

The police force is firmly under civilian control. An increase in organized crime-related violence led the public to call for better maintenance of law and order and for greater Sino-Portuguese cooperation in combating cross-border crime. There are no troops stationed in Macau. However, the Chinese Government announced in September that an "appropriately sized" People's Liberation Army garrison would be posted in the Special Administrative Region after reversion.

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 1998. Despite the economic downturn, most citizens still enjoy a high standard of living.

The Government generally respects the human rights of its citizens; however, some problems remain, including: The limited ability of citizens to change their government; some instances of press self-censorship; and inadequate provision for the disabled.

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

The law prohibits such abuses, and the authorities respect this provision in practice. The Public Prosecutor's Office investigated five complaints of police brutality during the year. In 1997 eight such allegations were lodged with the High Commissioner against Corruption and Administrative Illegality. The Covenant against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to Macau on March 16. The Portuguese and Chinese Governments agreed in the Joint Liaison Group that the covenant would continue to be applied after reversion.

Prison conditions meet minimum international standards, and the Government permits visits by human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

Legal prohibitions against arbitrary arrest exist, and the authorities respect them 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.

Forced exile is not practiced.

e. Denial of Fair Public Trial

The judiciary is independent. The Basic Law provides for the continuation of an independent judiciary after reversion; however, 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 Governor, upon the recommendation of the Supreme Council of Justice (for the Superior Court) and the Judiciary Council of Macau (for the common courts), appoints judges. After reversion, the chief executive is to appoint judges, acting on the recommendation of an "independent commission composed of local judges, lawyers and eminent persons." Local judges are appointed for life. However, the terms of office of judges seconded from the Portuguese judiciary (the majority of judges) are due to expire on December 19, 1999. The future term of office for judges is under negotiation in the Joint Liaison Group. The Chief Procurator, currently appointed by the Governor, enjoys substantial autonomy from both the executive and judiciary. After reversion, the Chief Procurator is to be appointed by the central Government, upon the recommendation of the chief executive.

The Superior Court is the highest court in Macau, although until reversion the Portuguese Supreme Court of Justice and Constitutional Court remain competent. 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. When such a panel's ruling is appealed, the case is 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 procedure calls into question the objectivity of the subsequent ruling. Beneath the Superior Court are the courts of first instance and the Court of Auditors.

The law provides for the right to a fair trial, and citizens enjoy this right in practice. 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. 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 18 months. The slow translation of laws and administrative guidelines into Chinese presented a problem in the past. Most laws issued between 1976 and 1991 have now been translated into Chinese and are being published slowly. Since 1991 all new legislation has been issued simultaneously in Chinese and Portuguese.

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 generally respects them in practice. However, on occasion journalists practice self-censorship. In August the Government refused to allow the staging in a government auditorium of a play dealing with Macau's 1967 anti-Portuguese riots.

There are eight Chinese and three Portuguese daily newspapers, five Chinese and two Portuguese weekly newspapers, one television station, and one radio station. In addition all Hong Kong newspapers and many international newspapers are freely available. Although there is no government censorship or intimidation of the press, criminal triads have sent threatening letters to newspapers warning of

retaliation if they cover triad activities. 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.

Article 23 of the Basic Law obliges the Macau Special Administrative Region to enact laws that "forbid any act of treason, secession, sedition, subversion against the central People's Government, or theft of state secrets," as well as "prohibit foreign political organizations or bodies from conducting political activities in the region." Human rights groups are concerned that these provisions may restrict fundamental rights and freedoms. They are particularly concerned because current penal provisions concerning crimes against state security became law in November 1995 when a new penal code was adopted, but become null and void on December 19, 1999.

Academic freedom is respected.

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.

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 Special Administrative Region to enact laws that "prohibit foreign political organizations or bodies of the region from establishing ties with domestic political organizations or bodies."

c. Freedom of Religion

Portuguese law as extended to Macau provides for freedom of religion, and the Government respects this right in practice. However, human rights groups have expressed concern 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. No Vietnamese refugees were repatriated in 1997 or 1998. Macau returns an average of 444 illegal Chinese migrants to China each month.

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

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. Elections are held every 4 years. The Chinese Government has agreed that the current legislators may continue to hold office after reversion until their current terms expire in 2001. 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 the Legislative Assembly can enact laws on all matters except those reserved for bodies in Portugal or the Governor, in practice the Governor initiates the vast majority of legislation, either directly through "decree-laws" or through bills that must be approved by the Legislative Assembly. While the Legislative Assembly has the legal power to refuse to ratify laws issued by the Governor, in practice it does so rarely. In the first 9 months of 1998, the Governor issued 45 decree-laws, while the Legislative Assembly passed 7 laws.

The Consultative Council, an advisory group to the Governor composed of elected and appointed members, also provides some measure of popular representation. The Basic Law provides for an appointed executive council to fulfill this role after reversion. Municipal assemblies are elected by direct, universal, secret ballot. The Basic Law stipulates that the Macau Special Administrative Region 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. Women hold approximately 25 percent of local senior civil service 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 their findings on human rights cases.

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

While the Constitution does not proscribe discrimination based on race, sex, religion, disability, language, or social status explicitly, it does incorporate 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.

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 1997 nine rape cases were brought to court; in the first 9 months of 1998 there were five cases.

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, according to the Public Prosecutor's Office, 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 reported to be widespread problems. In 1997 eight cases of child abuse were reported, and only two cases were reported during the first 9 months of 1998.

People With Disabilities

In 1997 the United Nations Human Rights Committee recommended that Macau do more to ensure the economic and social rights of the disabled. There are few special programs 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 the provision of state services is not fully known.

National/Racial/Ethnic Minorities

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, individuals born in Macau or in the People's Republic of China filled only 64 percent of senior government positions. Considerable pressure remains on the Government to accelerate 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 these rights are extended to Macau. The Government neither impedes the formation of trade unions nor discriminates against union members. However, human rights groups are concerned that no similar rights and protections have been incorporated into local law to ensure such protections after reversion.

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 requiring an employer to have "justified cause" to dismiss an employee protect striking employees from retaliation.

Unions may freely form federations and affiliate with international bodies. Three new unions were registered in 1998. 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's 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 migrant 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 raised concerns during the year over government practices that they feel 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. In 1997 and 1998, there were two work stoppages, which technically are not considered strikes. On several occasions, Chinese migrant workers staged protests to demand their back pay.

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

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced and bonded labor, and there were no reports of such practices. 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." 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 has declined significantly since effective enforcement began in 1985. In 1997 the Labor Department Inspectorate conducted 676 inspections and uncovered 35 violations of child labor laws, all in the same factory. In the first half of 1998, only 1 violation of child labor laws was detected during 381 inspections. 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.).

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 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, and medical and maternity care. 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.

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 who performs 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. 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 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. In 1997 the Labor Department Inspectorate carried out 793 inspections and uncovered 668 violations carrying fines worth a total of \$1.3 million. Although the law includes a requirement that employers provide a safe working environment, no explicit provisions exist to protect the employees' right to continued employment if they refuse to work under dangerous conditions.

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