

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

**INTERNATIONALLY RECOGNISED CORE LABOUR
STANDARDS IN MACAO, S.A.R.**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF
TRADE POLICIES OF MACAO**

Geneva, 30 April and 2 May 2007

EXECUTIVE SUMMARY

The eight ILO Conventions on Core Labour Standards have been ratified by and apply to the Macao Special Administrative Region. Determined measures are, however, needed to comply with the commitments Macao accepted in Singapore, Geneva, and Doha in the WTO Ministerial Declarations over 1996-2001 and in the ILO Declaration on Fundamental Principles and Rights at Work.

Both the ILO Core Convention on Freedom of Association and Protection of the Right to Organise and the ILO Core Convention on the Right to Organise and Collective Bargaining apply to Macao. Freedom of association and the right to organise are guaranteed by law. However, workers are not sufficiently protected against anti-union discrimination.

Both the ILO Core Convention on Equal Remuneration and the ILO Core Convention on Discrimination apply to Macao. Discrimination against women is a problem, especially concerning remuneration and women earn far less than their male counterparts for the same type of work. Migrant workers are denied the most basic forms of protection.

Both the two ILO core conventions on child labour apply to Macao. Work by children below the age of 16 years is permitted by law and there is a lack of necessary regulations in this field.

Both ILO core conventions on forced labour apply to Macao. Although the law prohibits forced labour, there are consistent reports of women and children falling victim to trafficking for the purpose of sexual exploitation.

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN MACAO

Introduction

This report on the respect of internationally recognised core labour standards in Macao is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth WTO Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

Pursuant to an agreement signed by China and Portugal on 13 April 1987, Macao became the Macao Special Administrative Region (SAR) of China on 20 December 1999. China has promised that, under its "one country, two systems" formula, China's economic system will not be practiced in Macao, and that as provided for in the Basic Law of the Macao SAR, Macao will enjoy a high degree of autonomy in all matters except foreign and defence affairs for the next 50 years.

In particular, the Basic Law stipulates that international labour conventions that applied before the handover remain in force. Since 1999, further core international labour conventions have been made applicable, as specified below.

Macao's economy has remained one of the most open in the world since it was handed back to China in 1999. It is trade oriented, with the value of exports and imports amounting to 60% of GDP. China is its main trading partner, with close to 50% of both imports and exports being with that country. Apparel manufacturing and tourism are the foundation of the economy. Although the territory was hit hard by the 1997-98 Asian financial crisis and the global downturn in 2001, it has since recovered strongly, with economic growth of 10.1% in 2002, 14.2% in 2003, 28.6% in 2004 and 6.7% in 2005. The economic boom has been fuelled by gambling and tourism, as well as the construction necessary to support such activities. Macao's GDP amounted to US \$ 11.56 billion in 2005 with GDP per capita at US \$ 24,300.

The labour force of 248,000 workers is mainly employed in services, which account for 92.7 percent of GDP. Industry accounts for 7.2 percent of GDP. The official unemployment rate was 4.1% in 2005, although trade unions in Macao estimated the real unemployment rate to be 6%.

I. Freedom of Association and the Right to Collective Bargaining

Both ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise and ILO Convention No. 98 (1949) on the Right to Organise and Collective Bargaining have been ratified by Macao and have been applicable to the Macao Special Administrative Region since December 1999.

Freedom of association is guaranteed under section 4 of Law No. 2/99/M. Trade unions may be formed and any worker is free to join a trade union. Section 45 of Decree-Law No. 24/89/M prohibits the dismissal of workers on the grounds of their membership of a trade union or their trade union activities. Section 347 of the Penal Code is intended to prevent public authorities from interfering in workers' freedom of association.

However, new guidelines developed by the Commission Against Corruption (CCAC) appear to require that civil servants must obtain approval from their managers before joining associations or becoming leading figures in labour associations.

Moreover, certain groups of workers still face problems when it comes to organising. Hence, in 2006 the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) called on the government to fully ensure that domestic workers have the right to organise, as they are explicitly disqualified of this right by Decree-Law No. 24/89/M on labour relations. A new bill amending labour legislation, described below, is intended to cover these workers.

Section 6 of Decree-Law No.24/89/M provides that agreements concluded between employers and workers shall be valid. However, it does not state explicitly that such agreements should be concluded or that they should involve collective bargaining.

According to the government, a bill amending labour legislation, and covering the right of association and collective bargaining, is at an advanced stage. Reports in April 2007 suggest that the Executive Council of Macao has discussed a revised draft of the Bill and plans to send it to the Legislative Assembly in the near future for discussion and approval. Earlier drafts were rejected by Macao trade unions and associations.

The ILO Committee of Experts has requested the government to take measures to ensure that the legislation affords the guarantees set out in the relevant ILO Convention, stressing that the right to collective bargaining should cover all workers including non-resident workers and home workers. The Committee has reiterated that the future Act should expressly address this issue, forbid collective bargaining by a group of non-unionised workers where a trade union exists in the enterprise or the institution, and cover the right to collective bargaining of public servants not engaged in the administration of the State.

According to the ILO Committee of Experts, legislation which allows the employer in practice to terminate the employment of a worker on condition that the compensation provided for by law in all cases of unjustified dismissal (or unilateral termination of the employment) is paid, when the real motive is trade union membership or activity, is inadequate under the terms of Convention No. 98. Rather, the most appropriate measure is reinstatement.

The ILO Committee of Experts has therefore urged the government to take the necessary measures to ensure that the legislation protects all workers against acts of anti-union discrimination (including the unilateral termination of contract, transfers, demotion, etc.) for trade union membership or union activities and that such protection should be accompanied by rapid proceedings and sufficiently dissuasive penalties. Necessary measures are requested to ensure that the legislation affords the guarantees set out in the Convention, including collective bargaining, to all workers including non-resident workers and home workers.

While the right to strike is supposed to be protected by law, there is no legal protection against retribution by employers for involvement in strike action. Striking workers may therefore be easily dismissed during or after industrial action, regardless of the negotiated outcome.

This was evident in the Sands Casino dispute in October 2004, as reported by the ITUC/GUF/HKCTU/HKTUC Hong Kong Liaison Office (IHLO). Over 20 cleaners working at the Sands Casino staged a brief strike on 3 October 2004, six months after the casino opened. The cleaners walked out after two union officials were fired in a pay dispute with one of the casino's contractors. The union officials were the chair and vice chair of the Macao Cleaning Workers union. They had been fired after objecting to the contractor's demand that 60 workers reimburse their wages for hours that were not logged due to a technical problem with a timecard machine that had stopped working. After the firing of the union officials, the company dropped its demand for reimbursement of the wages but nevertheless refused to reinstate the two officials. Their union has since filed a complaint to the Labour Affairs Bureau, accusing the company of anti-trade union discrimination.

The ILO Committee of Experts has recognised the problems with regard to the right to strike and has urged the government to guarantee this right to all workers, with the only possible exception being those in essential services in the strict sense of the term and public servants exercising authority in the name of the State.

Summary

Freedom of association and the right to organise are guaranteed by the law in Macao. There are, however, many limitations to these rights in practice. Moreover, workers are not sufficiently protected against anti-union discrimination.

II. Discrimination and Equal Remuneration

Both ILO Convention No. 100 (1951) concerning Equal Remuneration and ILO Convention No. 111 (1958) concerning Discrimination (Employment and Occupation) have been applicable to the Macao Special Administrative Region since December 1999.

Equal opportunity legislation, applicable to all public and private organisations, stipulates that women must receive equal pay for equal work, prohibits discrimination based on sex or physical ability, and establishes penalties for employers who violate these guidelines.

According to the Macao government although the principle of non-discrimination between men and women is firmly entrenched in the daily lives of workers, further work is required to raise awareness and monitor compliance with the principle of equal remuneration.

At present there are no statistics in Macao of sufficient quantity or quality to permit a detailed breakdown of earnings by sex. However, even existing estimates show remarkable differences regarding salaries between men and women, especially in unskilled jobs where the average monthly salary earned by men in 2003 was MOP

5,732 (US\$ 711.7) whereas unskilled women earned MOP 3,888 (US\$ 482.7) – a difference of about 50%.

A full analysis of the position and pay of men and women in all job categories within and between the various sectors is required to permit an adequate evaluation of the nature, extent and causes of the pay differential between men and women and to measure the progress achieved in implementing the principles of the Conventions.

There has been some improvement regarding the balance between men and women in positions of responsibility in the public sector, but progress in this regard in the private sector has been slower.

There is a lack of specific legislation prohibiting sexual harassment in employment and occupation. The government has been urged by the ILO Committee of Experts to take appropriate measures to address sexual harassment in employment and occupation, including the adoption of legislation that prohibits both *quid pro quo* harassment (i.e. harassment that forces a worker to choose between giving in to sexual demands or losing a job or job benefits) and hostile work environments.

Recently, the government created a ‘Consultative Commission for Women’s Affairs’ whose purpose, amongst others, is to promote women’s rights and interests, contribute to the realisation of women’s opportunities and encourage their full participation in the labour market.

Migrant workers make up more than one tenth of the population and 21 percent of the workforce. About 60 percent of the migrant workers are from mainland China, 10 percent from Hong Kong and the rest from South East Asia and other regions. They are denied the most basic forms of protection. Although migrant workers usually have employment contracts, they have no right to collective bargaining and no effective legal recourse in the case of unfair dismissal. While they are entitled to compensation as a result of dismissal before the termination of their contracts, it is common practice for migrant workers to be issued with short-term contracts under which the non-renewal of the contract amounts to dismissal.

Illegally imported workers from southeast Asia and mainland China mainly work in construction, small & medium enterprises and as domestic helpers. The use of illegal (and hence unprotected) labour results in regular crackdowns by the Macao authorities. With the increasing number of construction projects (primarily for casinos and hotels) there has been a relaxation of regulations allowing the importation of labour from the mainland. Many unions and other groups have been trying to ensure that the use of imported labour does not unduly affect wage rates for local workers and that migrants are covered by union bodies.

A new Bill has apparently been given to the Executive Council regulating the employment of imported labour, which it is to start to review it soon.

Summary

Discrimination against women is a problem in Macao, especially concerning remuneration. There is considerable evidence that women earn less than their male counterparts for the same type of work. Migrant workers are denied the most basic forms of protection.

III. Child Labour

ILO Convention No. 138 (1973) on Minimum Age and ILO Convention No. 182 (1999) on the Worst Forms of Child Labour are both applicable to the Macao Special Administrative Region.

In Macao the age of compulsory schooling is 15 years (section 2(a) of Decree No. 11/98) and the age of admission to employment or work is set at 16. If compulsory schooling comes to an end before the young persons are entitled to work, there may therefore be a period of enforced idleness, as noted by the ILO CEACR.

The employment of minors aged between 14 and 16 is permitted on condition that the minor's good health is proved by a medical certificate and that this certificate is revised once a year. According to the government, such cases are restricted to seasonal labour during school holidays, and are not permanent in nature. The Report on Employment Survey 2005 prepared by the Statistics and Census Bureau indicated a total labour force of 6,432 children aged 14-19 in the country, of which 5,415 were employed in hotels, restaurants and similar activities and in construction work. The principal reason for entering into the labour force was completion of studies or discontinuation of studies.

In July 2005 the Labour Department Inspectorate conducted a special inspection specifically aimed at enforcing child labour laws. During this inspection 476 companies were visited, and 17 were found to have violated child labour laws by employing 29 minors ages 14 to 16.

Despite this, the government has stated that since there are no cases of violations of the law on child labour, there is no need to regulate the laws concerning the employment of persons less than 16 years of age on light work. The ILO Committee of Experts, however, has recalled that as work by children below the minimum age of 16 years is permitted by law, the activities permitted and the hours and conditions under which such work can be performed need to be regulated in order to be in line with the provisions of the ILO Minimum Age Convention (No. 138).

In particular, the minimum age for admission to hazardous work and their definition has still to be regulated by law. According to the government, the new Labour Law will specifically stipulate the places and types of dangerous work to which the admission of minors will be prohibited or subjected to limitations.

Furthermore, the government was recently requested by the ILO Committee of Experts to indicate the necessary measures taken to secure the prohibition of the sale and trafficking of children less than 18 years of age for labour exploitation.

Summary

Under certain conditions, work by children below the minimum age of 16 years is permitted by law. There is evidence of some degree of violation of child labour laws in Macao.

IV. Forced Labour

Both ILO Convention No. 29 (1930) concerning Forced Labour and ILO Convention No. 105 (1957) on the Abolition of Forced Labour were ratified by Macao in 1999.

Forced labour is prohibited by law. Under section 14(1) of Law No. 2/93/M concerning public meetings and demonstrations, violations of restrictions imposed by this Law are punishable as a criminal act of "qualified disobedience", which involves sanctions of imprisonment for a term of up to two years. According to section 52 of Law-Decree No. 40/94/M on deprivation of liberty and section 27 of Decision No. 8/GM/96 establishing regulations of the Coloane Prison establishment, prisoners are required to perform labour. In relation to this, the ILO Committee of Experts has emphasised that Convention No. 105 prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

Forced labour may not be used as a means of labour discipline, according to Convention No. 105. However, under section 350 of the Macao Penal Code, a negligent attitude of a public official towards their duties which blocks the proper functioning of a public service is punishable with imprisonment for a term of up to one year, which involves compulsory prison labour.

According to the United Nations Committee on Economic, Social and Cultural Rights trafficking in women and children for sexual exploitation is a serious problem in Macao. Prosecution of traffickers generally has not been effective. The Committee has called on the Macao government to make concerted efforts to combat the phenomenon of trafficking in persons and ensure that victims of trafficking have access to crisis centres where they can receive assistance.

Most females in Macao's sizeable sex industry come from the interior regions of China or Mongolia, though a significant number also come from Russia, Eastern Europe, Thailand, and Vietnam, according to the US State Department. There is evidence that some are deceived or coerced into sexual servitude, often through the use of debt bondage.

Summary

Trafficking in women and children for sexual exploitation is a serious problem in Macao. Prosecution of traffickers generally has not been effective. Moreover, in some circumstances prison labour does not comply with Convention No 105.

Conclusions and Recommendations

1. The Macao authorities should review their labour legislation in order to ensure its conformity with the eight ILO conventions on core labour standards that are applicable to Macao. In particular, the new Bill amending labour legislation, and covering the right of association and collective bargaining, must comply fully with the relevant international labour conventions.
2. Trade unionists and workers in Macao are insufficiently protected from acts of anti-union discrimination. As a result, workers are often unable to exercise their freedom to join and form trade unions or to conduct union activities. The authorities must ensure the effective protection of workers exercising these rights.
3. If employers are unwilling to negotiate a collective agreement, or not willing to abide by the terms of an existing agreement, workers have no legal ability to exercise the right to collective bargaining enshrined in ILO Convention No. 98. The authorities in Macao must ensure that the aforementioned new Bill enables workers to have this right.
4. Adequate legal protection is required against retribution by employers for involvement in strike action.
5. Determined steps are needed to end gender discrimination including the disparity in wages between men and women, particularly among low skilled and low paid workers. The authorities should take measures to ensure that women are fairly represented in positions of responsibility and that women earn the same as men doing similar work by implementing the principle of equal pay for work of equal value.
6. The government must take urgent measures to improve the rights and conditions for migrant workers. It is essential that the new bill that has apparently been given to the Executive Council regulating the employment of imported labour cover all such rights.
7. Legislation prohibiting sexual harassment in employment and occupation must be drawn up and adopted.
8. Regarding legally permissible work by children, the activities permitted and the hours and conditions under which such work can be performed need to be regulated in line with the provisions of the ILO Minimum Age Convention. This is particularly urgent regarding the regulation of hazardous work.
9. The authorities must take further and effective steps to address the problem of trafficking in persons for the purpose of sexual exploitation.
10. In line with the commitments accepted by Macao at the Singapore WTO Ministerial Conference and China's obligations as a member of both the WTO and the ILO, regular reports should be provided to the WTO and the ILO on legislative changes and implementation programmes with regard to all the core labour standards.
11. The WTO should draw to the attention of the authorities of Macao the commitments they undertook to observe core labour standards at the Singapore

and Doha WTO Ministerial Conferences. The WTO should request the ILO to intensify its work in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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