



ITUC INTERNATIONAL TRADE UNION CONFEDERATION CSI CONFÉDÉRATION SYNDICALE INTERNATIONALE
CSI CONFEDERACIÓN SINDICAL INTERNACIONAL IGB INTERNATIONALER GEWERKSCHAFTSBUND

Bd. du Roi Albert II, 5, Bte 1, B - 1210 Bruxelles Belgique
Tel. +32 (0) 2224 0211 Fax +32 (0) 2201 5815 E-mail info@ituc-csi.org http://www.ituc-csi.org

SHARAN BURROW
PRESIDENT
PRÉSIDENTE
PRÄSIDENTIN
PRESIDENTA

GUY RYDER
GENERAL SECRETARY
SECRÉTAIRE GÉNÉRAL
GENERALSEKRETÄR
SECRETARIO GENERAL

Mr Juan Somavia
Director-General
International Labour Office (ILO)
Route des Morillons, 4
CH - 1211 - Geneva
Switzerland

By fax: + 41 22 799 67 71

HTUR/JS

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ILO Committee of Experts on the Application of Conventions and Recommendations

Dear Mr. Director-General,

I have the honour of sending you our comments concerning compliance by **Macau SAR (China)** with the following conventions:

Convention No. 87 on Freedom of Association and Protection of the Right to Organise, 1948 (notified in 1999), and Convention No. 98 on Right to Organise and Collective Bargaining, 1949 (notified in 1999).

Freedom of association

Freedom of association is guaranteed under local law¹. Trade unions may be formed and anyone can join one although contrary to the Macau basic Law, restrictive guidelines require that civil servants need permission from their managers before joining a union. 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.

Certain groups of workers, like domestic workers are not allowed to organise according to Decree-Law No. 24/89/M on labour relations, nor does the new bill amending labour legislation, described below, provide for universal protection of the right to freedom of association, excluding for instance migrants and civil servants.

¹ Freedom of association is guaranteed under section 4 of Law No. 2/99/M, so trade unions may be formed and anyone can join one. 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 ostensibly a deterrent against public authorities interfering in workers' freedom of association.

The dismissal of workers on the grounds of their membership of a trade union or their trade union activities is prohibited by law with clauses in the criminal law also prohibiting the interference of public authorities in workers' freedom of association however in practice dismissals do occur and remedies are difficult and time consuming to obtain. Collective bargaining is not guaranteed despite growing labour unrest in the wake of economic changes.

In practice many labour groups and union find it difficult to register as organisations. Informal worker groups and attempts to form labour groups are not allowed.,. In many cases organizers are asked to submit the names of potential members even before registration however due to fears of recriminations and blacklisting, many supporters are unwilling to provide full details.

The ILO Committee of Experts has previously requested the government to bolster the right to collective bargaining and abolish exceptions as well as take practical and legislative measures to ensure adequate protection for striking workers, including reinstatement for unfair dismissal (rather than simple monetary compensation).

No guarantee of collective bargaining:

While Macau legislation provides that agreements concluded between employers and workers shall be valid, it does not explicitly state that such agreements should be concluded or that they should involve collective bargaining.² As a result of the increasing labour disputes and wages-arrear cases, several Macau unions are stepping up calls for the authorities to guarantee collective bargaining. However, a draft trade union law designed to legally enshrine and protect core union rights, proposed by the Macau Civil Servants Union, has been voted down in the legislature and the government has not provided any alternative timetable for possible legislation.

The passing in August 2008 of the long awaited labour relations law (effective January 2009) is a positive element, and the law does address some of the more pressing issues of labour relations. However some local Macau unions are critical towards the law for not providing enough protection for workers' rights. A large amount of 'flexibility' is built into the law, leaving part-time workers and migrant workers vulnerable. In addition to the guidelines calling for public servants to seek prior permission of managers before joining a trade union, the new labour law also excludes public sector employees employed under individual labour contracts from the protection under public employment regulation, but does however give them protection under the labour relations law.

Introduction of National Security Laws.

Under Article 23 of the Macau Basic law, like Hong Kong, the local government is obliged to enact legislation concerning national security. In October 2008, the Macau SAR government introduced for public consultation draft legislation on article 23. The legislation was only slightly revised after the consultation by the government and passed by the Legislative Council in December 2008. The legislation introduces mainland notions of national security into Macau; outlines criminal sanctions for the crimes of

² Section 6 of Decree-Law No.24/89/M provides that agreements concluded between employers and workers shall be valid. However, it does not explicitly state that such agreements should be concluded or that they should involve collective bargaining. Certain clauses such as sections 3(2) and 3(3) of Decree-Law No. 24/89/M specifically exclude public servants and migrant workers from the protection of the labour law

subversion, succession, sedition, treason and treason and could, if widely applied be used against worker activists and others attempting to promote labour rights and the right to freedom of association and as such negatively affect progress towards a more vibrant civil society. The potential for broad interpretation could also impact activities held by trade unions, especially those such as industrial action, strikes, assemblies or public processions or those with extensive links with foreign trade union bodies.

The ITUC is concerned that at a time of increasing labour activism and awareness in Macau, the potential proscription of trade union groups coupled with the possibility of sentencing for offences relating to subversion and sedition could negatively affect the membership of trade union and labour groups in Macau.

Restrictions on independent unions in practice

It is widely believed that the central government of the People's Republic of China has a strong influence over local trade union activities, including the direct selection of the leadership of the largest private sector union, the Federation of Trade Unions. Nearly all of the six main private sector unions belong to this federation. Many unions tend to resemble local traditional neighborhood associations, promoting social and cultural activities. This has undermined the independence of trade unions, since support for central government policies, such as the minimization of workplace disruption, take precedence over the protection of the rights and interests of trade union members. There have been reports of intimidation of those who do speak out against government policies and in terms of labour rights.

The Macau SAR government does not promote independent and outspoken trade unions. For example, According to a Portuguese-language newspaper in October 2005, supervisors at the S. Januário Hospital and related health centers were requested by their directors to find out if their workers were planning to become involved in labour associations. Any worker who wanted to join a new association was requested to submit an application to their superior, and could only choose one association to join. The paper reported that the directors had been asked by the Minister for Social Affairs and Culture to implement these restrictions, but that many supervisors were not following these instructions.

Civil society is growing in Macao in recent years, especially after the May Day rally in 2007, there has been a growth of smaller and more vocal trade unions alongside a growth in civil society groups. However many small emerging unions have complained of blacklisting of members and excessive demands concerning the submission of members names and contact details to the authorities.

Employers' power

Workers in Macau have little bargaining power with employers and many do not have formal employment contracts with their employers, giving the employers the power to unilaterally change the wages and working conditions of employees or to terminate employment (equivalent to dismissal). In this context and with no legal-institutional framework for collective bargaining or even employment contracts, workers are easily victimized and discriminated against for their union activities. The use of temporary contracts has been increasing, thereby reducing the number of workers covered by

pensions, sick leave, paid holidays and other benefits, as well as effectively reducing wages as stated on contracts.

Limitations on the right to strike

Whilst the right to strike is protected by law, there is no legal protection against retribution by employers for involvement in strike action. Striking workers may therefore be dismissed during or after industrial action, regardless of the negotiated outcome. Strike leaders and union activists also report that they are blacklisted by the local business sector. However the economic slowdown coupled with the rising trend of using migrant and often illegal labour in Macau has led to an increase in disputes however the lack of power held by smaller independent unions' means they are not usually very successful. During 2008, unions organized four strikes at construction sites including protests blocking off the site in order to claim unpaid wages and protest against lack of paid work for workers paid on daily rates. Two large scale union organized strikes at the Venetian Casino and sites owned by the Melco PBL Group (crown Casino) in May and August were successful in gaining back pay for 140 Venetian workers and 90 Melco PBL workers.

In August 2008, four workers from the Hotel Waldo were reportedly dismissed without valid reasons. The workers complained to the labour bureau as they believed they had been dismissed discriminatorily while the Hotel kept its predominantly migrant workforce. However the labour bureau was unable to help and after threats from the employer the workers were forced to accept dismissal.

The ILO Committee of Experts has previously 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.

Migrant workers and the denial of collective bargaining

The number of registered migrant workers reached 95,574 in November 2008, (reached 104,281 in September 2008) nearly 10,000 more than in December 2007. More than half of the migrant workers are from mainland China. Migrant workers 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.

In September, 13 migrant workers of the Macau Galaxy Entertainment reported they were threatened after they tried to claim missing wages for the final month of their contract which had been terminated. Workers complained to the union which was eventually successful in obtaining compensation for the workers who had had to return to mainland China.

Since start of the global financial crisis in September, the casino construction band development boom has rapidly slowed down. Several massive casino projects owned by foreign developers have suspended work. In June, 270 workers of the Macau Galaxy

Entertainment were dismissed and in November, 11,000 construction workers were laid off by a single Casino group. This figure included around 4,000 workers from Hong Kong. Many employers are gradually reducing staff, in many cases with little or no compensation.

Dismissal of unionists

Over 20 cleaners working at the Sands Casino (opened in May 2004) went on strike briefly in October 2004 after two union officials were fired in a pay dispute with one of the casino's contractors. The officials, the Chair and Vice-Chair of the Macau Cleaning Workers Union were reportedly sacked after complaining to the contractor about its demand that some 60 workers refund pay for working hours that went unlogged after a timecard machine stopped working. The company then agreed to drop its demand for a refund. However, the officials were not reinstated. The Sands is reportedly only offering three month contracts to new workers. A complaint to the Labour Affairs Bureau has since been filed.

Union demonstrations dispersed

Protestors at the May Day rally in 2007 complained of police interference and harassment, when an estimated 10,000 protestors (official sources estimates 2,400) marched in protest at current living conditions and labour rights. Corruption was also a central theme, linked to rising house prices and a shortage of affordable housing in the wake of a huge embezzlement scandal involving the former secretary for transport and public works Ao Man-long. The rally saw several scuffles and the accidental shooting of a motorcyclist by police.

In 2008, some 3,000 workers joined a May Day Rally and clashed with police when trying to reach the government headquarters to express their demands for more effective policing of illegal workers and a limitation on imported workers, making it the biggest protest since 2 July 2000, when police used tear gas to disperse workers protesting against unemployment. Eight labour organisations including the Association for Promoting Livelihood in Macau, the Association for Promoting Livelihood of Workers in Macau, the Labour Union of Macau, the Mutual Help Association for Construction Workers in Macau, the Decoration Workers' Association of Macau, the Concrete Sector Workers' Association of Macau, the Cleaners' Association of Macau, and the Property Management Workers' Association of Macau organised the May Day march. The pro-Beijing Federation of Trade Unions, like its counterpart in Hong Kong (the HKFTU) stayed away from the May Day march. Little publicity was given to demands calling for imported labour to be given similar safeguards and wages as resident workers.

Denial of re-entry to Macau to Hong Kong trade unionists and supporters

Macau has long had a believed black list of local workers who have supported local strikes and denied entry to “trouble-makers”, including Hong Kong’s prominent legislator and social activist Leung Kwok-hung as well as the legislator and General Secretary of the Hong Kong Confederation of Trade Unions, Lee Cheuk Yan. Hong Kong workers, employed in Macau, who openly supported the strike by Hong Kong metal workers in August 2007 were later denied the right to re-enter Macau for work. On 20 December 2008, Macau authorities refused entry to Hong Kong activists and lawmakers arriving to participate in events criticizing the proposed national security legislation. Albert Ho, chair of Hong Kong’s Democratic Party was among nine lawmakers who were stopped upon arrival and detained by immigration officials who cited “internal security laws”.

Yours sincerely,



General Secretary