

that this kind of arrangement has been condemned under international standards on the ground that it is likely to lead to human rights violations.

The WG expressed concern over the recent increase of disappearances in China, particularly in Tibet, and reminded the government of its responsibility under article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance, to take effective measures to prevent and terminate acts of enforced disappearances in any territory under its jurisdiction. The WG also reminded the government of its commitment, under article 14 of the Declaration, "to bring to justice all persons presumed responsible for an act of enforced disappearance". Twenty-eight cases of disappearance in China remain to be clarified.

Extrajudicial, summary or arbitrary execution, Special Rapporteur on: (E/CN.4/1997/60, paras. 15, 16, 17, 18, 19, 22, 28, 32, 83, 86, 87, 91; E/CN.4/1997/60/Add.1, paras. 100-114)

In 1993 the Special Rapporteur (SR) requested an invitation from the government to visit China. That request has been reiterated in subsequent years. During the 1997 session of the Commission on Human Rights, the government indicated that it would consider extending an invitation to the SR after visits by the High Commissioner for Human Rights and "another mechanism of the Commission of Human Rights" [most probably the Working Group on Arbitrary Detention] had been completed.

The report notes that the SR transmitted a number of cases to the government and expressed particular concern that the death penalty is allowed in cases involving minors, and well as those related to economic and/or drug-related offences. The report specifically comments on information received which indicates that the nationwide anti-crime campaign, launched on 28 April 1996, has resulted in the execution of at least a thousand people. The focus of the campaign was primarily on criminal gangs and on crimes such as murder and robbery. The campaign also fully mobilized the media to publicize arrests and executions on a daily basis and to exhort local leaders, the police and the judiciary to punish "swiftly and severely" offenders targeted in the campaign. The report notes that the vast majority of those sentenced to death in the campaign were reportedly executed immediately after summary trials. There is also a reference to the fact that the number of crimes for which the death penalty can be imposed has increased from 21 under the 1980 Criminal Law to 68 under present laws and includes a number of non-violent crimes. According to the report, the death penalty can be imposed for offences such as tax fraud, drug-related crimes, forgery, robbery, killing of protected species, smuggling of ivory, and crimes endangering social order.

In summary comments based on information received, the SR notes that trials resulting in the imposition of a death sentence continue to fall short of internationally recognized fair trial standards, including: the lack of a presumption of innocence; the placement of the burden of proof on the accused; the fact that the determination of guilt is usually decided by the authorities and not by the court, which leads to political interference; failure to observe defendants' right to counsel until a few days before trial; lack of prior notice of the

trial date for defendants and associated lack of timely access to a lawyer; prohibition on witnesses giving evidence in court; limitation of a lawyer's access to the file concerning the defendant; and, a provision that lawyers may not challenge the validity of the charges against their clients but only call for mitigation of the sentence.

The SR observed that safeguards to protect the rights of those facing the death penalty require that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The SR therefore reiterated his position that the death penalty should be eliminated for economic and drug-related crimes. Distressed at the increase in the number of reported executions, especially in connection with the above-mentioned anti-crime campaign, the SR expressed the view that the death penalty is not an appropriate tool for fighting the growing crime rate in China, and that he was opposed to public executions as a means of public education.

Freedom of opinion and expression, Special Rapporteur on: (E/CN.4/1997/31, Section III)

The report notes that, in a joint initiative with the Working Group (WG) on Arbitrary Detention and the Special Rapporteur (SR) on the independence of judges and lawyers, the SR transmitted information on the case of Wei Jingsheng and expressed concern that the detention and trial were solely motivated by his non-violent pro-democracy activities, and therefore appeared to be in violation of his right to freedom of opinion and expression. The report summarizes a detailed response from the government, the basic points of which were that: Wei Jingsheng had been on parole and therefore deprived of his political rights when he had engaged in activities aimed at overthrowing the government; and, the trial and judgement had been rendered according to the law and in conformity with provisions of relevant international human rights instruments.

With respect to a second case referred to the government by the SR, the government again responded that the arrest and sentencing were: in response to subversive activities and collusion with anti-Chinese organizations abroad in order to disrupt social order; and that re-education through labour was not a criminal punishment but applied to individuals in urban areas who engage in anti-social behaviour or whose "delinquency" falls short of criminal offences. The government asserted that individuals undergoing re-education through labour retain their right to freedom of expression and opinion. The Special Rapporteur indicated that further clarifications would be sought on this case.

Independence of judges and lawyers, Special Rapporteur on: (E/CN.4/1997/32, paras. 10, 11, 21, 48, 94)

The Special Rapporteur (SR) has been exploring the possibility of establishing a system whereby he or a representative may observe important trials. In response to this suggestion, the government indicated that trial observation was expressly prohibited under national law and would constitute a significant obstacle to the Special Rapporteur's undertaking trial observation in China. The report refers to the joint appeal on behalf of Wei Jingsheng (see above).