

social order. Articles 102 to 113 are special provisions related to crimes endangering national security and, *inter alia*, prohibit: acts aimed at splitting the country or undermining national unification; acts to subvert the political power of the state and overthrow the socialist system; institutions, organizations or individuals inside or outside the country from providing financial support for organizations or individuals in the country for the commission of such crimes.

The WG's assessment of the revised Criminal Law characterized as salutary the principles of clearly defined crimes and punishment, equality before the law, and proportionality of the punishment to the gravity of the crime. The report notes, however, that these principles will be realized only to the extent that the law is reasonably applied. The report then addresses issues that may mitigate against a reasonable application of the law in practice. Among the points raised were: failure in the revisions to define precisely the concept of "endangering national security", and application of the imprecise definition to a broad range of offences; the fact that acts of individuals in exercise of freedom of opinion and expression may be regarded as acts endangering national security; the fact that institutions, organizations and individuals outside China, working with domestic organizations, may be charged with, and convicted of, "endangering national security"; the lack of precision in the definition of the offence of attempting to subvert political power and overthrow the socialist system, or incitement to such an offence by "spreading rumours, slander or [through] other means" (article 105); and the fact that under article 105, even communication of thoughts, ideas or opinions, without intent to commit any violent or criminal act, may be regarded as subversion. Other points included that: the law makes no attempt to establish standards to determine the quality of acts that might or could harm national security; the national security provision is, in some ways, even broader than the "counter-revolutionary crimes" which, in name, have been abolished; the revised law has reduced the number of offences punishable by prison terms, leading to a reduction in the inmate population, because the punishment of "control" may now be applied to 93 offences instead of 34 as under the previous law; and reduction in the inmate population may be a valid social objective, but it does not justify the imposition of "control" as a punishment under which an individual is liable to lose fundamental human rights.

The commentary on revisions to the Criminal Procedure Law (CPL) are briefly described in such areas as restrictions on the powers of the Public Security Office (police services) related to investigation, and measures intended to restore the balance of relations between magistrate and lawyers in favour of the lawyers. The WG noted and provided commentary on the salient features of the revised Criminal Procedure Law. The areas addressed are: abolition of "shelter and investigation", access of the accused to lawyers, introduction of the concept of "presumption of innocence" of the accused, introduction of an element of neutrality in court procedures, and adoption of the adversarial system of justice.

With regard to the reform of the administrative procedures and measures related to deprivation of liberty, the report reviews: the Administrative Procedures Law — allowing citizens to bring suit against the administration in court, establishing a genuine statutory civil service; the Administrative Penalties Law which, for the first time, regulates state prerogatives in areas most frequently affecting daily life (fines, seizures, withdrawal of permits, refusals of authorizations, arbitrary bureaucracy) and administrative measures of deprivation of liberty, such as re-education through labour; and the State Compensation Law, under which citizens have the right to compensation for losses suffered through infringement of their civic rights, including illegal arrest or illegal application of administrative measures of restraint and illegal imprisonment arising from an illegal application of some other form of deprivation of liberty.

The report provides commentary on the history and application of re-education through labour, and states that even in China the measure is controversial among jurists, lawyers, and academics. Concern was expressed at the fact that no judge is present when the decision is taken to place a person in administrative detention, thus incurring the risk of increasing police abuses. With regard to the supervision of re-education through labour, the report notes that the committee which was supposed to perform that duty very rarely met because of its heterogeneous composition of officials from numerous agencies, and the practical difficulties which that entailed, leaving the police as the only organ to implement and supervise the measure.

The WG's comments on re-education through labour noted, *inter alia*: the authorities stated that the measure was only applied to those who had committed minor offences under the common law and who were not required to be formally prosecuted; the WG's strong belief that if the measure is applied to persons who disturb the public order as indicated, the commitment of such individuals to re-education through labour would clearly be arbitrary but this conclusion may not apply to common law offenders; and, it would be appropriate to state categorically in the law that the measure of re-education through labour should not be applied to any persons exercising their fundamental freedoms as guaranteed by the Universal Declaration of Human Rights.

The conclusions in the report refer to a number of findings of the mission, including that: changes to the Criminal Procedure Law are a step in the right direction; the move from an inquisitorial system of criminal justice towards a more adversarial system will hopefully contribute to the protection of human rights; concerns remain that offences considered counter-revolutionary are still in the statute although now referred to as offences endangering national security; there is no precise definition, however, of "endangering national security" and the absence of a clear definition enabled authorities to arrest and harass persons who may be peacefully exercising their fundamental liberties; concerns remain over the fact that many of the offences are vague and imprecise, jeopardizing the fundamental rights and free-