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PEOPLE'S REPUBLIC OF CHINA
Law Reform and Human Rights

This document examines the major legal changes introduced in China last year and other aspects of Chinese legislation which are particularly relevant to human rights protection and practice. Despite positive legal changes, arbitrary detention, unfair trials and torture continue in China, and the number of executions carried out last year, many after summary trials, reached its highest level in the past 13 years. Amnesty International's concerns about the widespread human rights violations which continue in China are described in separate documents.

I. INTRODUCTION

Human rights related legislation during the 1990s in China indicate two opposite tendencies. One is aimed at increasing the legal protections for certain rights, bringing some aspects of the Chinese legislation more in line with international human rights standards. The other one has expanded the State's legal tools of repression, further restricting fundamental freedoms and criminalizing activities involving the peaceful exercise of basic rights. New laws introduced in 1996 reflect these two tendencies.

In March 1996, China's legislature, the National People's Congress (NPC), passed substantial amendments to the Criminal Procedure Law (CPL) - the basic law which has governed the criminal justice process in China for the past 16 years. The revision of this law was the most significant legal development in China since 1979, when the CPL and the Criminal Law were adopted. The revised CPL, which came into force on 1 January 1997, increases the protections for people detained under the criminal justice system. The provisions of the 1979 CPL fell far short of international fair trial standards and the 1996 amendments contribute to narrowing the gap, though they still leave the law far behind international standards.

At its March 1996 session, the NPC also adopted an Administrative Punishment Law (APL) to regulate the system of administrative sanctions, including administrative detention, which exists parallel to the criminal justice system in China. The APL, which came into force on 1 October 1996, introduces some rights for people who may be subjected to administrative detention.

These legal changes have been described by Chinese official sources as a "major step forward" in improving the Chinese legal system[1] and as part of a continuing process of legal reform. Indeed, many other laws have been introduced in China in recent years,[2] including some laws which have provisions aimed at preventing or redressing some human rights abuses, such as the State Compensation Law, and another major law, the Criminal Law, is currently being revised by China's legislature.

While the revision of the CPL and the adoption of the APL have been widely publicized by the Chinese media, the adoption in 1996 of another new law, the Martial Law of the PRC, practically passed in silence. Promulgated on 1 March 1996 by the Standing Committee of the NPC, the Martial Law provides for the suspension of constitutional rights during a state of emergency. It is the latest in a series of laws which restrict fundamental freedoms. Since the late 1980s, various laws and regulations on state secrets and state security have been introduced. They curtail fundamental freedoms and criminalize a broad range of activities seen as a threat to the established political, economic or social order. These laws are increasingly being used to jail people for the peaceful exercise of basic human rights[3].

Amnesty International welcomes the revision of the CPL and some other legal changes as a positive step to bring Chinese legislation more in line with international human rights standards. However, Amnesty International is concerned that these legal changes are insufficient to ensure fair trial or to protect individuals in China against arbitrary detention and other human rights violations.

The revised CPL and other recently introduced laws still fall far short of international human rights standards. Furthermore, many other laws in China curtail fundamental rights and freedoms and cause widespread human rights violations. The Martial Law adopted in 1996 only adds to the existing legal tools of repression.

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1. See Xinhua news agency report, Beijing, 17 March 1996.

2. For a review of legislation introduced during the 1990s and the framework in which it is implemented, see "Chine: Un Etat de Lois Sans Etat de Droit", by Jean-Pierre Cabestan, *Revue Tiers Monde*, No.147, juillet-septembre 1996, pp. 649-668.

3. See Amnesty International's report, *People's Republic of China: State Secrets - A Pretext for Repression*, AI Index: ASA 17/42/96, May 1996; hereafter cited as *State Secrets - A Pretext for Repression*.

In addition, widespread illegal practices by law enforcers, the lack of independence of the judiciary and the arbitrary application of the law also cause numerous human rights violations[4]. Though efforts are apparently being made to curb some illegal practices, there are grounds to doubt whether the most positive of the recent legal changes will be put fully into practice without further review of legislation and of the institutional framework in which the law is implemented.

II. THE REVISED CRIMINAL PROCEDURE LAW

The 1979 CPL has been the basis of widespread human rights violations, including long-term detention without charge, torture and ill-treatment of detainees, and unfair trials. The 1996 amendments[5] improve its provisions, increasing the legal rights of criminal suspects and accused persons, notably regarding access to lawyers. Some changes in the law are aimed at introducing some fairness in a criminal process heavily weighted against criminal suspects. This is reflected in the symbolic replacement of the terms "defendant" and "offender" - which were used to designate detainees at all stages of the criminal process in the 1979 CPL - by the terms "criminal suspect" (to designate detainees before they are prosecuted) and "defendant" (after prosecution) in the revised law.

A particularly welcome decision adopted by the NPC in conjunction with the amendments to the CPL, was to repeal a 1983 Decision which provides for summary trials in some death penalty cases. This Decision was repealed on 1 January 1997, when the revised CPL came into force. Another expected change associated to the revision of the CPL concerns the disappearance of one form of administrative detention, known as "shelter and investigation", which has been widely used by police to detain people without charge for long periods, outside the judicial process. While the intended abolition of this form of detention is in itself welcome, this has

4. For a description of Amnesty International's concerns about the arbitrary use of law in China, see *China - No one is safe: Political repression and abuse of power in the 1990s*, AI Index: ASA 17/01/96, published in March 1996; hereafter cited as *No one is safe*.

5. For a detailed analysis of the revised CPL and information on the background which led to its revision, see *Opening to Reform? An Analysis of China's Revised Criminal Procedure Law*, Lawyers Committee for Human Rights, October 1996, hereafter cited as *Opening to Reform?*

been compensated for by the incorporation of the main features of "shelter and investigation" in the CPL.

Despite some positive changes, the revised CPL still does not conform to international fair trial standards. The amendments made are insufficient to ensure protection against human rights violations such as arbitrary detention, torture and ill-treatment, and the revised law still contains many loopholes allowing law enforcers to bypass the standard procedures and time limits stipulated by the law. Some of these issues are examined below.

1. Detention without charge or trial

The revised CPL, like the 1979 law, permits long periods of detention without charge or trial. It also grants wide powers to the police to restrict or detain people on their own authority, without judicial review. Both factors have been a major source of human rights violations in the past. In this respect, the revision of the law has not brought much improvement.

Under international standards, "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release..."[6] This is one of the basic safeguards against arbitrary arrest or detention and the word "promptly" in this context is understood to mean "a few days". There is no such safeguard in Chinese law.

6. International Covenant on Civil and Political Rights, adopted by the Un General Assembly on 16 December 1966, Article 9(3), hereafter cited as ICCPR.

Under the CPL, "arrest" (*daibu*) is the only "coercive measure" (form of detention or restriction) which requires review and approval by a body other than the police. Prior to "arrest", the CPL allows the police to impose four different forms of restriction or detention without charge for which there is no review and approval procedure. These are "summons" (*juchuan*), "taking a guarantee and awaiting trial" (*qubao houshen*)[7] , "supervised residence" (*jianshi juzhu*), and "detention" (*juliu*). "Arrest" marks the time at which a suspect is formally charged with a crime and requires approval by the procuracy. Arrest is followed by a period of "investigation" (*zhencha*), usually carried out by the police, which ends when the police file a request for prosecution with the procuracy. The procuracy then reviews the case in order to decide whether or not to initiate a "public prosecution" (*gongsu*). If it proceeds with prosecution, the procuracy writes an indictment (*qisushu)* and transmits the case to a court for examination and trial. After reviewing the case, the court decides whether or not to proceed with the trial.

Each of these stages of the criminal process can take weeks or months, during which time detainees have no right of access to a judge to challenge the grounds of their detention. The only circumstance in which detainees can challenge the legality of their detention is when its length has exceeded the time limits prescribed by the law. Some aspects of the pre-trial detention process in the revised CPL are examined in more detail below.

Detention

Under the 1979 CPL, the maximum permitted length of "detention" (*juliu* - or detention without charge) was 10 days. The 1996 amendments to the CPL have increased this period in two ways. Ordinary criminal suspects may now be detained for up 14 days without charge. In addition, the 1996 amendments have introduced in the CPL special categories of criminal suspects for whom detention without charge can be up to 37 days.

These special categories of criminal suspects are those who previously fell within the scope of "shelter and investigation", a form of administrative detention which has been the source of widespread human rights violations (see below, page 21). They consist of people "who do not tell their true name and place of residence, or whose

7. For further information on "summons" and "taking a guarantee and awaiting trial", see *Opening to Reform*?, op.cit., page 6.

identity is unclear", as well as those "who are strongly suspected of having roamed from place to place committing crimes, or of committing repeated crimes, or of forming gangs to commit crimes" (Article 61, revised CPL).

Under the revised CPL, people who are "strongly suspected of having roamed from place to place committing crimes, or of committing repeated crimes, or of forming gangs to commit crimes" may be detained for up to 37 days without charge (Article 69). As to those "who do not tell their true name and place of residence, or whose identity is unclear", they are affected by a clause in the law (which refers to a later stage in the criminal process) according to which the period for holding them in custody during investigation (after "arrest") starts being calculated only from the time their identity is clarified (Article 128, revised CPL). This means that they may be detained for indefinite periods without trial until their identity is clarified.

According to Chinese official sources, these changes were primarily intended to result in the abolition of the administrative practice of "shelter and investigation" - a welcome intention in itself. In effect, however, the main features of "shelter and investigation" have now been incorporated into the criminal process. This may only perpetuate the human rights abuses which have characterized this form of detention, including prolonged detention without charge, and without judicial review, of people who had committed no crime or who did not fall within its scope (see pages 21-22). In addition, the amendments to the CPL have also increased the period of detention without charge and without judicial review for ordinary criminal suspects.

Supervised residence

One of the alternatives to "detention" permitted by the CPL is "supervised residence" (*jianshi juzhu*[8]), a form of restriction or detention outside regular police custody. It can by imposed by the police, the procuracy or the courts, and has been used in the past as a disguised form of detention. It involves restricting a person suspected of a crime either to his or her home or in a "designated place of residence". Neither the 1979 CPL nor the revised law specify what these "designated" places might be. In the past, such places have included State "guest houses" and other official buildings which were in fact unacknowledged places of detention. Political dissidents and

8. This has been sometimes translated as "living at home under surveillance", but this translation is misleading since "supervised residence" also involves restriction of suspects in places other than their homes.

others have been held for long periods in "supervised residence", without charge and incommunicado, in unidentified places. This was the case with Wei Jingsheng, China's best known dissident, who was held for nearly 20 months without charge in "supervised residence" until November 1995.

The provisions on "supervised residence" have been modified in several respects. Whereas the 1979 CPL did not specify who could be restricted "at home" and who to a "designated place", the revised law indicates that restriction to a "designated place of residence" applies to "criminal suspects" and "defendants" who "do not have a fixed residence" (Article 57). In addition, unlike the 1979 CPL, the revised law limits "supervised residence" to a maximum of six months (Article 58). It also defines the cases in which it is applicable as being either minor criminal cases or those of suspects who "will not pose a danger to society" (Article 51). Inasmuch as these changes introduce some protection against indiscriminate detention in unidentified places and limit the length of "supervised residence", they are an improvement over the original provisions.

However, the revised provisions on "supervised residence" still allow the police to impose restrictions which are comparable to detention[9], for up to six months and without judicial review, on people who have not been charged with an offence. Like the 1979 CPL, the revised law makes clear that the main purpose of "supervised residence" is to allow the police to restrict people against whom there is too little evidence to justify arrest: Article 65 of the revised law states that it applies to people "whom it is necessary to arrest but against whom there is not yet sufficient evidence". In this context, it is questionable whether they should be restricted at all. The conditions of supervised residence are more stringent under the revised CPL than they were under the 1979 law, and are closely akin to detention. Under the revised law, those subjected to supervised residence are forbidden to leave their home or "designated place of residence" or to meet other persons without permission, and they can be summoned for interrogation at any time (Article 57). The revised law still does not specify what the "designated place of residence" might be for those to whom this applies, contravening international standards which require governments to hold people only in recognized places of detention.

The revised CPL also permits the use of "supervised residence" in different contexts at later stages in the criminal process. Under Article 74 of the revised law, detained

9. See Report of the Working Group on Arbitrary Detention to the Commission on Human Rights, 12 January 1993, UN document E/CN.4/1993/24, page 9.

suspects and defendants can be placed under "supervised residence" when the investigation, prosecution, trial or appeal is not concluded within the time limits specified by the law. While this may be preferable to remaining in police custody, this provision essentially allows law enforcers to keep people in a form of restriction, notwithstanding the fact that the time limits for various stages of the criminal process, including pre-trial detention, have been exceeded. Given that supervised residence involves restrictions comparable to detention, this provision appears to have been introduced for the benefit of investigators rather than of suspects and defendants.

Similar provisions exist in the law for another form of restriction, known as "taking a guarantee and awaiting trial [out of custody]" (*qubao houshen*), which involves less stringent restrictions than "supervised residence". "Taking a guarantee and awaiting trial" means restriction to the city or county where the suspect resides. It is limited to one year under the revised CPL. Like "supervised residence", it applies to people suspected of or charged with crimes which are considered minor or to those who "do not pose a danger to society". The "guarantee" is either a personal or a financial guarantee. The revised law includes a new provision making it possible for detainees, their legal representatives or close relatives to apply for "taking a guarantee and awaiting trial" (Article 52) which, if granted, is equivalent to release on bail. This is an improvement over the 1979 CPL. However, like "supervised residence", this form of restriction can also be imposed by the police against people who are not charged with an offence, for up to one year and without any recourse against it, in cases where there is insufficient evidence to justify arrest.

Suspects subjected to "supervised residence" or to the other "coercive measures" permitted by the law - including "taking a guarantee and awaiting trial", "detention" and "arrest" - have no recourse to a court or other authority to challenge the legality of their restriction or detention so long as these remain within the specified time limits. Under the revised CPL, the police, the procuracy or the courts must rescind or alter "coercive measures" if they discover that these measures have been inappropriately taken (Article 73). However, the only circumstance in which detainees and restricted persons, or their legal representative, can demand release or the lifting of their restriction order is when the maximum permitted length for their detention or restriction has been exceeded (Article 75, revised CPL). Prior to this point, there is no other procedure giving detainees the right to contest the legality of their detention. As will be seen below, for those who are formally "arrested", the length of detention without recourse can be particularly long.

Post-arrest detention

The 1996 amendments to the CPL extend the maximum period of "investigation" permitted by the law during pre-trial detention.

Under the revised law, following "arrest" (charge), a suspect may be held for investigation for up to two months, which can be extended by one month in "complex cases" with the approval of the procuracy at the next higher level (Article 124). With appropriate approvals, this period can be further extended by up to two months in a variety of important or complex cases (Article 126) and by up to four months in cases where the suspect faces a sentence of 10 years or more (Article 127). Thus, after formal arrest, detention for investigation may last for up to seven months under the revised law, as compared to a maximum of three months under the 1979 CPL.

In addition, the period of investigation may be extended by an extra two months under a procedure providing for "supplementary investigation". The procuracy can order the police to carry out a "supplementary investigation" if it feels this is needed when it examines a case referred to it by the police for decision on whether to prosecute. The revised law includes a new provision specifying that there can only be two such supplementary investigations in a case (Article 140) and each may last one month.

Other exceptions are provided for by the law, allowing further extensions of the period of investigation in specific cases - for example if it is discovered during the investigation that the suspect has committed another "important" crime, the period for investigation will be recomputed from the time this discovery is made. Equally in the cases of people "who do not tell their true name and place of residence, or whose identity is unclear" (see above, page 5), the period for investigation starts being calculated only from the time their identity is clarified (Article 128, revised CPL). Indefinite extensions of the period of investigation can also granted in cases that are determined to be "especially major and complex", with the approval of the NPC Standing Committee, upon request by the Supreme People's Procuratorate (Article 125, revised CPL). This latter provision already existed under the 1979 CPL.

When investigation is finally completed, the procuracy has up to one and a half months to decide whether or not to initiate a public prosecution (Article 138, revised CPL). The law does not specify any time limit for the period between prosecution and trial.

.2. Access to lawyers

Positive changes have been made to the provisions of the CPL concerning access to a lawyer, though these still fail to meet the requirements of international standards.

The CPL gives defendants the right to defend themselves or to appoint one or two "defenders" for this purpose. "Defenders" can be either lawyers, relatives or guardians of the accused, or other authorized citizens.

Under the 1979 CPL, detainees were guaranteed access to a defence lawyer only at the trial stage. They were informed of their right to a "defender" seven days before trial, when they were given a copy of the indictment by the court handling the case. This was often after months or even years of incommunicado detention. The revised law makes access to a lawyer possible much earlier, but it does not guarantee this as being clearly part of the "right" to defence until an advanced stage in the criminal process, after a long period of detention. In addition, in view of the inadequate provisions for legal aid in the law, this change seem to benefit only those who can afford hiring a lawyer.

The two articles dealing with the time at which detainees can engage a lawyer in the revised law are Article 96 and Article 33. Several other articles describe the powers and duties of defence lawyers and other "defenders", in particular Article 36.

• **Article 96** of the revised CPL states that a suspect "may engage a lawyer to seek legal assistance" after the first session of interrogation by the "investigative organ" (usually the police) or from the day the suspect is subjected to one of the forms of detention or restriction provided by the law. If a suspect hires a lawyer, the latter can demand to be told the offence imputed to the suspect. The lawyer may also file complaints and petitions on the suspect's behalf, may apply for the form of bail which exists under the law,[10] and "may" meet the suspect in custody. Meetings between the suspect and the lawyer, however, may take place in the presence of police officers or other investigators assigned to the case.

10. See above, page 8.

Article 96 makes a notable exception for cases involving "state secrets". In such cases, the investigators are empowered to approve the suspect's request to engage a lawyer, which means they can deny it if they wish. Furthermore, in state secrets cases, investigators have the power to approve or deny requests for meetings between lawyers and their clients.

• **Article 33** states that criminal suspects have the "right" to retain a "defender" from the time the case is transferred to the procuracy for review and decision on whether to prosecute - that is at the end of the period of "investigation". It also stipulates that suspects should be informed of their right to retain a "defender" within three days after the procuracy receives the request for prosecution from the police. Another article in the revised law provides that the defence lawyer "may" meet and communicate with the suspect in custody, as well as read and duplicate some of the documents on the case (Article 36). These documents, however, do not include material containing specific evidence against the suspect, such as witnesses testimony[11]. The defence may only have full access to the prosecution's materials from the time a court "accepts the case" (Article 36). The law does not specify at which time a court "accepts" a case, but this is likely to be shortly before the trial and, in many cases, weeks or months after the end of the period of investigation. Article 36 also includes a restriction on the right of access to the suspect and to the authorized case materials when the "defenders" are not defence lawyers: it stipulates that such access is subjected to approval by the procuracy or the court in the case of "defenders" who are not lawyers. This restriction may prejudice the rights of detainees who designate a relative or other person to assist them as "defender".

It is difficult to determine precisely how long after detention the right to a "defender", as defined in Article 33, becomes effective, as the length of investigation may vary considerably from case to case and the law allows many exceptions to the standard time limits for investigation (see above, 'post-arrest detention', pages 8-9). However, where no particular exception apply, investigation may last for up to three months in cases which are not considered major, and for up to seven months in major and complex cases. In addition, before the phase of investigation starts, suspects may be detained without charge in police custody for up to 14 or 37 days. Thus, in cases where the standard time limits apply, the revised law guarantees the right to a defence lawyer or other "defender" after periods which may vary from maximum three and half months to just over eight months. This still will not apply in a variety of special cases, including those that are "especially major and complex" for which

11. See *Opening to reform ?*, op.cit., page 39.

investigation can be extended indefinitely with the approval of high level authorities (see page 9).

The coexistence of Article 96 and Article 33 - both apparently granting access to a lawyer but at two different stages - may appear contradictory. However, there are significant differences between the two articles.

Under Article 96, access to a lawyer is an option - not a "right". The lawyers' role at this stage is limited: they can file complaints and petitions on their clients's behalf, but they are not given the authority to defend their clients on substantial grounds. This is clear from the language of Article 96, which describes the possibility of hiring a "lawyer" as a means of "seeking legal assistance", whereas Article 33 clearly guarantees the "right to a defender". Significantly, Article 96 uses the term "lawyer" (*lushi*), rather than the expression "defence lawyer" (*bianhu lushi*) which is used in the law in reference to the time when the "right to a defender" becomes effective. Furthermore, unlike the provisions in Article 33, Article 96 does not require the police to inform suspects of their right to hire a lawyer, so that many detainees may remain unaware that they can do so. Even if they are, many will not have the means of hiring a lawyer.

At this stage, detainees have no entitlement to free legal assistance. This becomes a right much later and, even then, only some detainees have a clear entitlement to have a defence lawyer appointed if they have not hired one. Under Article 34 of the revised law, the courts "may" designate a defence lawyer to defendants who have not appointed a "defender" for financial or other reasons, and this becomes a clear obligation if the defendant is blind, deaf, mute, a minor, or liable to be sentenced to death; this provision is applicable "in cases in which a public prosecutor appears in court to bring a public prosecution". The law does not specify at which time exactly the court may designate a defence lawyer for a defendant, though this is likely to be once the court has decided to try the case. The only clear indication given by the law is that this should take place "no later than ten days" before the trial (Article 151(2), revised CPL).

In practice, access to a lawyer shortly after detention is an option which is likely to remain unavailable to the majority of detainees. In addition, under Article 96, this option can be denied altogether in "state secrets" cases, which, in view of the human rights abuses resulting from the legislation on state secrets, count among the cases where early access to a lawyer would be most desirable. Even in other cases, the provisions of Article 96 do not alter the fact that detainees only have the "right" to engage a "defence" lawyer at the end of the period of "investigation", after weeks or

months of detention. Furthermore, for those who do not have the means of hiring a lawyer at either of these stages, there is no prospect of having one appointed until shortly before the trial.

Overall, while the provisions concerning access to lawyers in the revised law are an improvement over the 1979 CPL, they mean that detainees may still be held incommunicado for weeks or months without guaranteed access to a defence lawyer. These provisions still fall far short of international standards which require that detainees be given prompt and regular access to lawyers[12], that they be immediately informed of their right to be assisted by a lawyer upon arrest or detention or when charged[13], and that lawyers can "defend them in all stages of criminal proceedings"[14]. Certainly, the right to a defence lawyer cannot be denied for many weeks or months as is the case under the revised CPL[15]. Under international standards, the right of consulting with a lawyer includes the right to communicate and meet with the lawyer out of the hearing of law enforcement officials, without delay or censorship, and to be given adequate time and facilities to do so[16].

These rights are not guaranteed in the revised CPL. They are important not only as a safeguard against arbitrary detention and to ensure fair trial, but also as a protection against torture and ill-treatment.

3. Protections against torture

The provisions of the CPL concerning torture have basically remained unchanged. Article 43 of the revised law incorporates provisions of the 1979 CPL which prohibit

12. See the UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (hereafter, Body of Principles), Principles 15, 17 and 18.

13. UN *Basic Principles on the Role of Lawyers*, 1990, Principle 5.

14. *Basic Principles on the Role of Lawyers*, Principle 1.

15. Principle 7 of the *Basic Principles on the Role of Lawyers* states that access to a lawyers should be granted "not later than 48 hours from the time of arrest or detention", whether or not a criminal charge has been laid.

16. *Basic Principles on the Role of Lawyers*, Principle 8.

"the use of torture to extract confessions and the gathering of evidence by threats, enticement, deceit or other unlawful methods". In addition, Article 46 of the revised CPL includes the previously existing clause that "in cases where there is only the statement of the defendant and there is no other evidence, the defendant cannot be found guilty and sentenced to a criminal punishment".

The revised law, however, does not specifically exclude the use as evidence in court of confessions extracted through torture. In this respect, it fails to meet a requirement of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China has ratified. Article 15 of the Convention against Torture explicitly requires State Parties to prohibit the use as evidence in court of any statement made as a result of torture. A similar prohibition was in fact included in China in a 1994 regulation of the Supreme People's Court (SPC) relating to criminal adjudication. It is therefore particularly disappointing that this prohibition was not included in the CPL when it was revised. It is unclear whether the prohibition in the 1994 SPC regulation still apply since the revised CPL came into force.

The revised CPL also fails to increase protection against torture in other respects. Such protections include prompt and regular access to lawyers, judges or relatives. As noted earlier, the revised CPL does not clearly guarantee detainees the right to see a lawyer promptly after they are taken into police custody. It also fails to guarantee access to judges or to the family. Under the law, the police should in principle inform the family of the detention or arrest of a relative and of the place of detention within 24 hours after detention or arrest, but this may not happen if the police deems that this "would hinder the investigation" (Articles 64 and 71, revised CPL). In practice, communications with the family are often denied until the detainee is brought to trial. Equally, in most cases, detainees have no access to a judge until their trial.

4. Trial process and presumption of innocence

Welcome changes have been made to the CPL to introduce some neutrality in a trial process which, like the whole justice system, has been traditionally heavily weighted against defendants. The spirit of these changes is reflected by the new terminology used in the CPL to describe detainees who have not yet been prosecuted as "criminal suspects" (*fanzui xianyiren*), rather than as "offenders" (*renfan*) or "defendants" (*beigaoren*) as they were described from the early stages of detention in the 1979 law.

Under the 1979 CPL, suspects were considered guilty from the time they were detained, the right to defence was nominal, criminal trials were usually a mere formality - with verdicts decided in advance in important cases - and judges assumed more or less the role of prosecutors.

The revised CPL corrects this unbalance to some extent. In particular, it changes the terms of a provision in the 1979 CPL which resulted in pre-determined verdicts, a practice known in China as "verdict first, trial second". Under the 1979 CPL, the court president had the power to submit "all major or difficult cases" to the adjudication committee (a body set up in each court to supervise judicial work) for "discussion and decision". Thus, the verdict and sentence were usually decided by the adjudication committee and the trial court was little else than a rubber-stamp. The revised law does not completely eliminate this procedure but changes it significantly. First, it is now the trial court itself (rather than the court president) who can decide to refer upwards "difficult, complex or important" cases - in which case it asks the court president to refer them to the adjudication committee for decision. Secondly, this procedure is limited to cases where the trial court finds it difficult to reach a verdict, and the law clearly indicates that the court should normally reach a verdict "after hearing and deliberation of a case" (Article 149). These provisions limit the previous practice of referring cases upwards for decision and they should in principle prevent the verdict being decided before the trial hearing even starts. They also give a new importance to the court and to the trial itself.

Other changes in the law signal the intention to make the courts more neutral in the trial process. For example, the revised law eliminates a procedure under which, during a trial, the court could return a case to the procuracy for "supplementary investigation" if the court deemed that the "evidence was incomplete" (Article 123, 1979 CPL). This was often done, in fact, when the evidence was insufficient for conviction. The hearing would then be postponed until the prosecution's evidence was sufficiently "complete" for the defendant to be found guilty. This procedure was frequently used in political cases. For example, in the case of Gao Yu, a journalist accused of leaking "state secrets", trial hearings were suspended twice in 1994 because the court found that the prosecution's evidence "still needed to be verified". Instead of acquitting Gao Yu, the court twice returned the case to the procuracy for "supplementary investigation". Gao Yu was eventually found guilty and sentenced to six years' imprisonment at a final secret hearing from which her lawyers and husband were excluded.

While the court's power to order a supplementary investigation has been removed in the revised law, a supplementary investigation can still be requested by the procuracy during the trial hearing (Article 165) and the law does not specify on what grounds this may be granted. In view of this, it is possible that this procedure may still be used as previously to bring the prosecution' s evidence to the standards required for conviction.

There remain many other deficiencies in the law. As noted earlier, the right to defence is still limited during pre-trial detention and only some detainees have a clear entitlement to free legal assistance "at least ten days" before the trial (see above, page 12). It is also at this time that defendants are entitled to receive a copy of the indictment (the bill of prosecution) and have full access to the evidence against them. In many cases, ten days is likely to be grossly insufficient to prepare an adequate defence. In contrast, the police and procuracy may have had months to build up evidence against the accused.

In addition, the revised law still fails to guarantee the defence's right to examine prosecution witnesses and to call new witnesses in court. Witnesses' testimony can still, as previously, be presented in writing (Article 157) and, when witnesses are called in court, cross-examination is subject to approval by the chief judge (Article 156). This may therefore be denied at the chief judge's discretion. As to the right to call new defence witnesses in court, this is at the discretion of the trial court (Article 159).

The revised law also fails to guarantee public trials in all cases: it retains a clause of the original law which allows cases involving "state secrets" to be tried *in camera* (Article 152). In such cases, only the verdict is to be announced "in public", which in practice usually means in the presence of close relatives of the accused and in some cases of other people selected by the authorities.[17]

When the amendments to the CPL were passed, some commentators stated that the law now included the presumption of innocence - a fundamental principle of fair trial in international law. This assumption was based on the inclusion of a new provision in the law, which reads: "No one shall be determined guilty without a verdict according to law by a people's court" (Article 12). This article, however, does not speak of presumption of innocence. All it says is that the only legal means to

17. Even this has been denied in some cases, such as that of Gao Yu (see page 15). The verdict and sentence against her were announced at a secret hearing, in the absence of her husband and lawyers.

"decide" (*queding*) guilt is a verdict by a court, and by extension, that only the courts have this power. According to some experts, the inclusion of Article 12 in the revised law is related to controversy about a procedure known as "exemption from prosecution" which, under the 1979 CPL, gave the procuracy the power to determine guilt[18]. This procedure has been modified in the revised law[19].

18. For a detailed discussion of this issue, see *Opening to Reform ?*, op.cit., pp. 43-50.

19. Exemption from prosecution, which often implied the suspect was considered guilty, has been changed in the revised law by a decision "not to prosecute". The procuracy must now decide "not to prosecute" in a number of cases specified by the law. It may also decide on its own authority "not to prosecute" minor criminal cases which are "neither liable to a criminal punishment nor eligible for an exemption from criminal punishment". However, cases which are not prosecuted may be liable to an "administrative punishment". If this is the case, the procuracy must refer the case to the appropriate administrative authority for decision (Article 142, revised CPL). This procedure, which did not exist under the 1979 CPL, opens the door for imposing administrative detention upon recommendation by the procuracy in cases which are not eligible for prosecution.

Article 12, however, does not touch upon questions which are central to the presumption of innocence, such as the burden and standards of proof. One article in the revised law, retained from the 1979 CPL, appears in fact to place the burden of proof on the defence. It reads, in relevant part: "The responsibility of a defender is, on the basis of the facts and the law, to present material evidence and opinion proving that the criminal suspect or defendant is innocent, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility..." (Article 35, revised CPL; Article 28 in the 1979 CPL). While this article can be interpreted in various ways, the law still does not give the defendant the benefit of the doubt. Some moves have been made in the revised law in the direction of presumption of innocence - notably, as noted earlier, through the change in the terminology used to designate detainees. However, the pre-trial detention process still denies detainees many of the rights which are associated with the presumption of innocence and this principle is still far from being recognized in the law.[20]

Despite positive changes in the provisions related to the trial process, the revised law still fails to conform to international standards for fair trial, including the right to a defence lawyer at all stages of the criminal process, the right to have adequate time and facilities to prepare the defence, the right to be presumed innocent and the right to a public trial by an independent and impartial tribunal.

5. Provisions on the death penalty

One of the most welcome changes brought by the revision of the CPL is the repeal of a 1983 Decision which provided for summary trials in some cases liable to the death penalty[21]. The use of this legislation has led to tens of thousands of executions after summary trials in China since 1983. It was applied last year during the "strike hard" anti-crime campaign launched by the authorities in April, which, alone, has resulted in several thousand executions.

20. For more information on this issue and the standards of proof, see *Opening to reform ?*, op.cit., pp.63-65.

21. *Decision of the Standing Committee of the National People's Congress Regarding the Procedure for Rapid Adjudication of Cases involving Criminal Elements who Seriously Endanger Public Security*, adopted 2 September 1983, repealed on 1 January 1997.

The 1983 Decision applied to "offenders on whom death sentences should be imposed" for crimes such as murder, rape, robbery, causing explosions, and "other crimes which seriously endanger public security". It cancelled the procedures of the CPL requiring that defendants be given notice of the trial and of their right to hire a lawyer, as well as a copy of the indictment, at least seven days before the trial. This meant that defendants facing the death penalty could be summarily tried without a lawyer, without knowing in advance the substance of the accusations against them and without having any time to prepare their defence. The 1983 Decision also reduced the time limit for appeal against the verdict or sentence from 10 days to 3 days.

With the repeal of this Decision, all defendants facing the death penalty should now be tried under the procedures of the revised CPL, which include receiving notice of the trial and of the right to a defence lawyer, as well as a copy of the indictment, at least ten days before the trial starts. Under the revised law, defendants facing the death penalty who have not hired a defence lawyer have the right to have one appointed for them by the court hearing the case, at least ten days before the trial (Articles 34 and 151). While this is a significant improvement over the 1979 CPL, this still leaves little time to prepare an adequate defence in death penalty cases. International standards require that people charged with offences for which the death penalty may be imposed be given "adequate legal assistance at all stages of the proceedings"[22]. In addition, as noted earlier, the procedures for trial in the revised CPL are still insufficient to ensure fair trial (see above, pages 14-17).

22. Article 5, UN *Safeguards guaranteeing protection of the rights of those facing the death penalty*, approved by Economic and Social Council resolution 1984/50 of 25 May 1984; hereafter cited as UN *Safeguards*.

The provisions regarding review of death sentences in the revised CPL are the same as they were in the 1979 law. Those sentenced to death, like other defendants, are entitled to one appeal and, if they do not appeal, there is an automatic review of the case by a court at a higher level than that which passed sentence. Appeals in death penalty cases are usually heard by the high courts. In addition, the CPL states that all death sentences have to be approved by the Supreme People's Court. However, under another law, the Supreme People's Court can delegate its power to approve death sentences to the provincial high courts in some cases[23]. The delegation to the high courts of the power to approve death sentences has often meant in the past that the procedure for approval of the sentence was amalgamated with that for appeal or review of the case. The revised CPL, like the 1979 law, includes no mechanism allowing prisoners sentenced to death to seek pardon or commutation of the death sentence, which is an internationally-recognized right[24].

International standards generally require that the most careful legal procedures and all possible safeguards for the accused be guaranteed in death penalty cases, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, the right to have adequate time and facilities to prepare the defence - including, as noted above, the right to have adequate legal assistance at all stages of the proceedings - and the right to seek pardon or commutation of the sentence. Despite positive changes brought by the revision of the CPL, these safeguards remain either unavailable or inadequately guaranteed in the Chinese justice system.

The provisions for carrying out death sentences have been modified in some respects in the revised CPL. One change concerns cases where a death sentence has been passed with a two-year suspension of execution - which is an alternative to the death penalty "with immediate execution". Under the 1979 CPL, at the end of the two-year period of suspension, the death sentence was carried out if the prisoner was found to have "resisted reform in an odious manner" and it was commuted if the prisoner was deemed to have "truly repented" or to have performed "meritorious service" while

23. This is provides for by the Organic Law of the People's Court, as amended in 1983. Delegation of approval of death sentences to the high courts applies to cases of murder, rape, robbery, causing explosions and "other offences which seriously endanger public security". Confirmation that this procedure still applies is given in "*Xingshi susongfa shiyong wenda"* (Practical questions and answers on the Criminal Procedure Law), issued by the Supreme People's Court Publishing House, Beijing, July 1996, page 370.

24. ICCPR, Article 6(4) and UN *Safeguards*, Article 7.

imprisoned during the two-year suspension of execution. The revised law has changed this provision. Execution or commutation of the death sentence now depends on whether or not the prisoner has "intentionally committed crimes" during the period of suspension of execution (Article 210). While this is an improvement over the 1979 CPL, the revised law does not specify what types of new crimes might warrant the carrying out of the death sentence. It is therefore possible that prisoners under suspended death sentences may be executed for fairly minor offences committed in prison during the period of suspension of execution. This is particularly of concern in view of a new provision in the law which allows the prison authorities to investigate themselves crimes allegedly committed by convicted prisoners within prisons (Article 225), with all the potential for bias this involves.

Until recently, execution was by shooting and usually carried out at an outdoor execution ground. The revised law has added a new method of execution, lethal injection, and specifies that execution can be carried out at an execution ground or a designated detention site (Article 212). This provision now clearly allows executions to be carried out in prisons. According to Chinese officials and jurists, executions in prison are "fairer, more civilized and more cost effective" because they avoid exposing condemned prisoners to public view, and save on the substantial manpower required to carry out executions at outdoor grounds[25.]

While Amnesty International opposes the death penalty in all cases and, therefore, all methods of execution, it finds the addition of lethal injection particularly regrettable. This will require the involvement of doctors in executions, which breaches internationally recognized principles of medical ethics and which has been condemned by international professional associations. In addition, it is feared that this method may be used to facilitate the removal of organs from executed prisoners for transplantation - a practice in China which has been well documented. According to medical experts, lethal injections can be used to execute a person without damaging the organs which may be retrieved for transplantation. With the introduction of lethal injection, the current level of medical involvement of doctors in executions will be deepened and medical ethics will be further breached.

The revised CPL retains a provision which bans public executions[26], but it still fails to prohibit the public display and humiliation of prisoners sentenced to death, which

25. See *Eastern Express*, 19 October 1995, citing a newspaper associated to the Chinese Ministry of Supervision, and Reuter, Beijing, 1 January 1997, citing Chinese jurists.

26. Article 212. It states, in relevant part, "Execution of death sentences shall be publicly announced

is a common practice. Prisoners sentenced to death are frequently paraded in public - with their hands tied behind their back, a placard around their neck and their head forced down by guards - at "mass sentencing rallies" or in parades of trucks through the streets on their way to the execution ground. This practice remains common despite instructions against it issued by various government departments and judicial authorities on several occasions since the 1980s, including one issued by the Supreme People's Court in March 1994[27]. Some Chinese legal scholars have advocated banning this practice in law,[28] but no consideration appears to have been given to the issue when the CPL was revised. The revised law also fails to include provisions allowing prisoners sentenced to death to see their family before execution, which has also been advocated by some legal scholars in China.

III. ADMINISTRATIVE DETENTION

but shall not take place in public".

27. See "Guanyu sixing zhixing chengxu de xiugai yu wanshan" (Improvements and Changes in the Procedure for Carrying out the Death Penalty), in *Zhengfa Luntan*, No.2, 1995, pages 46-50.

28. See *Zhengfa Luntan*, N.2, 1995, cited above, and report from Radio Australia on 15 January 1996 in the BBC Summary of World Broadcasts, 17 January 1996 (FE/2511 G/6).

"Shelter and investigation" and "re-education through labour" are two forms of administrative detention which have existed in China since the late 1950s. They have been widely used to detain people for long periods without charge or trial, outside the criminal justice system, causing widespread human rights violations.[29]

As noted earlier, some of the amendments made last year to the Criminal Procedure Law (CPL) were intended to result in the abolition of "shelter and investigation" as an administrative measure, though this form of detention has now been integrated in the criminal process. No consideration, however, appears to have been given to abolishing "re-education through labour", which remains in force as an administrative punishment.

Instead, China's legislature adopted a new law, the Administrative Punishment Law (APL), to regulate the system of "administrative sanctions" - ranging from fines to detention - which can be imposed by state officials, outside the criminal justice system. When the APL came into force on 1 October 1996, a Chinese official acknowledged that "in the past, random and unreasonable penalties which lacked a legal basis" were imposed by government officials. He stated that the APL would "help prevent the random imposition of penalties".[30] As noted below, however, the APL does not challenge the fundamental principles on which "re-education through labour" is based. Therefore, it does not provide a remedy against arbitrary arrest and detention.

1. "Shelter and investigation"

29. See Amnesty International's report, *China - Punishment Without Crime: Administrative Detention*, AI Index: ASA 17/27/91, September 1991, hereafter cited as *Punishment Without Crime*. A collection of translated legal texts and materials on administrative detention in China has been published in the journal *Chinese Law and Government*, September-October 1994.

30. See Agence France Presse, Beijing, 2 October 1996.

"Shelter and investigation" has been a major source of human rights violations, including large-scale arbitrary detention and torture. It provided a convenient way for the police to detain people for long periods when there was too little or no evidence to charge them with a crime under the Criminal Law. Since the 1980s, hundreds of thousands of people have been detained for "shelter and investigation", many of whom had committed no crime. Over the years, the victims have included many political dissidents. Among recent examples are those of Hada and Tegexi, two ethnic Mongol intellectuals, who were illegally detained for three months for "shelter and investigation" in early 1996 before they were charged with "counter-revolutionary offences" under the Criminal Law[31]. As in many other cases, their detention for "shelter and investigation" breached the regulations which define this form of detention.

The regulations on "shelter and investigation" allowed the police to detain specific categories of suspects without charge for periods of up to three months, without any judicial review. Under the regulations, "shelter and investigation" applied to people suspected of "minor acts of law-infringement or crime" whose identity and address were not clear, or who were suspected of "having moved from place to place to commit crimes" or of forming criminal gangs. In practice, however, "shelter and investigation" was used by the police to detain anyone they wished, including many people who did not fit the definition of those who could be detained under this measure[32]. In addition, many people held for "shelter and investigation" were kept in custody for periods far exceeding the permitted maximum of three months - in some cases for several years.

Amnesty International would welcome official confirmation that "shelter and investigation", as an administrative measure, has been formally abolished. As yet, it is unclear whether this has been done. Statements of intent to that effect were made in the *Decision of the National People's Congress on Revision of the Criminal Procedure Law of the PRC,* adopted in March 1996. However, this *Decision* does not in itself abolish "shelter and investigation". Though the legal basis of "shelter and investigation" is somewhat unclear, in the past 16 years its use has been justified by a 1980 Notice of the State Council (government) and subsequent regulations issued by

31. Hada and Tegexi were detained in December 1995 for promoting human rights and the concept of Mongolian cultural identity. They were tried and sentenced in Inner Mongolia in late 1996.

32. See *No one is safe,* op.cit., pp.20-24.

the Ministry of Public Security[33]. Its formal abolition as an administrative measure would therefore appear to require a government decree or decision. According to official statements made last year, "shelter and investigation" was due to be abolished when the revised CPL came into force on 1 January 1997, but so far there has been no official announcement that the government has done so.

33. See *Punishment Without Crime*, op. cit., pages 6-8.

While such clarification would be welcome, Amnesty International remains concerned that the main features of "shelter and investigation" have been integrated in the procedures for detention under the Criminal Procedure Law, albeit with a shorter time limit. Inasmuch as the revised CPL allows the police to detain for up to 37 days, without charge and without judicial review, the same vaguely defined categories of suspects as were previously held for "shelter and investigation", the shift from an administrative to a criminal procedure does not substantially change this form of detention[34]. It is feared therefore that the high incidence of arbitrary detention and associated torture and ill-treatment which have characterized "shelter and investigation" may continue.

2. *"Reeducation through Labour" and the new Administrative Punishment Law*

The system of "re-education through labour" - a form of administrative detention imposed as a punishment - is based on a Decision passed by the National People's Congress in 1957, which was later updated with new regulations[35]. This legislation remains in force. According to a definition given by an official legal newspaper, "re-education through labour" is a punishment for actions which fall "somewhere between crime and error"[36].

"Re-education through labour" involves detention without charge or trial for up to three years, renewable by one year, in a forced labour camp. It is imposed by local government committees usually presided over by police officials. It applies to people who are regarded as troublemakers or those accused of committing minor offences

34. Whether or not to "upgrade" shelter and investigation to the level of a "criminal coercive measure" has been debated in Chinese legal circles since the 1980s. One legal scholar noted in 1989 that if shelter and investigation became a criminal coercive measure, since its length far exceeded that of 'detention' in the CPL, public security officers would prefer to use it instead of 'criminal' detention for the sake of convenience. He also opposed making shelter and investigation a criminal coercive measure because "when the period of detention is relatively long, it is easy for the individual rights and economic interests of innocent citizens to be infringed" (*Zhengfa Luntan*, No.1, 1989; see translated extracts of this article in *Punishment without Crime, op.cit., pp.22-23).*

35. See *Punishment Without Crime*, pages 30-38.

36. *China Legal News*, 29 April 1985; see *Punishment without Crime*, op.cit., p.28.

which are not regarded as amounting to "crime" and which therefore are not prosecuted under the criminal justice system. Under the regulations on "re-education through labour", people who can be subjected to this punishment include those who are classified as being "counter-revolutionary", "anti-Party" or "anti-socialist", as well as people who "behave like hooligans", such as by engaging in fights, smuggling or prostitution, or by disturbing public order or "the order of production" in other ways. Over the years, many political dissidents and people labelled as "anti-social elements" have been detained for "re-education through labour". According to official statistics, in 1996 there were 200,000 people in "re-education through labour" camps in China.

Detainees liable to receive terms of "re-education through labour" have no right to a lawyer. Until recently they had no right to a hearing either and, therefore, no means of defending themselves against the accusations.

The Administrative Punishment Law passed by the National People's Congress in March 1996, which became effective on 1 October 1996, has introduced some changes. It gives people liable to receive administrative punishments "the right to make a statement and to defend themselves" (Article 32, APL). Article 42 of the APL provides that the "parties concerned" (including the accused) shall be notified of their "right to a public hearing" and that such a hearing shall be organised if they request it. The same article sets detailed rules for the organisation of such hearings, which are to be held publicly, except in cases involving "state secrets", "business secrets" or "individual privacy". It also specifies that the "parties concerned" may attend the public hearing or ask one or two persons to represent them.

While the APL introduces some protections which did not exist previously, it does not challenge the fundamental principles on which "re-education through labour" is based and therefore it is not a remedy against arbitrary detention.[37] These principles were established by laws passed by the National People's Congress, which the APL does not question. Two fundamental principles of "re-education through labour" are that it is a punishment involving deprivation of freedom which is imposed by government officials, rather than by the courts, and that it punishes people whose

37. The same applies to another law introduced in 1990, the Administrative Procedure Law, which instituted a mechanism for appealing against administrative punishments; for further information on this law, see *Punishment without Crime*, op.cit., pages 53-57. The Administrative Procedure Law seems to have led to few successful appeals against administrative detention orders, and all appeals known to have been made by political detainees have been systematically rejected.

"actions" are considered "too minor" to amount to "crime", including people who hold dissenting political views. By definition, this may lead to arbitrary detention.

If one compares "re-education through labour" with criminal punishments, one may also question the justification for imposing a punishment varying from one year to three years of detention in a forced labour camp in cases which are not considered serious enough to be prosecuted and tried under the Criminal Law, whereas those convicted of "crimes" under the Criminal Law can receive light punishments such as "control" (which involves supervision within the community for periods varying from three months to two years), or "criminal detention" (which involves between 15 days and six months of detention)[38]. The APL, however, does not address this question.

In addition, there are reasons to doubt whether the limited changes introduced by the APL for those who may be subjected to "re-education through labour" will be fully implemented in practice, at least in political cases. The handling of a recent case involving a political dissident raises such doubts.

Liu Xiaobo, aged 41, was detained on the morning of 8 October 1996 and assigned later that same day to a period of three years of "re-education through labour". He was reportedly detained in connection with his co-signing of a letter on 1 October 1996 calling for political reforms - the result therefore of exercising peacefully his fundamental right to freedom of expression.

Liu Xiaobo was detained only one week after the Administrative Punishment Law came into effect. Along with others, Liu Xiaobo had welcomed the adoption of this law for enhancing the legal rights of detainees. The provisions of the APL, however, do not appear to have been applied in his case. In particular, the speed and secrecy with which Liu Xiaobo was assigned to "re-education through labour" contravenes "the principle of fairness and openness" required by Article 4 of the APL. Little opportunity can have been provided in his case to "fully hear the opinions of the parties concerned, verify the facts, reasons and evidence presented by the parties", as required by Article 32 of the APL. The APL also stipulates that punishments are

38. One argument frequently used by Chinese officials to justify "re-education through labour" is that this punishment does not have the stigma of a criminal punishment and that it involves less stringent conditions of detention than a term of imprisonment. In reality, however, the conditions of detainees in labour re-education camps are often similar to those of convicted prisoners, and they often face the same difficulties finding employment after their release.

"invalid without legal basis or without following legal procedures" (Article 3). These procedures include the "right to a public hearing" (Article 42) at which "parties may ask one or two persons to represent them" (Article. 42.5). No such hearing is known to have taken place in Liu Xiaobo's case and his wife was not informed of the reasons, evidence or legal basis for the decision to impose three years of "re-education through labour" on him.

Liu Xiaobo is only one of many people who in the past year have been served with detention orders for "re-education through labour" after signing open letters calling for political and social reform. Liu Nianchun, Wang Donghai, Chen Longde and others are arbitrarily detained for having peacefully exercised their constitutional rights to freedom of speech and association.

The provisions of the APL do not alter that fact that arbitrary detention for "re-education through labour" is likely to continue as long as the legislation which provides for this form of detention remains in force.

IV. THE MARTIAL LAW

The Martial Law of the PRC was promulgated on 1 March 1996 by the Standing Committee of the NPC. It provides that martial law can be imposed, either locally or in the whole country, in response to situations vaguely defined as "turmoil, riot or disturbance" where "only emergency measures can help preserve social order and protect the people's lives and property".

This law gives the national and local governments the power to suspend constitutional rights during such a state of emergency. It provides that the "martial law enforcement institutions" can ban or restrict assembly, parades, demonstrations, public speeches and "other group activities". They can also ban strikes, impose press censorship, control correspondence and telecommunications, and ban "any activity against martial law".

The personnel in charge of executing martial law - which can be the police, the People's Armed Police, or military units - are given wide powers to carry out arrests under the Martial Law. They can detain and search people violating curfew regulations, "criminals or major suspects endangering state security or undermining social order", people who obstruct or defy "the implementation of martial law tasks", and basically anyone suspected of opposing martial law.

Martial law enforcement personnel also have the power to use "police instruments" to disperse by force crowds or groups of people involved in "illegal" gatherings or demonstrations, or causing "disruption of traffic order", and to immediately detain the organiser or individuals who do not obey orders in such situations.

The Martial Law further specifies that, for those detained or arrested during martial law, the procedures and time limits provided by the Criminal Procedure Law for detention or arrest will not apply, except for the procedure which requires that "arrest" (charge) be approved by the procuracy.

The law allows martial law enforcement personnel to use "guns and other weapons", "if police instruments prove to be of no avail", in various situations where violence occurs or there is a threat of the use of violence. This includes situations where a person detained, or transported under escort, commits a physical assault or "attempts to get away". The law sets no limit on the amount of force to be used in such situations and does not specify that force must be used only when strictly necessary and must be proportionate to the threat of violence.

Amnesty International is concerned that the Martial Law permits restrictions to the exercise of basic rights which go beyond those envisaged under international standards. The declaration of a state of emergency is an expression of the rule of law, not the abrogation of it, and emergency measures must not be introduced as a means of suppressing legitimate rights.

International standards set strict limits on the scope of restrictions which may be enforced under a state of emergency and specify that such restrictions may only occur "in time of a public emergency which threatens the life of the nation and the existence of which is officially proclaimed"[39]. The Martial Law of the PRC goes far beyond this by providing that martial law, and the restrictions it involves, can be imposed in response to a local situation of "turmoil, riot or disturbance".

Furthermore, some rights are so fundamental that they can never be suspended, even during a state of emergency. Under international standards, the rights which can never be derogated from include the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatement or punishment, and the right to freedom of thought, conscience and religion. In Amnesty International's experience,

39. ICCPR, article 4.

violations of the non-derogable rights to life and freedom from torture often occur during an emergency when security forces are given licence to maintain public order with no effective executive, legislative or judicial control. The Martial Law of the PRC gives wide powers to the security forces and may lead to such violations.

International standards also limit the restrictions that can be put on all other rights during a state of emergency. They specify that the exercise of rights other than the non-derogable rights can be suspended by a state only "to the extent strictly required by the exigencies of the situation"[40] and as a temporary measure. The Martial Law of the PRC does not contain any such limitations. Its provisions are so vague that they would permit the arbitrary suspension of rights, such as the right not to be arbitrarily detained, the right to fair trial, and the rights to freedom of expression, association and peaceful assembly.

The Martial Law is the latest in a series of laws introduced in China since the late 1980s which restrict fundamental rights and freedoms. These include laws and regulations on state security and "state secrets"[41] which are increasingly being used to arbitrarily imprison individuals who peacefully exercise their fundamental rights to freedom of expression or association.

The legislation on state security, for example, was invoked in the case of Wang Dan, a former student leader in Beijing who was sentenced to 11 years' imprisonment after an unfair trial on 30 October 1996. Wang Dan was accused of engaging in activities which "endangered state security" because of his contacts with organisations and individuals outside China. It is clear, however, that the "crimes" imputed to Wang Dan amount to no more than the peaceful exercise of his right to freedom of expression and association, and that his activities did not present a threat to legitimate national security interests.
It is feared that the provisions of the state security legislation may have served as the model for those due to replace shortly the provisions on "counter-revolutionary crimes" in the Criminal Law. Amendments to the Criminal Law are currently being examined by the NPC. Official sources have announced that new provisions on state security will be included in the revised law to replace those on "counter-revolutionary crimes", which have served to arbitrarily imprison thousands

40. As set out, for example, in article 4(1) of the ICCPR.

41. For further information on these laws, see Amnesty International reports, *No One is Safe* (see note 4) and *State Secrets - A Pretext for Repression* (see note 3).

of prisoners of conscience. While the repeal of the "counter-revolutionary" provisions from the Criminal Law in itself is to be welcomed, the change would be purely nominal if the provisions replacing them are modelled on those of the state security legislation.

V. CONCLUSION

Significant changes were made last year to the Chinese Criminal Procedure Law, narrowing to some extent the gap between the law and international human rights standards. However, not all the changes made are positive ones and the revised law still fall far short of international standards for fair trial. For those detained under the criminal justice system, the revised CPL still fails to ensure protection against arbitrary detention, unfair trial and torture or ill-treatment. There is also a body of other legislation which cause human rights violations in China, including laws providing for administrative detention. The Martial Law which was adopted last year only adds to the existing legal tools of repression.

While it is still too early to know what impact the changes to the CPL will have in practice, some aspects of law-enforcement in China - including widespread illegal practices by law-enforcers, the interference of political authorities and the lack of independence of the judiciary[42] - raise doubt as to the extent to which the most positive changes may be implemented in practice. Arbitrariness continues to prevail in the treatement of suspects and offenders. Cases in which law-enforcers and other officials disregard the law or apply it arbitrarily come to light frequently. The continued use of "torture to extract confessions", which has been explicitly prohibited by law since 1980, is one example. The principle of equality before the law, which is written in the Constitution, is often ignored. In many cases, political considerations determine how the law is implemented. There is also evidence of growing corruption among the judiciary, which according to official sources has resulted in many "incorrect" rulings and other malpractices in recent years[43].

42. See "Chine: Un Etat de Lois Sans Etat the Droit", pages 659-668, cited at note 2 above.

43. In his report to the NPC, the President of the Supreme People's Court, Ren Jianxin, said that more than 1,000 judicial officials had been punished in 1996 for taking bribes or bending the law in favour of relatives, and described other "serious shortcomings" in implementation of the law. See AFP, Beijing, 11 March 1997.

Amnesty International believes that a fundamental review of all legislation and of law enforcement and judicial practices is needed to curb human rights violations in China. It urges the Chinese authorities to broaden the legal reforms and review all laws containing provisions which cause human rights violations. It also urges the authorities to undertake a review of the constitutional and institutional framework in which the law is implemented, with a view to ensure its independent and impartial application and to introduce effective mechanisms to prevent and redress human rights violations.