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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest
attainable standard of physical and mental health, Paul Hunt**

Addendum

Summary of cases transmitted to Governments and replies received*

* The report is being circulated in the languages of submission only.

Introduction

1. The present document is submitted by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, to the Commission on Human Rights pursuant to Commission resolution 2002/31. This addendum contains, on a country-by-country basis, summaries of communications, including urgent appeals, government replies and observations thereon, relating to the Special Rapporteur's mandate. A communication from the Special Rapporteur usually requests that the Government concerned investigate one or more allegations and, in appropriate cases, take all necessary measures to remedy the situation.

2. To date, most of the Special Rapporteur's communications have been sent jointly with one or more special procedures of the Commission on Human Rights, or the Representative of the Secretary-General on internally displaced persons. In these joint communications, the Special Rapporteur's concern is the dimension of the case relating to his mandate, such as an allegation of forced abortion or the denial of medical treatment. Sometimes, a joint communication includes several cases, not all of which have a dimension relating to the Special Rapporteur's mandate. In these instances, the Special Rapporteur only reports, in the following paragraphs, on the case in the joint communication that has a dimension relating to his mandate. Fuller accounts of joint communications will be found in the reports of the other relevant special procedures.

3. In accordance with paragraph 6 of Commission resolution 2002/31, the Special Rapporteur strives to avoid "overlapping" with other special procedures of the Commission on Human Rights. For example, while many cases fall within the mandate of the Special Rapporteur on the question of torture, as well as the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the latter does not take up allegations of torture. He will, however, take up a case where there is both an allegation of torture plus an additional factor that concerns his mandate. For example, while the Special Rapporteur will not take up an allegation of torture, he is prepared to take up such an issue where it is also alleged that the victim was subsequently denied access to medical treatment.

4. The Special Rapporteur has received a number of complaints concerning hunger strikes and forced feeding. As the following paragraphs reveal, he has taken up some of these complaints with Governments. At present, the Special Rapporteur declines to take up complaints that are only about hunger strikes, but he is prepared to take up a hunger strike case that has an additional factor bearing upon his mandate. Hunger strikes and forced feeding raise complex legal, ethical and human rights issues that the Special Rapporteur will continue to research and keep under review.

5. The Special Rapporteur regrets that, because of extremely limited resources, he is unable to take up many of the complaints that are brought to his attention. Also, having taken up a case, follow-up is severely limited by the Special Rapporteur's lack of capacity. Sometimes, where the facts of a case do not clearly fall within his mandate, the Special Rapporteur has brought the matter to the attention of another special procedure of the Commission on Human Rights where there would appear to be a closer fit between the facts and the mandate.

6. The Special Rapporteur's communications are dependent upon, and shaped by, the information and complaints that he receives. He emphasizes that the range of issues that are brought to his attention by way of unsolicited information and complaints is very much narrower than the range of issues that he finds on his country missions. In other words, the issues reflected in this addendum are unrepresentative of the wide range of issues encompassed by the right to the highest attainable standard of physical and mental health.

7. During the period under review (1 December 2003 to 1 December 2004), the Special Rapporteur sent 36 communications concerning the right to the highest attainable standard of physical and mental health, to 21 countries. This report also refers to two communications that originated prior to 1 December 2003. In transmitting a communication to a Government, the Special Rapporteur makes no judgement concerning the merits of the case, nor the opinions and activities of the persons on behalf of whom he intervenes. The Special Rapporteur's communications have a humanitarian and preventive purpose; they do not require the exhaustion of domestic remedies.

8. Owing to restrictions on the length of documents, the Special Rapporteur regrets that he has been compelled to condense communications sent and received. The Special Rapporteur appreciates the replies received from some Governments to his communications. He regrets, however, that some Governments have failed to respond. These communications remain outstanding.

China

Communications sent

9. On 3 February 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, concerning **Tian Xianofei** and **Cao Jiguang**. Mr. Tian, 40 years old, was reportedly detained in Huazi Prison in Liaoyang City, and sentenced to 10 years' imprisonment by the Pingshan District Court, allegedly for being a Falun Gong practitioner. According to the information received, Mr. Tian began a hunger strike on 20 July 2003 and was forcibly fed and denied medical treatment. Cao Jiguang, 35 years old, was reportedly detained in Guangyuan Jail in Sichuan Province, serving a five-year sentence, allegedly for being a Falun Gong practitioner. It was reported that during a hunger strike, Cao Jiguang was force fed by the jail's doctor, who inserted a plastic tube into his trachea and pulled it out repeatedly with the apparent intention of hurting him, and that before force-feeding him guards opened his mouth with an instrument, which caused severe injuries inside his mouth.

10. On 30 April 2004, the Special Rapporteur transmitted a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture, concerning **Gong Sheng Liang**, aged 51. He was reportedly held in Hongshan Prison, Wuhan City. On 12 April 2004, his relatives visited him and reportedly found him unable to walk; he needed to be carried by four other inmates. It was also reported that he was in a coma for several days following a beating in June 2003 and that his medical condition had since deteriorated. It was

alleged that he has been refused medical treatment for his injuries. In view of his state of health, concern was expressed for the physical and mental integrity of Gong Sheng Liang if he did not receive prompt and adequate medical treatment.

11. On 30 April 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on torture and the Special Rapporteur on violence against women, concerning **Liu Mei**, aged 36, a resident of Donggang City, Liaoning Province. It was reported that Liu Mei was arrested on 9 April 2002 and sentenced to 13 years in prison for producing and distributing materials about Falun Gong. She was reportedly held in Dabei Prison in Shenyang City. On 10 March 2004, a visiting relative reported that Liu Mei, extremely weak and thin, was carried to the visiting room. It was alleged that she had been denied adequate medical attention and her health has reportedly continued to deteriorate. In view of the reported state of her health, concern was expressed for the physical and mental integrity of Liu Mei if she did not receive prompt and adequate medical attention.

12. On 15 July 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on torture and the Special Rapporteur on violence against women regarding **Geng Juying** and **Su Yanhua**. On 25 May 2002, Ms. Geng, a Falun Gong practitioner, was allegedly taken to the Mengzhou police station. She was pregnant at the time. It was alleged that the police officers forcibly gave her an injection to induce an abortion so she could be sent to the Shibalihe Labour Camp. On 15 April 2002 Ms. Su, a resident of Jiamusi City, Heilongjiang Province, was arrested by local police because she was a Falun Gong practitioner. She was sent to Lianjiangkou Detention Centre and two weeks later transferred to the Jiamusi Labour Camp. She began a hunger strike and it was alleged that she was force-fed milk and salt for seven days. The conditions in Jiamusi Labour Camp were allegedly very unsanitary. By February 2003, Ms. Su had developed scabies. It was alleged that at one point the guards sprayed her with a chemical that caused her severe chest pains and rendered her unable to move her head or hands. Ms. Su was reportedly not released from the labour camp after her term expired and her health remained in a critical condition.

13. On 15 July 2004, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on torture, concerning **two individuals**, both HIV positive. According to the allegations received, they were arrested in Shangqiu City, Henan Province, on 12 July 2004, when they were about to travel to Beijing to petition the National Health Department. They had intended to protest about the lack of adequate health care and other services for those with HIV/AIDS and, in particular, the failure of the central authorities to fulfil their promise to provide them with medical treatment. Concern was expressed for their physical and mental integrity if they did not receive adequate medical treatment during their detention.

14. In a letter dated 15 October 2004 and sent jointly with the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on extrajudicial,

summary or arbitrary executions, the Special Rapporteur on torture and the Special Rapporteur on violence against women, the Special Rapporteur expressed his concern at reports about the treatment of members of the **Falun Gong and other “heretical organizations”** (“*xiejiao zuzhi*”). Over the past five years, hundreds of cases of alleged violations of the human rights of Falun Gong practitioners have been brought to the attention of the Special Rapporteurs. Many of these allegations have been reported to the Chinese authorities and are reflected in reports of the Special Rapporteurs to the Commission on Human Rights. The Special Rapporteur was concerned that reports of the denial of adequate medical treatment of detained members of “heretical organizations”, in particular Falun Gong practitioners, were increasing.

Responses received on cases sent by the Special Rapporteur in preceding years

16. By letter dated 18 March 2004, the Government replied to the communication sent regarding the situation of **Ma Shiwen** on 9 October 2003. The Government replied that Ma Shiwen was the former Deputy Director of the Office of Disease Control of the Henan Province Health Department. In August 2002, the Health Department prepared a special report on AIDS prevention efforts and a draft version of the report was sent to Ma Shiwen. Ma Shiwen anonymously sent this confidential draft on AIDS prevention, via the Internet, to other persons in and outside China, and he was therefore arrested in accordance with the law on suspicion of the crime of deliberately divulging State secrets. The Government attached importance to ensuring the right to health and had taken vigorous steps to constantly raise the level of the masses' health. In the area of AIDS prevention, the Government's intention was to establish a mechanism in which several different ministries would work together. The Government had also formulated the Chinese National Medium- and Long-Term Strategic Plan for HIV/AIDS Prevention and Control (1998-2010), and in areas where the epidemic is serious the Government had established comprehensive model prevention districts for the development of treatment, patient care and life-saving activities. Since 2002 in Henan Province alone, the Government had allocated some 22 million yuan renminbi for the treatment of AIDS

patients, had shut down the province's blood collection centers and had provided free testing and treatment for persons with AIDS and those infected with the virus, and the Ministry of Health regularly issued public bulletins on the AIDS situation. The allegation that the Government restricted access to information on health issues was not true.

Observations

17. The Special Rapporteur thanks the Government for its replies and regrets that at the time of the finalization of his report no replies had been received regarding some of his communications. The Special Rapporteur has received a news report that Ma Shiwen was released from detention in mid-October 2003.