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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Report of the Special Rapporteur on the independence of judges and lawyers,
Leandro Despouy, submitted in accordance with
Commission on Human Rights resolution 2004/33**

Addendum

Situations in specific countries or territories*

* The present document is being circulated in the languages of submission only as it greatly exceeds the page limitations currently imposed by the relevant General Assembly resolutions

Introduction

1. The present report supplements the main report and the mission reports presented by the Special Rapporteur on the independence of judges and lawyers to the Commission on Human Rights. It includes:

(a) Summaries of the urgent appeals and allegation letters transmitted by the Special Rapporteur to governmental authorities between 1 January and 31 December 2004 and of the press releases issued during the same reporting period. In this connection, the Special Rapporteur wishes to emphasize that the urgent appeals and communications reflected in the report are based exclusively on information that has been transmitted to him directly. Where information was insufficient and it could not be supplemented and cross-checked, or where the information received was outside the mandate, the Special Rapporteur was not in a position to act;

(b) Summaries of all replies received from the States concerned by 31 December 2004 (including replies to cases acted upon by the Special Rapporteur in 2003 or earlier). In this connection, it may be noted that at the time of submitting this document the Special Rapporteur had received responses from the Governments of China, Columbia, Eritrea, the Russian Federation and the United Kingdom to urgent appeals or communications sent during the reporting period: The Special Rapporteur regrets that these replies were either not able to be translated in time or were received after 31 December 2004, and therefore will be reflected in next year's report to the Commission. Due to restrictions on the length of the report, the Special Rapporteur has been obliged to summarize the details of all correspondence sent and received. As a result, requests from Governments to publish their replies in their totality could regrettably not be accommodated;

(c) Wherever possible, observations or specific comments by the Special Rapporteur;

(d) In a limited number of cases, a note on recent important developments affecting the judiciary.

2. For the first time, the Special Rapporteur has included in this report two tables of statistical data for an overview of the extent and nature of the problems faced by the judiciary worldwide:

(a) Table 1 provides an overview of all actions taken by the current Special Rapporteur and his predecessor on specific situations and cases brought to their attention during the years 2003 and 2004, and of any replies received from the Government of the States concerned. It should be noted that on-site missions are not reflected in the table;

(b) Table 2 provides a tentative thematic overview of the types of problems faced by the judiciary in 2004 as reflected in the nature of the complaints brought to the Special Rapporteur's attention. In this connection, the Special Rapporteur wishes to emphasize that the categories presented are subject to further elaboration and analysis in future reports. He would thus welcome comments and suggestions.

3. It can be seen from table 1 that no fewer than 58 States were approached in one way or the other during the last two years, with 17 communications, 107 urgent appeals and 20 allegation letters sent to the authorities of the States concerned, and that 15 press releases were also issued.

4. In the year 2004, 38 States were directly approached by the Special Rapporteur who – in addition to performing on-site missions to Kazakhstan and Brazil - sent 3 communications to 3 States, 59 urgent appeals to 28 States and 18 allegation letters to 13 States, and issued 7 press releases regarding situations in 7 States. It will be noted that, as threats to the independence of the judiciary often go hand in hand with other human rights violations, for the sake of efficiency, most of these action were taken by the Special Rapporteur jointly with other colleagues.

5. Of the 58 States with which the Special Rapporteur was in contact during the last two years, 45 offered their active cooperation by providing a response, and of the 38 States specifically contacted in 2004, 28 sent a response, and while some replies address the concerns raised more comprehensively than others, the Special Rapporteur highly appreciates the responses as they are a positive indication of a Government's willingness to engage in a dialogue. The Special Rapporteur welcomes this attitude and encourages all other States concerned to also offer their cooperation.

6. To the Special Rapporteur's knowledge and concern, the independence and impartiality of the judiciary is being threatened in yet other countries and territories that are not mentioned in this report. It goes without saying that he closely monitors such situations and will, if appropriate, report on them in due time.

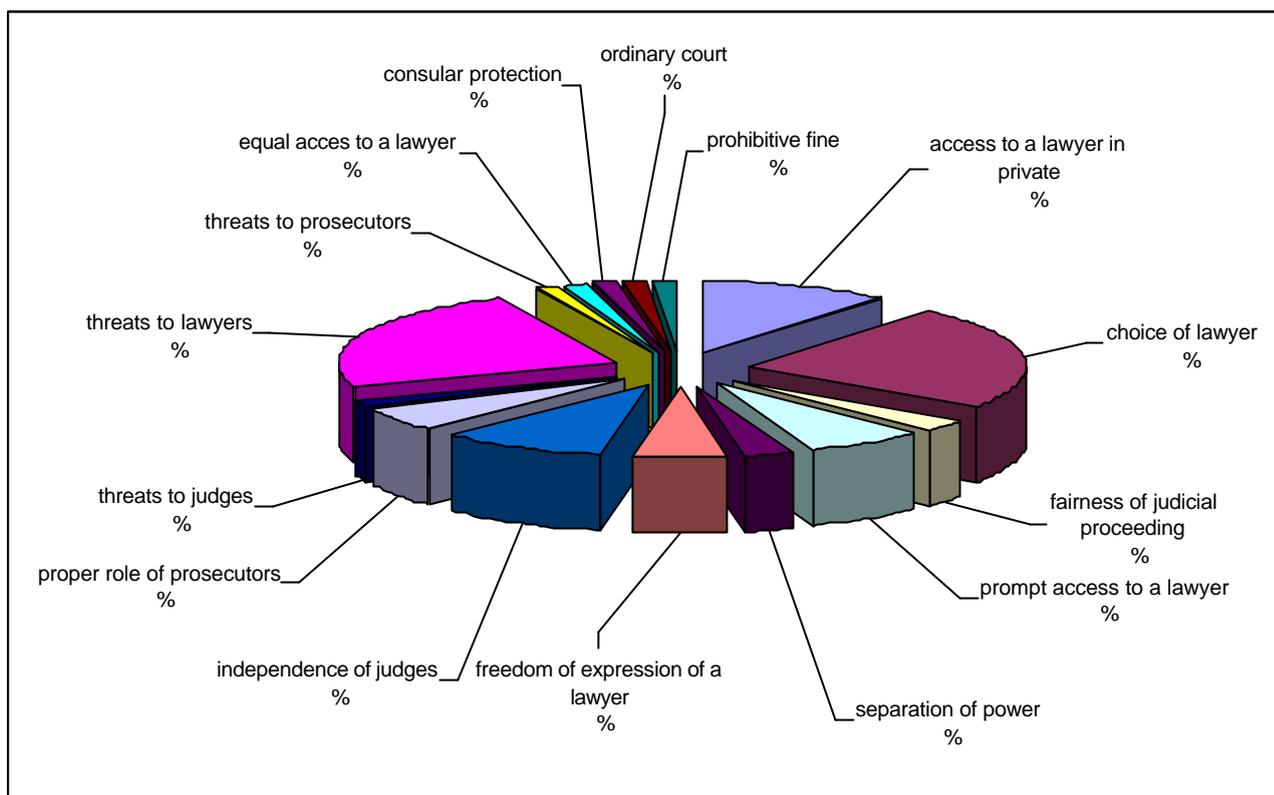
Table 1. Communications sent and received in 2003-2004

7. The statistics in table 1 are a compilation from this report (E/CN.4/2005/60/Add.1) and last year's report (E/CN.4/2004/60/Add.) for the period between 1 January 2003 to 31 December 2004 and reflect the communications, urgent appeals, allegation letters and press releases issued by the Special Rapporteur individually (ind.) or jointly (jt.) with other Special Procedures of the Commission on Human Rights and the replies received from the country concerned.

Communications to the Government

Résumé général					
États concernés	Communications	Appels urgents	Lettres d'allégations	Communiqués de presse	Réponses des États concernés
58 États : dont 38 États approchés en 2004	17 : dont 3 communications concernant 3 États en 2004	107 : dont 59 appels urgents concernant 28 États en 2004	20 : dont 18 lettres d'allégations concernant 13 États en 2004	15 : dont 7 communiqués concernant 7 États en 2004	103 réponses provenant de 45 États : dont 53 réponses de 28 États reçues en 2004

Information pays par pays						
États concernés		Communications	Appels urgents	Lettres d'allégations	Communiqués de presse	Réponses des États concernés (la date de la réponse figure sur la même ligne que celle de la démarche du RS)
9	Chine	09/01/03 (ind.) 24/02/03 (ind.)	19/03/04 (jt.) 08/06/04 (jt.) 22/09/04 (jt.) 15/10/04 (jt.) 25/10/04 (jt.) 01/12/04 (jt.)	27/08/04 (ind.) 19/10/04 (cjt)	14/04/04 (jt.)	29/04/03 29/04/03 05/07/04 --- --- --- 31/12/04 31/12/04 31/12/04 --- (réponse qui figurera dans le prochain rapport)

Table 2. Tentative statistics on thematic issues addressed in 2004

Choice of lawyer	24%
Threats to lawyers	24%
Access to a lawyer in private	11%
Independence of judges	10%
Prompt access to a lawyer	7%
Proper role of prosecutors	6%
Freedom of expression of a lawyer	6%
Fairness of judicial proceeding	3%
Separation of power	3%
Threats to judges	1%
Threats to prosecutors	1%
Equal access to a lawyer	1%
Consular protection	1%
Ordinary court	1%
Prohibitive fine	1%

China

Communications to the Government

20. On 19 March 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning the situation of **Yang Jianli**, who was reportedly arrested on 26 April 2002, and for whom an urgent appeal was sent on behalf of the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 11 December 2002. According to more recent information received, Mr. Yang was tried on 4 August 2003. It is reported that the authorities had four months from that date to issue a ruling, in accordance with provisions of the Criminal Code, but as of that date they had failed to pass sentence. It is further reported that Yang Jianli, who was not allowed to have access to his lawyer during the first 14 months of his detention, asked to be allowed to speak to his lawyer without prison guards and security agents recording their conversation, and to be allowed to write letters. Yang Jianli was editor-in-chief of the online review "Yibao" (www.chinaeweekly.com). He was arrested when returning to China to investigate workers' strikes in the country's north-east, after his expulsion from the country for taking part in Tiananmen Square demonstrations in 1989. He was arrested for "failing to have a valid passport", and was charged on 17 July 2003 with "illegal entry into Chinese territory" and "spying for Taiwan". However, it is believed that Mr. Yang's critical stance vis-à-vis the authorities, in particular on the review "Yibao", might be the reason for his detention.

21. On 8 June 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning reports that, on 18 May 2004, the trial of **Du Daobin** for "incitement to subversion" before the Intermediate Peoples' Court in the city of Xiaogan, Hubei province, which commenced in the absence of Du Daobin's lawyer. Mr. Du's lawyer, who was notified four days before the trial, could not travel to attend the trial and Mr. Du was appointed a lawyer, who refused to enter a not-guilty plea, despite the wishes of his client. It is further reported that the trial was held behind closed doors. Previous urgent appeals were sent on behalf of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention on 7 November 2003 and by the Special Rapporteur on the right to freedom of opinion and expression on 3 December 2003, as Mr. Du had previously been denied the services of his lawyer when, on 3 November 2003, his counsel reportedly had his licence withdrawn by his own law firm, preventing him from defending his client.

22. On 27 August 2004, the Special Rapporteur sent an allegation letter concerning the situation of **Wei Jun**, an attorney from the Baicheng law firm in Baise city, Guangxi province, who had allegedly been threatened and harassed for defending **Liang Changying**, a Falun Gong practitioner. Ms. Liang was sentenced to 5 ½ years in prison. After the court adjourned, the public prosecutor allegedly asked about the existence of a regulation stating that lawyers cannot defend Falun Gong practitioners who plead "not guilty". The same day Mr. Wei's home phone, cell phone and office phone were put under surveillance, and several days later police officers asked the Judiciary Bureau to suspend Mr. Wei's licence to practice law and to sentence him to three years of forced labour. After the director of the Judiciary Bureau refused their request, the

police reportedly warned Mr. Wei that in the future he would not be allowed to defend Falun Gong practitioners, and confiscated all of his materials regarding Ms. Liang's case.

23. On 22 September 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the situation of **two Nepalese citizens** who were reportedly sentenced to death by a Chinese court in a trial alleged to have fallen short of international fair trial standards. Fears were expressed that the two men, whose names remain unknown, were at risk of imminent execution. The men were reportedly sentenced to death by a court in the Tibet Autonomous Region of China, on charges relating to smuggling arms into Nepal. During their trial, it is believed that they neither had access to legal representation nor to an interpreter. Reportedly, the Government of Nepal announced the sentences on 17 September 2004 and appealed to the Government of China to retry the case and to provide the defendants with legal representation.

24. On 15 October 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women, its causes and consequences, to express their concern at reports of systemic repression against 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 back to the Chinese authorities and are reflected in reports of the Special Rapporteurs to the Commission on Human Rights. The Special Rapporteurs are concerned that reports of arrest, detention, ill-treatment, torture, denial of adequate medical treatment, sexual violence, deaths, and unfair trial of members of so-called “heretical organizations”, in particular Falun Gong practitioners, are increasing. They expressed concern that these allegations may reflect a deliberate and institutionalized policy of the authorities to target specific groups such as the Falun Gong. An analysis of reports indicates that the alleged human rights violations against Falun Gong practitioners, including systematic arrest and detention, are part of a pattern of repression against members of this group. Most of those arrested are reportedly heavily fined and released, but many are detained and ill-treated in order to force them to formally renounce Falun Gong. Those who refuse are sent to re-education through labour camps, where torture is reportedly used routinely and in many cases has resulted in death. When charges are laid they reportedly include allegations such as “disturbing social order”, “assembling to disrupt public order”, “stealing or leaking State secrets”, or “using a heretical organization to undermine the law”. According to the information received, those prosecuted have been unfairly tried and many have received lengthy prison sentences. In this respect it is reported that on 5 November 1999, a notice issued by the Supreme People’s Court instructed all local courts to do their “political duty” in bringing to trial and punishing “severely” those charged with “heretical organization crimes”, “particularly Falun Gong”, and to handle these cases “under the leadership of the Party committees”.

25. On 19 October 2004 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture concerning **Tenzin Deleg**

Rinpoche, a Buddhist religious leader who was at imminent risk of execution, following a conviction based on a confession obtained under torture. It is reported that he was arrested on 7 April 2002 following a bombing incident in Chengdu, Sichuan province, on 3 April 2002. He was found guilty on 29 November 2002 in a secret trial by the Kardze (Ganzi) Intermediate People's Court in the Kardze Tibetan Autonomous Prefecture, Sichuan province, for "causing explosions" and "inciting separatism". On 2 December 2002 he was sentenced to death with a two-year suspension of execution, which will expire on 2 December 2004. Tenzin Deleg Rinpoche was reportedly held incommunicado for eight months from the time of his arrest until the time of his trial. He was reportedly tortured in detention, including by being shackled hand and foot and suspended from above, and forced to confess. His conviction was upheld on 26 January 2003 by the Sichuan High People's Court, and he was moved to a secret location afterwards.

26. On 25 October 2004, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture concerning the situation of **Chan Yu Lam**, a British citizen and a resident of Hong Kong who was tried for espionage in a trial closed to his family by the Guangzhou Intermediate People's Court on 24 February 2004. He was convicted based on a confession extracted under torture, and on 5 March 2004, he was sentenced to life imprisonment. Chan Yu Lam was denied access to British consular officials during his detention and trial, and his lawyers were threatened not to meet him by State Security officials. Mr. Lam was abducted in Shenzhen on 31 January 2003 by persons who identified themselves as members of the Debt Collection Group of the Guangdong Province Public Security Bureau, but were reportedly members of the Guangzhou State Security Bureau. In June 2003, the Guangdong Province Foreign Affairs Office informed the British Consulate General in Guangzhou that Chan Yu Lam had been arrested for an unspecified economic crime. Then in December 2003 his family received a letter from him informing them that he had been arrested for espionage and that they should retain lawyers for him. Therefore, since his arrest until 13 December 2003, at which time he was first visited by his lawyers, Chan Yu Lam was held incommunicado.

27. On 1 December 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders regarding **Zheng Enchong**, a Shanghai lawyer involved in the defence of economic and social rights of displaced persons, who was sentenced on 28 October 2003, Zheng Enchong has been imprisoned and denied access to his lawyer, which reportedly resulted in his not being able to file an appeal application against his sentence before the Shanghai Supreme People's Court. His wife reportedly filed an application on his behalf, but the Court has not acknowledged it. Furthermore, the director of the Shanghai's Judicial Bureau and Prisons Bureau, Miao Xiaobao, reportedly visited Zheng Enchong in Shanghai's Tilanqiao Prison on several occasions, telling him that if he admitted wrongdoing, his three-year sentence would be reduced by one year. However, Zheng Enchong refused to do so. Concern was expressed that the denial of Mr. Zheng's right to see a lawyer and the right to appeal his sentence may be intended to prevent him from resuming his work as a lawyer who defends persons displaced from their homes by real estate projects. Such concerns are reinforced by the alleged attempts to induce Zheng Enchong to repudiate his legal work in defence of human rights, both by offering a reduction of his sentence and by aggravating the conditions of his detention.

Communications from the Government

28. On 5 July 2004 the Government replied to the Special Rapporteurs' joint urgent appeal of 19 March 2004 and advised that Mr. Yang Jianli was sentenced on 13 May 2004 and received five years' imprisonment for the crime of espionage and six months' imprisonment for illegally crossing State borders and a fine. The Government stated that the judicial authorities acted in accordance with internal law and international human rights instruments as Mr. Yang's legal rights were guaranteed during detention (he met with his lawyer 17 times from the investigative to the sentencing stage) and he was sentenced in accordance with articles 110 and 322 of the Criminal Law. The sentence was a result of illegal activities involving threats to State security and had nothing to do with freedom of expression or opinion as the Government ensures these freedoms under article 35 of the Constitution, but citizens must assume their corresponding duties under the law.

29. On 31 December 2004, the Government sent replies to the Special Rapporteurs' joint urgent appeals sent on 15, 19 and 25 October 2004. The replies unfortunately could not be translated in time to be included in this report but will be reflected in next year's report.

Press release

30. On 14 April 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to freedom of opinion and expression, and the Special Representative of the Secretary-General on human rights defenders issued the following press release:

“UNITED NATIONS HUMAN RIGHTS EXPERTS EXPRESS CONCERN OVER THE SITUATION OF TIBETAN MONK

“We are deeply concerned over the continued detention under a suspended death sentence of Tenzin Deleg Rinpoche, a prominent Lama who was involved in social work in favour of the Tibetan community in the Kardze Tibetan Autonomous Prefecture of the Sichuan Province and who promoted the reestablishment of Tibetan Buddhism in the region.

“Tenzin Deleg Rinpoche was sentenced on 2 December 2002, after he was accused of ‘causing explosions’ and ‘inciting the separation of the State’, charges he denied. His co-accused, Lobsang Dondrup, was executed on 26 January 2003. Numerous and credible reports have referred to serious procedural flaws during the closed trial, in particular violation of the right to a public trial, violation of the right to choose his own lawyer and denial of the right to know and have the opportunity to examine the evidence presented against him in court, and to ill-treatment of the accused during the pre-trial period, including incommunicado detention for the whole pre-trial period and ill-treatment during interrogations.

“We are concerned that Tenzin Deleg might be executed any time until the end of the suspension of his death sentence. We are also concerned that his death sentence will be commuted in a life sentence after 2 December 2004, following a trial which apparently fell short of international norms and standards. Therefore, we urge the authorities to grant

Tenzin Deleg Rinpoche a new trial in accordance with international norms and standards of due process.”

Observations of the Special Rapporteur

31. The Special Rapporteur welcomes the commutation of the death sentence passed against Tenzin Deleg Rinpoche to life imprisonment, while reiterating his concern that the conviction resulted from a trial that did not meet international fair trial standards.