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29 July 2003

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Your Excellency,

The International Commission of Jurists (ICJ) consists of jurists who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights. The ICJ's Centre for the Independence of Judges and Lawyers (CIJL) is dedicated to promoting the independence of judges and lawyers throughout the world.

We are writing to you regarding the 6 June arrest of Mr. Zheng Enchong, a Shanghai-based lawyer, on charges of "illegally obtaining State secrets" for having provided legal assistance to plaintiffs who were displaced by a redevelopment project. We are deeply concerned that Mr. Zheng's arrest and detention violate international human rights standards.

According to the information we have received, Mr. Zheng was initially detained in Shanghai on 6 June on accusations of stealing State secrets, a broad and frequently used charge that can cover innocuous activities such as collecting publications. Twelve days later, Mr. Zheng was formally charged with a violation of article 282 of the Criminal Code ("illegally obtaining State secrets") and detained at the Shanghai Municipal Security Bureau Detention Centre where he still remains. No trial date has yet been set. Since his arrest, Mr. Zheng's house has been reportedly searched at least twice and, during those searches, police officials allegedly warned his wife against speaking to the foreign media.

Furthermore, we have also received reliable information that Mr. Zheng's license to practise law had been revoked by the Shanghai Justice Bureau in July 2001 on the basis that he had not complied with China's regulations relating to lawyers. However, no details have ever been provided regarding the way in which Mr. Zheng allegedly failed to comply with said regulations. Mr. Zheng has applied on several occasions for reinstatement of his license, but to no avail. It appears that Mr. Zheng's license was revoked because

of the assistance he provided to many persons who lost their homes in Shanghai's redevelopment projects. Nevertheless, Mr. Zheng continued to aid the plaintiffs and revealed that a prominent businessman involved in the mentioned projects had allegedly received loans with the collusion of high-ranking Communist party officials.

We wish to remind your Government that Mr. Zheng's arrest and detention for twelve days without charges constitute a violation of the *International Covenant on Civil and Political Rights* (ICCPR), which China has signed and must honour. Article 9 of the ICCPR prohibits arbitrary arrest and detention as follows:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

We believe that Mr. Zheng's arrest and detention are in retaliation for his continued assistance to displaced residents and his advocacy in favour of reforming the constitutional provisions on property rights. Given the vagueness of the charges against this lawyer, we therefore consider his arrest to be a form of punishment, as was the earlier revocation of his licence to practice law.

In this regard, we would like to remind your Government that under the *United Nations Basic Principles on the Role of Lawyers*, which were adopted by the U.N. General Assembly in 1990, Governments have a duty to ensure that lawyers can fulfil their functions without fear of harassment and that any disciplinary proceedings against lawyers must be conducted in a fair and impartial manner. The said *Principles* specifically provide that:

Principle 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Principle 27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

Principle 28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

Thus, in light of international standards, we urge your Government to release Mr. Zheng from detention. If proceedings are initiated against him, international fair trial standards must be strictly followed. We furthermore call upon your Government to restore Mr. Zheng's license to practise law and remind you that any disciplinary proceedings against

lawyers must be conducted before an impartial and independent body. In addition, we request that your Government revise the Criminal Code with a view to precluding the crime of “illegally obtaining State secrets” from being used to prosecute lawyers who are discharging their professional duties.

Please accept the assurances of my highest consideration.

Yours sincerely,

Ernst Lueber
Acting Secretary-General

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