

Communiqué Alleging the Enforced Disappearance and Arbitrary Detention of Rights Defender Chow Hang-Tung

Submission to:

Working Group on Arbitrary Detention

Also provided to:

Special Rapporteur on the situation of human rights defenders

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

I. IDENTITY

1. Family name: Chow (鄒)

2. First name: Hang Tung (幸彤)

3. Sex: Female

4. Birth date or age (at the time of detention): January 24, 1985

5. Nationality/Nationalities: Hong Kong SAR (China)

6. (a) Identity document (if any): Hong Kong ID

(b) Issued by: Hong Kong SAR

(c) On (date): unknown

(d) No.: Z635503(0)

7. Profession and/or activity (if believed to be relevant to the arrest/detention):

Ms. Chow Hang Tung is a Hong Kong barrister, pro-democracy activist, and human rights defender. Ms. Chow has also provided support for labor rights and human rights defenders in mainland China and those charged for involvement with pro-democracy demonstrations in Hong Kong.

In 2016, Ms. Chow was appointed vice chair of the Hong Kong Alliance in Support of Patriotic Democratic Movements in China. In addition to campaigning for democratic reforms and the release of political prisoners in China, the Alliance had been responsible for organizing the annual June 4th public gathering to commemorate the 1989 democracy demonstrations occurring in Mainland China and the subsequent Tiananmen Square massacre, attracting as many as 180,000 participants in some years. As part of a general civil society crackdown, the Hong Kong government has charged Ms. Chow in connection her role within the organization and the June 4th commemorations beginning in 2020.

8. Address of usual residence:

3403 Bank of America Tower,
12 Harcourt Road,
Central, Hong Kong

II. Arrest¹

1. Dates of arrest:

- a) June 23, 2020**
- b) June 4, 2021**
- c) June 30, 2021**
- d) September 8, 2021**

2. Place of arrest (as detailed as possible):

- a) June 23, 2020 arrest:** unknown
- b) June 4, 2021 arrest, c) June 30, 2021 arrest, and d) September 8, 2021 arrest:**

Ms. Chow Hang Tung's office at:
3403 Bank of America Tower
12 Harcourt Road, Central, Hong Kong

3. Forces who carried out the arrest or are believed to have carried it out:

Hong Kong Police

4. Did they show a warrant or other decision by a public authority?

Unclear, but presumed yes.

5. Authority who issued the warrant or decision:

Presumed to be:

- a) June 23, 2020 arrest:** Wan Chai District Court
- b) June 4, 2021 arrest:** West Kowloon Magistrates' Court
- c) June 30, 2021 arrest:** West Kowloon Magistrates' Court
- d) September 8, 2021 arrest:** West Kowloon Magistrates' Court

6. Reasons for the arrest imputed by the authorities:

- a) June 23, 2020 arrest:** Ms. Chow Hang Tung was arrested for “inciting others to participate in unauthorized assembly” under Section 17A of the Public Order Ordinance on the basis of violating a prohibition on gatherings due to COVID prevention measures.
- b) June 4, 2021 arrest:** Ms. Chow Hang Tung was again arrested for “inciting others to participate in unauthorized assembly” under Section 17A of the Public Order Ordinance, again on the basis of violating a prohibition on gatherings due to COVID prevention measures.
- c) June 30, 2021 arrest:** Ms. Chow Hang Tung’s bail for her previous detention was revoked and she was re-arrested and taken into pre-trial detention. Police justified the need to take her into custody with the allegation that she had once more “incited others to participate in unauthorized assembly” under Section 17A of the Public Order Ordinance.
- d) September 8, 2021 arrest:** Ms. Chow Hang Tung was arrested for failure to comply with a police order to hand over information to comply with a police request for information in connection with allegations that the Alliance was a “foreign agent,” thereby “breaching the Implementation rules for Article 43 [of the National Security Law].”

7. Legal basis for the arrest including relevant legislation applied (if known):

Legal basis for a) June 23, 2020 arrest, b) June 4, 2021 arrest, and c) June 30, 2021 arrest:

Hong Kong Public Order Ordinance Section 17A(3)(a):

Where any public meeting, public procession or public gathering, or other meeting, procession or gathering of persons, is an unauthorized assembly by virtue of subsection (2)—

(a) every person who, without lawful authority or reasonable excuse, knowingly takes or continues to take part in or forms or continues to form part of any such unauthorized assembly [...]

shall be guilty of an offence and shall be liable—

- (i) on conviction on indictment, to imprisonment for 5 years; and
- (ii) on summary conviction, to a fine at level 2 and to imprisonment for 3 years.

Hong Kong Public Order Ordinance Section 17A(2)(a):

Any person who without reasonable excuse contravenes section 11(5) or 15(4) commits an offence and is liable to a fine at level 2 and to imprisonment for 12 months. (2) Where—

(a) any public meeting or public procession takes place in contravention of section 7 or 13;

Hong Kong Public Order Ordinance Sections 11(5) and 15(4):

Every person who organizes a public meeting, or any person acting in place of such person for the purpose of subsection (1)(a), shall comply forthwith with any direction given to him by a police officer for ensuring compliance with or the due performance of any of the requirements of subsection (1) or any conditions imposed under subsection (2).

[*Submitter's note:* the text of the Hong Kong Public Order Ordinance Sections 11(5) and 15(4) are identically worded]

Legal basis for d) September 8, 2021 arrest:

Hong Kong National Security Law, Article 43:

When handling cases concerning offence [*sic*] endangering national security, the department for safeguarding national security of the Police Force of the Hong Kong Special Administrative Region may take measures that law enforcement authorities, including the Hong Kong Police Force, are allowed to apply under the laws in force in the Hong Kong Special Administrative Region in investigating serious crimes, and may also take the following measures:

[...]

(5) requiring a political organisation of a foreign country or outside the mainland, Hong Kong and Macao of the People's Republic of China, or an agent of authorities or a political organisation of a foreign country or outside the mainland, Hong Kong and Macao of the People's Republic of China, to provide information;

Excerpt of Implementation Rules for Article 43:

“5. Requiring Foreign and Taiwan Political Organisations and Agents to Provide Information on Activities Concerning Hong Kong

If the Commissioner of Police reasonably believes that it is necessary for the prevention and investigation of an offence endangering national security, the Commissioner of Police may, with the approval of the Secretary for Security, by written notice served on a foreign political organisation or Taiwan political organisation, or a foreign agent or a Taiwan agent, require the organisation or agent to provide the Commissioner of Police with the prescribed information (including the activities, the personal particulars, as well as the assets, income, sources of income, and expenditure of the organisation in Hong Kong) in a prescribed manner within the specified period. The relevant rules are formulated with reference to the prevailing provisions of the Societies Ordinance (Cap. 151) under which Societies Officers may request the provision of information from societies.

[...]

To ensure the effective implementation of the above relevant measures, there is also a need to provide in the Implementation Rules relevant penalties for contravention of the requirements [...] a foreign political organisation or Taiwan political organisation, or a foreign agent or a Taiwan agent, who fails to provide information as requested by the Police is liable on conviction to a fine of \$100,000 and to imprisonment for six months unless it can prove that it has exercised due diligence and there have been reasons beyond its control.”

III. Detention

1. Dates and 2. Duration of Detentions

a) June 23, 2020 detention: Although the submitter does not have details at hand regarding where and for how long Ms. Chow Hang Tung was detained for in June 2020, we understand that she was released on shortly after this first arrest. When she was tried for the charges connected to this arrest and sentenced on December 13, 2021 to 12 months imprisonment, she was already in custody on remand on another charge (see (d) September 8, 2021 detention).

b) June 4, 2021 detention: Ms. Chow was arrested at around 7:40AM in the morning and released on bail after 33 hours in detention.

c) June 30, 2021 detention: Ms. Chow’s previous bail was revoked and she was re-arrested and remanded in custody. She repeatedly re-applied to be released on bail, and her re-application was approved on August 5, 2021. She was detained for a total of 37 days.

d) September 8, 2021 detention: After this arrest, Ms. Chow was denied bail and remanded in custody. Authorities have held her in custody since that date—13 months at the time of submission. During this time she has been sentenced to two prison terms on December 13 and January 4, respectively, that together will run for 22 months. She still awaits trial for national security charges in connection with her last arrest in September 8, 2021.

3. Forces holding the detainee under custody:

Hong Kong Police

4. Places of detention (indicate any transfer and present place of detention):

a) June 23, 2020 detention: unknown

b) June 4, 2021 detention: Tsuen Wan Police Station

c) June 30, 2021 detention: Initially detained at the New Territories South Regional Police Headquarters; later transferred to the Tsuen Wan Police Station

d) September 8, 2021 detention: Initially detained at Central District Police Station; later transferred to the Tai Lam Women’s Correctional Centre, where she is currently being held.

5. Authorities that ordered the detention:

- a) June 23, 2020 detention:** Wan Chai District Court
- b) June 4, 2021 detention:** West Kowloon Magistrates' Court
- c) June 30, 2021 detention:** West Kowloon Magistrates' Court
- d) September 8, 2021 detention:** West Kowloon Magistrates' Court

6. Reasons for the detention imputed by the authorities and 7. Legal basis for the detention including relevant legislation applied (if known):

See Section II regarding reasons for and legal basis of arrests.

Additional notes:

- b) June 4, 2021 detention:** There was no legal basis for holding Ms. Chow in custody for 33 hours after her second arrest on **June 4, 2021**. Human rights groups have noted that the processing of her arrest and bail may have been purposefully delayed in order prevent her from publicly commemorating June 4th.
- c) June 30, 2021 detention:** Ms. Chow's release on bail after her June 4 arrest was revoked and she was re-arrested. Ms. Chow was remanded in custody on the basis that she was likely to re-offend given her previous charge for "incitement" on the basis of Article 42(2) of the Hong Kong National Security Law. Article 42(2) reads: "No bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security." This provision has been read by courts in Hong Kong as reversing the legal presumption in favor of bail in national security cases, which are not limited to charges brought under the National Security Law. Ms. Chow was ultimately never charged based on the new allegations, and she was released after several repeated applications for bail, ultimately being held in pre-trial custody for 37 days.
- d) September 8, 2021 detention:** Ms. Chow was denied bail and remanded in custody, again on the basis of Article 42(2) of the Hong Kong National Security Law.

IV. Describe the circumstances of the arrest.

Ms. Chow Hang Tung was arrested a total of four times beginning in 2020 amid a wide-scale crackdown on civil society and freedom of public assembly by the Hong Kong government following the pro-democracy demonstrations of 2019. As a prominent activist, legal professional, and the vice-chair of the Hong Kong Alliance in Support of Patriotic Democratic Movements in China—the group responsible for a vigil that was among the most widely attended public gatherings in the city—Ms. Chow was an obvious target. She was arrested four times and released the first three times, although in the last instance after being held for 37 days on remand. She was again held on remand after her final arrest and remained in pre-trial custody until being sentenced to a total of 22 months based on the Public Order Ordinance charges from her earlier arrests. She has been continuously held in custody for the last 13 months and is still

awaiting trial for National Security Law charges related to her fourth and final arrest on September 8, 2021.

Police arrested Ms. Chow on June 23, 2020, accusing her of violating the Public Order Ordinance on the basis of her participating in a June 4th candlelight vigil in Victoria Park after the mass vigil was banned by authorities. Officials used COVID-prevention measures to prohibit long-standing public gatherings, including the annual June 4th commemoration of the 1989 student democracy movement and subsequent crackdown in Mainland China. Ms. Chow was released shortly after this first arrest.

A year later on June 4, 2021, police arrested Ms. Chow for the same violation based on her social media posting encouraging people around Hong Kong to light candles throughout the city to commemorate June 4th. Officials had banned the gathering in Victoria Park once more as a pandemic control measure at a time when restrictions had largely been lifted and other mass public gatherings, including indoor festivals and retail conventions, were permitted to proceed. Ms. Chow was arrested at around 7:40AM in the morning and released on bail of 10,000 HKD (approximately \$1280 USD) after 33 hours in detention. It is thought that her release on bail may have been purposefully delayed in order prevent her from public commemoration.

Less than a month later on June 30, 2021, Ms. Chow's bail was revoked and she was re-arrested and taken into pre-trial detention. Police accused her of encouraging the public to participate in the annual July 1 pro-democracy demonstration, which had been banned. No evidence of Ms. Chow's violation was ever presented and charges were never brought, but Ms. Chow was remanded in custody on the basis that she was likely to re-offend given her previous charge for "incitement." Given the lack of evidence for the charge, the arrest may have been a pretense to prevent Ms. Chow from continuing her participation in pro-democracy activities in Hong Kong by holding her in pre-trial custody, such as providing legal aid and advice to those seeking to engage in public assembly.

While in pre-trial custody, Ms. Chow repeatedly re-applied to be released on bail; her application was approved on August 5, 2021, by which time she had been detained for 37 days. The Court ordered her to pay a cash bail of HKD 50,000 (approximately \$6400 USD) and offer a surety of the same amount. She was prohibited from leaving Hong Kong and ordered to hand over all travel documents to the authorities. She was also required to report to the Ma On Shan Police Station once a week.

Ms. Chow was arrested for a final time on September 8, 2021 along with four other leaders of the Hong Kong Alliance for refusing to comply with a police order for information about staff, funding sources, and interactions with Hong Kong and foreign organizations over the previous seven years. The police order stated that the information was sought pursuant to establishing whether the Alliance constituted a "foreign agent" under Article 43 of the National Security Law. Hong Kong police had also used such investigations of other organizations in their broader crackdown on civil society. The Alliance members voted to dissolve the organization on September 25, 2021.

After her September 8 arrest, Ms. Chow was denied bail under the National Security Law's Article 42(2) presumption against bail for national security crimes and remanded in custody. Since then, authorities have held her in custody for a total of 13 months at the time of submission. During this time she has been sentenced to two prison terms on December 13 and

January 4, respectively, that together will run for 22 months. She still awaits trial for charges in connection with her last arrest in September 8, 2021.

Ms. Chow was tried for two charges on December 9, 2021: “incitement to knowingly take part in an unauthorised assembly” in violation of Common Law and section 17A(3)(a) of the Public Order Ordinance, and “knowingly taking part in an unauthorized assembly” in violation of the same section. The charges were based on her appearing in public on June 4, 2020 to attend an unsanctioned commemoration of the Tiananmen Square Massacre anniversary in Victoria Park after a large-scale commemoration was banned by police, who cited pandemic prevention. On December 13 she was convicted on both counts and was sentenced to two concurrent sentences—12 months for the first charge and 6 months for the second—for a total of 12 months.

On January 4, 2022, Ms. Chow was tried for one charge of violating the same Public Order Ordinance section 17A(3)(a), specifically “inciting others to knowingly participate in an unauthorised assembly.” The charge was based on two social media postings and one article she authored in local Hong Kong paper *Ming Pao* that appeared after her arrest. The pieces described the significance of continuing to commemorate June 4th after Hong Kong authorities rejected the Hong Kong Alliance petition to hold the traditional public commemoration in Victoria Park, once again citing COVID-19 prevention. She was convicted and sentenced to 15 months, of which she would serve 10 months after finishing the 12 month sentence already received. Ms. Chow has appealed the January 4 decision, which is scheduled to be heard on October 11, 2022.

At the time of submission, Ms. Chow was sentenced to a total of 22 months and the government was engaged in pre-trial court proceedings for the two charges under the National Security Law in connection with her role as vice-chair of the Hong Kong Alliance. The first charge is for failing to comply with a police request for information to assist in an investigation of the Hong Kong Alliance as a suspected “foreign agent” (National Security Law Article 43). She was also additionally charged with incitement to state subversion after her arrest on September 8, 2021 (National Security Law Article 22).

Text of National Security Law Article 22:

Article 22 A person who organises, plans, commits or participates in any of the following acts by force or threat of force or other unlawful means with a view to subverting the State power shall be guilty of an offence:

- (1) overthrowing or undermining the basic system of the People’s Republic of China established by the Constitution of the People’s Republic of China;
- (2) overthrowing the body of central power of the People’s Republic of China or the body of power of the Hong Kong Special Administrative Region;
- (3) seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People’s Republic of China or the body of power of the Hong Kong Special Administrative Region; or
- (4) attacking or damaging the premises and facilities used by the body of power of the Hong Kong Special Administrative Region to perform its duties and functions, rendering it incapable of performing its normal duties and functions.

A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction.

V. Reasons why Ms. Hang Tung Chow's arrest and detention should be considered arbitrary

Ms. Chow Hang Tung's detentions were not authorized by law (Category I)

Ms. Chow Hang Tung was held in pretrial detention three times for periods of 33 hours, 37 days, and 3 months, respectively. She was not released from her latest pre-trial detention, but transferred to a correctional facility after her first conviction to begin serving one of two sentences that total 22 months. She awaits trial for two more charges.

After being arrested on June 4, 2021, Ms. Chow Hang Tung was held for 33 hours before being released on bail. At the time, police alleged that two social media posts she had made constituted “incitement” of unauthorized assembly. Ms. Chow’s social media posts did not call on people to gather at any location, but to light candles where they were throughout the city, an obvious discrepancy with the charge which indicates that the allegation may have been a pretext for arresting her (see discussion under Category III). This discrepancy also calls into question the legality of her subsequent conviction and sentencing on this charge in January 2022. As for her detention after her arrest, 33 hours was an unusually long duration to be held and then released for a public order violation. These inconsistencies suggest that authorities intended to detain Ms. Chow to deprive her of freedom of expression and assembly for a specific period of time and, as such, would have done so without legal basis.

When police revoked Ms. Chow’s bail and re-arrested her on June 30, 2021, they did so alleging that she had incited others to protest at a banned July 1 demonstration in violation of the Public Order Ordinance without citing evidence that she had done so. This re-arrest was therefore without legal basis. Charges based on this allegation were never brought.

Ms. Chow re-applied to be released on bail and was rejected at least three times before her bail application was approved on August 5, 2021, after she had already been remanded in custody for 37 days. During her bail hearings, prosecutors cited the existing incitement charges against her as evidence that she was highly likely to re-offend, and that the presumption against bail under National Security Law Article 42(2) should apply. Ms. Chow’s pre-trial detention on this basis was therefore a violation of her right to the presumption of innocence under Article 11(1) of the Universal Declaration of Human Rights.

As with the June 4 arrest, Ms. Chow’s time in detention beginning on June 30 also rendered her unable to assemble with others to express their views ahead of a politically meaningful date for pro-democracy activists. The behavior alleged by prosecutors to constitute the offenses—social media postings, written articles, and speaking in public—were all legitimate forms of free expression and assembly under Articles 19 and 20 of the Universal Declaration of Human Rights (see discussion under Category II below), and the court affirmed that remand in custody was necessary to prevent further offenses of the same nature. This establishes that the 37-day pre-trial

detention was expressly for the purpose of preventing Ms. Chow from legitimate exercise of her freedom of expression and assembly and was therefore without legal basis.

In September 2021, Ms. Chow was arrested and held in pre-trial detention based on two National Security Law charges. The Human Rights Committee has found that the lack of clarity as to what constitutes “national security” under the law—and what conduct thereby constitutes a criminal offense under the law—to undermine the principle of legal certainty, and has called for the law to be repealed. Ms. Chow’s arrest and detention under this law is therefore without sufficient legal basis.

Ms. Chow’s repeated requests for bail after her September 8, 2021 arrest were rejected on the basis of Article 42(2) of the National Security Law, which requires judges to have “sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security” in order to grant bail. As stated earlier, pre-trial detention on this basis violates the suspect’s right to the presumption of innocence under Article 11(1). Also, the “acts endangering national security” are not defined by the law, and as such the prohibition is nonspecific enough that it can be interpreted to hold people in pre-trial detention without a particular legal basis, thus violating the principle of legality in Article 11(2) in the Universal Declaration of Human Rights. The Human Rights Committee has recommended that the Hong Kong government refrain from applying this article pending repeal of the National Security Law (CCPR/C/CHN-HKG/CO/4, par. 35(c)), and several UN Special Rapporteurs have also expressed concern about the application of this law to deny bail in Ms. Chow’s case in particular.

On October 22, 2021, Ms. Chow was granted release on bail for the charge under the National Security Law Article 43 of failure to provide information, although she remained in pre-trial detention for an Article 22 incitement to subversion charge. Ms. Chow refused to accept bail, saying it was impossible to comply with one bail condition that was too vaguely worded—a requirement to refrain from speech and acts that could “reasonably” be suspected to constitute a national security offense. The court did not recognize her refusal and ordered her to accept bail and the conditions set by the court. The bail condition further indicates that the purpose of pre-trial custody in national security cases is expressly to limit the freedom of expression of defendants.

Ms. Chow’s arrests and detentions violate the presumption of innocence and the principle of legality under Article 11 of the Universal Declaration of Human Rights, and it is a stated purpose of the pre-trial detentions to prevent her from exercising her rights to free speech and assembly. They are thus without legal basis and fulfill the conditions for arbitrary detention under Category I.

Ms. Chow Hang Tung’s detention is a result of the exercise of her rights guaranteed by articles 18, 19, 20 of the UDHR and articles 18, 19, 21, 22 of the ICCPR (Category II)

Hong Kong authorities have charged and sentenced Ms. Chow based on the following activities that are also legitimate exercises of her rights to freedom of expression, assembly, and association:

On June 4, 2020, Ms. Chow participated in a candle-lighting ceremony in Victoria Park, joining other members of the Hong Kong Alliance in chanting slogans and distributing candles to passersby. Prior to the ceremony, she had also posted on social media and made public

statements encouraging people to commemorate the anniversary. Based on this, she was sentenced to 12 months imprisonment.

On May 29, 2021, Ms. Chow posted a short essay on her Facebook and Twitter accounts encouraging people in Hong Kong to light candles “in every corner of Hong Kong.” On June 4, 2021, local Hong Kong paper *Ming Pao* published her article describing the significance of continuing to commemorate June 4th after Hong Kong authorities rejected the Hong Kong Alliance petition to hold the traditional public commemoration in Victoria Park. Based on these publications she was sentenced to 15 months, 5 of which she would serve concurrently with her previous sentence, for a total of 22 months.

In September 2021, Ms. Chow was arrested and charged for refusing to hand over the Hong Kong Alliance’s information about staff, funding sources, and interactions with Hong Kong and foreign organizations. The maximum sentence for this violation is 6 months. She was also charged with incitement to state subversion under the National Security Law for her role as vice-chair of the Hong Kong Alliance. The evidence for this charge included items such as the organization’s operational goals (to release the democracy movement protestors, to rehabilitate the 1989 pro-democracy movement, to achieve accountability for the deaths, to end one-party dictatorship, and to build a democratic China). The prosecution also showed video clips of someone reading a list of names of victims of those killed during the Tiananmen Square Massacre, which prosecutors claimed showed that the annual vigils were used by the Alliance to incite the overthrow of the Chinese government. The court proceedings for these charges are still ongoing; state subversion can carry a minimum sentence of ten years for “principal offenders” or an “offence of a grave nature.”

The justification for restricting Ms. Chow’s peaceful exercise of freedom of expression and assembly in the first two instances was “public safety” in connection with preventing the spread of COVID-19 under the Public Order Ordinance. The Human Rights Committee has found the Public Order Ordinance to impose “undue restrictions on the right of peaceful assembly,” stating in particular that COVID-19 regulations have been used discriminatorily to infringe on the right to peaceful assembly of government protestors (CCPR/C/CHN-HKG/CO/4, par. 47; see discussion under Category V).

The justification for restricting Ms. Chow’s freedom of expression, assembly, and association via the National Security Law charges is likewise overreaching. As stated under Category I, the vagueness of the provisions and failure to define items such as “acts endangering national security” make it overly broad and unduly restrictive of freedoms of expression, assembly, and association. The Human Rights Committee has found that the law and the Implementation Rules for Article 43 have “unduly restricted a wide range of Covenant rights” and directed the government to “stop applying the National Security Law against...human rights defenders... duly exercising their right to freedom of expression”

Finally, in prosecuting the charge of incitement to state subversion under the National Security Law, the government has directly scrutinized Ms. Chow’s beliefs about democratic government in China and sought to use them as evidence of criminal intent to overthrow the state, thus violating article 18 of the Universal Declaration of Human Rights.

Hong Kong authorities have therefore arrested, detained, and sentenced Ms. Chow Hang Tung because she has exercised her rights to freedom of thought, expression, assembly, and association as guaranteed by articles 18, 19, 20 of the Universal Declaration of Human Rights and 18, 19, 21, 22 of the International Covenant on Civil and Political Rights. Ms. Chow's detentions thus fulfill the conditions for arbitrary detention under Category II.

Authorities have not observed international norms relating to Ms. Chow Hang Tung's right to a fair trial (Category III)

Serious violations of Ms. Chow's due process rights have occurred via her prolonged pre-trial detentions due to the presumption against bail imposed by National Security Law Article 42(2) (see discussion under Category I).

Another serious violation of Ms. Chow's right to a fair trial has been the misconstrual of evidence by Magistrate Amy Chan Wai-mun in her 2021 Public Order case. Ms. Chow's May 29, 2021 social media post had stated that the Hong Kong Alliance could not host the June 4th candlelight vigil in Victoria Park and encouraged people to light candles "in every corner of Hong Kong." Magistrate Chan edited these exculpatory statements out of the post on which she ultimately based her January 4, 2022 judgment finding that Ms. Chow had incited others to knowingly participate in an unauthorized assembly.

Ms. Chow has also been denied a jury trial in all of her cases due to Article 46 of the National Security Law, which authorizes the Secretary of Justice to determine whether a national security case may be tried by a jury (a discretion extending beyond National Security Law cases to any involving national security). This discretion violates the defendant's right to "equality before courts and tribunals" under Article 14 of the International Covenant on Civil and Political Rights. To date, no defendant in a National Security Law case has been granted a trial by jury. This provision has made it possible for the government to shield the prosecution of national security crimes from an important form of public accountability. In its General Comment No. 32, the Human Rights Committee has stated that "equality before courts and tribunals" under Article 14 "requires that similar cases are dealt with in similar proceedings," and that "objective and reasonable grounds" must be provided to justify exceptional procedures or specially constituted tribunals, with the Committee's General Comment No. 32 explicitly noting with concern the exclusion of certain categories of offenders from jury trials (CCPR/C/GC/32 (2007)).

Another concern about the fairness of Ms. Chow's court proceedings arises from Article 44 of the National Security Law, which grants authority to the Chief Executive to designate judges specifically to preside over trials under the law. A December 2021 ruling by the Court of Final Appeal has extended the purview of these judges to all national security crimes, even those not under the law. The designations of judges are limited to one year. Neither the law nor the Chief Executive's implementation of it indicates that there is any transparent mechanism or procedure preventing the Chief Executive from exclusively selecting judges that are sympathetic to the government. To the contrary, the government has announced that designations are not to be made public to avoid security risks. Taken together, the government's actions suggest that the designations are not tailored to accumulate expertise so much as to shield the executive and a changing cast of select judges from public criticism and accountability for handing down unpopular verdicts in national security cases. The one-year terms also allow the Chief Executive

to remove judges who issue verdicts unfavorable to the government. All of this severely compromises the rights of defendants in security law cases to a trial before an impartial and independent tribunal.

The above establishes that authorities have violated international norms relating to Ms. Chow's right to a fair trial. Her detentions pursuant to these proceedings thus fulfill the requirements of Category III.

Ms. Chow Hang Tung has been deprived of her liberty for reasons of discrimination based on political opinion (Category V)

The government's prosecution of Ms. Chow Hang Tung has explicitly targeted her political opinions. This is indicated by the fact that it has been events associated with the pro-democracy movement that have been prohibited and their organizers and attendees prosecuted under the Public Order Ordinance. While the stated justification for the prohibitions was COVID-19 prevention, other contemporaneous events of comparable or greater public health risk were widely permitted at the time, such as an indoor retail exhibition by the Hong Kong Trade Development Council that attracted around 55,000 visitors.

Discrimination is also apparent in the charge against Ms. Chow of failing to comply with a police requirement to provide information about whether the Hong Kong Alliance was a "foreign agent." The requirement was part of a government campaign targeting civil society organizations with pro-democracy views or that had expressed criticism of Chinese or Hong Kong government actions, with authorities asserting that such views were themselves evidence of having "endangered national security" under the National Security Law. More than 80 different civil society organizations shut down after Hong Kong authorities took actions such as arresting their leaders, freezing bank accounts, and harassing and intimidating organization members. The list of civil society organizations targeted includes many of Hong Kong's biggest, best-known, and oldest, such as the Hong Kong Professional Teachers Union, Hong Kong Confederation of Trade Unions, the Civil Human Rights Front, and Amnesty International's Hong Kong section.

In addition, the government's charges against Ms. Chow of inciting state subversion under National Security Law Article 22 rely heavily on the substance of her political opinions as evidence. For example, during the preliminary hearing for the case, prosecutors questioned her support for and interpretation of the Hong Kong Alliance's stated goal of "ending single-party dictatorship," asserting that support for the goal would itself constitute subversion. Ms. Chow's lawyer argued that the prosecution had not shown that Ms. Chow had ever threatened to use violence or unlawful means to pursue this goal, and as such her stated support goal was part of her rightful exercise of free expression. The magistrate judge found that the prosecutor had established a prima facie case for subversion and the case has been transferred to the city's Court of First Instance for trial.

Finally, Ms. Chow's prolonged pre-trial detentions have also had a discriminatory basis. In applying Article 42(2) of the National Security Law, judges who grant bail are charged with finding "sufficient grounds" to believe that defendants in national security cases would not commit further acts endangering national security. High Court Judge Esther To Lye-ping has explained that such grounds can be shown through past support of Chinese government policies, demonstrating that the defendant is not "anti-Mainland." She cited her approval of one defendant's release on bail in which she referenced his business plan promoting the "Great Bay Area," a Chinese central government plan for an economic and business hub integrating Hong

Kong with neighboring cities in the Mainland. This indicates that bail determinations involve scrutiny of the political opinions of defendants and that the presumption against bail expressly applies to those like Ms. Chow because they have political opinions that are critical of the Chinese government.

These instances of discrimination based on Ms. Chow's political opinions form the basis for her being deprived of her liberty, thus fulfilling the requirements of Category V.

VI. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.²

Ms. Chow Hang Tung applied for bail at least four times after her June 30, 2021 arrest and was granted it on August 5, 2021. After her subsequent arrest on September 8, 2021, she applied and had her bail applications rejected at least 10 times—one bail application for the charge of failing to comply with the police request for information about the Hong Kong Alliance was approved in October 22, 2021 after the judge found that it was unlikely that evidence could be tampered with as it had already been seized by police. However, the approval did not serve to release her from custody because she was also on remand for a separate charge. Such applications for release from pre-trial detention have been most often denied in cases related to national security because of the application of the National Security Law Article 42(2)'s presumption against bail, with around 74 percent of such cases denied bail (CCPR/C/CHN-HKG/CO/4, par. 35(c); see discussion in Section V, Category I), although there have been some instances where judges do not seem to have applied this presumption and approved bail applications.

Ms. Chow Hang Tung has also appealed her January 4, 2022 conviction for “inciting others to knowingly participate in an unauthorized assembly,” referring to the June 4th vigil of 2021. Her appeal will be heard on October 11, 2022.

VII. Full name, postal and electronic addresses of the person(s) submitting the information

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Date: September 30, 2022

Signature:

