

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA CHN 10/2021

24 September 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 41/12, 42/22, 43/4, 43/16 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of barrister, woman human rights defender and pro-democracy activist Ms. Chow Hang-Tung, who was arrested on 8 September, along with other pro-democracy activists, and charged with breaching the implementation rules under article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("National Security Law") which allows the police to demand information during national security probes. Ms. Chow Hang-Tung was reportedly later charged with incitement to subversion pursuant articles 22 and 23 of the National Security Law in connection with her activities with the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (the "Hong Kong Alliance") between 1 July 2020 and 8 September 2021 in Hong Kong Special Administrative Region (HKSAR).

Concerns about the anti-terrorism law in the HKSAR, as well as its application on human rights defenders and pro-democracy activists, have been subject to three previous communications sent by Special Procedures to your Excellency's Government dated 23 April 2020 (CHN 7/2020), 19 June 2020 (CHN 13/2020), and 1 September 2021 (CHN 17/2020). We thank your Excellency's Government for the replies received to CHN 17/2020 and CHN 7/2020, and for the ongoing and sustained dialogue on security and counter-terrorism regulation more broadly. However, we regret not yet having received a response to UA CHN 13/2020.

In OL CHN 17/2020, we expressed specific concerns that the application of the Law of the People's Republic of China on Safeguarding National Security in the HKSAR could curtail the enjoyment of the freedoms of expression, peaceful assembly, and association, and interfere with the ability of civil society organisations to perform their lawful functions. We expressed further concerns over the implications of the scope and substance of the security law as a whole on the rule of law.

Ms. Chow Hang-Tung is a woman human rights defender, a pro-democracy activist and the Vice Chairwoman of the Hong Kong Alliance. She is also a barrister. She was due to appear at a bail hearing on 8 September 2021 to represent a journalist and opposition politician facing charges of conspiracy to commit subversion under articles 22 and 23 of the National Security Law.

The Hong Kong Alliance is a pro-democracy organisation that was established in 1989 amid a series of student demonstrations, which organises, *inter alia*, pro-democracy assemblies.

According to the information received:

On 25 August 2021, Officers of the National Security Department served a notice under section 3(1)(b) of Schedule 5 of the Implementation Rules for article 43 of the National Security Law to seven standing committee members of the Hong Kong Alliance, including Ms. Chow Hang-Tung. In the letter of notice, the Commissioner of Police, with the approval of the Secretary for Security, requested information pursuant to section 3(1) of Schedule 5 of the Implementation Rules of article 43 of the National Security Law. The letter further stated that authorities had reasonable grounds to believe the Alliance is a “foreign agent” and that the requested information was necessary for the “prevention and investigation of an offence endangering national security”. The requested information included, *inter alia*, personal information on its members and employees since the founding of the group, detailed financial information since 2014, as well as substantive and logistical information about internal and external activities and meetings since 2014, including with political groups based outside the territory of the People’s Republic of China. The notice letter concludes that non-compliance with the request for information by the specified deadline of 7 September constitutes an offence for which an individual can be indicted and, if convicted, can be subject to a fine of HK\$ 100,000.- and imprisonment for six months.

Ms. Chow Hang-Tung, along with three other standing committee members of the Hong Kong Alliance, held a press conference on 4 September announcing that the group would not provide the requested information. During the press conference, she stated that the notice was setting a bad precedent of abuse of power by the national security police through the arbitrary labelling of a civil society organisation as a foreign agent. She further strongly denied that the Hong Kong Alliance was a foreign agent, and declared that the alliance was founded during the 1989 democratic movement by the Hong Kong people. Under Schedule 5, Sec. 1, para. 1(a) of article 43 of the Implementation Law of the National Security Law, there are two requirements to qualify an individual or organisation as “foreign agent”, namely: 1) that they receive direct or indirect funding by a foreign government or political organisation, and 2) that all or part of their activities benefit a foreign government or foreign political organisation.

In the afternoon of 7 September, Ms. Chow Hang-Tung and the three committee members went to the police headquarters to formally deliver, in a joint letter, the organisation's refusal to comply with the request for information. They stated that the accusations were "groundless" as the Alliance is not a foreign agent, and that such demands were an "abusive and unreasonable practice" and an attempt to stoke fear in civil society groups. In response to the organisation's refusal, Secretary for Security in Hong Kong Chris Tang Ping-Keung declared that law enforcement would follow with swift action.

On 8 September, Ms. Chow Hang-Tung was arrested by the National Security Unit of the Hong Kong Police at her office in the Hong Kong central business district. She livestreamed on Facebook the police entry into her offices. Several other standing committee members of the Alliance were also arrested.

Upon her arrest, Ms. Chow Hang-Tung was charged with failure to comply with section 3(1)(b) of Schedule 5 of the Implementation Rules for article 43 of the National Security Law, and her mobile phone was seized by the police. She received access to her lawyer in the afternoon of her arrest. Her family has been in regular contact with the lawyer, but were also aware of her arrest from her livestream on Facebook. She has since been detained by the Hong Kong Correctional Service at the Tai Lam Centre for Women, in the town of Tuen Mun, New Territories region, Hong Kong.

In an official statement, the National Security Department confirmed that several individuals had been arrested for failing to comply with the National Security Law requirements, without providing further information on their identities or charges.

On 9 September, a day after her arrest, authorities brought new charges against Ms. Chow Hang-Tung of "incitement to subversion" under articles 22 and 23 of the National Security Law, different charges than those for which she was originally arrested. Police alleged that she had incited others to "organise, plan, commit or participate in acts by unlawful means with a view to subverting the State power" between 1 July 2020 and 8 September 2021. This crime carries possible penalties of no less than five years and up to 10 years in prison. The four other committee members, as well as the Alliance itself, were also charged with incitement to subversion (articles 22 and 23 of the National Security Law).

The Hong Kong national security police announced on 9 September that they had frozen HK\$ 2.2 million worth of the Hong Kong Alliance's assets. At approximately 1.00pm local time that same day, police sent personnel to the organisation's "June 4th Museum", which commemorates the Tiananmen Square protests, in search of evidence for alleged violations of the National Security Law. The National Security Department confirmed police officers had removed key exhibits, displays and boxes of material which were thereafter loaded on a truck for further investigation. Police also raided the Alliance's premises, informing after the search that documents, computers and

promotion materials were seized.

Ms. Chow Hang-Tung appeared for a bail hearing on 10 September in the West Kowloon Magistrates' Court and pleaded not guilty to the charges of "incitement to subversion", stating in her defence that she was not a foreign agent. The Court denied her bail application, determining that the court could not reasonably believe the suspect would not conduct acts that endanger national security if granted bail (article 42 of the National Security Law). It also denied Ms. Chow Hang-Tung's application to lift bail reporting restrictions, after she had made an argument in support of the application filed by reporters. Under the restrictions regulating court reporting by the media, the information in written and broadcast reports is limited to the result of bail proceedings, the name of the person and their representation, as well as the offence concerned. To give grounds for the denial of the application, the judge stated that as the investigation was still ongoing, the lifting of restrictions could impact the trial procedure. The case was finally adjourned to 28 October, so as to provide more time to the police to conduct an investigation, including examining the materials seized from the Alliance's office. On 15 September, Ms. Chow Hang-Tung was again denied bail by the same judge at a second bail hearing, as the judge found there were insufficient grounds to believe that she wouldn't continue to endanger national security. The judge also denied her application to remove reporting restrictions.

On 15 September 2021, other pro-democracy activists were sentenced to between six and ten months in prison by a District Court for participating in an unauthorised assembly organised by the Hong Kong Alliance. They all pleaded guilty for their participation in an annual vigil on 4 June 2020 for the victims of China's 1989 Tiananmen Square crackdown on protesters. The vigil had been banned by the Hong Kong police, who had cited COVID-19 restrictions on public gatherings. The presiding judge stated that "the defendants ignored and belittled a genuine public health crisis [and had] wrongly and arrogantly believed their common purpose was more important than protecting the community or the public's right to protection from a serious health risk." The judge further noted that the freedom of peaceful assembly, although protected by article 27 of the Basic Law of Hong Kong, was subject to restrictions based on public safety, and that to violate and invite others to defy COVID-19 social distancing measures was a serious offence. Three other pro-democracy activists received suspended sentences.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concern at the circumstances of the arrest and detention of Ms. Chow Hang-Tung, which may be arbitrary. We also express our serious concern that the targeting of pro-democracy activists and human rights defenders may be directly related to the exercise of their fundamental freedoms, especially their rights to freedom of peaceful assembly and freedom of expression. In this regard, we would like to refer to the rights to freedom of opinion and expression and freedom of association, as enshrined in articles 19 and 20(1) of the Universal Declaration of Human Rights, articles 19 and 22 of the International Covenant on Civil and Political Rights and refer to the Declaration on the Right and Responsibility of Individuals,

Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 12. We take note that regarding the application of the ICCPR to Hong Kong, China notified the Secretary-General that the Covenant will also apply to the Hong Kong Special Administrative Region.

We are also particularly concerned that these arrests and detentions seem to form part of a broader operation to impose undue restrictions on the freedom of expression and peaceful assembly of pro-democracy movements in Hong Kong, whereby critical or dissenting voices are depicted as threats to national security. Such a criminalisation of the exercise of human rights with reference to national security is incompatible with international human rights law. As such, we are gravely concerned by what appears to be a systematic stifling of dissent and targeting of human rights defenders exercising their right to freedom of expression, of association. In this context, we are also seriously concerned that unjustified searches against civil society organisations, the prosecution of human rights defenders for the work they do, as well as broad and vaguely worded legal provisions in criminal legislation, seem to result in the criminalization and undue restrictions of fundamental freedoms protected by the ICCPR.

We would also like to refer to articles 9 and 10 of the Universal Declaration on Human Rights which prohibits in absolute terms arbitrary arrest and guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. In this context, we would also like refer to relevant provisions of the United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court.

Furthermore, we again reiterate our deep concern at the continued practice of invoking national security provisions under the National Security Law to impermissibly impinge on the rights to freedom of expression, of association, and of peaceful assembly. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.¹ As such, States must "refrain from imposing restrictions which are not consistent with paragraph 3 [of article 19 of ICCPR], including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups".²

We would furthermore like to emphasize that any restriction on freedom of expression that a government implements must additionally be sufficiently clear and not afford undue discretion to the authorities in restricting speech, so as to meet the requirements of precision under ICCPR article 9 (1).³ It should be expressly linked to a defined set of criminal acts and not criminalize acts and entitlements which are

¹ ICCPR, arts. 19 (3) and 21.

² Human Rights Council Resolution 12/16, para. 5 (p) (i).

³ Human Rights Committee, General Comment No. 34, article 19: Freedoms of opinion and expression; CCPR/C/GC/34, para. 25.

lawful under international law (CCPR/C/GC/35). We would further like to underscore that any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). Finally, even where the law pursues a legitimate aim and is sufficiently clear, the restriction would be unlawful if it constitutes a disproportionate interference in the rights of individuals.⁴ We would also like to underscore that security legislation with criminal sanctions should never be misused against those exercising their rights to freedom of expression and freedom of association and of peaceful assembly, nor to deprive such persons of their personal liberty through arrests and detention.⁵ These rights are protected under ICCPR and the application of criminal law to the non-violent exercise of these rights would for most purposes be contrary to the Covenant. Security legislation cannot be referred to in order to suppress peaceful groups and their members, nor can it have the chilling effect of suppressing the legitimate exercise of their rights, nor to hinder the work of individuals and groups engaged in promoting and defending human rights. Thus, we express our deep concern that the National Security Law may be misused to silence dissent and prevent human rights defenders and civil society organisations from carrying out their legitimate activities. The People's Republic of China is not a party to the ICCPR, however, if criminal regulation is to be applied under the National Security Law, all such processes must be ICCPR-compliant, noting in particular the significance of article 14 of the ICCPR. We remind your Excellency's Government that under article 2 of the ICCPR, HKSAR is under a duty to ensure that individuals under its jurisdiction enjoy the rights in the Covenant and adopt laws as necessary to ensure that the domestic legal system is compatible with the Covenant.

We are further concerned that the charges brought against Ms. Chow Hang-Tung are overly broad and vaguely worded. The crime of incitement to subversion, as laid out in article 22 of the National Security Law, lacks proper definitions and limitations that may result in serious restrictions on the work of human rights defenders and other civil society actors and their right to associate. For the purposes of paragraph 3 [of ICCPR, art. 19], a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.⁶ In her 2019 thematic report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism warns that overly broad definitions of what constitutes threats to national security results in a chilling effect on civic space, the stigmatization of civil society actors, and excludes civil society from engaging in national and international fora.⁷

⁴ Human Rights Committee, General Comment No. 34, article 19: Freedoms of opinion and expression; CCPR/C/GC/34, para. 34.

⁵ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, paras. 29 and 30.

⁶ Human Rights Committee, General Comment No. 34, article 19: Freedoms of opinion and expression; CCPR/C/GC/34, para. 25.
A/HRC/40/52, paras. 60, 61, 65.

We reiterate furthermore our deep concern regarding the use of the law “inciting subversion of state power”, a charge applied broadly to human rights defenders in 2019. The Working Group on Arbitrary Detention described the crime of “inciting subversion” as a “vague and imprecise offence” in the context of article 105 (2) of the Chinese Criminal Law, calling for the law to be repealed or brought into line with obligations under international human rights law (Opinion No. 15/2019, para. 33).

Moreover, we are troubled by the application of article 43 of the Implementation Law of the National Security Law, which concerns offences “endangering national security”. In such cases, article 43 National Security Law provides for a number of incisive measures against alleged “foreign agents”, such as: searching premises and electronic devices, confiscating travel documents, freezing property, requiring information or material, as well as conducting covert surveillance, *inter alia*. Two requirements are laid out in Schedule 5, Sec. 1, para. 1(a) to qualify an individual or organisation as “foreign agent”: 1) that they receive direct or indirect funding by a foreign government or political organisation, and 2) that all or part of their activities benefit a foreign government or foreign political organisation. The Special Rapporteur on the rights to freedom of peaceful assembly and of association in a report called upon States “[t]o ensure that associations (...) can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments.”⁸ He further called upon States to “recognize that undue restrictions to funding (...) is a violation of the right to freedom of association and of other human rights instruments”, and to “recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding.”⁹ As such, we remain deeply concerned that the criteria laid out in Schedule 5 infringe on the right to freedom of association as protected under article 22 of the ICCPR, under HRC resolution 22/6, and as asserted by the Human Rights Committee (No. 1274/2004).

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard Ms. Chow Hang-Tung's rights in compliance with international instruments.

⁸ A/HRC/23/39, para. 82 (b).

⁹ A/HRC/23/39, para. 82 (c) and (d).

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please clarify what are the legal grounds for the arrest and detention of Ms. Chow Hang-Tung on national security grounds, including how her detention is compatible with the legality, necessity and proportionality standards provided by article 19 (3) of the ICCPR.
3. Please provide detailed information on the conditions of detention of Ms. Chow Hang-Tung, and the other pro-democracy activists. Please provide information about the measures that have been taken to ensure their physical and psychological integrity while in detention.
4. Please could you explain the legal basis for the search of the Hong Kong Alliance's premises and the freezing of HK\$ 2.2 million worth of its assets, and its compatibility with Article 22 of the ICCPR.
5. Please explain what measures have been taken to ensure that all human rights defenders in China, in particular those working on pro-democracy issues, can carry out their peaceful and legitimate activities without fear of judicial harassment, or other restrictions.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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