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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its 105th session, 23 March–1 April 2026****Opinion No. 26/2026 concerning Owen Chow Ka-shing (Hong Kong, China)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 60/8.
2. In accordance with its methods of work,¹ on 27 October 2025 the Working Group transmitted to the government of Hong Kong, China, a communication concerning Owen Chow Ka-shing. The government submitted a late response on 6 January 2026. The International Covenant on Civil and Political Rights is binding upon Hong Kong, China.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States Parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination, based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ A/HRC/36/38.

1. Submissions

(a) Communication from the source

4. Owen Chow Ka-shing is a permanent resident of Hong Kong, China, born on 10 February 1997. He is a holder of a passport of Hong Kong, China.

5. Mr. Chow is a pro-democracy activist and nursing student who was actively involved in the 2019–2020 demonstrations against the government’s introduction of the Extradition Law Amendment Bill that would have allowed extraditions from Hong Kong, China, to mainland China. The anti-extradition protests marked the beginning of his political activism; he then unsuccessfully ran for election to Hong Kong District Council in November 2019.

6. The source recalls that on 9 June 2020, in preparation for the primaries for the 2020 Legislative Council general election, Mr. Chow, along with other activists, drafted an online declaration entitled “Resolute resistance, inked without regret”. In the document, the activists called on the candidates in the primaries to obey five demands made during the nationwide 2019–2020 anti-extradition protests: (a) completely withdraw the extradition bill; (b) re-characterize the protests so as not to label them “riots”; (c) grant amnesty for arrested protesters; (d) conduct independent investigations into alleged police brutality; and (e) grant universal suffrage for the Hong Kong Chief Executive and the Legislative Council elections. They further encouraged candidates to deploy the power conferred by the Basic Law of Hong Kong, China, to Legislative Council lawmakers, including the right of parliamentarians to use their right of veto in budget deliberations to compel the Chief Executive to respond to their demands.

7. On 21 June 2020, Mr. Chow posted the political slogan he had started using in May 2020 for the upcoming primaries, “Reject colonizers, national resistance against tyranny”, on social media. On 25 June 2020, he posted a statement on the same social media site announcing his intention to engage in politics.

8. On 11 and 12 July 2020, Mr. Chow ran in the primaries for the 2020 Legislative Council election. He rose to prominence as an independent local candidate during the primaries. He came fifth in the New Territories East constituency and secured the nomination to run in the general election.

9. On 15 July 2020, Mr. Chow and 15 other primary candidates, calling themselves the “localist resistance camp”, held a press conference in which candidates promised to use their constitutional power to veto the government budget for the five demands to go through.

(i) Arrest and detention

10. On 6 January 2021 at 6 a.m., officers of the National Security Division of the Police Force knocked on Mr. Chow’s apartment door, threatening to break in should he refuse to open the door immediately. Mr. Chow let them in and they arrested him without showing an arrest warrant and without informing him of the reason for his arrest. They confiscated his passport, electronic devices and credit cards. He was then taken to the Tsing Yi Police Station. His arrest was reportedly part of a larger raid conducted by the Hong Kong Police, which arrested 54 other candidates on suspicion of subversion under the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law) for their organization and participation in the July 2020 pro-democracy primaries.

11. On 7 January 2021, Mr. Chow was released on bail, and the police continued their investigation.

12. On 26 February 2021, officers of the National Security Division of the Police Force called Mr. Chow and requested that he return to the Tsing Yi Police Station on 28 February 2021.

13. On 28 February 2021, Mr. Chow returned to the Tsing Yi Police Station, where he was officially charged with conspiracy to commit subversion under article 22 (3) of the National Security Law, which holds that a person who organizes, plans, commits or participates in seriously interfering in, disrupting or undermining the performance of duties

and functions in accordance with the law by the body of central power of China or the body of power of the Hong Kong Special Administrative Region, by force or threat of force or other unlawful means with a view to subverting the State power is guilty of an offence. Mr. Chow was charged, along with 45 of the 55 activists arrested on 6 January 2021, for his participation in the July 2020 pro-democracy primaries. That same day, the police placed Mr. Chow under pretrial detention in the Tsing Yi Police Station.

14. According to the charges, Mr. Chow and 15 other defendants conspired to participate in a scheme between 1 July 2020 and 7 January 2021 to seriously interfere in, disrupt or undermine the performance of duties and functions in accordance with the law by the body of power of the government of Hong Kong, China, by unlawful means with a view to subverting State power, by participating in the July 2020 pro-democracy primaries campaign. More precisely, the prosecution, which referred to that act as “the scheme”, alleged that the defendants, if elected to the Legislative Council and after obtaining a majority of seats, intended to abuse their constitutional powers to indiscriminately veto any budget or refuse to pass any budget or public expenditure introduced by the government, with the intention of compelling the Chief Executive of the government to respond to the five demands of the anti-extradition protests. If the Chief Executive refused to respond to their demands, the prosecution claimed that the defendants, through their vetoes, planned to push the Chief Executive to dissolve the Legislative Council so as to paralyse the operations of the government, ultimately causing the Chief Executive to resign.

15. On 1 March 2021, Mr. Chow appeared before the West Kowloon Magistrates’ Courts for a four-day bail hearing with his lawyer. The hearing on the first day lasted 14 hours. Following his hearing, he was transferred to Lai Chi Kok Reception Centre, a maximum-security institution.

16. On 4 March 2021, the Chief Magistrate rejected Mr. Chow’s bail application under article 42 of the National Security Law, which holds that 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.

17. On 5 March 2021, Mr. Chow was transferred from Lai Chi Kok Reception Centre to Stanley Prison, a maximum-security facility.

18. On 22 June 2021, the Court of First Instance of the High Court released Mr. Chow on bail, on the condition that he stopped committing acts endangering national security. He was ordered to pay HK\$ 50,000 (approximately US\$ 6,450) and obey bail conditions, including not making speeches or taking part in any behaviour on media or social media platforms that could be seen as threatening national security, reporting to the police station every day between 6 and 9 p.m., observing a curfew from midnight to 7 a.m., not leaving Hong Kong, China, and surrendering all travel documents. He was also banned from participating in any elections or contacting any foreign officials.

19. During his release on bail, Mr. Chow continued to post content on social media. On 31 August 2021, he posted material related to the events that had occurred on 31 August 2019 at the Prince Edward Mass Transit Rail station, during which the police reportedly attacked pro-democracy protesters, journalists and commuters in the subway station. In particular, he posted photos of riot police officers deploying pepper spray inside train carriages.

20. On 12 January 2022, during his regular visit to North Point Police Station, Mr. Chow was arrested without a warrant by officers of the National Security Division of the Police Force. The officers reportedly did not inform him of the reason for his arrest. He was then kept in detention in North Point Police Station.

21. On 13 January 2022, Mr. Chow was brought to the West Kowloon Magistrates’ Courts, which revoked his bail and placed him under pretrial detention for having violated his bail conditions by posting material that endangered national security. He was taken to Lai Chi Kok Reception Centre.

22. On 6 July 2022, at the request of the prosecution, the Principal Magistrate of the West Kowloon Magistrates’ Courts transferred Mr. Chow’s case to the Court of First Instance of the High Court.

23. On 22 August 2022, the Secretary for Justice ordered that Mr. Chow's case, along with the rest of his co-defendants' cases, be tried without a jury, pursuant to article 46 of the National Security Law, which stipulates that in criminal proceedings in the Court of First Instance of the High Court concerning offences endangering national security, the Secretary for Justice may issue a certificate directing that the case shall be tried without a jury on the grounds of, among others, the protection of State secrets, involvement of foreign factors in the case, and the protection of the personal safety of jurors and their family members.

24. The Secretary for Justice reportedly cited the involvement of foreign elements, the personal safety of jurors and their family members and a risk of perverting the course of justice if the trial was conducted with a jury as the basis for his decision. A certificate issued under article 46 of the National Security Law directs that a panel of three specially designated national security judges hear a case instead of a jury.

25. On 6 February 2023, Mr. Chow's closed-door trial began before the Court of First Instance of the High Court. The Court held its hearing at the West Kowloon Magistrates' Courts.

26. On 2 May 2023, Mr. Chow gave his lawyers a complaint to file with the Office of the Ombudsman at Lai Chi Kok Reception Centre. According to the complaint, the officers from the Correctional Services Department had intercepted and banned two books on Buddhism that his family members had tried to send him.

27. On 24 October 2023, national security officers arrested Mr. Chow, while he was already detained, for conspiring to have taken out of the prison an unauthorized item – the Ombudsman complaint form. His attorneys were arrested that same day and granted bail pending further investigation.

28. On 4 December 2023, Mr. Chow's trial before the Court of First Instance of the High Court ended.

29. On 1 March 2024, Mr. Chow was transferred to Stanley Prison, where he has since been detained.

30. On 22 March 2024, Mr. Chow and his lawyer appeared at West Kowloon Magistrates' Courts and pleaded not guilty to the charge of taking an unauthorized article out of prison, for removing from the prison a complaint form about corrections officers, written after officials intercepted two books that were sent to Mr. Chow.

31. On 30 May 2024, Mr. Chow was convicted of conspiracy to commit subversion under article 22 (3) of the National Security Law. The decision was based on his role in drafting the online declaration on resolute resistance; his political slogan published on 21 June 2020, which the court described as "radical"; and his political campaign posts on social media of 25 June 2021, which allegedly proved that he was "in substance not accepting the sovereignty of the Central People's Government over Hong Kong" and participating in "the scheme" to overthrow the government of Hong Kong, China. The decision also relied on his participation in the "localist resistance camp" press conference on 15 July 2020 to conclude that his objective for taking part in the election was to "undermine, destroy or overthrow the existing political system ... and the policy of 'one country, two systems'".

32. On 29 July 2024, the Principal Magistrate at the West Kowloon Magistrates' Courts convicted Mr. Chow and his lawyer of removing the Ombudsman complaint form from the prison without authorization on 2 May 2023. His second lawyer was not charged.

33. On 14 August 2024, the Principal Magistrate at the West Kowloon Magistrates' Courts ordered Mr. Chow to serve three additional days of detention and ordered his convicted lawyer to pay a fine of HK\$ 1,800 (approximately US\$ 231) for the above-mentioned incident. Both Mr. Chow and his lawyer appealed the sentence.

34. On 19 November 2024, the Court of First Instance of the High Court sentenced Mr. Chow to seven years and nine months in prison. The court reasoned that he was one of the initiators of the online declaration and that he had attended all the coordination meetings, election forums and press conferences held by the "localists" of the pro-democracy primary in June and July 2020, all of which allegedly proved his role in the scheme to overthrow the Chief Executive of the government of Hong Kong, China.

35. On 25 February 2025, the Court of First Instance of the High Court heard an appeal presented by Mr. Chow and his lawyer. The prosecution claimed that the Ombudsman complaint form was sent to a third party without the appropriate security checks having been completed and that correctional officers are authorized to check the content of detainees' external communications.

36. On 12 May 2025, the Court of First Instance of the High Court upheld Mr. Chow's conviction and that of his lawyer. However, Mr. Chow's three-day jail sentence was reduced to a fine of HK\$ 1,800 (approximately US\$ 231). His lawyer's HK\$ 1,800 fine was upheld.

37. Several books requested by Mr. Chow have been banned by the Correctional Services Department. His cell was raided seven times after he insisted on filing a complaint. Following one of the more recent raids, he was punished for having in his possession, without permission, a Portuguese egg tart, even though the dessert had been part of a breakfast he had not finished.

38. On 14 July 2025, Mr. Chow's appeal hearing before the West Kowloon Magistrates' Courts began, along with 10 others. The appeal lasted three and a half days, and prosecutors stated that there was an "unprecedented" nature to the conspiracy. The court noted that a decision would be issued in nine months.

39. On 18 July 2025, the authorities changed the prison rules to restrict meetings with visitors and lawyers based on national security. Mr. Chow's family members are able visit him twice a month. He can also write to and receive letters from his family and friends. However, his letters are often declared lost or held by prison officials without any justification.

40. Since his first arrest in February 2021 and his second arrest in January 2022, Mr. Chow has been held in solitary confinement with limited human interaction. He is only allowed to go outside or work out alone and must eat his meals inside his cell.

(ii) *Legal analysis*

41. The source submits that Mr. Chow's case falls under categories I, II, III and V.

a. *Category I*

42. On 6 January 2021, national security officers arrested Mr. Chow at his home without providing him with an arrest warrant and without informing him of the reason for his arrest. Further, for his arrest on 12 January 2022 at North Point Police Station, Mr. Chow was not presented with an arrest warrant and was not informed of the reason for his arrest. The source argues that the government violated article 9 (1) and (2) of the Covenant, and principles 2, 4, and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

43. Moreover, Mr. Chow has not been given the opportunity to challenge his detention in court since his regular visit to the police station on 12 January 2022 and the revocation of his bail by the West Kowloon Magistrates' Courts the following day.

44. Mr. Chow's first pretrial detention lasted four months, from 28 February to 22 June 2021, before the Court of the First Instance of the High Court released him on bail. He was ordered to pay HK\$ 50,000 (approximately US\$ 6,450) and follow a list of bail conditions, including reporting to the police station every day between 6 and 9 p.m., observing a curfew between midnight and 7 a.m., not leaving Hong Kong, China, and surrendering all travel documents. He was also banned from participating in any elections or from contacting any foreign officials. The Working Group has previously held that stringent bail conditions, including prohibitions on leaving the country or residences within certain hours and obligations to report to a court every 30 days, resembled house arrest.² Moreover, the bail conditions were vague, indicating, for instance, the requirement not to make speeches or take part in any behaviour on media or social media platforms that could be seen as threatening national security.

² Opinions No. 14/2020, para. 43; No. 28/2024, para. 76; and No. 52/2024, para. 86.

45. Mr. Chow was then held in pretrial detention for another year, from 13 January 2022 to 6 February 2023, when his trial began. The court did not make an individualized determination of his bail, properly assessing the gravity of the charges or the risk of flight, of recurrence or of evidence-tampering. Article 42 of the National Security Law replaced the presumption of bail with the presumption against bail. Consequently, as the Working Group has already noted, approximately 74 per cent of those charged with national security crimes were denied bail.³ Moreover, the bail conditions have become too vague, in violation of article 9 (3) of the Covenant.⁴

46. The source therefore claims a violation of articles 8 and 9 of the Universal Declaration of Human Rights, articles 2 (3) and 9 (3) and (4) of the Covenant, and principles 11 (1), 32 (1), 37 and 39 of the Body of Principles.

47. According to the source, the National Security Law, created in response to the 2019 protests, criminalizes vaguely defined acts of secession, subversion, terrorist activities and collusion with a foreign country or external elements to endanger national security.

48. In this regard, Mr. Chow and 46 others (the Hong Kong 47) were charged with “conspiracy to commit subversion” under article 22 (3) of the National Security Law, which states that a person who organizes, plans, commits or participates in seriously interfering in, disrupting or undermining the performance of duties and functions in accordance with the law by the body of central power of China or the body of power of the Hong Kong Special Administrative Region, by force or threat of force or other unlawful means with a view to subverting the State power is guilty of an offence.

49. The source concludes that by applying vague and overly broad provisions, which also expressly violate international human rights law, the government of Hong Kong, China, violated the principle of legality, enshrined in article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant.

b. Category II

50. The source submits that Mr. Chow’s bail terms, revocation of bail, and detention resulted from the exercising of his rights to the freedoms of opinion and expression, peaceful assembly and association, and participation in public affairs.

51. The prosecution and the Court of First Instance of the High Court based their case on Mr. Chow’s public statements, social media posts and his drafting of the online declaration, in which the activists called upon the primary candidates to carry out the five demands of the anti-extradition protestors by non-violent means.

52. Furthermore, to prove his participation in the scheme to “overthrow” the government, the court distorted Mr. Chow’s use of popular resistance expression in his social media posts during his political campaign. His statements reflected his political opinions and agenda, not a scheme, but rather a commitment to advance the protesters’ demands using the constitutional powers of lawmakers. The court further claimed that he sought to “undermine, destroy or overthrow the existing political system” by participating in the pro-democracy camp’s primaries, even though he and other candidates were pledging to use their constitutional powers to advocate for the adoption of the protesters’ five demands.

53. Lastly, Mr. Chow’s complaint to the Office of the Ombudsman, which he handed to his lawyers in protest against the actions of the authorities on 2 May 2023, resulted in additional punishment for him and his lawyer.

c. Category III

54. Mr. Chow was denied the right to trial within a reasonable time, in breach of articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles. He was detained from 28 February until 22 June 2021, and from 12 January 2022 until 6 February 2023, when his trial at the Court of First Instance of the High Court commenced. The trial

³ Opinion No. 34/2024, para. 95.

⁴ Ibid.

lasted until 4 December 2023, 118 days in total, but he was not convicted and sentenced until 30 May 2024 and 19 November 2024, respectively.

55. Mr. Chow has spent his entire detention in solitary confinement. The prolonged solitary confinement undermined his ability to prepare his defence.

56. Mr. Chow's trial before the West Kowloon Magistrates' Courts on 6 February 2023 was conducted in camera. There are seven magistrates' courts in Hong Kong, China, and criminal cases are usually assigned geographically. However, all five magistrates designated by the Chief Executive to handle national security cases have chambers in the West Kowloon Magistrates' Courts. The concentration of all national security judges in one magistrates' court is a departure from standard judicial practice that creates a reasonable doubt about impartiality. Moreover, the Secretary for Justice relied on an overly vague and broad provision of the National Security Law to impose trial without a jury.

d. Category V

57. The source submits that Mr. Chow's detention was discriminatory, based on his status as a prominent member of a political opposition group, the so-called Hong Kong 47, who have been continuously targeted by the authorities under the National Security Law. In total, at least 200 more individuals have been charged under the National Security Law since its enactment in June 2020. The reasons for Mr. Chow's detention indicate that the authorities discriminated against him because of his political opinion.

(b) Response from the government

58. On 27 October 2025, the Working Group transmitted the allegations made by the source to the government through its regular communication procedure. The Working Group requested the government to provide detailed information by 26 December 2025 about the current situation of Mr. Chow. The Working Group also requested the government to clarify the legal provisions justifying his continued detention, as well as their compatibility with the obligations of Hong Kong, China, under international human rights law. Moreover, the Working Group calls upon the government to ensure Mr. Chow's physical and mental integrity.

59. The government submitted its reply on 6 January 2026, after the deadline. The Working Group cannot accept this response as if it were provided within the time limit. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion on the basis of all the information it has obtained.

2. Discussion

60. In determining whether Mr. Chow's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the government if it wishes to refute the allegations. Mere assertions by the government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁵

(a) Preliminary remarks

61. The Working Group notes that the present case concerns acts of the government of Hong Kong, China. Under article 39 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the provisions of the Covenant, which applied to Hong Kong up to the transfer of sovereignty to China on 1 July 1997, have continued to remain in force thereafter. The government of Hong Kong, China, continues to submit periodic reports to the Human Rights Committee, which adopted its most recent concluding observations on Hong Kong, China, on 22 July 2022.⁶ The Working Group has

⁵ A/HRC/19/57, para. 68.

⁶ CCPR/C/CHN-HKG/CO/4.

also held that the Covenant is binding upon Hong Kong, China.⁷ In addition, it is worth noting that, in its methods of work, the Working Group uses the term “Government” instead of “States” or “Member States” with respect to the consideration of individual communications.⁸

62. At the same time, under article 4 (1) of the articles on responsibility of States for internationally wrongful acts, the Government of China is responsible for the conduct of the government of Hong Kong, China, as a State organ, “whatever its character as an organ of the central Government or of a territorial unit of the State”.

63. Moreover, the Working Group acknowledges that the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region was passed by the Standing Committee of the National People’s Congress of China and signed by the President on 30 June 2020, coming into effect just before the twenty-third anniversary of the transfer of sovereignty to China of Hong Kong, China, on 1 July 1997. In this regard, the Working Group notes that the special procedures of the Human Rights Council have sent communications, including the one concerning the present case, to the Government of China, which submitted its late reply.

(b) Category I

64. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

65. The source submits, and the Government does not contest in its late reply, that Mr. Chow was not presented with a warrant at the time of arrest on 6 January 2021. The Government claims that the police obtained sufficient evidence and that there was a legal basis to reasonably suspect that he had committed the offence and, accordingly, he was arrested without a warrant in accordance with the powers conferred under the Police Force Ordinance.

66. The Working Group has previously stated that, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant or arrest order (or an equivalent document).⁹

67. The right to be presented with an arrest warrant is inherent to the right to liberty and security of person and to the prohibition of arbitrary detention, under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and principles 2, 4 and 10 of the Body of Principles.¹⁰ In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available. However, in the present case, the Government does not claim that Mr. Chow was apprehended in flagrante delicto. The Government has shown no urgent grounds for detaining him that a reasonable person would consider sufficient justification for arrest without a warrant. The Working Group therefore finds that the warrantless arrest of Mr. Chow cannot be justified as an exception to the general requirement of the presentation of an arrest warrant to ensure the exercise of effective judicial control.

68. With respect to Mr. Chow’s second arrest for alleged violation of his bail conditions on 12 January 2022, the source submits that the police did not provide reasons for his arrest at the time of his arrest. The Government claims he was promptly informed of the reasons for his arrest, which is recorded on video. However, the Government did not share any

⁷ Opinions No. 30/2023, para. 2; and No. 34/2024, para. 2.

⁸ A/HRC/36/38, paras. 15 and 16.

⁹ Opinions No. 27/2023, para. 77; No. 66/2023, para. 44; No. 77/2023, para. 53; No. 37/2024, para. 83; No. 62/2024, para. 69; and No. 24/2025, para. 84. The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See decisions No. 1/1993, paras. 6 and 7; No. 3/1993, paras. 6 and 7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6 and 7. For more recent jurisprudence, see opinions No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46.

¹⁰ Opinion No. 58/2025, para. 47.

evidence to prove its assertion. In the absence of such evidence, the Working Group finds that the Government therefore failed to inform Mr. Chow promptly of the reasons for his arrest and finds a violation of article 9 (2) of the Covenant.

69. The Working Group is also concerned about the conditions for bail imposed by the Court of First Instance of the High Court on 22 June 2021, requiring that Mr. Chow stop committing “acts endangering national security”. Although the Government, in its late reply, asserts that the term “national security” is clearly defined by law and that a broad understanding of the concept is adopted by many common law jurisdictions in its application to ensure flexibility to respond effectively to emerging threats, the Working Group notes that the use of this term in the bail conditions makes it difficult, if not impossible, for persons on bail to regulate their actions in a manner that would ensure that they would not be deprived of liberty. The Human Rights Committee has noted the inadmissibility of vague and expansive standards such as “public security” as grounds for pretrial detention.¹¹ Moreover, recalling its concerns over the bail provisions of the National Security Law, the Working Group concludes that Mr. Chow’s pretrial detention violated article 9 (3) of the Covenant and was therefore arbitrary. Mr. Chow’s revocation of bail and resultant pretrial detention therefore lacks a legal basis.

70. Mr. Chow was held in pretrial detention from 28 February to 22 June 2021 and from 12 January 2022 to 30 May 2024, when he was convicted. Article 9 (3) of the Covenant requires that pretrial detention must be the exception rather than the rule and that release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and for execution of the judgment. A detainee must be entitled to meaningful periodic judicial review. Pretrial detention without an individualized determination of the risk of flight, of interference with evidence or of the recurrence of crime, as well as consideration of less intrusive alternatives, such as bail, electronic bracelets or other conditions in accordance with the principle of reasonableness, necessity and proportionality, is devoid of legal basis.¹²

71. In the present case, the Working Group concludes that there was no periodic judicial review or individualized determination of Mr. Chow’s circumstances and, as a result, his detention lacked a legal basis and was ordered in violation of articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) and (3) of the Covenant and principles 38 and 39 of the Body of Principles.

72. In its concluding observations on Hong Kong, China, the Human Rights Committee expressed the concern that article 42 of the National Security Law – which provides that 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 – introduces a more stringent threshold for bail in national security cases than in other cases, which creates a presumption against bail for those charged under the National Security Law. As the Committee noted, approximately 74 per cent of persons charged with national security crimes have allegedly been denied bail without proper reasoning, with many held in pretrial detention, including 11 children, and some reportedly for more than a year.¹³

73. The Working Group will further elaborate on the propriety of detention under article 22 (3) of the National Security Law with respect to the principle of legality.¹⁴ One of the fundamental guarantees of due process is the principle of legality, including: (a) the principle of non-retroactivity; (b) the prohibition against analogy; (c) the principle of certainty; and (d) the prohibition against uncoded, that is, unwritten, or judge-made criminal provisions. This means that an act can be punished only if, at the time of its commission, the act was the object

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 38.

¹² Opinions No. 24/2015, para. 37; No. 61/2018, para. 50; and No. 72/2019, para. 47. See also Human Rights Committee, general comment No. 35 (2014), para. 38, and A/HRC/19/57, paras. 48–58.

¹³ Opinion No. 34/2024, para. 95, citing CCPR/C/CHN-HKG/CO/4, paras. 35 (c).

¹⁴ The principle of legality may also be viewed as a limitation of the punitive power of the sovereign State, one of the legal and procedural guarantees. Luigi Ferrajoli, *Diritto e ragione: Teoria del garantismo penale*, 10th ed. (Roma-Bari, Laterza, 2011), p. 69.

of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached.¹⁵

74. Article 22 (3) of the National Security Law provides that a person who organizes, plans, commits or participates in 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, by force or threat of force or other unlawful means with a view to subverting the State power is guilty of an offence.

75. The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.¹⁶ The Working Group considers that vague and ill-defined terms and concepts such as “with a view to subverting the State power” do not meet this standard. They are worded in such vague and overbroad language as to invite abuse and misuse and are thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant. Mr. Chow's detention cannot therefore be considered to be prescribed by law for the purpose of satisfying the requirement of *nulla poena sine lege*.

76. In the light of the above, the Working Group concludes that Mr. Chow's deprivation of liberty lacks a legal basis and is thus arbitrary under category I.

(c) Category II

77. The Working Group will now examine whether Mr. Chow's detention is arbitrary under category II, in relation to which the source submits that his arrest, detention and conviction stem from the legitimate exercise of his fundamental rights, which are guaranteed by the Universal Declaration of Human Rights and the Covenant, and are in retaliation for his public criticism of government policy.

78. The source submits, and the Government does not contest, that Mr. Chow was detained, convicted and sentenced for his public statements, social media postings and drafting of the online declaration, a political manifesto to realize the main aims of the 2019–2020 anti-extradition demonstrations by winning a majority in the elections.

79. The Working Group recalls that the Human Rights Committee has recognized freedom of expression as the foundation stone for every free and democratic society, and the right of peaceful assembly, together with other related rights, as constituting the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.¹⁷ The Committee has reiterated that freedom of expression includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.¹⁸ Even statements considered by the authorities to be unacceptable, disrespectful and in very bad taste are entitled to protection.¹⁹

80. While articles 19 (3), 21 and 22 (2) of the Covenant allow restrictions on the rights to freedom of expression, peaceful assembly and association, the Working Group recalls that such restrictions must not be used to stifle expression of political opposition, challenges to authority, including calls for democratic changes,²⁰ or human rights advocacy.

81. In the Working Group's view, the principle of necessity and proportionality inheres equally in all fundamental human rights. The Working Group has confirmed that the notion of “arbitrary” *stricto sensu* includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is

¹⁵ Opinions No. 10/2018, para. 50; and No. 36/2019, para. 40.

¹⁶ For example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59.

¹⁷ Human Rights Committee, general comments No. 34 (2011) on the freedoms of opinion and expression, para. 2, and No. 37 (2020) on the right of peaceful assembly, para. 1.

¹⁸ *Marques de Moraes v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

¹⁹ Opinions No. 10/2018, para. 63; No. 61/2018, para. 56; No. 14/2020, para. 65; No. 43/2020, para. 74; No. 11/2022, footnote 28; No. 67/2025, para. 81; and No. 68/2025, para. 53.

²⁰ Human Rights Committee, general comment No. 37 (2020), para. 49.

proportional to the aim sought, reasonable and necessary.²¹ In its jurisprudence on the application of the principle of proportionality, the Working Group has applied the four-pronged test of: (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.²²

82. The Working Group notes that the National Security Law was the subject of serious concern in letters sent by special procedures of the Human Rights Council on 1 September 2020²³ and on 22 March 2024.²⁴

83. The Government submits that Mr. Chow and his associates aimed to win a majority in the elections and "indiscriminately veto" the government's bills to compel it to accede to their demands, for the Chief Executive to dissolve the Legislative Council and to resign. However, their plan simply lists peaceful electoral tactics that may well be politically inconvenient but are hardly unusual in an electoral democracy. There is nothing to suggest that the permissible restrictions would apply in the present case and no evidence that the Hong Kong 47 attempted to violently overthrow the government or impose their political will by violent means.

84. For these reasons, the Working Group concludes that Mr. Chow's detention resulted from the exercise of his rights to freedom of expression, assembly, association and political participation, stipulated in articles 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 19 (1) and (2), 21, 22 (1) and 25 (a) of the Covenant, with no legitimate aim or objective in a democratic society that may justify interference with their rights and freedoms.

85. The Working Group thus finds that Mr. Chow's deprivation of liberty is arbitrary and fall within category II.

(d) Category III

86. Given its finding that Mr. Chow's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Mr. Chow has been tried, convicted and imprisoned. In the light of the above, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give Mr. Chow's deprivation of liberty an arbitrary character, such that it falls within category III.

87. The Working Group observes that Mr. Chow was held in prolonged pretrial detention until his conviction on 30 May 2024 and his sentencing on 19 November 2024. The Working Group recalls that the right of the accused to be tried without undue delay is designed not only to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interest of justice. Mr. Chow's trial began on 6 February 2023, which was 761 days after his initial arrest on 6 January 2021. The Government provided no explanation for the delay other than asserting that the defendant filed available procedural applications. The Working Group therefore finds a violation of article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (c) of the Covenant.

²¹ A/HRC/22/44, para. 61.

²² Opinions No. 54/2015, para. 89; No. 41/2017, para. 86; No. 56/2017, para. 51; No. 58/2017, para. 48; No. 76/2017, para. 68; No. 82/2018, para. 38; No. 87/2018, para. 64; No. 32/2020, para. 49; No. 89/2020, para. 63; No. 92/2020, para. 63; No. 25/2021, para. 57; No. 59/2024, para. 53; No. 67/2025, para. 83; and No. 68/2025, para. 55.

²³ See CHN 17/2020. All allegation letters and/or urgent appeals mentioned in the present document are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

²⁴ See CHN 5/2024.

88. Concerning the source's allegation that Mr. Chow spent his entire detention in solitary confinement, the Government submits that since his remand into custody on 2 March 2021, Mr. Chow's separation from other inmates has been arranged in accordance with his personal wishes and after consideration of all relevant factors. He may request resumption of association at any time. Further, his right under article 35 of the Basic Law to confidential legal advice has not been affected and he may meet with his legal representatives in accordance with the Prison Rules to prepare for trial. The source contends that Mr. Chow and his co-defendants were placed in solitary confinement by default because they were charged and tried under the National Security Law.²⁵ The State has skewed Mr. Chow's inaction as action. By not asking to be removed from solitary confinement, the State is assuming that Mr. Chow requested to be placed in solitary confinement.

89. With regard to the above, the Working Group notes that the authorities could have presented any document corroborating that Mr. Chow requested to be placed in solitary confinement but have not done so. It is therefore concerned that Mr. Chow has been placed in solitary confinement and that rule 68B of the Prison Rules enables solitary confinement for "safeguarding national security".²⁶ Prolonged solitary confinement in excess of 15 consecutive days is prohibited by rules 43 (1) (b) and 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has expressed his view that any imposition of solitary confinement beyond 15 days, whereby some of the harmful psychological effects of isolation can become irreversible, constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances.²⁷

90. Further, by the Government's own admission, rules 47A and 47C of the Prison Rules allow prison officials to open and read prisoners' letters, including complaints to the Ombudsman, and Mr. Chow's attempt to bypass this process on 2 May 2023 resulted in punishment for Mr. Chow and his lawyer. The Working Group is concerned that rules 52, 52A and 52C of the Prison Rules, as revised by Legal Notice 174 of 2025, enable restrictions on visits by lawyers and communications with them on the grounds of "national security".²⁸ Mr. Chow's solitary confinement therefore violated article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant, as well as his entitlement to the guarantees necessary for his defence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the Covenant.

91. The source submits that there is a serious concern about judicial independence and the rule of law, in the light of the National Security Law under which Mr. Chow faced prosecution. The Government, in its late response, categorically dismisses these allegations.

92. The Working Group recalls that the Human Rights Committee has stated that the requirement of competence, independence and impartiality of a tribunal in the sense of article 14 (1) of the Covenant is an absolute right that is not subject to any exception. It has also observed that a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal. Judicial independence encompasses the procedure and qualifications for the appointment of judges, guarantees relating to security of tenure, and the actual independence of the judiciary from political interference by the executive.²⁹

93. The Working Group is, therefore, extremely concerned by articles 44, 46 and 47 of the National Security Law. Articles 44 and 47 provide the Chief Executive with excessive power, including the power to appoint judges, from a list that is not made public and in consultation with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region and the Chief Justice of the Court of Final Appeal, to hear national security cases, and the power to issue a binding certificate to the courts as to whether

²⁵ Hong Kong, China, Prison Rules (1954) (amended), rule 68B (10) (a).

²⁶ Ibid.

²⁷ A/66/268, para. 19 et seq, especially paras. 76, 87 and 88.

²⁸ Hong Kong, China, Prison (Amendment) Rules 2025.

²⁹ Human Rights Committee, general comment No. 32 (2007), para. 19.

an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The Working Group notes that the Human Rights Committee also expressed this particular concern in 2022.³⁰

94. The Working Group considers that Mr. Chow's right to an independent and impartial tribunal, encapsulated in article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, was violated. In reaching that conclusion, the Working Group recalls the source's submission that the steps taken by the Chief Executive to effectively bar a jury trial for Mr. Chow, for which the Government provided no justification in his case other than claiming it to be a discretionary decision, is further indication of the court's lack of independence and impartiality.

95. Given the above observations, the Working Group concludes that the numerous violations of the right to a fair trial and due process are of such gravity as to give Mr. Chow's deprivation of liberty an arbitrary character that falls within category III.

(e) Category V

96. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention, including whether: (a) the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; (b) other persons with similarly distinguishing characteristics have also been persecuted; or (c) the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.³¹

97. With regard to these non-cumulative indicators, the Working Group notes a pattern of intimidation of the Hong Kong 47, a group of 47 pro-democracy advocates in Hong Kong, China, including Mr. Chow, who were charged with conspiracy to commit subversion under the National Security Law.

98. The source submits that Mr. Chow's detention is arbitrary under category V because he has been discriminated against and targeted for his political opinions and his status as a prominent pro-democracy advocate. It alleges that the targeting of Mr. Chow by the authorities because of his status as one of the most prominent pro-democracy activists in Hong Kong, China, is emblematic of a pattern of the misuse of criminal laws to justify the prosecution and imprisonment of journalists, publishers, human rights defenders and political opponents.

99. Moreover, in the discussion above concerning category II, the Working Group established that Mr. Chow's detention resulted from the peaceful exercise of his human rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the ground of discrimination based on political or other views.³²

100. For these reasons, the Working Group finds that Mr. Chow was deprived of his liberty on discriminatory grounds, on the basis of his political opinions and his status as a human rights defender. The deprivation of his liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant and was arbitrary under category V.

(f) Concluding remarks

101. The Working Group takes note of the recommendation of the Human Rights Committee that Hong Kong, China, should take concrete steps, with a clear timeline, to introduce universal suffrage and, in the meantime, to reform the electoral system in accordance with article 25 of the Covenant and the Committee's general comment No. 25 (1996), including by: (a) increasing the number of seats directly elected by public voters in the Election Committee and the Legislative Council; (b) increasing the number of public

³⁰ CCPR/C/CHN-HKG/CO/4, para. 35 (a).

³¹ A/HRC/36/37, para. 48.

³² Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; No. 39/2024, para. 69; and No. 51/2024, para. 117.

voters in the Election Committee; (c) introducing public voting for the election of the Chief Executive; (d) revising candidate eligibility criteria to ensure diversity among candidates; and (e) reviewing the criteria for and process of disqualification, and repealing discriminatory criteria.³³

102. The Working Group expresses its concerns about the recent amendments to the National Security Law that took effect on 23 March 2026 and which empower the police to demand phone and computer passwords during investigations, with refusal punishable by up to a year in jail.³⁴ The Working Group echoes the recommendation of the Human Rights Committee that Hong Kong, China, should take concrete steps to repeal the current National Security Law and, in the meantime, refrain from applying it.³⁵

3. Disposition

103. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Owen Chow Ka-shing, being in contravention of articles 2, 3, 5, 7, 9, 10, 11 (1) and (2), 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 2 (1), 7, 9 (1), (2) and (3), 14 (1) and (3) (b), (c) and (d), 15 (1), 19 (1) and (2), 21, 22 (1), 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

104. The Working Group requests the government of Hong Kong, China, to take the steps necessary to remedy the situation of Mr. Chow without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

105. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Chow immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

106. The Working Group calls upon the government to revise the provisions of the National Security Law to ensure that they comply with its obligations under the Covenant, in particular articles 9 and 14 thereof.

107. The Working Group urges the government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Chow and to take appropriate measures against those responsible for the violation of his rights.

108. The Working Group requests the government to translate, publish and disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

109. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Chow has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Chow;
- (c) Whether an investigation has been conducted into the violation of Mr. Chow's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Hong Kong, China, with its international obligations in line with the present opinion;

³³ CCPR/C/CHN-HKG/CO/4, para. 52.

³⁴ OHCHR, "Rushed adoption of national security bill a regressive step for human rights in Hong Kong – UN Human Rights Chief", press release, 19 March 2024.

³⁵ CCPR/C/CHN-HKG/CO/4, para. 14.

(e) Whether any other action has been taken to implement the present opinion.

110. The government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

111. The Working Group requests the source and the government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

112. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.³⁶

[Adopted on 1 April 2026]

³⁶ Human Rights Council resolution 60/8, paras. 6 and 9.