

新聞稿

由：香港人權資訊中心

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**聯合國工作組裁定鄒幸彤遭受任意拘留**  
**要求港府立即放人及修改《國安法》**  
**香港人權資訊中心對港府以藐視法庭罪阻嚇工作組表示遺憾**

聯合國任意拘留問題工作組（Working Group on Arbitrary Detention）早前發表[意見書](#)（A/HRC/WGAD/2023/30），裁定香港政府對前支聯會副主席鄒幸彤的長期扣留構成任意拘留（arbitrary detention）。

工作組於本年 5 月 1 日發表的意見書中，要求港府立即釋放鄒幸彤、給予她獲取賠償的權利、修改《國安法》條文以避免任意拘留和保障司法獨立，以及就此個案展開全面獨立的調查並對涉事人員採取適當措施。工作組要求港府廣泛地傳播這份意見書，並需在六個月內提交落實上述要求的進度報告。

香港人權資訊中心歡迎工作組的裁定。我們促請港府立即落實工作組的所有要求，並須以工作組制訂的標準覆核其他因為行使言論或集會自由而被檢控的個案，從而避免任意拘留。

根據工作組訂下的定義，「任意拘留」合共分為五個類別，只要符合任何一個類別已構成「任意拘留」。該五個類別分別是：

- 類別一：明顯沒有任何法律依據可以合理化對事主的拘留
- 類別二：事主是因為行使其基本人權而導致被扣留
- 類別三：事主沒有得到公平審判，其嚴重程度使其拘留具有任意性
- 類別四：事主是尋求庇護者、移民或難民，而其接受的行政拘留是缺乏覆核的可能性
- 類別五：剝奪自由是基於針對事主的歧視

工作組發現，鄒幸彤被剝奪人身自由的遭遇，總共符合上述五個類別的其中四個（即類別一、二、三及五），因此屬於任意拘留。具體而言，鄒幸彤個案符合各類別的原因如下：

- 類別一：在煽惑集會案中，鄒最初被捕及後來被控的理據並不一致；在支聯會拒交資料案中，法庭頒下的保釋條例缺乏必需的準確度及清晰性
- 類別二：鄒遭到的拘捕及扣留，都是由於她和平地行使言論及集會自由所導致
- 類別三：鄒接受獨立及中立的法庭審判的權利遭到侵犯
- 類別五：當局對鄒的拘捕及扣留是源自對她的長期騷擾和針對，因此屬於一種基於其政見而作出的歧視

工作組亦特別批評《國安法》的條文缺乏足夠的清晰度，無法令人民根據條文規管自己的行為，因此可能導致任何基於《國安法》的拘留都成為任意拘留。工作組促請港府盡快修訂《國安法》。

值得注意的是，工作組在意見書中多次批評港府的不合作態度。例如港府沒有根據程序預先向工作組申請延長提交回應的期限，結果卻遲了 8 天才提交回應。工作組又指，儘管反駁指控的舉證責任是在政府身上，但港府在否認多個不同指控時，卻沒有提供具體的論點、作出針對性的回應或清楚解釋鄒的犯罪行為，只是不斷重覆《國安法》及其他法例的條文。工作組強調，港府單純聲稱自己已遵守所有法律程序，並不足以反駁消息人士的指控。

工作組批評香港政府以本地法律和程序作為拒絕配合調查的理由。港府指由於案件正在審理，發表任何企圖干預司法程序的言論都可能構成刑事藐視法庭。不過，工作組已明確反駁這個說法，並強調工作組的使命是保護任意拘留的受害人及讓成員國互相問責，因此機制的原意肯定是容許工作組解決受害人提出的爭端，而聯合國人權理事會亦早已提醒所有成員國都要全面配合工作組。

對於港府嘗試以藐視法庭罪阻嚇工作組發表意見，並以本地法律作為拒絕配合聯合國人權調查的擋箭牌，香港人權資訊中心表示非常遺憾。工作組今次已明確指出，本地法律程序不能凌駕聯合國的調查工作。當局拒絕配合調查的態度，正正反映當局正利用本地法律和司法侵犯人權。

事實上，《公民權利和政治權利國際公約》（《公約》）適用於香港，當中第九條明文禁止任意拘留，而第二條則要求締約國制定必要之立法以實現《公約》所確認之權利。聯合國人權事務委員會在詮釋《公約》時指出，政府不可引用本地法律來為自己違反《公約》的行為開脫<sup>1</sup>。我們要求港府全面配合工作組的調查，並按工作組的意見立即作出糾正。

根據聯合國人權理事會的授權，工作組的任務是調查任意或不符合《世界人權宣言》規定的國際標準或國際法律文書的剝奪自由案件。工作組由五名獨立的人權專家組成，他們均以個人身份工作，並不代表所屬國家。現時的成員分別來自馬來西亞、紐西蘭、烏克蘭、厄瓜多爾及贊比亞。

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<sup>1</sup> 第 31 號一般性意見（2004 年）（CCPR/C/21/Rev.1/Add.13），  
<https://digitallibrary.un.org/record/533996?ln=en>

## 關於我們

香港人權資訊中心於 2022 年成立，由一群專注法律及政策研究的香港人權工作者組成，目標是向外界提供有關香港人權、法治及政治發展的最新和可靠的資訊，以支持香港的公民社會，並以國際人權法和標準，捍衛香港的人權和自由。

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## Press Release

From: Hong Kong Centre for Human Rights (“HKCHR”)

Date: 27 June 2023

### **UN Working Group found Chow Hang-tung’s detention arbitrary Urging HK government to release her immediately and revise National Security Law HKCHR regrets government’s attempt to silence Working Group with criminal contempt**

The United Nations Working Group on Arbitrary Detention (“**Working Group**”) issued an [opinion](#) (A/HRC/WGAD/2023/30) on 1 May 2023 (“**Opinion**”) concerning Chow Hang-tung, a Hong Kong human rights lawyer and former vice-chairperson of the now-defunct Hong Kong Alliance in Support of Patriotic Democratic Movements of China (“**Alliance**”). The Working Group concluded that the deprivation of liberty of Chow is arbitrary detention.

The Working Group requested Hong Kong government to release Chow immediately, accord her an enforceable right to compensation and other reparations, revise the provisions of the National Security Law (“**NSL**”) to ensure fair trial and avoid arbitrary detention, ensure a full and independent investigation of the arbitrary detention of Chow, and take appropriate measures against those responsible for the violation of her rights. The Hong Kong government was requested to disseminate the Opinion as widely as possible, and to provide information within six months on action taken in follow-up to the above requests.

Hong Kong Centre for Human Rights (“**HKCHR**”) welcomes the Opinion. We urge the Hong Kong government to immediately implement the Working Group’s requests, and review in accordance with the Working Group’s standards other ongoing cases related to prosecution resulting from the exercise of freedom of expression and assembly.

According to its mandate, the Working Group regards deprivation of liberty as arbitrary in the following cases:

- Category I: When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty
- Category II: When the deprivation of liberty results from the exercise of human rights
- Category III: When the total or partial non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character
- Category IV: When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy
- Category V: When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination.

Regarding the situation of Chow Hang-tung, the Working Group found that her detention fell within Categories I, II, III and V, and is therefore arbitrary detention. The details of each category are as follows:

- Category I: For the case of incitement to unauthorized assembly, there were discrepancies in the reasons of arrest and charging of Chow; for the case of denying to provide information of

the Alliance, the bail conditions lacked the requisite degree of precision to enable Chow to direct her conduct accordingly.

- Category II: The arrest and detention of Chow resulted from her peaceful exercise of the freedoms of opinion and expression and assembly.
- Category III: Chow's right to independent and impartial tribunal were violated.
- Category V: Chow's arrest and detention stems from long-term harassment and targeting by the Hong Kong authorities and that her arrest and detention are therefore arbitrary as they are discriminatory, resulting from her political opinion and activism.

The Working Group criticized that the NSL were not formulated with sufficient precision so that the individual can regulate his or her conduct accordingly. It stated that such failure may render any detention on the basis of the NSL to be arbitrary. The government was urged to amend the NSL without delay.

It shall be noted that the Working Group has repeatedly criticized the uncooperative attitude of the Hong Kong government in the Opinion. For example, the Hong Kong government did not follow the procedures to seek an extension of the deadline for submission of its reply, but ended up submitting its reply eight days late. The Working Group also pointed out that although the burden of proof for refuting the allegations rests upon the government, the Hong Kong government, when denying a number of different allegations, only kept citing the provisions of the NSL and other legislation, without providing specific arguments or clearly explaining the purported criminal conduct of Chow. The Working Group stressed that mere assertions by the government that lawful procedures had been followed were not sufficient to rebut the source's allegations.

Besides, the government told the Working Group that publishing statements that are intended to interfere with or obstruct the due administration of justice may constitute "criminal contempt of court. However, the Working Group pointed out that it was not sufficient for the government to argue that its national legislation or domestic legal proceedings prevented it from providing a detailed explanation of the actions of the national authorities. Given that the Working Group was created to serve the needs of victims of arbitrary detention worldwide and as a way for Member States to hold each other accountable, Member States must have intended that the mechanism resolve disputes brought by victims. The Human Rights Council has also reminded States to cooperate fully with the Working Group.

HKCHR expressed regret on the government's attempt to threaten the Working Group with the offence of contempt of court and to not cooperate with the Working Group by invoking domestic laws. The Working Group has made it clear that domestic legal procedures cannot override the UN investigation. The refusal of the authorities to cooperate with the investigation shows that the authorities are using local law to infringe on human rights.

The International Covenant on Civil and Political Rights applies to Hong Kong. Article 9 expressly prohibits any forms of arbitrary detention while Article 2 requests each State Party to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant. According to the interpretation of the Covenant made by the Human Rights Committee, a government should not invoke provisions of the constitutional law or other domestic law to justify a failure to perform or give

effect to obligations under the Covenant.<sup>2</sup> We demand the government to fully cooperate with the Working Group and implement its recommendations.

The Working Group has the mandate to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights, or the international legal instruments accepted by the States concerned. It is composed of five independent experts of balanced geographical representation. The current members are from Malaysia, New Zealand, Ukraine, Ecuador and Zambia.

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### **About us**

Hong Kong Centre for Human Rights is established in 2022 by a group of human rights defenders from Hong Kong with background in policy and legal research. We aim to provide credible information on Hong Kong's legal, political, and human rights development with the goal of supporting the resilient civil society of Hong Kong and upholding international human rights standards.

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<sup>2</sup> General Comment No. 34 (2004) (CCPR/C/21/Rev.1/Add. 13), <https://digitallibrary.un.org/record/533996?ln=en>