

新聞稿

由：香港人權資訊中心

日期：2023 年 4 月 28 日

## 香港政府打壓集會自由 違反國際人權標準及終審法院案例

前職工盟主席黃迺元及前幹事杜振豪，早前向警方通知於五一勞動節舉辦遊行，但黃於周三（4月26日）突然撤回通知。雖然他未有公開交代撤銷通知的原因，但據杜振豪表示，黃於當天早上一度失去蹤影，重獲自由後已經情緒崩潰，顯然承受了巨大壓力，惟限於《國安法》第63條無法透露詳情。保安局局長鄧炳強回應指，任何人認為無能力令活動安全或有序進行而決定取消，是一個負責任的做法。

對於香港政府拒絕履行在國際人權法及本地法律規範下的積極責任（positive duty），主動為遊行提供協助及採取措施，以保障公民在《公民權利和政治權利國際公約》、《基本法》及《香港人權法案》下行使集會自由的權利，香港人權資訊中心（本中心）表示非常關注及遺憾。

本中心強調，香港政府除了不應任意限制及干預市民行使遊行集會的權利，同時亦有積極責任主動提供協助及採取措施，以促使相關集會能夠和平及順利地舉行。對於最近數月出現至少三宗由組織者主動取消遊行集會的事件，本中心表示高度關注，認為組織者受到不尋常的施壓而取消活動，已成為一種打壓香港公民社會的新模式。

聯合國人權事務委員會（委員會）在解釋和平集會權利的[《第37號一般性意見》](#)指出，政府不得無端干預和平集會的進行，同時亦有積極責任，提供一個有利於市民行使集會權的環境，並建立法律和體制框架，讓這一權利可得到有效行使；當局必要時更需採取具體措施，例如是封鎖街道及對參與集會者提供安全保護等。此外，政府不應要求個人承諾或保證不組織或不參加未來的集會。反之，亦不得強迫任何人參加集會。

香港終審法院於2005年的[《梁國雄案》](#)的判詞中指出：「和平集會權利涉及一項政府（即行政當局）所須承擔的積極責任，那就是採取合理和適當的措施，使合法的集會能夠和平地進行」。法院同時引述香港政府以往提交給委員會的報告，指出政府亦承認自己「有責任協助市民行使舉行和平公眾集會和示威的權利和為之做好準備」。

本中心發言人表示：

「香港政府有責任履行其積極責任，協助主辦者舉行和平集會。一般而言，只要集會的目的、主題不是為了提倡非法行為、暴力、仇恨和歧視，便應該可以舉行。最近不

斷出現主辦者『負責任』地取消預定舉行的活動，是不正常的情況，並反映當局可能正以非正式的手段去阻止公眾舉行特定性質的集會。」

「在 2019 年的反修例示威浪潮後，香港政府持續以不同的法律及行政措施限制公民行使遊行集會的權利，我們對此感到非常憂慮。我們尤其關注，當局可能借用《國安法》第 63 條以阻止活動組織者公開交代事件，包括披露其遭遇或作出決定的詳情，令政府可以迴避公眾的問責。」

## 關於我們

香港人權資訊中心於 2022 年成立，是由一班擅長法律及政策研究的香港人所組成，目標是要向外界提供有關香港的人權、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

Date: 28 April 2023

### **Hong Kong government infringed the right to freedom of assembly Contravening international human rights standards and Hong Kong case law**

Joe Wong and Denny To, former members of now-defunct Confederation of Trade Unions, earlier notified the police for holding a march on Labor Day (1 May). However, Wong suddenly withdrew the notification on 26 April. Although Wong did not publicly explain the reason for withdrawing the notice, To told the press that Wong disappeared from his home in the morning on 26 April; and after he regained his freedom in the afternoon, he had suffered an emotional breakdown, apparently under great pressure. To said that Wong could not disclose more details due to Article 63 of the National Security Law (“NSL”). Secretary for Security Chris Tang responded that cancelling a march was a responsible thing to do if anyone believed that they were incapable of making the march safe or orderly.

We express grave concern and regret that the Hong Kong government refuses to fulfill its positive duty under international human rights law and domestic laws to provide assistance and take measures to protect citizens' right to freedom of assembly, which is a constitutional right guaranteed by the International Covenant on Civil and Political Rights, the Basic Law and the Hong Kong Bill of Rights.

We have to stress that not only should the Hong Kong government refrain from arbitrarily restricting and interfering with the exercise of the right to procession and assembly, but it also has a positive duty to take the initiative to provide assistance and take measures to facilitate the processions and assemblies to conduct in a peaceful and smooth manner. In recent months, there have been at least three cases of organizers cancelling rallies or assemblies “voluntarily”. We are very concerned that organizers’ cancellation of rallies or assemblies under unusual pressure has become a new mode of suppressing the civil society in Hong Kong.

Regarding the international standards, the United Nations Human Rights Committee has clearly stated in its [General Comment 37](#) that States parties are obliged to allow peaceful assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. As to the positive duty, the Committee rightly opined that States parties “have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively.”

In [Leung Kwok Hung v HKSAR \[2005\] HKCFA 41](#), the Hong Kong Court of Final Appeal has also unambiguously stated: “... it must be pointed out that the right of peaceful assembly involves a positive duty on the part of the Government, that is the executive authorities, to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully.”

The Spokesperson of HKCHR said today:

“The Hong Kong government has to discharge its positive duty to assist organizers in holding peaceful assemblies. Generally speaking, as long as the purpose and theme of the assembly is not to promote illegal acts, violence, hatred and discrimination, it should be allowed to take place. The recent spate of “responsible” cancellations of assemblies by organizers is an anomaly and reflects the possibility that the authorities are using informal means to prevent the public from holding assemblies of a particular nature.”

“We are very concerned that, after the anti-extradition movement in 2019, the Hong Kong government continues to restrict the exercise of the right to freedom of assembly by different legal and administrative means. We are particularly concerned that Article 63 of the NSL may be invoked to prevent event organizers from publicly explaining their situations, including disclosing details of their encounters or decisions, so that the government can evade public accountability.”

**About us:**

HKCHR is established in 2022 by a group of human rights defenders from Hong Kong with strong background in policy and legal research. The mission of HKCHR is to provide credible information on the latest situation in Hong Kong, with reference to its legal, political, and human rights development, in order to support the resilient civil society in Hong Kong and defend the city’s rights and freedoms in accordance with international human rights law and standards.

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