

WHAT YOU NEED TO KNOW ABOUT ARTICLE 23

1 WHAT IS ARTICLE 23? WHY WAS ARTICLE 23 PREVIOUSLY SHELVED?

Article 23 of the Hong Kong *Basic Law*—the Hong Kong Special Administrative Region’s (HKSAR) constitution—is a provision which requires the HKSAR to enact laws to prohibit seven national security-related offences.

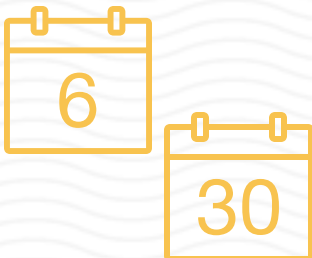
To date, the Hong Kong government has only made one attempt, in February 2003, to introduce Article 23 legislation. The 2003 bill came under significant public criticism due to the lack of transparency of the process, inadequacy of consultation with the public, substantive concerns regarding the consultation document, and potential negative impact on Hong Kong’s rule of law and exercise of civil and political rights. A massive 500,000-strong demonstration on July 1, 2003 forced the legislative attempt to be shelved indefinitely on September 5, 2003.

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Article 23: The Hong Kong Special Administrative region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion, against the Central People's Government, or theft of state secrets to prohibit foreign political organizations or bodies of the region from establishing ties with foreign political organizations and bodies.



2 WHY HAS ARTICLE 23 BEEN RESURRECTED NOW?



Although Hong Kong’s failure to introduce Article 23 legislation has been cited as a key reason for the CPG’s decision to impose the *National Security Law* (the NSL) on Hong Kong, which came into effect on June 30, 2020, the CPG has made clear that the implementation of the NSL does not negate the need for Hong Kong to pass its own local national security law pursuant to Article 23.

Mounting pressure from Beijing has put Article 23 legislation back on the docket, with outgoing Chief Executive Carrie Lam proclaiming the urgency of Article 23 legislation in fall 2021. John Lee, Hong Kong’s new Chief Executive as of July 1, 2022, has stated repeatedly that his administration will push to enact Article 23 legislation as soon as possible.



3 WHAT ARE THE MAIN CONCERNS SURROUNDING THE REINTRODUCTION OF ARTICLE 23 LEGISLATION?

In the face of rapid and deepening erosion of civil and political rights in Hong Kong following the Hong Kong government's aggressive implementation of the *National Security Law*, local, regional, and international non-governmental organizations have expressed strong concerns that Article 23 legislation would expand the government's arsenal of legal weapons to arbitrarily restrict or persecute individuals or groups for the peaceful exercise of their rights.



Any proposed Article 23 legislation is expected to further erode cherished civil and political rights in Hong Kong, such as freedom of expression and the press, which have already been undermined and significantly curtailed under the NSL.

The bill, when proposed, is expected to pass unopposed through a legislature, the Legislative Council (LegCo), that is now composed overwhelmingly of "patriots." In the current climate, one that is drastically different from that in 2003 and marked by systematic repression and control of civil society and the severe weakening of institutions necessary to protect rights, any public protest would undoubtedly be extremely costly and challenging for participants.

SINCE JUNE 9, 2019

the number of political prisoners—those imprisoned for exercising their fundamental rights and expressing political views that do not align with Beijing's—has soared.



10,501

Approx. no. of political arrests made



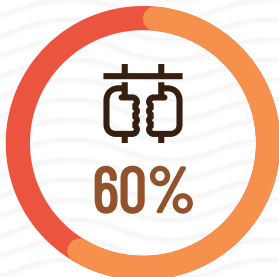
2,974

Approx. no. of political defendants prosecuted

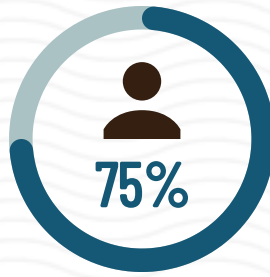


1,014

Total no. of political prisoners in Hong Kong



Approx. conviction rate



Approx. % of political prisoners under the age of 30



Approx. % of political prisoners who are minors

Statistics are drawn from the Hong Kong Democracy Council's report, "Hong Kong Reaches a Grim Milestone: 1,000 Political Prisoners," May 2022, <https://hkdc.us/wp-content/uploads/2022/05/HKDC-political-prisoners-report-updated.pdf>.

4 HOW DOES ARTICLE 23 RELATE TO THE CURRENT ICCPR REVIEW?



The ICCPR (International Covenant on Civil and Political Rights), which enshrines key fundamental human rights, is one of 15 UN human rights treaties which apply to Hong Kong.

But what does this mean?



This means that the Hong Kong government is under a duty to ensure that Hong Kong's legal system, including the substance and procedure of any legislative exercise undertaken by Hong Kong authorities, complies with the ICCPR.

So any proposed Article 23 legislation must adhere to the international standards and norms related to national security regulations?



Since 2003, UN experts have repeatedly and extensively raised concerns in relation to other existing Hong Kong national security-related legislation, including the NSL. The current ICCPR review of Hong Kong's implementation of its international obligations is an important opportunity for Hong Kong civil society and all stakeholders present to press for the Hong Kong and Chinese governments' accountability, compliance with international human rights standards, and fulfilment of their domestic and international human rights obligations.

What should be done?



Check out the recommendations below!

5 WHAT ARE HRIC'S KEY RECOMMENDATIONS?

In the current LegCo, Article 23 legislation is almost certain to pass. Despite the steep challenges, HRIC's recommendations are focused on **ensuring that any future Article 23 legislative exercise is subject to robust substantive and procedural scrutiny and is used as an opportunity to press the Hong Kong government to address concerns regarding the compatibility of its existing national security laws with the ICCPR.**

As highlighted by seven UN experts, including the Special Rapporteur on counter-terrorism and human rights, in their communication to China on September 1, 2020, urging the review and reconsideration of the National Security Law to comply with international law:

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National security is not set apart from the obligation to protect and ensure human rights but rather that the latter is a necessary and integral part of the right to security guaranteed to each person individually.

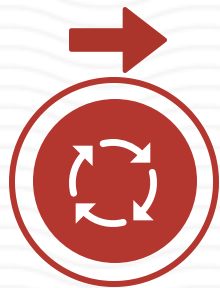
In line with the HKSAR's (and the CPG's) international obligations, our key recommendations aim to promote the **peaceful exercise of rights, including public participation, freedom of expression, peaceful assembly, and association.**

KEY RECOMMENDATIONS



The Hong Kong government must undertake **meaningful public consultation** as part of any Article 23 legislative exercise. This should include, at a minimum, wide circulation of any proposed Article 23 bill for general public comment, carrying out formal and informal consultations using both online and offline methods in languages that are accessible to participants for the purpose of canvassing public opinion on the draft legislation, and making submissions and records of consultations and their outcome publicly available during and after consultations.

Any proposed Article 23 bill must **comply with international standards on security legislation and protection of rights**, and any **derogations** from rights must comply with international standards.



Any proposed Article 23 bill must address the procedural and substantive deficits of the Article 23 exercise in 2003, including **inviting wide and inclusive consultation with experts and Hong Kong society, as well as providing adequate time for discussion and input.**

Hong Kong civil society and all other relevant stakeholders should **leverage any future Article 23 legislative exercise as an opportunity to press the Hong Kong government for clarity and accountability** in relation to concerns raised by UN human rights and other legal experts regarding Hong Kong's implementation of existing national security legislation, including the NSL, *Anti-Terrorism Law*, and *Sedition Law*.



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