

研究背景

基本法第二十三條規定香港應自行立法，「禁止任何叛國、分裂國家、煽動叛亂、顛覆中央人民政府及竊取國家機密的行為，禁止外國的政治性組織或團體在香港特別行政區進行政治活動，禁止香港特別行政區的政治性組織或團體與外國的政治性組織或團體建立聯繫。」回歸至今已近二十年，香港尚未履行其憲法責任，就二十三條成功立法。

拖延立法不符合基本法，更會影響一國兩制的發展，亦會影響香港政制進一步民主化。特區政府應逐步創造有利條件，在適當時候為二十三條立法，並可參考我們以下的建議：

政策建議

(一) 先易後難、分階段立法

政府應分兩階段立法：在第一階段先行處理現行法例中比較簡單的修改，即《刑事罪行條例》裡有關叛國及煽動叛亂的條文，並且參考2003年草案中有關建議作為基礎，開始討論關於分裂國家及顛覆中央人民政府的兩個環節的立法。第二階段則在政治環境合適時才啟動，處理二十三條中比較複雜而具爭議性的餘下三個要求。

(二) 草案必須符合《基本法》以及國際標準

政府應該在國家安全和人權之間取得平衡，保障香港居民的基本權利，除了應符合《基本法》第三章「香港居民的基本權利和義務」的所有要求外，二十三條立法亦須符合國際原則；最重要的目標是：任何條文也不應構成「以言入罪」，並符合《約翰內斯堡原則》與《錫拉庫扎原則》等國際標準。

(三) 充份諮詢市民，達到共識後才再立法

為防止議會內外再度出現激烈反彈，政府於立法前必須進行全面諮詢，達到共識後才進行立法工作。政府可考慮成立專責諮詢委員會，提升公眾參與，以及善用互聯網吸納民意等方法，增加諮詢過程的透明度和認受性，並適當處理諮詢過程中的爭執，讓社會更容易達成共識。諮詢過程應有獨立專業人士及公眾的積極參與。

(四) 以最低限度方式立法

政府應以最低限度方式訂立國家安全法例，不應就《基本法》第二十三條的七個要求以外的範圍立法，即如非必要，不應額外立法。




**Judicial Path to
Article 23 of the Basic Law**
Adhere to Four Fundamental Principles

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 [hongkongvision](https://www.instagram.com/hongkongvision)

 (852) 3920 0688

 info@hongkongvision.org.hk

 <http://hongkongvision.org.hk/>

 26/F, Bonham Circus, 40-44 Bonham Strand,
Sheung Wan, Hong Kong

Research Background

Article 23 of the Basic Law provides that Hong Kong 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 from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies”. The National Security (Legislative Provisions) Bill 2003 was shelved in 2003 due to strong public opposition and Article 23 has not yet been implemented since then.

It is Hong Kong’s constitutional obligation to give effect to Article 23 at appropriate time and with reference to the following principles.

Policy Recommendations

(1) Staged legislation

We recommend that Article 23 enactment be divided into two stages. The first stage is to reform and update the existing outdated laws from the era of British rule on some of the Article 23 elements. In the second stage, we recommend the Government to enact new laws to regulate the remaining elements as required by Article 23. The Government should reach public consensus before enacting new laws that are understandably controversial.

(2) Comply with the Basic Law and international standards of human rights protection

When enacting Article 23, the Government should ensure that the standards imposed by both the Basic Law and the International Convention of Civil and Political Rights (ICCPR) are complied with. The Government should also take into account of the principles set out in the Johannesburg principles and the Siracusa principles. It is important to guarantee that mere expression of opinions would not fall foul of the new legislation.

(3) Conduct thorough public consultation to reach social consensus

The Government must conduct a comprehensive consultation exercise before putting forward the legislative proposals. In particular, we recommend that a special consultative committee be established for Article 23 purposes in order to engage the public with a view to reaching consensus. This committee should comprise members from the public and professional bodies.

(4) Adopt a minimalist approach

We recommend the Government to formulate a new draft national security bill on the basis of “minimalism”, meaning to keep the legislation as simple and “minimal” as possible. The Government should not legislate above the minimum requirements set out in Article 23, or have any unnecessary legislations.




二十三條的立法之路

堅守四大原則 釋除立法爭議

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 [hongkongvision](https://www.instagram.com/hongkongvision)

 (852) 3920 0688

 info@hongkongvision.org.hk

 <http://hongkongvision.org.hk/>

 香港上環文咸東街40 – 44號泰基商業大廈26樓