

# Six things to look out for in Hong Kong in the next six months



In the last year we have seen an unprecedented crackdown in Hong Kong on basic rights and freedoms, with nearly every pro-democracy activist in jail, awaiting trial, or in exile. Every week there is a new attack on human rights as Xi Jinping takes a further step to dismantle the city's autonomy and crush dissent in direct violation of China's international treaty commitments.

For lawmakers, government officials, and civil society actors, it would be easy to conclude that Hong Kong's story is over, with the city's freedoms on a permanent path of decline. However, there are a number of flash-points in the next six months which will bring the crisis in Hong Kong back onto the front-page and into the public's mind once again.

These developments will have a substantial impact on Hong Kong's future and offer further evidence of the Chinese Communist Party's intentions for the region itself. They will also offer activists and the growing international alliance rising in defence of Hong Kong opportunities to push for policy changes, whether that is the introduction of Magnitsky sanctions, the expansion of lifeboat schemes, or the suspension of extradition treaties.

## Topics Covered:

The triggering of Article 23 national security legislation

The trial and sentencing of Jimmy Lai

Legislative Council elections under Beijing's new electoral system

The National Security trial of 47 pro-democracy activists

The extension of the Foreign Anti-Sanctions Law to Hong Kong

The continued crackdown on civil society

# 1. The triggering of Article 23 national security legislation

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In the Hong Kong Chief Executive's Policy Address for 2021, Carrie Lam confirmed her intention to trigger Article 23 national security legislation. This followed similar comments by Hong Kong's Security Secretary, Chris Tang, that the Hong Kong SAR would consider triggering Article 23 to look at the role of foreign organisations.

Article 23 of Hong Kong's Basic Law gives the Hong Kong Government the power to introduce local national security legislation. In 2003, the Hong Kong Government attempted to introduce Article 23 national security legislation. This legislation was shelved following 500,000 Hong Kongers taking to the streets to protest.

## *What would the triggering of Article 23 mean for Hong Kong?*

Former pro-democracy lawmaker, Dennis Kwok, who represented the legal community in the Legislative Council for a number of years, said:

"The indication by Carrie Lam that she intends to trigger Article 23 national security legislation is a starting gun for a further cycle of oppression and an expansion of the ongoing crackdown on civil society, the press, and the general population in Hong Kong.

The pro-Beijing politicians in Hong Kong are outdoing each other in order to show absolute loyalty. The contents of the Article 23 legislation are rumoured to include espionage laws, fake news, and a super-charged sedition offence replacing the existing one.

Once the Article 23 legislation is implemented it will complete the cycle of what was once a free liberal society and turning it into an authoritarian one."

# 2. The trial and sentencing of Jimmy Lai

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On 28 December 2021, Jimmy Lai, the prominent pro-democracy activist and former owner of Apple Daily, will stand trial for "colluding with foreign forces" under the National Security Law. This will be the most prominent national security trial, since the draconian law was introduced last summer.

Arrested back in August 2020 when the Hong Kong Police raided Apple Daily and charged under the National Security Law in December 2020 for comments he made in the press, Jimmy Lai has been in jail awaiting trial since December 2020.

In February 2021, the Hong Kong Court of Final Appeal rejected Jimmy Lai's bail application on the grounds that the National Security Law supersedes Hong Kong's Basic Law.<sup>2</sup> Following this announcement, Jimmy Lai was given additional charges under the National Security Law and in May 2021 the Hong Kong Government invoked Article 43 of the National Security Law to freeze his assets amounting to HK\$500m.<sup>3</sup> The Hong Kong Government also ordered the removal of books written by Jimmy Lai from public libraries.<sup>4</sup>

The case will be heard by Hong Kong's High Court, which means that the prosecution will likely seek the maximum sentence which is life in prison.

<sup>1</sup><https://www.hongkongwatch.org/all-posts/2021/1/11/briefing-democracy-dismantled-the-implementation-of-the-national-security-law-september-december-2020>

<sup>2</sup><https://www.hongkongwatch.org/all-posts/2021/2/9/denial-of-bail-to-jimmy-lai-marks-a-legal-watershed-as-court-of-final-appeal-confirms-it-cannot-consider-constitutional-challenges-to-the-nsf?rq=jimmy>

<sup>3</sup><https://www.hongkongwatch.org/all-posts/2021/5/14/freezing-jimmy-lais-assets-undermines-the-rule-of-law-and-vandalises-hong-kongs-status-as-an-international-finance-centre?rq=jimmy>

<sup>4</sup><https://www.scmp.com/news/hong-kong/politics/article/3139486/hong-kong-librarian-suspended-after-books-jailed-apple>

## ***What will be the impact of the sentencing of Jimmy Lai?***

Mark Simon, the former Senior Executive at Next Digital and Apple Daily, said:

"The Chinese Communist Party, an enemy of democracy, human rights, free speech, and the common values of free peoples, has decided that Jimmy Lai as a proponent of freedom and values of the free must be jailed. As such he has been convicted three times for peacefully demonstrating and faces four national security charges based on saying the wrong things that with each charge could jail this 74-year-old democracy leader for life."

## **3. Legislative Council elections under Beijing's' new electoral system**

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Hong Kong was scheduled to have Legislative Council elections in September 2020. These elections were postponed by the Hong Kong Chief Executive five weeks before taking place, citing the COVID-19 pandemic as an excuse. They will now take place on 19 December 2021, under a new electoral system introduced by Beijing.<sup>5</sup>

On 30 March 2021, the Standing Committee of China's National People's Congress adopted changes to Hong Kong's electoral system in direct violation of its international treaty commitments under the Sino-British Joint Declaration.

Beijing's changes to Hong Kong's elections include the reduction of directly elected members of Hong Kong's Legislative Council from 35 to 20 and the increase of the Legislative Council's size from 70 to 90, to ensure the dilution of the influence of directly elected members. These reforms also changed the make-up of the committee that selects the Hong Kong Chief Executive, to give the Chinese Communist Party even more power over appointing the city's highest political position.<sup>6</sup>

Under this new system anyone wishing to stand for election will need to be vetted by a newly established committee to ensure the city is "governed by patriots". The National Security Committee and the national security police will provide reports on each candidate to assist the vetting committee. This new system is designed to essentially bar pro-democracy candidates from running.

The Hong Kong Government has warned that voters who cast blank ballots in the upcoming election could be violating the National Security Law.<sup>7</sup>

## ***What do the upcoming Legislative Council elections mean for Hong Kong?***

Former pro-democracy lawmaker and activist, Nathan Law, said:

"Under the election overhaul, the Legislative Council becomes meaningless. There are only around twenty percent of the seats that will be through direct election, and most of the seats are reserved for the pro-Beijing camp. The candidates also will need to be vetted by the National Security Police, which will lead to candidates with a genuine pursuit for democracy being eliminated. The legislature is now a complete rubber-stamp chamber. Elections have become nothing more than a "Selection."

<sup>5</sup> <https://www.hongkongwatch.org/all-posts/2020/7/28/analysis-why-hong-kongs-impending-decision-to-suspend-the-legislative-council-elections-is-unnecessary-and-an-assault-on-freedoms?rq=covid>

<sup>6</sup> <https://www.hongkongwatch.org/all-posts/2021/4/9/briefing-human-rights-developments-in-hong-kong-in-march-2021>

<sup>7</sup> <https://hongkongfp.com/2021/11/08/calls-to-cast-invalid-votes-or-boycott-election-may-breach-national-security-law-hong-kong-security-chief-warns/>

## 4. The National Security trial of 47 pro-democracy activists

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In early 2022, 47 former pro-democracy lawmakers and activists who stand accused of and participating in “subversion” under the National Security Law will stand trial.

The 47 pro-democracy activists and former lawmakers are accused of organising and participating in democratic primaries in the Summer of 2020 ahead of the Legislative Council elections. John Lee, Hong Kong’s Security Minister said that those arrested (and later charged) under the National Security Law were suspected of trying to paralyze the government, via their plans to gain a majority of the seats in the legislature to create a situation in which the Chief Executive had to resign and the government would stop functioning.<sup>8</sup>

It will be the first mass trial of activists under the National Security Law, covering some of the most prominent voices in the pro-democracy camp, including Joshua Wong and Benny Tai. There is an expectation that the organisers of the primaries, Benny Tai and Au Nok-hin, could possibly face life in prison.

### *What will be the impact of the sentencing of the 47 pro-democracy activists?*

Former pro-democracy lawmaker, Ted Hui, who represented the Hong Kong Island constituency in the Legislative Council from 2016-2020, said:

“The national security trial of my former colleagues is a strategic move by the Chinese Communist Party to eliminate the whole cohort of prominent political leaders and freedom fighters from the pro-democracy camp. It denotes its extreme rejection of any form of dissent, making it difficult for Hong Kongers to look up to any democratic alternative, that is why the Hong Kong diaspora and the international community must take bigger stakes to support the cause.”

## 5. The extension of the Foreign Anti-Sanctions Law to Hong Kong

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On 29 July 2021, it was first reported that the National People's Congress Standing Committee will add China’s new Foreign Anti-Sanctions Law to the annex of Hong Kong’s Basic Law at its next session.

The law authorises retaliation against individuals and groups involved in issuing and carrying out sanctions against China. The measures include denial of visas, deportation and seizure of assets located in China.<sup>9</sup>

The Hong Kong Government on 19 August 2021 stated that its extension would be put on hold. However, Hong Kong’s Chief Executive, Carrie Lam, has said that it that the anti-sanctions law will be implemented in Hong Kong in some form in the future.<sup>10</sup>

Risk advisory firms have raised concerns that applying the legislation to Hong Kong could impact financial institutions in the city that comply with U.S. sanctions, particularly the likes of HSBC, as China's law orders organisations and individuals not to cooperate with foreign sanctions, and it gives those harmed by the sanctions the right to sue for damages.<sup>11</sup>

<sup>8</sup> <https://www.hongkongwatch.org/all-posts/2021/5/31/hong-kong-watch-calls-for-the-release-of-36-pro-democracy-activists-being-held-in-custody-ahead-of-national-security-trials>

<sup>9</sup> <https://www.scmp.com/news/hong-kong/politics/article/3145394/chinas-anti-sanctions-law-what-it-how-will-it-take-effect>

<sup>10</sup> <https://hongkongfp.com/2021/08/10/hong-kong-leader-says-city-set-to-adopt-chinas-anti-sanctions-law/>

<sup>11</sup> <https://asia.nikkei.com/Politics/International-relations/US-China-tensions/China-poised-to-impose-anti-sanctions-law-on-Hong-Kong>

## ***What would be the impact of extending the Foreign Anti-Sanctions Law to Hong Kong?***

Human rights activist and China analyst, Dimon Liu, said:

"The Foreign Anti-Sanctions Law is another attempt to deploy the Chinese Communist regime's coercive power beyond its borders. If the Foreign Anti-Sanctions Law is adopted in Hong Kong, it would require banks to ignore US sanctions. Inevitably and materially, this would hasten the further decoupling and isolation of Hong Kong from the international system."

## **6. The continued crackdown on civil society**

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In the last few months, the Chinese Government has used the National Security Law to target civil society organisations in Hong Kong. This has included forcibly disbanding of the largest teachers' union and the largest confederation of trade unions, the civil society group that organised the annual Tiananmen Square Massacre Vigil, the speech therapists union, and the 612 Humanitarian Relief Fund which provided financial assistance and paid legal fees for protestors.<sup>12</sup>

On 25 October 2021, Amnesty International announced that it would be closing its two offices in Hong Kong, stating that the National Security Law had made it all but impossible for human rights organisations to work freely and without fear of reprisals from the government<sup>13</sup>

In the next six months, it is likely that more trade unions, human rights NGOs, and civil society organisations will be forced to close as a result of the ongoing crackdown.

## ***What is the impact of the crackdown on civil society in Hong Kong?***

The pro-democracy activist, Ray Wong, said:

"The clampdown on civil society in Hong Kong reflects Beijing's determination to completely sweep away the freedoms and civic rights of Hong Kong people. We expect to see more disbandment of civic organizations, arrests, and prosecutions of dissidents. Without the support of civil society, Hong Kong's democracy movement will struggle to survive under the National Security Law."

<sup>12</sup> <https://www.hongkongwatch.org/all-posts/2021/9/8/briefing-human-rights-developments-in-hong-kong-in-august-2021>

<sup>13</sup> <https://www.amnesty.org/en/latest/news/2021/10/amnesty-international-to-close-its-hong-kong-offices/>