



# The Uncertain Future of “One Country, Two Systems”

Promise of Democratization in Hong Kong Series  
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# National Democratic Institute

The National Democratic Institute (“NDI” or “the Institute”) is a nonprofit organization working to strengthen and expand democracy worldwide. Since 1997, NDI has periodically published assessment reports evaluating the status of democracy in Hong Kong. These reports have reviewed the Hong Kong Special Administrative Region’s (“HKSAR,” “Hong Kong,” or the “Region”) electoral framework, autonomy, the rule of law, and civil liberties under the “One Country, Two Systems” framework. This report is the sixteenth in that series. Through this series of reports, entitled *The Promise of Democratization in Hong Kong*, NDI has sought to raise awareness of the challenges and the progress toward universal suffrage, which is set forth as the “ultimate aim” in Hong Kong’s Basic Law.

In January 2016, representatives from NDI, led by Howard Dean, the Institute’s board member, former governor of Vermont, and former candidate for the presidential nomination of the Democratic Party, met with members of the HKSAR government, political parties, academia, the press, and broadly representative civil society organizations to discuss the political environment in Hong Kong. The findings from these conversations and the various perspectives presented to NDI’s team of representatives informed the drafting of this report. The information in this report reflects events from July 2, 2012 through September 9, 2016. Any developments of events following September 9, 2016 are not included in this report.

NDI received input that contributed to this report from the following:

- Alliance for True Democracy
- Civic Party
- Democratic Party
- The Education University of Hong Kong
- The Government of the Hong Kong Special Administrative Region, People's Republic of China
- Hong Kong 2020
- Hong Kong Human Rights Monitor
- The Hong Kong Journalist Association
- Labour Party
- The Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region
- The Professional Commons
- Scholarism
- The University of Hong Kong

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# Frequently Used Terms

<b>Basic Law</b>	Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China
<b>CE</b>	Chief Executive
<b>Central Government</b>	Central People's Government of the People's Republic of China
<b>CY Leung</b>	Chun-ying Leung, incumbent Chief Executive
<b>HKBA</b>	Hong Kong Bar Association
<b>HKSAR</b>	Hong Kong Special Administrative Region
<b>HKU</b>	The University of Hong Kong
<b>HKUPOP</b>	Hong Kong University Public Opinion Programme
<b>HKJA</b>	Hong Kong Journalist Association
<b>HSBC</b>	The Hongkong and Shanghai Banking Corporation
<b>ICAC</b>	Independent Commission Against Corruption
<b>Joint Declaration</b>	The Sino-British Joint Declaration of 1984
<b>LegCo</b>	Legislative Council
<b>NPC</b>	National People's Congress
<b>Occupy Central</b>	Occupy Central with Love and Peace
<b>PRC</b>	People's Republic of China
<b>NPCSC</b>	Standing Committee of the National People's Congress
<b>White Paper</b>	White Paper on the Practice of "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region

## Executive Summary

From 2012 to 2016, Hong Kong experienced a period of intensified debate on political reform and the meaning of the “One Country, Two Systems” formula that has governed relations between the Region and the mainland for almost two decades. Mass protest movements have energized the population and drawn young people into the political discourse as never before. The protesters have been mobilized by concerns that the promise of universal suffrage remains unrealized and civil liberties increasingly are being curtailed. In addition, many residents of Hong Kong fear that, as a result of escalating political tensions, the economic environment that has been the lifeblood of the city for decades may be eroding. This is concerning to business leaders and the broader international community as well; according to the Hong Kong Trade and Development Council, 3,798 foreign companies maintain offices in Hong Kong. These firms have long been attracted to the Region’s vitality, including its business climate, efficient administration, and especially its rule of law.

The view on the mainland and among Hong Kong’s pro-establishment camp is very different. They maintain that Beijing’s proposal on universal suffrage, rejected by Hong Kong’s Legislative Council (“LegCo”) in June 2015, was a step forward toward universal suffrage; that the commitments contained in the Basic Law, Hong Kong’s *de facto* constitution, are being fulfilled; and that civil unrest is a threat to China’s sovereignty. The result of these contending perspectives has been political stalemate and a growing rift between a large segment of Hong Kong’s population and the Central People’s Government of the People’s Republic of China (“Central Government”) in Beijing. NDI’s report examines the events of this four-year period and their impact on the political and economic status of Hong Kong. It is based on the findings of an NDI delegation that met with a variety of stakeholders in Hong Kong in January 2016 to review the status of Hong Kong’s democratic development.

When the British transferred Hong Kong to Chinese sovereignty in 1997, the over-arching question of how Hong Kong would relate to mainland China was addressed in the “One Country, Two Systems” framework, which was incorporated into the Sino-British Joint Declaration of 1984 (“Joint Declaration”) and the Basic Law of the Hong Kong Special Administrative Region (“Basic Law”). These documents contain the initial terms of transfer of sovereignty, and guaranteed a “high degree of autonomy” for Hong Kong, exercised through its own executive, legislature, and judiciary.<sup>1</sup> Since 1997, the level of autonomy guaranteed by “One Country, Two Systems” and the Basic Law has provided enormous benefits to China, its Asian neighbors, and the international community who rely on the territory’s trusted systems and institutions to protect civil liberties, promote academic freedom, and provide economic stability for citizens and international investors alike. Events since NDI’s last report in 2012, however, indicate that there is a growing gap between the mainland and a large portion of the Hong Kong people in their respective understanding of the “One Country, Two Systems” formula. This divergence may have substantial political and economic consequences for the territory’s future.

Hong Kong’s electoral framework outlined in the Basic Law<sup>2</sup> provides the opportunity for the introduction of universal suffrage for the elections of the Chief Executive (“CE”) and LegCo; however, electoral reform has not progressed according to the expectations of a large segment of the public. In August 2014, pro-democracy

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1. Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China 1990, [hereinafter “Basic Law”], Art 2.

2. The Sino-British Joint Declaration, Article 3 (12) stipulates that the policies of the Joint Declaration be codified in the Basic Law. Promulgated in 1990, the Basic Law has served as Hong Kong’s constitutional document since the handover in 1997.

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activists united behind the “Umbrella Movement” to oppose an electoral reform proposal backed by China’s Standing Committee of the National People’s Congress (“NPCSC”). This proposal introduced by the HKSAR government would have allowed all citizens to vote directly for the CE, but candidates would have been vetted through a nominating committee dominated by pro-business and pro-Beijing interests. Following months of political upheaval, the reform proposal was defeated in the LegCo in June 2015. Since the end of the movement and following the LegCo vote, pro-democracy voices and public discussion of democratic political reform in Hong Kong have diminished, at least temporarily, and there is no clear path forward for productive dialogue on political reform.

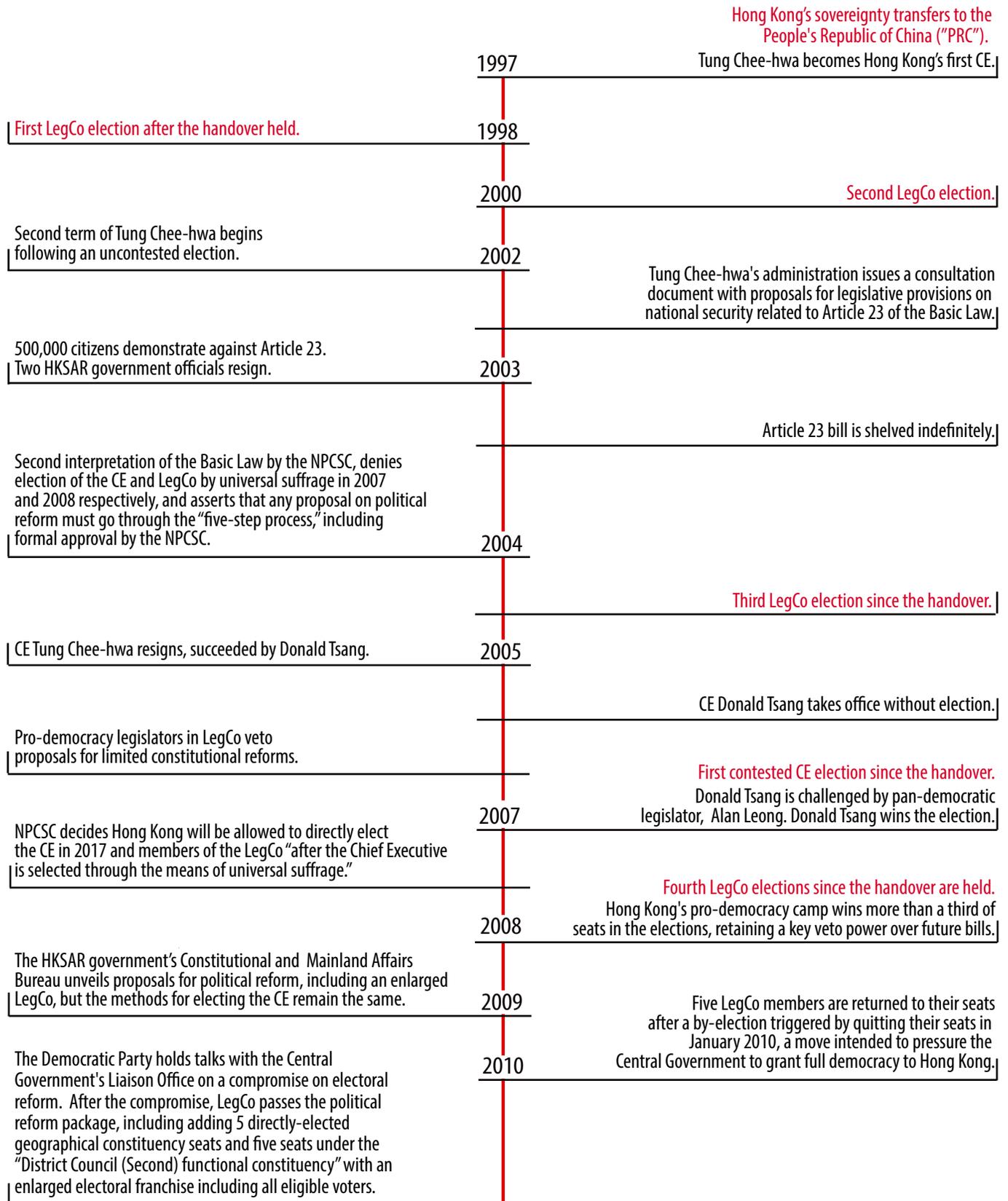
The growing tensions over universal suffrage have been exacerbated by recent events. Of particular concern for Hong Kong residents is the case of the five missing booksellers who allegedly were abducted after printing and distributing books critical of Beijing authorities. The controversy has raised serious questions about respect for the rule of law and the special autonomy status Hong Kong has enjoyed for the past two decades.

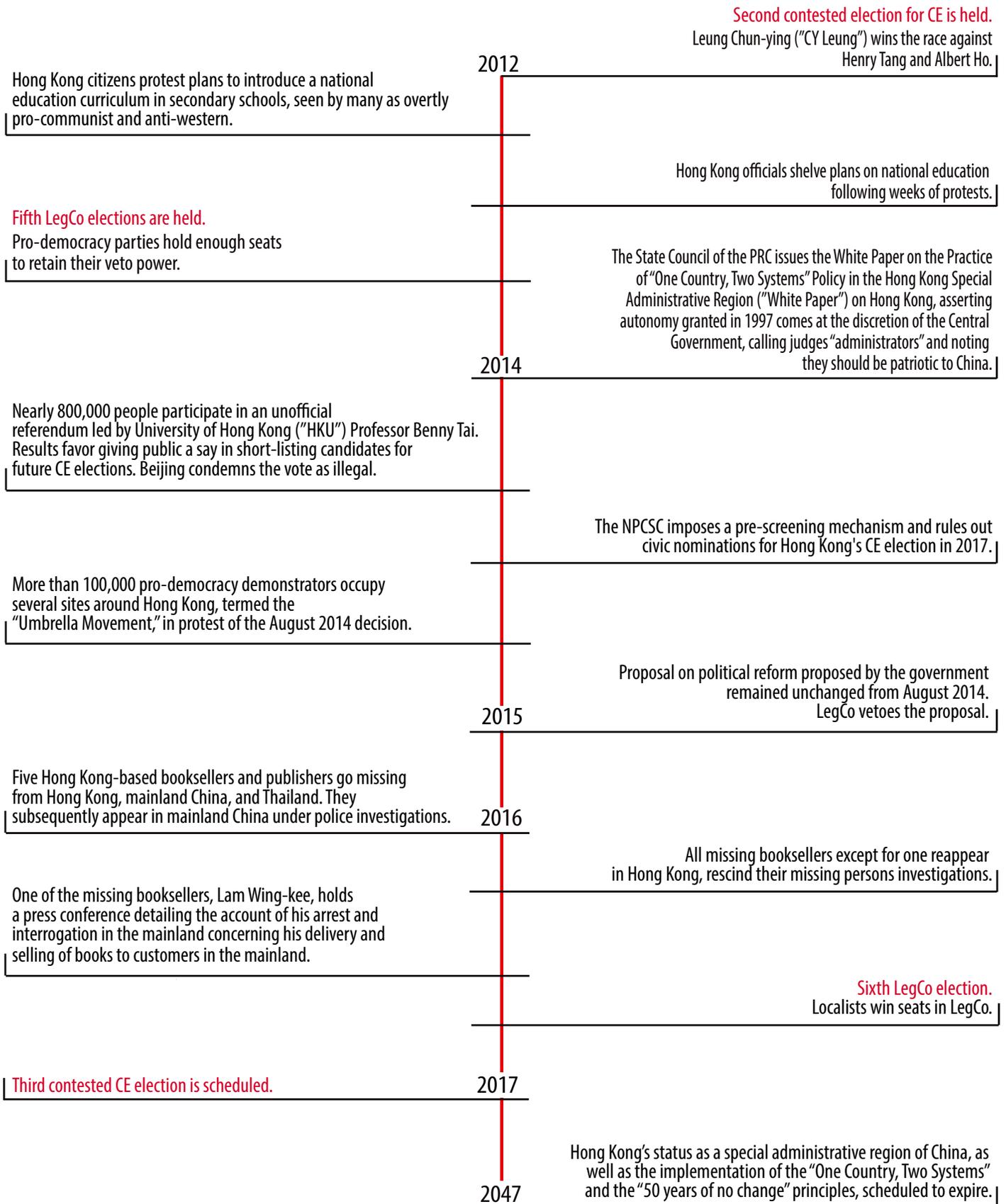
Youth have emerged as key players in Hong Kong seeking to have their voices heard on the relationship between Hong Kong and mainland China. Not only were young leaders the faces of the “Umbrella Movement,” but youth have also started to challenge the conventional format of bipolar pan-democrat pro-establishment politics by forming new political parties, some of which won LegCo seats in Hong Kong’s September 2016 elections. Many of these groups seek to advance ways for Hongkongers to have a greater voice in the city’s political future.

If a new understanding is not reached between Hong Kong’s democratic activists and the mainland, tensions seem likely to grow in the years ahead. The Region’s youth are increasingly exposed to values, through academic institutions, news media, the internet, and international travel, that diverge from those held by officials in Beijing. Increased repression of dissenting voices will only further erode trust between the two sides and make a political reconciliation even more difficult to achieve.

New avenues for constructive dialogue are urgently needed to develop a path forward. To be successful, NDI believes such an approach needs to meaningfully reflect the aspirations of those who seek to preserve the Region’s civil liberties, respect for the rule of law, and the territory’s unique identity within the “One Country, Two Systems” framework, while safeguarding the mainland’s legitimate interests.

# Timeline of Major Political Events: 1997-2047





# I. Background

The “One Country, Two Systems” principle enshrined in the Joint Declaration provided for Chinese resumption of sovereignty over Hong Kong, effective July 1, 1997.<sup>3</sup> For fifty years thereafter, Hong Kong would continue to have a high degree of autonomy, practice capitalism, and maintain its basic way of life.<sup>4</sup> The document also promised that Hong Kong’s rule of law, including an independent judiciary, would remain intact.<sup>5</sup> At the same time, the Basic Law declares that Hong Kong “is an unalienable part of the People’s Republic of China and that the National People’s Congress retains the right to amend the territory’s ‘mini constitution.’”<sup>6</sup> The future of the Basic Law beyond 2047 is not addressed in the Basic Law or the Joint Declaration.

Since the return of Hong Kong to Chinese sovereignty under the “One Country, Two Systems” framework, the implementation of a democratic electoral framework as outlined in the Basic Law has not progressed according to the expectations of a large segment of the public. The Basic Law states that “the ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”<sup>7</sup> “Universal suffrage,” “broadly representative,” and “democratic procedures” are left undefined by the Basic Law’s drafters and are at the core of the lack of agreement on how to advance political reform.

Currently, the Election Committee that selects the CE consists of 1,200 members belonging to 38 subsectors; the vast majority of the members hold conservative positions favored in Beijing.<sup>8</sup> During the government-led consultation process on political reform, citizens discussed the possible addition of new subsectors to make the committee more inclusive and representative (such as adding new subsectors to represent the interests of women or young voters), but restructuring would necessarily mean disrupting and eliminating existing subsectors or committee members and was ultimately ruled out by mainland officials. For these reasons, the HKSAR government’s consultation document suggested that these changes would be unlikely. The resulting government proposal was strictly in line with the NPCSC decision, allowing a popular vote for a slate of candidates effectively chosen by Beijing.

This political reform proposal triggered 79 days of protest and civil disobedience – what activists and the international media have referred to as the “Umbrella Movement.” In the months following this demonstration, divisions and lack of consensus were evident among Hong Kong’s broader civil society. Some groups strongly supported the government’s political reform proposal, while others fervently opposed it. Ultimately, the government’s political reform package was vetoed by the LegCo on June 18, 2015. Shortly after the veto, the CY Leung administration stated that it would use the remainder of its term to focus on livelihood issues, postponing indefinitely any further dialogue on electoral reform.

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3. “Sino-British Negotiations and the Sino-British Joint Declaration.” The Government of the Hong Kong Special Administrative Region, n.d. Web. 4 Mar. 2016.

4. Lam, Wai-man, Percy Luen-tim Lui, and Wilson Wong. *Contemporary Hong Kong Government and Politics*. Hong Kong: Hong Kong UP, 2012. Print.

5. *ibid.*

6. Article 3(12). Text of the Sino-British Joint Declaration.” Bilingual Laws Information System, Department of Justice of the Hong Kong Special Administrative Region Government, 19 Dec. 1984. Web. 4 Mar. 2016.

7. Basic Law, Art. 45.

8. “Method for Selecting the Chief Executive by Universal Suffrage. Consultation Document” Chapter 3, Section 3,08, p.10.

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Since 1997, NDI has conducted a series of missions to consider the development of Hong Kong's electoral framework, the status of its autonomy under the "One Country, Two Systems" framework, enforcement of the rule of law and civil liberties, and prospects for, and challenges to, the territory's democratization. NDI has published an ongoing series based on these assessments called *The Promise of Democratization in Hong Kong*. The last installment of the series of 15 reports was issued in July 2012 and focused on the November 2011 district council elections and the impending LegCo elections. Building off findings from previous reports, NDI organized a delegation of experts, led by Howard Dean, the Institute's board member, former governor of Vermont, and former candidate for the presidential nomination of the Democratic Party, to visit Hong Kong in January 2016 to conduct meetings with political decision-makers, activists, and opinion leaders across the ideological spectrum to assess the impact of recent developments in Hong Kong's political reform process. Similarly, this report provides an overview of key political events in Hong Kong over the last four years, examines specific challenges facing Hong Kong's democratic development, and assesses the territory's current progress in the pursuit of democracy. As with previous reports, the Institute's assessment reflects the views of a broad spectrum of Hong Kong stakeholders. It is the Institute's hope that the report's findings generate renewed interest in dialogue among those interested in, and affected by, the current political impasse.

## II. Challenges to Hong Kong's Democratic Development

### A. Political Reform

#### *Public Consultation*

Implementation of universal suffrage for the 2017 CE election in Hong Kong has proved to be one of the territory's most contentious issues since the 1997 handover. In 2004, the NPCSC issued a decision on universal suffrage for the CE election that required a "five-step process."<sup>9</sup> Following this decision, in 2007 the NPCSC determined that 2017 could be the first year of electoral reform implementation, thereby creating public expectation that the CE elections due in 2017 would be held by universal suffrage.<sup>10</sup> A task force created by the HKSAR government in December 2013 led to a five-month public consultation period on Hong Kong's constitutional development. Debates during this first consultation period were heated, and it became clear that achieving universal suffrage in the CE election would be challenging. Pan-democrats felt the process was co-opted by pro-Beijing forces and failed to participate in large numbers. The resulting report issued by the HKSAR Government to Beijing stated that their findings represented "mainstream opinion" among Hong Kong people regarding prerequisites to elect the CE and deferred the reform process for universal suffrage of the LegCo until after the implementation of universal suffrage for the CE.<sup>11</sup> The findings of the report outraged pan-democrats and further alienated them from the official government reform process.

#### *White Paper – Interpretation of "One Country, Two Systems"*

In early June 2014, the NPCSC issued its latest interpretation of the "One Country, Two Systems" policy, entitled the "White Paper on the Practice of 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region" ("White Paper").<sup>12</sup> Rather than focusing on "Two Systems," the 2014 White Paper placed greater emphasis on "One Country." The White Paper explained what "One Country" means, clarifying that "the high degree of autonomy of [the] HKSAR is not an inherent power, but one that comes solely from the authorization by the central leadership," and that upholding China's socialist system is of the utmost importance.<sup>13</sup> Drafters of the White Paper continued to explain that it is only within China's socialist system that Hong Kong can practice capitalism and maintain its relative autonomy. The relationship between "One Country" and "Two Systems" is made clear in the statement that "the 'One Country' is the premise and basis of the 'Two Systems,' and the 'Two Systems' is subordinate to and derived from 'One Country.'"<sup>14</sup> This language from the White Paper was the strongest indication to date that the PRC intends

9. These steps are: (1) the CE reports to the NPCSC on the need to amend the electoral system; (2) the NPCSC issues a decision on the need for an amendment; (3) the LegCo endorses the proposed amendment by a two thirds majority vote; (4) the CE provides his or her consent; and (5) the CE reports the amendment to the NPCSC for approval. "Questions and Answers on Constitutional Development" 2017 Make It Happen: Method for Selecting the Chief Executive by Universal Suffrage." The Government of the Hong Kong Special Administrative Region, 24 June 2015. Web. 4 Mar. 2016. See also, "The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China," n.p. 6 Apr. 2004. Web. 4 Mar. 2016.

10. Standing Committee of the Tenth National People's Congress, People's Republic of China, "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016," Standing Committee of the Tenth National People's Congress, People's Republic of China, 29 Dec. 2007. Web. 4 Mar. 2016.

11. Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016, Chapter 3, 3.05, July 2014.

12. The Information Office of the State Council. "Full Text: The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region," Beijing: The Information Office of the State Council, 10 June 2014. Web. 4 Mar. 2016.

13. *ibid*

14. *ibid*.

for Hong Kong to become more closely aligned with the mainland. The White Paper provoked growing concern by pan-democrats, who fear that it indicates reduced opportunities for further reform.<sup>15</sup>

### *NPCSC Decision on Universal Suffrage*

On August 31, 2014, the NPCSC released its decision, legally binding in Hong Kong, on the selection of the CE by universal suffrage.<sup>16</sup> As noted above, the decision allowed all Hong Kong citizens to vote for the CE, but from a limited list of candidates approved by a 1,200 member nominating committee modeled on the current CE Election Committee, which has been dominated by pro-Beijing representatives.<sup>17</sup> The NPCSC decision to include a screening mechanism for CE candidates sparked intense debate and protest in Hong Kong.



**Hong Kong Government Headquarters**

15. Hume, Tim. "Alarm in Hong Kong at Chinese White Paper Affirming Beijing Control." *CNN*. CNN Inc., 13 June 2014. Web. 13 June 2016.

16. Standing Committee of the Tenth National People's Congress, People's Republic of China, "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016," Standing Committee of the Tenth National People's Congress, People's Republic of China, 29 Dec. 2007. Web. 4 Mar. 2016.

17. Section II(1) and II(2). Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016. Standing Committee of the Tenth National People's Congress, People's Republic of China, 29 Dec. 2007. Web. 4 Mar. 2016.



“Umbrella Movement” Tents Outside Government Offices

## “Umbrella Movement”

A nonviolent civil protest group known as Occupy Central with Love and Peace (“Occupy Central”) united around a campaign to promote a form of universal suffrage that advances adherence to international democratic standards, including “elements of deliberation and citizen’s consent.”<sup>18</sup> Hong Kong students – primarily led by the Hong Kong Federation of Students and Scholarism, a pro-democracy, student-run organization headed by then-secondary school student Joshua Wong – moved quickly to organize large scale sit-ins at several Hong Kong universities.<sup>19</sup> Occupy Central likewise made plans to begin its civil disobedience campaign on October 1, 2014.<sup>20</sup>

The student movement accelerated the campaign against the NPCSC decision on September 26, 2014, when students and other protesters gathered in large numbers at Civic Square near the Hong Kong Central Government Complex, blocking roads and leading to a stand-off with police.<sup>21</sup> Initially, police in riot gear used pepper spray and tear gas in an attempt to disperse the large crowd of protesters (whose use of umbrellas to shield themselves gave birth to the term “Umbrella Movement”), drawing international attention. Attempts by student leaders and the HKSAR government to engage in negotiations ultimately failed.<sup>22</sup> Some movement leaders urged protesters to consider ending their road blockades and focus instead on winning the long-term support of the public. As the protests continued, the government and police did not intervene and public support for the movement eventually began to wane.<sup>23</sup> In the end, the government obtained a court order to clear the protest sites, which the vast majority of protesters obeyed.<sup>24</sup> Police cleared the streets peacefully on December 15, 2014, ending 79 days of protest.<sup>25</sup>

## LegCo Reform Vote

Following the conclusion of the “Umbrella Movement,” the debate on the HKSAR government proposal based on the August 2014 NPCSC decision turned to the LegCo. Although the LegCo retained the authority to approve or veto the proposal, passage of the measure required a super two-thirds’ majority of legislators present, or 47 of the body’s 70 total members if all were present and voted. Negotiations began in earnest, as pro-establishment legislators held 43 seats, requiring the addition of three pan-democrat votes for the measure to prevail. However, the pro-democracy and pro-establishment camps were deeply polarized (as illustrated in the table on the next page).

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18. Tai, Benny. “Central Issues of the Occupy Central Movement.” *South China Morning Post*. South China Morning Post Publishers Ltd., 23 May 2013. Web. 7 Mar. 2016.

19. Cheung, Tony, and Jeffie Lam. “Thousands Join Hong Kong Students’ Democracy Protest as Classroom Boycott Begins.” *South China Morning Post*. South China Morning Post Publishers Ltd., 23 Sept. 2014. Web. 4 Mar. 2016.

20. Lam, Jeffie. “Occupy Central to Start October 1? Benny Tai Drops ‘Grand Banquet’ Hint.” *South China Morning Post*. South China Morning Post Publishers Ltd., 23 Sept. 2014. Web. 4 Mar. 2016.

21. Barber, Elizabeth, and Charlie Campbell. “Pro-Democracy Students Storm Government Square in Hong Kong.” *Time*. Time Inc., 27 Sept. 2014. Web. 4 Mar. 2016.

22. “Talks Fail to Narrow Gap Between Student Leaders and Hong Kong Government.” *South China Morning Post*. South China Morning Post Publishers Ltd., 21 Oct. 2014. Web. 4 Mar. 2016.

23. Cheung, Gary. “Overwhelming Majority of Hongkongers Want Occupy Protests to End: Survey.” *South China Morning Post*. South China Morning Post Publishers Ltd., 19 Nov. 2014. Web. 4 Mar. 2016.

24. Chu, Julie. “High Court Judge’s Refusal to Stall Injunction Gives Green Light for Admiralty Clearance.” *South China Morning Post*. South China Morning Post Publishers Ltd., 5 Dec. 2014. Web. 4 Mar. 2016.

25. Kwok, Donny. “Hong Kong Police Clear Last Pro-democracy Protest Sites.” *Reuters*. Thomson Reuters, 15 Dec. 2014. Web. 4 Mar. 2016.

Pan-democratic Camp <sup>26</sup>	Pro-establishment Camp <sup>27</sup>
<ul style="list-style-type: none"> <li>■ The August 2014 NPCSC decision presents a model that does not incorporate genuine universal suffrage because candidates must be vetted through a nominating committee controlled by Beijing</li> <li>■ Hong Kong should not concede or accept a version of universal suffrage that will not produce a result that reflects the will of a majority of Hong Kong citizens</li> <li>■ There is no guarantee that the NPCSC electoral model could be amended later if it is passed by LegCo</li> </ul>	<ul style="list-style-type: none"> <li>■ The August 2014 NPCSC decision presents a model that complies with the Basic Law and allows all citizens to vote for the CE, therefore meeting universal suffrage requirements</li> <li>■ It is in Hong Kong’s best interest not to delay the five step political reform process and instead accept the current offer while it is still on the table</li> <li>■ The electoral model can always be amended after it passes through the five-step process</li> </ul>

Efforts to reach a compromise did not succeed, despite several attempts. HKU professor Albert Chen, an influential legal expert trusted by Beijing, proposed a blank vote or “none-of-the-above” option which would have allowed the vote for CE to proceed alongside pre-selected nominees.<sup>28</sup> Another group of 18 scholars proposed a “middle of the road” option – a combination of civil nomination (nomination from the general public) and party nomination of candidates.<sup>29</sup> Others proposed expanding the number of candidates to give voters a greater range of choice or adjusting the committee’s composition to make it more reflective of public opinion.<sup>30</sup> Ultimately, the HKSAR government maintained that the August 2014 NPCSC decision could not be changed and that the HKSAR proposal must either be approved or rejected as proffered.<sup>31</sup> With only 37 of 70 members present during the vote, pan-democrats vetoed the measure by a vote of 28 to 8 with one abstention on June 18, 2015.

### *Aftermath of the Political Reform Debate*

Following the LegCo veto, Central Government authorities indicated that China remains committed to universal suffrage for Hong Kong but signaled no further concessions to the pro-democracy groups.<sup>32</sup> The CY Leung administration announced that it would use the remainder of its term to focus on livelihood issues.<sup>33</sup> Chief Secretary for Administration Carrie Lam has since stated that she “sincerely hope[s] the next administration will have the necessary conditions, circumstances and atmosphere to restart the political reform process.”<sup>34</sup> After her remarks, CY Leung also stated that “completing the political reform process

26. Ng, Joyce, Peter So, and Gary Cheung. “Pan-Democratic Parties Threaten to Boycott Electoral Reform Consultation.” *South China Morning Post*. South China Morning Post Publishers Ltd., 6 Sept. 2014. Web. 4 Mar. 2016.

27. Liu, Luis. “41 Pro-establishment Lawmakers Pledge Support for Reform Package.” *China Daily Asia*. China Daily, 23 Apr. 2015. Web. 7 Mar. 2016.

28. Young, Simon NM. “Albert Chen on Ideas for Post-Occupy Political Reform.” HKU Legal Scholarship Blog, Law Faculty, The University of Hong Kong, 25 Dec. 2014. Web. 4 Mar. 2016.

29. Lam, Jeffie. “Scholars Suggest a Middle Way for 2017 Chief Executive Poll.” *South China Morning Post*. South China Morning Post Publishers Ltd., 3 Apr. 2014. Web. 21 Jun. 2016.

30. Hill, Steven. “Compromise for Hong Kong: An Electoral College That Works.” *The Huffington Post*. The Huffington Post, 8 Oct. 2014. Web. 6 Mar. 2016.

31. Lam, Jeffie. “Minister confirms June 17 Vote on Electoral Reform But is Resigned to Defeat.” *South China Morning Post*. South China Morning Post Publishers Ltd., 2 June 2015. Web. 4 Mar. 2016.

32. Kwok, Donny, and Yimon Lee. “Hong Kong Vetoes China-backed Electoral Reform Proposal.” *Reuters*. Thomson Reuters, 18 June 2015. Web. 13 May 2016.

33. Lo, Arthur. “‘We Need to Move On,’ says CY Leung After Reform Farce.” *Hong Kong Free Press*. Hong Kong Free Press, 19 June 2015. Web. 4 Mar. 2016.

34. Fung, Owen. “Hong Kong Chief Secretary Carrie Lam Hopes Next Government Will Revive Stalled Reform.” *South China Morning Post*. South China Morning Post Publishers Ltd., 2 July 2016. Web. 4 July 2016.



#### Legislators Stage a Walkout from the Legislative Chamber

as soon as possible is the common wish of Hong Kong people...[and] the Hong Kong and the central government.”<sup>35</sup>

Less than a week after the LegCo vote, moderate pan-democrat lawmaker Ronny Tong resigned his elected seat in the LegCo and withdrew from the Civic Party he co-founded. After tendering his resignation, Tong founded a think tank, Path of Democracy, to continue to look for a “middle way” and to “find a way out of the current morass as regards the issue of governance.”<sup>36</sup> A Path for Democracy delegation traveled to mainland China in April 2016 to conduct discussions on political reform with their mainland counterparts. Upon returning to Hong Kong, Tong indicated that Beijing officials believed Hong Kong issues should be addressed by Hong Kong itself.<sup>37</sup>

In a February 2016 by-election to fill Tong’s vacant seat, pan-democrat Alvin Yeung managed to retain the seat for the Civic Party, defeating his pro-establishment opponent by two percentage points and securing 37 percent of the vote.<sup>38</sup> The surprise in the by-election, however, was the success of Edward Leung, a 24-year old candidate from the newly formed Hong Kong Indigenous group, who secured 15 percent of the total vote. Leung’s campaign underscored the group’s platform of opposition to Beijing’s increased involvement in Hong Kong affairs. The surprise support for the candidate demonstrated that the political discord in Hong Kong is growing and could portend a serious shift in the political dynamics of Hong Kong electoral politics with the introduction of a third political “force.”

35. Cheng, Kris. “I wish to Complete Democratic Reform As Soon As Possible, Says CY Leung.” *Hong Kong Free Press*. Hong Kong Free Press, 5 July 2016. Web. 12 July 2016.

36. “Mission Statement,” *Path of Democracy*, n.d. Web. 4 Mar. 2016.

37. Cheung, Karen. “Beijing’s Attitude to HK More ‘Moderate’ in Recent Months, Says Ronny Tong.” *Hong Kong Free Press*. Hong Kong Free Press, 26 Apr. 2016. Web. 13 May 2016.

38. Cheung, Gary, Tony Cheung, and Jeffie Lam. “Pro-democracy candidate Alvin Yeung Wins Hotly Contested Hong Kong by-election, while Localist Edward Leung has Credible Showing with 15pc of Vote.” *South China Morning Post*. South China Morning Post Publishers Ltd., 29 Feb. 2016. Web. 4 Mar. 2016.

This new force in Hong Kong's political dynamic is known as the "localism" movement, which supports maintaining Hong Kong's political and cultural distinctiveness from mainland China. Though localist groups have existed since the territory's transfer of sovereignty, the current movement grew largely out of the "Umbrella Movement" and in the months following the 2015 LegCo veto. A range of views exist within the localism movement on the best way to maintain Hong Kong's political distinctiveness. Some localists advocate for a higher level of autonomy for Hong Kong while still remaining part of China, and a minority in the localist camp have called for Hong Kong's independence from China. It is still unclear if pro-independence groups equate independence with sovereignty or if their calls for independence are calls for greater autonomy. As the localism movement is still young and its place in Hong Kong's traditionally two-camp system is uncertain, it is possible that the current notion of localism will evolve in the coming years.

Though some localists have been criticized for using radical tactics, many localists have formed new political groups since the "Umbrella Movement." Groups such as Youngspiration, the Kowloon East Community, Demosistō, and Hong Kong Indigenous are led by young activists and are working to advance varying localist agendas. More than 40 young activists from new political groups under the age of 40 emerged to contest District Council elections held in November 2015, eight of whom were successful, defeating both pan-democratic and pro-establishment candidates.<sup>39, 40</sup> The role of localist political groups in the 2016 LegCo elections is discussed at length in the section "III. 2016 LegCo Elections."

Despite these developments, public discussion about the future of universal suffrage since the LegCo veto largely has been limited to university-sponsored dialogues seeking a way forward. During NDI's assessment, most interlocutors expressed the belief that the universal suffrage debate will remain at an impasse until at least 2020 (the next CE election after 2017 will occur in 2022). There seems to be broad agreement that the limited time remaining before the 2017 CE elections is insufficient to complete a new and lengthy negotiation process.

## B. The Rule of Law

### *Case of Missing Booksellers*

The issue most frequently raised during the delegation's visit involved the case of Hong Kong's missing booksellers. Five employees of Mighty Current Publishing House, a company that publishes and distributes media critical of the Chinese Communist Party, disappeared from Thailand, mainland China, and Hong Kong from October through December 2015. The most concerning case for Hong Kong and the "One Country, Two Systems" principle appeared to be that of Lee Bo, who reportedly disappeared from Hong Kong soil before reappearing in Chinese custody. While in China, Lee Bo appeared in a video, stating that he travelled to mainland China voluntarily to assist in an investigation.<sup>41</sup> Lee Bo subsequently returned to Hong Kong in March 2016 and has maintained a low profile.

In late March 2016, Lee Bo requested Hong Kong police to drop his missing person case, but the United States and United Kingdom governments have expressed concern about the consequences the

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39. Ng, Kang-chung, and Tony Cheung. "Significant Victories for Hong Kong's 'Umbrella Soldiers' in District Council Elections." *South China Morning Post*. South China Morning Post Publishers Ltd., 24 Nov. 2015. Web. 4 Mar. 2016.

40. Ng, Joyce, and Stuart Lau. "Hong Kong Post-Occupy Young Bloods Eye Up District Council Elections." *South China Morning Post*. South China Morning Post Publishers Ltd., 7 Apr. 2015. Web. 4 Mar. 2016.

41. Phoenix TV, 香港銅鑼灣書店老闆李波返港 接受鳳凰衛視專訪 (Hong Kong Causeway Bay Bookshop Manager Back to Hong Kong, Exclusively Interviewed by Phoenix Satellite TV). *Phoenix TV*. Phoenix TV Ltd., 24 Mar. 2016. Web. 21 June 2016.

case has for the “One Country, Two Systems” principle and the Basic Law. The United States State Department recently remarked in its Hong Kong Policy Act Report, released May 11, 2016, that the missing booksellers case “represent[s] what appears to be the most significant breach of the ‘One Country, Two Systems’ policy since 1997” and that, for many in Hong Kong, “Lee Bo’s disappearance suggests the Central Government is increasingly willing to side-step Hong Kong’s professional law enforcement agencies.”<sup>42</sup>

A Chinese legal advisor and the CE have also expressed concern. On January 17, 2016, CY Leung spoke out to say that the HKSAR government would not allow illegal forced removal of any person from Hong Kong.<sup>43</sup> This comment appears to refer to Basic Law Article 22.<sup>44</sup> Speaking on the alleged forced abduction from Hong Kong, Chief Legal Advisor to the Central Liaison Office in Hong Kong, Wang Zhenmin, stated during a January 2016 conference on governance in China that, “from a legal perspective, it is very clear. According to the ‘One Country, Two Systems’ formula under the Basic Law, no law enforcement or any institution’s personnel from outside the HKSAR should do such things.”<sup>45</sup>

One of the previously missing booksellers, Lam Wing-kee, returned home to Hong Kong on June 14, 2016. Lam then held a press conference on June 16, 2016 stating that he had been held against his will by Chinese security agents, interrogated for months, was unable to access to a lawyer (through the “voluntary” signature of a statement waiving access to a lawyer), and was questioned on the identities of the authors and purchasers of books sold by the Mighty Current Publishing House.<sup>46</sup> During the press conference, Lam also stated that his confession, aired on Chinese television, was forced. “It was a show, and I accepted it. They gave me the script. I had to follow the script. If I did not follow it strictly, they would ask for a retake.”<sup>47</sup> On June 17, 2016, a spokesman for the Foreign Ministry of the People’s Republic of China, Hua Chunying, stated “Lam Wing-kee is a Chinese citizen, and he has violated China’s laws on the mainland. Relevant authorities in China are authorized to handle the case in accordance with the law.”<sup>48</sup>

More than 6,000 Hongkongers, including Lam, protested outside HKSAR government as well as the Central Government’s Liaison Office headquarters in Hong Kong on June 18, 2016, demanding answers regarding Lam’s detention.<sup>49</sup> HKSAR government, political party, and civil society leaders have all spoken out on the case. Some, including Hong Kong’s Secretary of Justice Rimsky Yuen, want to investigate whether or not any law in mainland China was breached.<sup>50</sup> Others expressed concern and frustration at the state of freedoms

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42. United States Dept. of State. Bureau of East Asian and Pacific Affairs. “Hong Kong Policy Act Report.” United States Dept. of State. Bureau of East Asian and Pacific Affairs, 11 May 2016. Web. 13 June 2016.

43. CE follows up on bookseller’s case, *news.gov.hk*, Information Services Department, The Government of the Hong Kong Special Administrative Region, 17 Jan. 2016. Web. 4 Mar. 2016.

44. Article 22 of the Basic Law states that “No department of the Central People’s Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.”

45. Bladwin, Clare, Greg Torode, and Nick Macfire. “Chinese Official Expresses Concern Over Missing Hong Kong Bookseller.” *Reuters*. Thomson Reuters, 15 Jan. 2016. Web. 8 Mar. 2016.

46. Ng, Kang-chung, and Owen Fung. “Bookseller Lam Wing-kee Details His Detention on Mainland, Claims Lee Po Told Him He Was ‘Taken Away From Hong Kong.’” *South China Morning Post*. South China Morning Post Publishers Ltd., 16 June 2016. Web. 21 June 2016.

47. “I Want To Tell The Whole World – Hongkongers Will Not Bow Down Before Brute Force.” *South China Morning Post*. South China Morning Post Publishers Ltd., 16 June 2016. Web. 21 June 2016.

48. Siu, Philia, and Tony Cheung. “Bookseller Lam Wing-kee is a Chinese National Who Broke Mainland Law and Beijing has the Right to Deal With Him, Ministry Declares.” *South China Morning Post*. South China Morning Post Publishers Ltd., 17 June 2016. Web. 21 June 2016.

49. Siu, Phila, Tony Cheung, and Jasmine Siu. “Bookseller Lam Wing-kee Leads Thousands in Protest Through Streets of Hong Kong.” *South China Morning Post*. South China Morning Post Publishers Ltd., 18 June 2016. Web. 21 June 2016.

50. Siu, Phila, and Tony Cheung. “Outrage Expressed in Hong Kong Over Missing Bookseller, But No Answers Forthcoming.” *South China Morning Post*. South China Morning Post Publishers Ltd., 17 June 2016. Web. 21 June 2016.

and potential consequences for the rule of law.<sup>51</sup> Lam Wing-kee originally intended to attend Hong Kong's annual July 1 pro-democracy march, but he made a last minute decision not to participate, stating that he was followed by strangers and his personal safety would be threatened if he attended the march.<sup>52</sup> Following the July 1 march, Hong Kong and Chinese government representatives met and agreed to notify each other within 14 days if either party detained the other's resident for criminal investigation, an improvement to the prior notification mechanism that had no time requirement.<sup>53</sup>

Reactions from the international community raising the impact on "One Country, Two Systems," rule of law, and business interests were swift. An editorial following Lam's press conference in the Wall Street Journal stated, "A slow-motion tragedy is occurring in Hong Kong, where China is squeezing the freedoms it promised to allow the city for 50 years."<sup>54</sup> Representative Chris Smith, Co-Chair of the Congressional-Executive Commission on China, stated in part that "this whole episode was a counterproductive fiasco because it angered the Hong Kong people, sent a chill through the business community, and put in jeopardy the viability of the 'One-Country, Two-Systems' model."<sup>55</sup>

After it was widely reported that mainland security forces' actions could jeopardize "One Country, Two Systems," Beijing defended its actions. Director Wang Guangya of the State Council's Hong Kong and Macau Affairs Office commented on July 1, 2016 that "the books [the booksellers] publish aren't about Hong Kong affairs...but about the mainland's affairs. [Lam Wing-kee] publishes... books in Hong Kong and brings them back to sell on the mainland. This is his understanding of 'one country, two systems' – this 'one country, two systems', we'd rather not have it."<sup>56</sup> These remarks constitute the first instance that mainland officials discussed the booksellers' cases in the context of "One Country, Two Systems." It remains uncertain, however, what other acts would constitute a violation of the mainland's understanding of the "One Country, Two Systems" principle.

## *Judicial Independence*

The people of Hong Kong justifiably have taken pride in the strength of rule of law, developed under the common law system during British rule and promised under the Basic Law. That tradition provides a stable legal system and consistent avenue for the redress of violations of personal commercial rights. Article 85 of the Basic Law guarantees the independence of the courts in Hong Kong, and Article 88 prescribes that judges "be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors."<sup>57</sup> With respect to international trade and investment, the rule of law has cemented Hong Kong's status as a financial beacon in Asia for decades. Geoffrey Ma, Chief Justice of Hong Kong's highest court, the Court of Final Appeal, notes that "[t]he rule of law is seen by many as being Hong Kong's strength and regarded by some as an economic

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51. Yuen, Chantel. "Pro-democracy Figures Call for Bookseller to be Protected, Claim One Country Two Systems Has Been Violated." *Hong Kong Free Press*. Hong Kong Free Press, 17 June 2016. Web. 21 June 2016.

52. Ngo, Jennifer, and Jeffie Lam. "Followed by Strangers, Booksellers Lam Wing Kee Pulls Out July 1 March Fearing "Serious Threat" to Personal Safety." *South China Morning Post*. South China Morning Post Publishers Ltd., 1 July 2016. Web. 4 July 2016.

53. Ng, Joyce, and Owen Fung. "Hong Kong Pushes for Expansion of Communication System with China as Police Offer Protection to Returned Bookseller." *South China Morning Post*. South China Morning Post Publishers Ltd., 6 July 2016. Web. 6 July 2016.

54. Wall Street Journal Editorial, "Kidnapped by China." *The Wall Street Journal*. News Corp., 20 June 2016. Web. 21 June 2016.

55. Horwitz, Josh, and Tom Tsui. "The World Is Watching"—Appalled Reactions to China's Kidnapping of a Hong Kong Bookseller." *Quartz*. Atlantic Media Co., 17 Jun 2016. Web. 21 Jun 2016.

56. Ngo, Jennifer, and Jeffie Lam. "Beijing Official Accuse Bookseller of "Destroying" Hong Kong's Governing Policy." *South China Morning Post*. South China Morning Post Publishers Ltd., 2 July 2016. Web. 4 July 2016.

57. Basic Law, Art. 85, and Art. 88.

advantage enjoyed over the rest of China, indeed the whole of the South East Asia region.<sup>58</sup>

This widely held and deep regard for the judiciary was shared by all interlocutors during NDI's assessment. Some emphasized citizen respect for the High Court's ruling to disperse "Umbrella Movement" protesters, a decision respected by Hong Kong's citizens to end peacefully the 79-days of protests.<sup>59</sup> Others cited the role of Hong Kong's judiciary in holding powerful political and business figures accountable for corruption.<sup>60,61</sup> However, a number of stakeholders raised concerns that the CE's role in the judicial appointment process could present a future threat to Hong Kong's revered judicial independence and should be closely monitored by the international community.<sup>62</sup> As noted in the Institute's last report, the power of final interpretation of the Basic Law is vested in the NPCSC.<sup>63</sup> In 2012, citizens expressed concern that the frequency with which the HKSAR government and political parties invoked the possibility of NPCSC interpretation of the Basic Law to overrule final judgments of Hong Kong courts threatened Hong Kong judicial independence.<sup>64</sup>

### *2014 White Paper on "One Country, Two Systems"*

The pronouncement in the White Paper that judges must be "patriots"<sup>65</sup> provoked deep concern among Hong Kong's legal community that the guarantees embraced in the Joint Declaration and the Basic Law under the "One Country, Two Systems" framework were being undermined.<sup>66</sup> In response to the White Paper, nearly 2,000 lawyers launched a public protest outside the Hong Kong Court of Final Appeal.<sup>67</sup> The Hong Kong Bar Association ("HKBA") filed a detailed response, cautioning that an "NPCSC interpretation...should be rarely and cautiously undertaken. Otherwise there would be a perception of undermining the independence of the judiciary."<sup>68</sup> Anxieties about the territory's "One Country, Two Systems" framework were underscored in September 2015 when the Central Government's representative in Hong Kong suggested that the CE is

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58. The Bar Council of England and Wales Annual International Rule of Law Lecture 2015 Speech by the Hon Chief Justice Geoffrey Ma: Strength and Fragility in Tandem: The Rule of Law in Hong Kong, Court of Final Appeal, The Government of the Hong Kong Administrative Region, n.d. Web. 4 Mar. 2016.

59. Makinen, Julie. "Hong Kong Police to Remove Protesters From Streets After Court Order." *The Los Angeles Times*. The Los Angeles Times, 9 Dec. 2014. Web. 4 Mar. 2016.

60. "Dismissed: Ex-deputy Leader Rafael Hui, and Tycoon Thomas Kwok Lose Graft Appeal Bid." *Hong Kong Free Press*. Hong Kong Free Press, 16 Feb. 2016. Web. 6 Mar. 2016.

61. Hui is serving a seven-and-a-half-year sentence and Kwok is serving a five-year sentence for bribes the pair was allegedly involved in. See also, "Hong Kong's Former Leader Donald Tsang Charged over Corruption Allegations." *The Guardian*. Guardian News and Media, 5 Oct. 2015. Web. 6 Mar. 2016.

62. This concern echoes stakeholder concern with the vulnerability of the Hong Kong courts to the political influence of the mainland system in relation to right of abode litigation referenced in the Institute's 2012 report on Hong Kong. See National Democratic Institute for International Affairs. "The Fifteenth NDI Report in the Promise of Democratization Series," National Democratic Institute for International Affairs. July 1, 2012. Print. p. 22.

63. Basic Law, Art. 158. Under this authority, the general rule is that the Hong Kong courts may interpret the provisions of the Basic Law which are within the autonomy of the region, but must seek an interpretation by NPCSC if provisions of the Basic Law concern affairs within the purview of the Central People's Government, the relationship between the Central Authorities of the Region, or will affect the judgments of the cases.

64. Basic Law Art. 24. See also, National Democratic Institute for International Affairs. "The Fifteenth NDI Report in the Promise of Democratization Series," National Democratic Institute for International Affairs. 1 July 2012. Print. p. 22.

65. This was not the first time patriotism was introduced into discussion on Hong Kong's constitutional development. For example, in February 2004 Tong Chee-hwa stated "...patriots must form the main body that runs Hong Kong...A patriot respects one's own nation, sincerely supports one country, two systems and does not do anything that would harm our country or Hong Kong." The White Paper, however, marks the first time a patriotism test was extended to judges. Loh, Christine. *Underground Front: The Chinese Communist Party in Hong Kong*. Hong Kong: Hong Kong University Press, 2010. Print.

66. Cheng, Albert. "Beijing's White Paper Sounds Death Knell for Hong Kong as We Know It." *South China Morning Post*. South China Morning Post Publishers Ltd., 20 June 2014. Web. 4 Mar. 2016.

67. Lau, Stuart, Gary Cheung, and Tony Cheung. "Hong Kong Barristers Hit Out at Beijing's White Paper, Vow to Protect Judicial Independence." *South China Morning Post*. South China Morning Post Publishers Ltd., 11 June 2014. Web. 4 Mar. 2016.

68. "White Paper on the Practice of One Country, Two Systems Policy in the Hong Kong Special Administrative Region: Response of the Hong Kong Bar Association," Hong Kong Bar Association, 11 Jun. 2014. Web. 4 Mar. 2016.

above the executive, legislative, and judicial branches of government because of his responsibility to the central Chinese government.<sup>69</sup>

## *The Rule of Law and Economic Prosperity*

Some Hong Kong stakeholders speculate that the 2014 White Paper's interpretation of the "One Country, Two Systems" framework may have led to a March 2016 decision by Moody's Investors Service to downgrade the territory's bond rating from stable to negative, which has the potential to effect reductions in international investment and domestic economic prosperity. The Moody's decision states in pertinent part:

*"The tight political linkages between the Special Administrative Region and China have the potential to adversely affect Hong Kong's policy credibility and effectiveness over both the near and longer term. Political risk has risen in Hong Kong in light of ongoing tensions over the implementation of the "One Country, Two Systems" policy. In the near term, tensions could rise further, in particular ahead of the 2017 election for Hong Kong's Chief Executive, and impair the effectiveness of government policies. Over the medium term, the strong political linkage embedded in the "One Country, Two Systems" policy -- which was re-asserted in "The Practice of the 'One Country, Two Systems'" Policy in the Hong Kong Special Administrative Region" June 2014 White Paper from China's State Council -- creates the risk that Hong Kong's institutions will lose some of their independence over time as China's influence grows. This would negatively affect policy effectiveness and credibility in Hong Kong and weaken its institutional strength relative to China's."*<sup>70</sup>

Less than a month after the decision to downgrade Hong Kong's economic outlook to negative, a Hong Kong tribunal upheld a fine imposed on Moody's by the Securities and Futures Commission of Hong Kong for failure to do due-diligence and back up claims in a 2011 report titled "Red Flags for Emerging-Market Companies: a Focus on China." Regulators found 12 inaccuracies out of 1,000 claims, a 1 percent inaccuracy rate. "Of the top six red-flagged firms, four have since defaulted on their debts and two have dramatically underperformed markets. No flagged firm is known to have sued for libel, as might be justified if Moody's really flouted minimum professional standards."<sup>71</sup> Critics of the court's decision claim "closer scrutiny will interfere with their [investors and analysts] ability to freely air their opinions,"<sup>72</sup> particularly as it relates to negative information about Chinese companies.<sup>73</sup>

## *Judicial Review*

As with other countries, significant governance challenges pose a risk to economic prosperity and increase pressure on alternative systems, such as the judiciary, to compensate for lack of redress through other institutional channels. Rule of law depends in part on the proper functioning of a robust judicial review system. Article 35 of the Basic Law provides that "Hong Kong residents shall have the right to institute legal proceedings in the court against the executive authorities and their personnel." Article 84 provides

69. Levin, Ned, and Chester Yung. "A Year- after- Hong Kong Protests - 'Fatigue' Endures." *The Wall Street Journal*. News Corp., 24 Sept. 2015. Web. 13 May 2016.

70. "Moody's Changes Outlook on Hong Kong Rating to Negative from Stable." *Moody's*. Moody's Investment Services, 12 Mar. 2016. Web. 13 May 2016.

71. "Hong Kong Short- squeeze." *The Wall Street Journal*. News Corp., 5 May 2016. Web. 13 May 2016.

72. Steinberg, Julie. "Hong Kong Tribunal Partially Upholds Disciplinary Action Against Moody's." *Wall Street Journal*. News Corp., 31 Mar. 2016. Web. 13 June 2016.

73. "Hong Kong short- squeeze" *The Wall Street Journal*. News Corp., 5 May 2016. Web. 13 May 2016.

judicial oversight of Hong Kong's administrative institutions, authorizing the courts to rule on whether the executive and legislative branches of government are acting within the law.<sup>74</sup> The number of petitions for judicial review have risen over the last few years, launching public debate over the courts' role in interpreting Hong Kong's obligations under the "One Country, Two Systems" framework.<sup>75</sup>

Former HKBA chair and retired Court of Final Appeal Judge Henry Litton said of judicial review, "[it] is not available for challenges to government policy. That is a fundamental rule in the separation of powers. The court is concerned with law, not policy..."<sup>76</sup> Responding to Litton's remarks, Hong Kong's first chief justice after the 1997 handover, Andrew Li, described judicial reviews by an independent judiciary as "fundamental to the rule of law," urging that they not be viewed as a "nuisance" to government.<sup>77</sup> Li defended the rising number of judicial reviews taking up officials' time as a positive outcome of good governance, emphasizing that justice and convenience were "sometimes not on speaking terms."<sup>78</sup>

Young Hong Kong activists also have entered the debate and some are invoking the courts to mount direct challenges to policy issues. Yvonne Leung, immediate past President of HKU Students' Union who filed a challenge to the public consultation on political reform, asserted that, "[I]f the court could not respond to the public and make a ruling as to unconstitutional policies through judicial review, then there would be no procedure for redress if the Chief Executive made policy errors."<sup>79</sup> Another student activist, Joshua Wong, filed a judicial review petition with the High Court challenging the requirement that candidates be 21 years of age or older to compete for a seat in the LegCo.<sup>80</sup> The court ruled against Joshua Wong's bid on June 22, 2016, citing the matter as a political issue that should not be handled by the court.<sup>81</sup>

## C. Civil Liberties

### *Academic Freedom*

The fight for academic freedom ignited in the summer of 2012 when youth-led student group Scholarism mobilized an estimated 100,000 person protest, subsequent sit-ins, and hunger strikes against a proposed compulsory curriculum that would have introduced a "moral and national education" curriculum teaching Chinese communism favorably and dismissing Western democracy. The protest actions succeeded in strong arming the HKSAR government into abandoning the policy, a monumental win for the pan-democratic camp who had opposed the move as an attempt to brainwash secondary school students. Scholarism went on to be one of the main organizers of the "Umbrella Movement" in 2014 and founded Demosistō in 2016, whose candidate Nathan Law was elected to LegCo in the September 2016 LegCo elections.

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74. Basic Law, Art. 84.

75. Cheung, Karen. "Hong Kong's Judicial Review System Is Being Abused, Says Former Top Judge." *Hong Kong Free Press*. Hong Kong Free Press, 3 Dec. 2015. Web. 8 Mar. 2016.

76. *ibid.*

77. Cheung, Gary. "Judicial Reviews Fundamental to Rule of Law in Hong Kong, Says Former Top Judge Andrew Li." *South China Morning Post*. South China Morning Post Publishers Ltd., 14 Dec. 2015. Web. 8 Mar. 2016.

78. *ibid.*

79. *ibid.*

80. Wong, Michael. "Joshua Wong Files JR to Lower Election Age Threshold; Will Consider Running If Successful." *Harbour Times*. Harbour Times, 12 Oct. 2015. Web. 13 May 2016.

81. Lau, Chris. "Activist Joshua Wong, 19, Fails in Bid to Lower Minimum Age to Stand in LegCo Polls From 21." *South China Morning Post*. South China Morning Post Publishers Ltd., 22 June 2016. Web. 30 June 2016.



Silent March of Academic Staff at the University of Hong Kong

Following their involvement in the “Umbrella Movement,” leading academics at Hong Kong’s universities have come under increased government scrutiny. Benny Tai, an associate professor of law at HKU, initiated the Occupy Central campaign in January 2013, seeking universal suffrage by international standards for the 2017 CE election and the 2020 LegCo elections. In August 2015, the HKU administration imposed a three-year ban on Tai’s assumption of managerial posts and prohibited him from receiving donations or supervising researchers at HKU as penalties for managing Occupy-related donations without following the rules.<sup>82</sup> HKU Public Opinion Program (“HKUPOP”) Director Dr. Robert Chung was also banned from receiving donations for a shorter duration. School of Humanities professor Daniel Chua, who agreed to send a research assistant from his school to work for the referendum project, faces the same three penalties as Tai but for shorter periods.<sup>83</sup>

NDI’s interlocutors noted a chill on academic freedom resulting from the HKU Council’s rejection of then-Dean of the HKU Faculty of Law Johannes Chan, a close associate and former supervisor of Benny Tai, as the university’s Pro-Vice-Chancellor.<sup>84</sup> After delaying its decision, in late September 2015 the Council voted 12-8 against the university search committee’s recommendation that Chan be appointed to oversee

82. Ng, Joyce, and Shirley Zhao. “Occupy Central Founder Benny Tai Banned From Supervising Researchers For Three Years Following HKU Donation Scandal.” *South China Morning Post*. South China Morning Post Publishers Ltd., 27 Aug. 2015. Web. 13 May 2016.

83. *ibid.*

84. Ng, Joyce, Gloria Chan, and Shirley Zhao. “University of Hong Kong’s Council Votes 12-8 to Reject Johannes Chan’s Appointment as Pro-vice-chancellor.” *South China Morning Post*. South China Morning Post Publishers Ltd., 30 Sept. 2015. Web. 13 Mar. 2016.

HKU's academic staffing and resources.<sup>85</sup> During the delay, Chan claimed that he had been pressured by the HKSAR government to withdraw himself.<sup>86</sup> The Chairmanship position of HKU Council has since been conferred upon Arthur Li, a member of the Chinese People's Political Consultative Conference and the HKSAR's Executive Council.<sup>87</sup> The appointment of Li has subsequently caused unrest amongst faculty and students at HKU, including a boycott of classes and protests.<sup>88</sup> NDI interlocutors also pointed to academic self-censorship as a direct consequence of these decisions.<sup>89,90</sup>

## Media Freedom

Local and international organizations have documented a decrease in media freedom in Hong Kong and an increase in self-censorship of the press. Hong Kong's press freedom score by international human rights monitor Freedom House declined sharply from 33 in 2012 to 42 in 2015, before rising slightly again to 39 in 2016, on a scale of zero (best) to 100 (worst).<sup>91</sup> Media freedom seemed to reach its lowest point during the political uncertainty and upheaval of 2014, as exhibited by many high profile incidents. In July 2014, a web-based news site perceived to be pro-democracy, House News, suddenly announced its closure due to political pressure on the owner and personal concerns about the safety of himself and his family.<sup>92</sup> In August 2014, Jimmy Lai, owner of the only Cantonese pro-democracy news outlet Apple Daily, was targeted by an Independent Commission Against Corruption ("ICAC") investigation based on information gathered from a cyberattack regarding Lai's political donations.<sup>93</sup> The ICAC ultimately brought no charges against Lai, who stepped down as chairman of Next Media (and Apple Daily) following his arrest at Occupy Central. PEN America's 2015 report on press freedom in Hong Kong cited 17 reported assault cases on journalists in 2014, including the stabbing of a controversial former newspaper editor, the beating of a cameraman at a demonstration, the threatening of a reporter with a knife, and an attack on a media company owner's home.<sup>94,95,96</sup>

85. Cheng, Kris. "Explainer: The HKU Council Pro-vice-chancellor Debacle." *Hong Kong Free Press*. Hong Kong Free Press, 30 Sept. 2015. Web. 4 Mar. 2016.

86. Lau, Kenneth. "Leung Denies Torpedoing Uni Selection." *The Standard*. Sing Tao News, 13 Feb. 2015. Web. 4 Mar. 2016.

87. Li reportedly is also an heir to the Bank of East Asia and an ally of CY Leung who appoints six of 12 HKU Governing Council members. Kuhn, Anthony, "In Hong Kong, A Tussle Over Academic Freedom." *kuow.org*. KUOW News and Information, 10 Feb. 2016. Web. 4 Mar. 2016.

88. Lau, Kenneth. "War of Words as HKU Boycott Begins." *The Standard*. Sing Tao News, 21 Jan. 2016. Web. 4 Mar. 2016.

89. Joseph Cheung Yu-shek, former professor of City University and a prolific author on Hong Kong politics, said that "pressure to take a pro-China line 'trickles down' from top-level management to influence promotions at faculty level." Denyer, Simon, "Is Hong Kong Academic Freedom under Chinese Attack?" *The Washington Post*. The Washington Post, 13 Mar. 2015. Web. 4 Mar. 2016.

90. Hong Kong's former governor Chris Patten asserted in 2015 that "The autonomy of universities and free speech itself, guaranteed in the city's Basic Law, and the 50-year treaty between Britain and China on the city's status, are under threat." Mok, Danny, and Gary Cheung. "Last Hong Kong Governor Chris Patten Says Academic Freedom under Threat from Government Taking Its Cue from Beijing." *South China Morning Post*. South China Morning Post Publishers Ltd., 23 Feb. 2016. Web. 4 Mar. 2016.

91. "Hong Kong Freedom of the Press 2016." *Press Freedom of the World 2016*. Freedom House, n.d. Web. 13 May 2016.

92. Cheung, Gary, and Shirley Zhao. "Pro-democracy Website House News Closes, Citing Political Pressure, Low Revenue." *South China Morning Post*. South China Morning Post Publishers Ltd., 27 July 2014. Web. 13 June 2016.

93. Sevastopulo, Demetri. "Hong Kong Anti-corruption Agents Raid Media Mogul Jimmy Lai's Home." *Financial Times*. Financial Times Ltd., 28 Aug. 2012. Web. 13 June 2016.

94. PEN America Center, Threatened Harbour: Encroachments of Press Freedom in Hong Kong. *PEN America Center*. PEN America Center, 16 Jan. 2015. Web. 4 Mar. 2016.

95. Other high-profile physical assaults on the media included a near fatal attack on former Ming Pao Daily News editor Kevin Lau from an unknown assailant when exiting his car in a local neighborhood. Lo, Wei, Kao Chan, Samuel Ying-Kit Lai, "Kevin Lau, Ex-Ming Pao Editor Injured in Savage Chopper Attack, Stable After Surgery." *South China Morning Post*. South China Morning Post Publishers Ltd., 27 Feb. 2014. Web. 4 Mar. 2016.

96. According to the International Federation of Journalists, 39 reporters complained that they had been harassed, attacked, detained or maliciously accused by police and anti-Occupy protesters during Occupy Central, and some reporters received hundreds of harassing phone calls. "Journalists Caught Between Two Fires: Hong Kong Media Faces Serious Harassment and Self-Censorship." *2015 Annual Report of the Hong Kong Journalists Association*. Hong Kong Journalist Association, July 2015. Web. 4 Mar. 2016.

The 2016 Freedom House report notes that tensions had eased in Hong Kong in the aftermath of the 2014 pro-democracy protests and related crackdowns, which featured a number of physical assaults described above and cyberattacks on the press.<sup>97,98,99,100</sup> It also generally praises the Hong Kong media's lively criticism of the local government and, to a lesser extent, the Central Government. However, against a marginally more positive trend since the 2014 protests, Freedom House reports that the territory's media freedoms continued to be undermined in 2015 by mainland and local authorities who emphasize China's ultimate sovereignty.<sup>101</sup>

Hong Kong Journalists Association ("HKJA") Chairperson Sham Yee-Lan worries that the Association's "all time low rating" of their press freedom index demonstrates that "press freedom has been eroded at its roots"<sup>102</sup> She added that "press freedom as a pillar of Hong Kong's success" and the fundamental rights of Hong Kong citizens are at stake.

In discussions with stakeholders, NDI also heard concerns about the independence of the news media. In its 2014 and 2016 Annual Reports, HKJA reported that the Hong Kong media increasingly is being controlled by external authorities through personnel or ownership changes.<sup>103</sup> In support of this assertion, HKJA cites a number of cases, including the replacement of Kevin Lau, editor of the *Ming Pao Daily News*, by a Malaysian editor viewed as pro-establishment, and the acquisition of the leading English newspaper in Hong Kong, *South China Morning Post*, by China's leading e-commerce platform Alibaba. The acquisition sparked fears among staff that the paper's independence was under threat.<sup>104</sup> The *New York Times* cited the view of a former editor of the *South China Morning Post* that the recent purchase of the journal by Alibaba "would most likely exacerbate a trend at the paper toward self-censorship on sensitive political issues."<sup>105</sup>

In the 2016 annual report from the HKJA entitled "One Country, Two Nightmares," HKJA suggested that the missing bookseller case is a "landmark incident" which "brought up questions about the viability of one country, two systems in the context of the Beijing leadership's desire to eliminate opposition voices."<sup>106</sup> HKJA chairperson Sham Yee-lan said her group saw the Causeway Bay Books case as the "most blatant attack on speech and press freedoms in Hong Kong." She also added that "press will be frightened off from writing or publishing [media] that may be deemed as being unacceptable to China."<sup>107</sup>

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97. Next Media, a news outlet that promotes pro-democracy and pro human rights values, reported that being a repeated victim of cyberattacks, including the hacking of its founder, Jimmy Lai's, email account. PEN America Center. *Threatened Harbour: Encroachments of Press Freedom in Hong Kong*. PEN America Center. PEN America Center, 16 Jan. 2015. Web. 4 Mar. 2016.

98. Politically active citizens have also been targeted under Section 161 of the Hong Kong Crimes Ordinance, which prohibits "access to computers with criminal or dishonest intent. Heung, Charis. "Security Bureau Trying to Expand Computer Law, Say Experts." *EJ Insight*, Hong Kong Economic Journal, 2 Jun. 2015. Web. 4 Mar. 2016.

99. Zhang, Jennifer. "Hong Kong Social Media Activists Under Fire as Key Electoral Policy Vote Approaches." *Global Voices Online*. Global Voices, 11 Jun. 2015. Web. 4 Mar. 2016.

100. Between 26 September and 8 November 2014 alone, police reportedly arrested 14 people described by one news source as 'pro-democracy netizens' for what police termed cybercrime. PEN America Center. *Threatened Harbour: Encroachments of Press Freedom in Hong Kong*. PEN America Center. PEN America Center, 16 Jan. 2015. Web. 4 Mar. 2016.

101. "Hong Kong Freedom of the Press 2016." *Press Freedom of the World 2016*. Freedom House, n.d. Web. 13 May 2016.

102. "Journalists Caught Between Two Fires: Hong Kong Media Faces Serious Harassment and Self-Censorship." 2015 Annual Report of the Hong Kong Journalists Association. Hong Kong Journalist Association, July 2015. Web. 4 Mar. 2016.

103. "Press Freedom Under Siege: Grave Threats to Freedom of Expression in Hong Kong." 2014 Annual Report of the Hong Kong Journalist Association." *Hong Kong Journalist Association*. Hong Kong Journalist Association, July 2014. Web. 4 Mar. 2016.

104. Lau was later stabbed by assailants who were arrested, but refused to say who ordered the attack. See "Two Guilty of Cleaver Attack on Hong Kong Editor Kevin Lau." BBC News. BBC News, 13 Aug. 2015. Web. 6 Mar. 2016.

105. Barboza, David. "Alibaba Buying South China Morning Post, Aiming to Influence Media." *New York Times*. New York Times, 11 Dec. 2015. Web. 4 Mar. 2016.

106. "One Country, Two Nightmares" HKJA releases 2016 Annual Report." *Hong Kong Journalist Association*. Hong Kong Journalist Association, July 2016. Web. 4 July 2016.

107. Kang-chung, Ng. "Mainland China ideological crackdown hits Hong Kong, says Journalists Association." *South China Morning Post*. South China Morning Post Publishers Ltd., 3 July 2016. Web. 4 July 2016.



*South China Morning Post Recently Acquired by Alibaba*

According to the HKJA, Joseph Tsai, Alibaba’s Executive Vice-chairman, has said he favors the SCMP “spreading” a different angle on mainland China, addressing what he called a “western angle” bias.<sup>108</sup> The European Union has also observed a decrease in press freedom “as a result of caution and self-censorship when reporting about PRC domestic and foreign policy developments.<sup>109</sup> The disappearance of the five publishers is expected to aggravate this trend”<sup>110</sup> The State Department of the United States noted that, as a result of the booksellers’ disappearance, some Hong Kong bookstores have already removed books banned on the mainland from their shelves, “raising concerns about decreasing press freedom and freedom of expression in Hong Kong.”<sup>111</sup>

In addition, many of Hong Kong’s media are under financial constraint. Freedom House’s 2016 report notes that, while the overall media market in Hong Kong is strong—the city enjoys the world’s highest per capita advertising expenditure rate—many local news organizations struggle to stay afloat.<sup>112</sup> Some outlets known for their criticism of the Chinese central government have reported difficulties in attracting advertisers in recent years due to fears among private business owners that an association with independent media would damage their economic interests on the mainland.<sup>113</sup>

108. Hong Kong Journalists Association. “HKJA’s Response to the Control of South China Morning Post by Alibaba Group.” *Hong Kong Journalist Association*. Hong Kong Journalist Association, 11 Dec. 2015. Web. 4 Mar. 2016.

109. *ibid.*

110. European Commission. “Joint Report to the European Parliament and the Council: Hong Kong Special Administrative Region: Annual Report 2015.” European Commission. 25 Apr. 2016. Web. 13 June 2016.

111. United States. Dept. of State. Bureau of East Asian and Pacific Affairs. “Hong Kong Policy Act Report.” United States Dept. of State. Bureau of East Asian and Pacific Affairs. 11 May 2016. Web. 13 June 2016.

112. “Freedom of the Press 2016.” *Press Freedom of the World 2016*. Freedom House, n.d. Web. 13 May 2016.

113. *ibid.*

### III. 2016 LegCo Elections

The September 2016 LegCo elections were the first since Hong Kong's 2014 Umbrella Movement, and the growth of Hong Kong's localism movement in advance of the elections led to a pre-election controversy around independence. In response to the growth of pro-independence sentiment within the localism movement,<sup>114</sup> the HKSAR government issued a statement on July 14, 2016 that LegCo candidates in the September 2016 elections would be required to “endorse Chinese rule” through submission of a form.<sup>115</sup> The form required the candidates to further acknowledge three specific articles in the Basic Law.<sup>116</sup> The HKSAR government took the view that “advocating and promoting ‘independence of Hong Kong’ is contrary to the content of the declaration that the [Basic Law] requires a candidate to make... to ‘uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region.’”<sup>117</sup> The pro-democracy camp, however, raised concerns as to whether the new requirement contravenes the Basic Law. They also expressed the concern that this may constitute an initial step towards adopting further restrictions on candidates for elected office.<sup>118</sup> It appears likely that the new restriction will face a challenge in Hong Kong's courts. Based on the new requirement, five candidates campaigning on pro-independence or self-determination platforms were rejected by the Electoral Affairs Commission and prevented from seeking office in the September 2016 LegCo elections. Despite signing the pledge, Edward Leung was disqualified because, according to the Electoral Affairs Commission, he had not “genuinely changed” his pro-independence views.<sup>119</sup>

A record 2.2 million voters, representing 58 percent of Hong Kong's electorate, turned out to vote in the election on September 4, 2016 - the highest turnout in Hong Kong's electoral history.<sup>120</sup> This represents a five percent increase from Hong Kong's 2012 LegCo elections. Through increased coordination and strategic communications, the traditional pan-democratic camp and new localist candidates secured 29 of 70 seats overall - 19 of 35 in the geographical constituencies (including three localists) and 10 of 35 in the functional constituencies (including three of five of the “super seats”). The pan-democrats and localists gained a total of two additional seats compared to the 2012 election. Some have suggested that the increase in voter turnout and the gains for pan-democrats and localists indicate a response by Hong Kong citizens to the challenges to Hong Kong's democratic development outlined previously in this report.<sup>121</sup>

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114. See page 13 of this report for an explanation of the localism movement.

115. Ramzy, Austin. “Hong Kong Says Legislative Candidates Must Endorse Chinese Rule.” *The New York Times*. The New York Times Company, 15 July 2016. Web. 15 July 2016.

116. The three articles concerned are Article 1: The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China; Article 12: The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government, and Article 159 (4): No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong. See “Confirmation Form: 2016 Legislative Council Form.” Electoral Affairs Commission. The Government of the Hong Kong Special Administrative Region. July 2016. Web. 19 July 2016.

117. Government of Hong Kong Special Administrative Region. “Statement by HKSAR Government Regarding 2016 Legislative Council Elections.” Hong Kong Special Administrative Region. 14 July 2016. Web. 15 July 2016.

118. Cheng, Kris. “Pan-democrat LegCo Candidates Refuse to Sign New Declaration Stating Hong Kong is Part of China.” *Hong Kong Free Press*. Hong Kong Free Press. 21 July 2016. Web. 16 Sept. 2016.

119. Feith, David. “Hong Kong's Pledge of Allegiance.” *Wall Street Journal*. News Corp., 4 Aug. 2016. Web. 5 Aug. 2016.

120. Cheung, Gary, Owen Fung, Tony Cheung, Stuart Lau, and Jeffie Lam, “Record Hong Kong Turnout for Bitterly Fought Legislative Council Polls.” *South China Morning Post*. South China Morning Post Publishers Ltd., 5 Sept. 2016. Web. 14 Sept. 2016.

121. Cheung, Gary, Owen Fung, Tony Cheung, Stuart Lau, and Jeffie Lam, “Record Hong Kong Turnout for Bitterly Fought Legislative Council Polls.” *South China Morning Post*. South China Morning Post Publishers Ltd., 5 Sept. 2016. Web. 14 Sept. 2016.

	2012		2016		
	Pro-Dem.	Pro-Est.	Pro-Dem.	Pro-Est.	Indep.
Functional Constituencies (30)	6	24	7	22	1
Super Seats <sup>121</sup> (5)	3	2	3	2	-
Geographical Constituencies (35)	18	17	19 <sup>122</sup>	16	-
Total	27	43	29	40	1

*Hong Kong's pro-democracy camp has won a majority of democratically elected LegCo seats, evidenced in the geographical constituency and super seat results for the 2012 and 2016 LegCo elections.*

A number of new voices were elected into geographical constituency seats and super seats, while veteran pan-democrat politicians lost their spaces in the LegCo, marking a significant change in the pro-democracy camp. Including localists, the average age in the pro-democracy camp dropped from 53 to 44.<sup>124</sup> The youngest LegCo member is now Nathan Law, a candidate put forth by Demosistō, who was elected at age 23.<sup>125</sup> Twenty six candidates became first time legislators.<sup>126</sup> Six veteran legislators successfully passed their seats to newcomers from the same party, and fifteen incumbent politicians (ten from pan-democrats and localists, and five from pro-establishment parties) lost their seats. The average age of the elected legislators is now 49, a drop of five years from 54 for the legislators in the last term.<sup>127</sup> Also for the first time in Hong Kong's electoral history, all elected candidates in a geographical constituency (Kowloon West) were women.<sup>128</sup>

LegCo's new composition allows pan-democratic lawmakers to retain the ability to block legislation on political reform proposals with which they disagree. The pan-democratic parties also maintain veto power to block any amendments on rules and regulations in LegCo which would restrict their rights to exercise their duties as a legislator, such as filibustering. Many of the newly elected pan-democrat and localist LegCo members have committed to pushing political reform in the city, including a referendum on the future of Hong Kong's autonomy.<sup>129</sup>

Following the election, Beijing's Hong Kong and Macau Affairs Office issued a statement on September 6, 2016 stating, "We firmly oppose any activity relating to Hong Kong independence in any form, inside or outside the Legislative Council, and firmly support the Hong Kong government to impose punishment in accordance with the law."<sup>130</sup> Commenting on the results of the election, Chinese University of Hong Kong Professor Willy Lam remarked, "[the election] shows that there is a major change in the mentality of Hong

122. Super seats constitute a functional constituency but are elected by all Hong Kong citizens.

123. This figure includes 13 seats for pan-democrats and 6 seats for localists.

124. Fung, Owen. "Ready For Battle? Doubts Surface About LegCo Novices As Average Age Of Hong Kong Lawmakers Falls To 49." *South China Morning Post*. South China Morning Post Publishers Ltd., 18 Sept. 2016. Web. 19 Sept. 2016.

125. Stuart Lau, Jeffie Lam, Joyce Ng and Tony Cheung, "Veteran Lawmakers Cast Aside as LegCo's New Generation Appeals for Greater Say in Hong Kong's Political Future." *South China Morning Post*. South China Morning Post Publishers Ltd., 5 Sept. 2016. Web. 14 Sept. 2016.

126. Tsang, Emily. "Leung Chun-ying Plays Down Political Divide in Hong Kong as He Welcomes New LegCo Faces." *South China Morning Post*. South China Morning Post Publishers Ltd., 6 Sept. 2016. Web. 16 Sept. 2016.

127. Fung, Owen. "Ready For battle? Doubts Surface About LegCo Novices As Average Age Of Hong Kong Lawmakers Falls To 49." *South China Morning Post*. South China Morning Post Publishers Ltd., 18 Sept. 2016. Web. 19 Sept. 2016.

128. "Yau Wai-ching Knocks Wong Yuk-man Out Of LegCo." *RTHK News*. Radio Television Hong Kong. n.p. 5 Sept. 2016. Web. 16 Sept. 2016.

129. For example, both Nathan Law from Demosistō and Cheng Chung-tai from the Civic Passion group called for the referendum to take place. See Jenkins, Nash, "The Rule of Nathan Law: Talking Freedom, Democracy and Neckties With Hong Kong's Youngest Ever Legislator." *Time*. Time Inc. 7 Sept. 2016. Web. 14 Sept. 2016; Bland, Ben. "Young Activists Win Seats in Hong Kong Elections." *Financial Times*. The Financial Times Ltd. 5 Sept. 2016. Web. 14 Sept. 2016.

130. "China Warns New Hong Kong Lawmakers Not to Back Independence." *Hong Kong Free Press*. Hong Kong Free Press. n.p. 6 Sept. 2016. Web. 14 Sept. 2016.

Kong people. People want to thumb their noses at Beijing and send a strong message that... suppressing Hong Kong's democratic aspirations cannot be tolerated."<sup>131</sup>

## IV. Emerging Trends and Conclusions

The collective impression among Hong Kong's democratic activists is that the region's democratic development is regressing. Stalled dialogue on political reform, increased pressure on the rule of law, and encroachments on civil liberties have left Hong Kong citizens and the international community in a state of uncertainty. Though the "One Country, Two Systems" principle once provided reassurance regarding Hong Kong's relationship to mainland China, the Central Government's pronouncements in recent years have affected many Hongkongers' confidence in the principle and in Hong Kong's future. A June 2016 poll by HKUPOP revealed that 49.7 percent of Hongkongers lack confidence in the "One Country, Two Systems" framework, and 50.2 percent are not confident in the future of Hong Kong.<sup>132</sup> With the exception of polling conducted during the "Umbrella Movement" and polling from March 2016, these are the lowest levels of citizen confidence from the past ten years. Charts from HKUPOP (on page 26) convey the downward trend in public confidence.

It is within this context that NDI has seen three emerging trends: (1) political polarization and stalled dialogue, (2) expanding youth participation in politics, and (3) a growing concern of the impact political instability may have on Hong Kong's business climate.

### A. Political Polarization and Stalled Dialogue

The most recent political reform process demonstrated the inability of the pro-democracy or pro-establishment parties to find common ground. This is in stark contrast to the passage of the 2010 electoral reform package with support from pro-establishment parties and the Democratic Party. The Democratic Party subsequently lost seats and standing amongst the pro-democracy community, leading to infighting and fracture within the pan-democratic camp.

The view held by many pan-democrats that the 2015 political reform process conducted by the government was biased, along with the outpouring of support for the 2014 "Umbrella Movement," re-unified the pan-democrats in opposition to the pro-establishment faction. Moderate voices, as mentioned earlier, were unable to gain any significant support from either camp on a compromise solution.

This polarization has left Hong Kong at an impasse. The European Union has called on the HKSAR and Beijing "through constructive discussion, to resume the electoral reform and reach an agreement on an election system that is democratic, fair, open and transparent."<sup>133</sup> Next steps in the reform process are unclear. NDI interlocutors suggested the next reform process could begin in 2020, but no indication from HKSAR or Chinese government authorities has confirmed these suspicions.

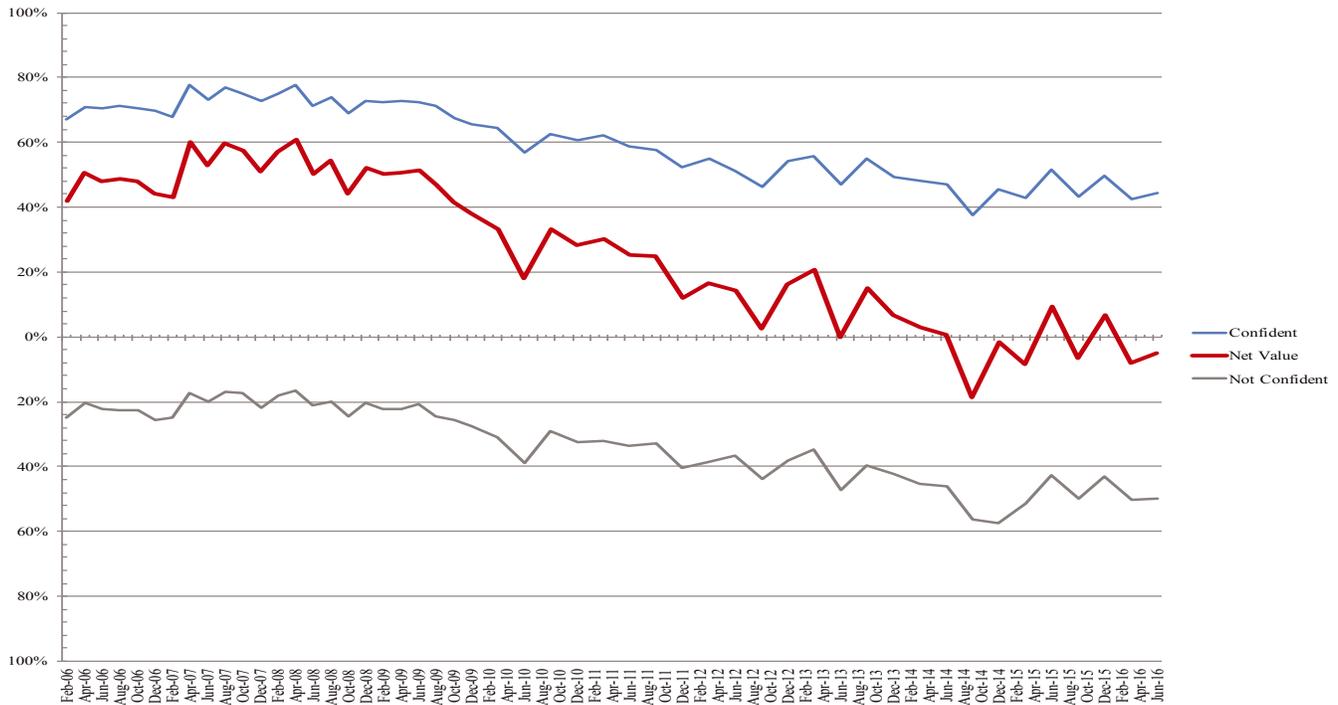
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131. Griffiths, James and Vivian Kam. "Hong Kongers 'Thumb Their Noses at Beijing' with Pro-independence Votes." *CNN*. CNN Inc. 6 Sept. 2016. Web. 14 Sept. 2016.

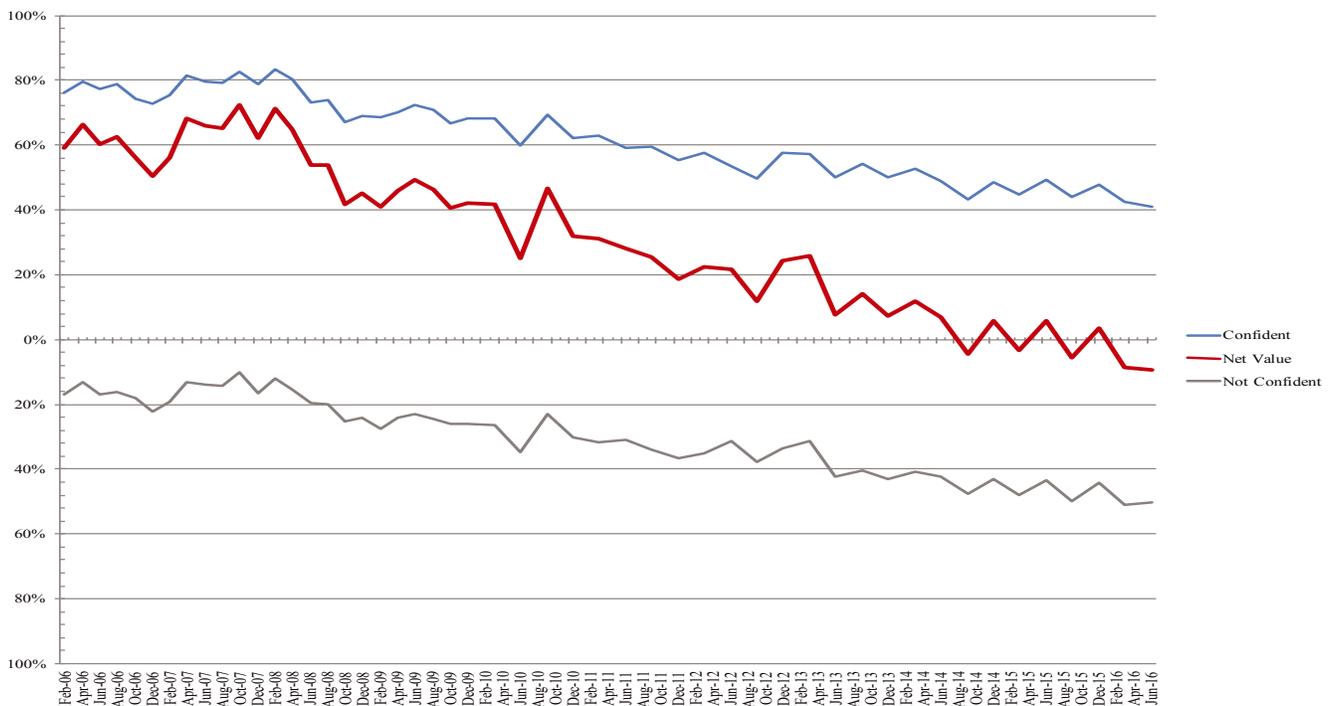
132. Public Opinion Programme, The University of Hong Kong, "People's Confidence in "One Country, Two Systems (Per Poll) (6/1993-6/2016)." n.d. Web. 13 June 2016; Public Opinion Programme, The University of Hong Kong, "People's Confidence in HK's Future (Per Poll) (1/1994-6/2016)." n.d. Web. 13 June 2016.

133. European Commission. "Joint Report to the European Parliament and the Council: Hong Kong Special Administrative Region: Annual Report 2015." European Commission. 25 Apr. 2016. Web. 13 June 2016.

## People's Confidence in "One Country, Two Systems"<sup>134</sup>



## People's Confidence in the Future of Hong Kong<sup>135</sup>



134. Public Opinion Programme, The University of Hong Kong, "People's Confidence in "One Country, Two Systems" (Per Poll) (6/1993-6/2016)." n.d. Web. 13 June 2016.

135. Public Opinion Programme, The University of Hong Kong, "People's Confidence in HK's Future (Per Poll) (1/1994-6/2016)." n.d. Web. 13 June 2016.



Two Emerging Youth-based Political Groups: Youngspiration (left) and Demosistō (right)

## B. Expanding Youth Participation in Politics

Hong Kong youth have emerged in the past four years as a politically active force. Public protest has been a prominent avenue for youth engagement, including sit-ins and hunger strikes. The pace at which the “Umbrella Movement” advanced, the scale of participation, and the resilience of participants during the 79-day movement can all largely be attributed to the role of students. Absent genuine electoral democracy in which citizens could see how an individual vote directly contributes to a political outcome, Hongkongers are more likely to see protests and other forms of collective action as more effective in influencing politics. Hong Kong’s youth particularly embody this point of view.<sup>136</sup>

Following the end of the “Umbrella Movement,” these same young people expanded their role beyond participation in social movements into the partisan political arena. Whereas young people previously felt that political parties, including the pan-democratic camp, were not trustworthy or effective, these young activists have formed their own parties and run for office. This engagement with the political system is a shift in the longstanding dynamics of the struggle for democracy in Hong Kong. New parties and groups focused on local issues are beginning to steer the political discourse.

The rise of youth-led political groups was one of the key stories of the 2016 LegCo elections. Seventeen LegCo members, representing 24 percent of LegCo, are now below the age of 40, and the average age in LegCo is now 49.<sup>137</sup> It remains to be seen how newly elected young LegCo members will change Hong Kong politics and affect Hong Kong’s future democratic development.

136. Lee, Francis L. F. “The Perceptual Bases of Collective Efficacy and Protest Participation: The Case of Pro-Democracy Protests in Hong Kong.” *International Journal of Public Opinion Research* 22.1 (2010): 392-411. Print.

137. Fung, Owen. “Ready For battle? Doubts Surface About LegCo Novices As Average Age Of Hong Kong Lawmakers Falls To 49.” *South China Morning Post*. South China Morning Post Publishers Ltd., 19 Sept. 2016. Web. 19 Sept. 2016.

## C. Climate for Business

Hong Kong remains an attractive location for business operations and continues to serve as a conduit for international organizations to conduct business with China. Hong Kong stands to reap further economic benefits from continued trade integration with China, such as the Closer Economic Partnership Arrangement, and other free trade deals.

Recent events, however, are posing challenges to the Region's economic appeal. The downgrade of Moody's credit rating, the disappearance of the booksellers, and the perception that judicial independence is being curtailed are contributing to the growing view that, due to political instability, the Region's economic environment is becoming less attractive to investors. An indication that these recent events have affected business in Hong Kong is the decision by The Hongkong and Shanghai Banking Corporation ("HSBC") not to relocate its headquarters from London to Hong Kong. An HSBC insider was quoted in Reuters as saying "...You have to wonder if the city will remain a suitable base for an independent-minded, top global financial institution."<sup>138</sup> In addition, the European Union predicts that the booksellers' disappearance and its consequences for Hong Kong's rule of law could impact Hong Kong's standing as a center for international finance.<sup>139</sup>

## D. Conclusion

Hong Kong has long enjoyed its reputation as a vibrant commercial center and entrepôt for China's mainland. It is a leading regional communications hub; it has one of the world's busiest container ports; it is the second largest private equity center in Asia, and it has the fifth largest foreign exchange market. The Region's economic success has in large measure resulted from the "One Country, Two Systems" framework, which, in turn, is premised on maintaining Hong Kong's strong rule of law tradition. If that tradition is compromised, confidence in the framework itself is jeopardized.

There are few signs that the polarization that has plagued Hong Kong for the last several years will soon abate. The pro-democracy movement, now fractured, and the pro-Beijing camp are not engaged in a meaningful dialogue, and the demographic features of Hong Kong, such as its rising and increasingly alienated youth population, suggest that the two sides may only grow farther apart. There is, then, an urgent need for new avenues for constructive dialogue involving key stakeholders, including Beijing and HKSAR officials and representatives of Hong Kong's pro-democracy and pro-establishment camps. An inclusive approach that seeks to bridge the widening gap between the two sides holds the best prospect for protecting the integrity of the "One Country, Two Systems" formula while advancing Hong Kong's democratization process and preserving the territory's stability and prosperity.

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138. White, Lawrence. "HSBC Board to Meet, China's Role in Hong Kong a Factor in HQ Debate," *Reuters*. Thomson Reuters, 27 Jan. 2016. Web. 13 June 2016.

139. European Commission. "Joint Report to the European Parliament and the Council: Hong Kong Special Administrative Region: Annual Report 2015." European Commission. 25 Apr. 2016. Web. 13 June 2016.

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