



Research Center of Management and Sustainable Development

A large, stylized circular graphic composed of several overlapping segments in various colors: orange, brown, green, grey, and light green. The segments are arranged in a way that they appear to be part of a larger circle, with some overlapping others. The colors are vibrant and modern.

# ***STUDY REPORT***

A PRELIMINARY ANALYSIS OF  
**POWER RELATIONS**  
*OF VIETNAMESE NGOs*



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## About MSD

MSD was founded in 2008. Being a non-government organization in Vietnam, MSD is taking effort to enable environment for the development of civil society sector and to promote the rights of marginalized and vulnerable groups, especially Children, Youth, Women and People with disabilities. MSD has a vision for a world of justice where civil society plays as an effective independent actor/partner with their own rights and the rights of marginalized and vulnerable communities are respected.

MSD achieves a local impact by making efforts in local work. We work effectively and efficiently through mutual learning, inspiring and innovative intervention. We have always made ourselves different, unique and effective to fulfill our objectives in:



**Empower** - to build capacity for local organizations focusing on CSOs and social innovative businesses (SIBs) towards development effectiveness;



**Partner** - to promote comprehensive and effective partnership among local partners with inter-and-multisectoral abroad;



**Enable** - to promote an enabling environment for CSOs and SIBs to do its work, and to enhance its self-development;



**Intervene** - to promote the rights of marginalized groups, especially Children, Youth, Women and People with disabilities.

Contributing to the achievement of Sustainable Development Goals, MSD has been focusing on implementation and monitoring for the Goal 3 (Good Health and well-being); Goal 4 (Quality education); Goal 5 (Gender equality); Goal 10 (Reduced inequality); Goal 16 (Peace, justice and strong institutions) and Goal 17 (Partnership for the goals).



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Part 1

# INTRODUCTION

**A**s civil society actors have become increasingly important in the development agenda at the global level and in Vietnam's context. These actors represent commitment to democratic and inclusive governance and also have the capacity and potential to bring about social change.

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Vietnamese CSOs re-emerged in late 1980s and grew rapidly in the 1990s when there were a large number of new VNGOs established (ADB 2011; Taylor et al. 2012; Bui 2013; Hannah 2007). There has been a debate regarding their independent status and their roles in Vietnam (ADB 2011). It is argued that Vietnamese CSOs are quite quasi - governmental; especially since reunification in 1975, they have not been seen as actors that are independent from the party-state (ibid.; Taylor et al. 2012).

Civil society space in Vietnam includes mostly booming Non-Governmental Organizations (NGOs) registered with political-social-professional associations. For example, VUSTA (Vietnam Union of Science and Technology Associations) alone has granted the inception of more than 500 institutes and centers under its umbrella. In principle, these organizations have to comply with a reporting regime to their umbrella organization and the line ministry on project - approval basis. However, in practice, they have a quite large degree of operational autonomy. These local NGOs have benefited from the experience and human resources of INGOs operating in Vietnam in 1990s and 2000s. Most of the leaders of the local NGOs are former staffers of INGOs or/and have strong connections with both INGOs and the party-state officials. Indeed, the international donors have been partnering with Vietnamese NGOs on policy advocacy and promotion of international human rights norms and standards as they are seen as bridges between the party-state and the society.

However, the Vietnamese party-state still has a lot of reservations about the role and position of the NGOs in the development field. There are certain concerns about anti-party and anti-state elements in the NGOs that can potentially pose threats to the regime, both in terms of its legitimacy and its grip on power. There are signs that the Government is tightening regulations on the NGOs with more restrictive measures designed in new decrees including the one on sanctioning the organization of international conferences, meetings and seminars. It is likely that the civil society space is becoming more repressed over the next few years as a result of the new measure to be enacted. According to CIVICUS (2017), Vietnam has "closed" civic space or space for civic activism and "fundamental rights are severely curtailed" in this country. The activities of CSOs get more complex due to the administrative guidelines which emphasize state control and leave little room for CSOs to engage in policy review and advocacy (Taylor et al. 2012).

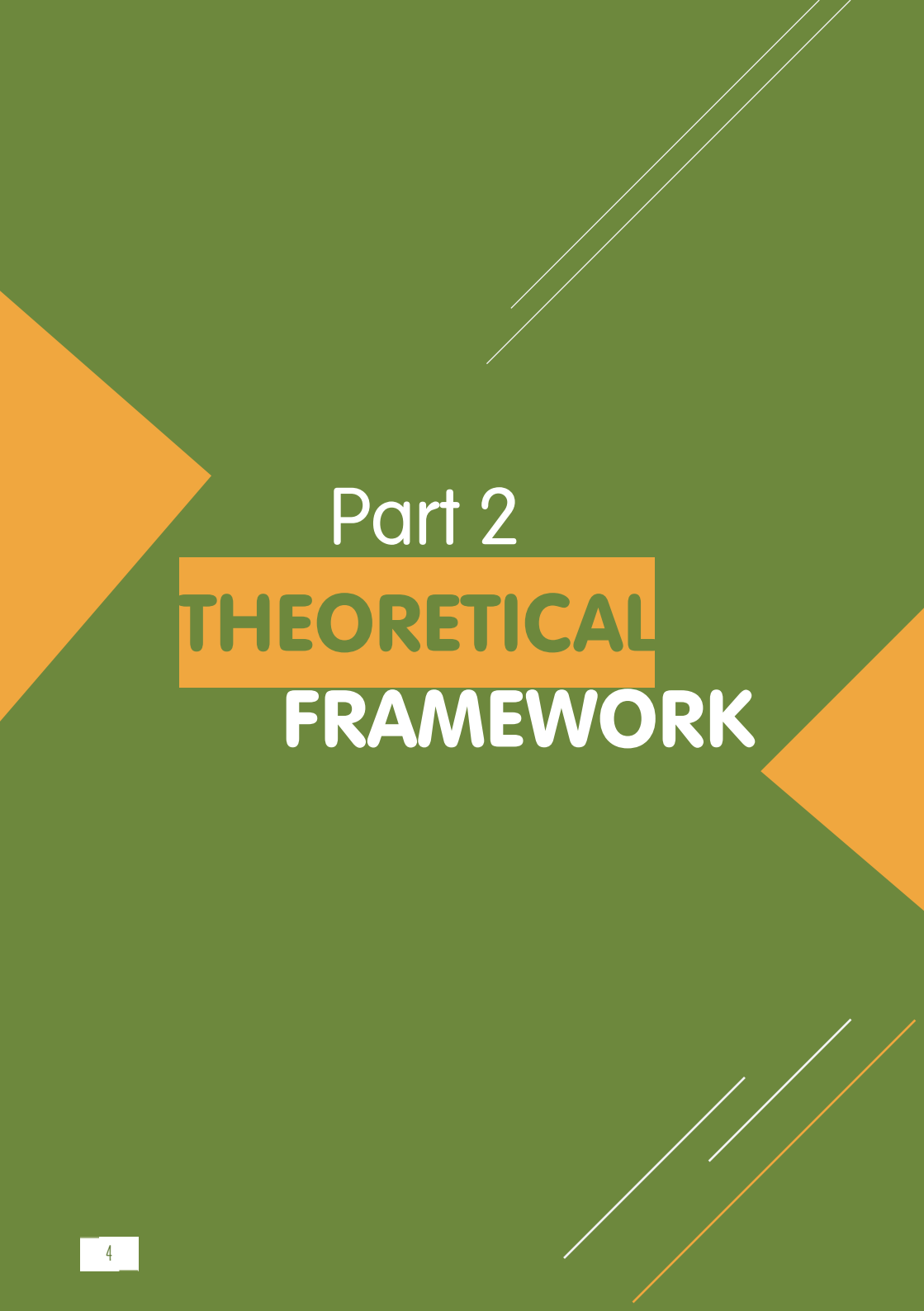


The state discouraged political activism of VCSOs due to a fear of instability in society and a threat to the political regime where only one communist party is the force leading the state and society (Salemink 2006). The procedures and the legal framework are key challenges for the development of VCSOs (Taylor et al. 2012). Since the early 1990s, there have been many efforts to draft and to advocate for a National Law on Associations; however, so far it has not been promulgated. In 2016, several drafts of the Law on Associations was prepared and discussed but finally shelved again. Thus, the process of developing the enabling legal framework for local CSOs was delayed once more after 2018.

Furthermore, the Vietnamese NGOs are now facing with difficulties in terms of funding, human resources and internal governance. Most of them are heavily dependent on foreign funding, thus being susceptible to more strict rules on project approval and operational requirements by the party-state. Given the shrinking development funding from abroad, these NGOs have to compete fiercely among themselves for the grants and projects for survival. These organizations were established and run by a number of key founders with background in INGOs. However, it has become harder for them to find the new generation of competent staff with INGOs experience as most INGOs have gradually phasing out of Vietnam. What is more, the job opportunities with the NGO sector has now become less attractive to the skilled labor force as it was in the last two decades. The local NGOs are also undergoing difficulties in learning and adopting best practices in internal governance, particularly regarding accountability and transparency, making them less competitive in grant bidding and less responsive to local and grassroots level needs.

In this context, the burgeoning philanthropy is a valuable opportunity for the local NGOs to tap into for both partnership and resource mobilization. Philanthropy creates opportunities for blended funding using ODA as a means to attract additional resources from new sources. However, due to restrictive and complex legal framework on this issue as well as their weak internal governance capacities, they have not been successful with mobilizing resources for their development programs from philanthropic institutions and individuals. Joining the forces of official development cooperation and philanthropy to service new international, universal development goals could make a substantial difference for the Vietnamese civil society. However, it will require new mind-sets, partnerships and forms of collaboration between governments, the philanthropic actors and development partners alike.

This study report aims to provide an analysis on the power relationship between local CSOs and local government in their advocacy efforts for enabling CSOs legal framework and recommendations for local CSOs for better strategies and efforts.



Part 2

**THEORETICAL**

**FRAMEWORK**



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This paper used a tool developed by IDS to assess the the power relationship between local CSOs and local government in their advocacy efforts for enabling CSOs legal framework.

Power cube is a useful tool used in this research for analyzing power in the relationships among CSOs and/ or between CSOs with development partners, government. Power, hereby, is seen in three dimensions: level, form and space, (IDS 2011). "The forms dimension refers to the ways in which power manifests itself, including its visible, hidden and invisible forms. The spaces dimension of the cube refers to the potential arenas for participation and action, including what we call closed, invited and claimed spaces. The levels dimension of the cube refers to the differing layers of decision-making and authority held on a vertical scale, including the local, national and global" (IDS 2011, p. 8). Moreover, this tool also helps to position the sector of CSOs in Vietnam in general, which leading to the appropriate strategies in working with government in order to promote enabling legal framework for CSOs.

Theory on power has demonstrated several important attributes worth noting for the analysis in this respect. First of all, it is the constraint that any power relations face. In a relationship, actors are constrained in different ways by other actors, even the more powerful actor is. Second, it is the influence. Actors are mutually influenced. Thirdly, it is the compliance that makes a power relationship. Fourthly it is the dependence from the less powerful actor on the more powerful one. Fifthly, it is the necessity, the circumstance and pressure that characterizes the power relations.

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Part 3

**SOURCES & FORMS**  
**OF VCSOs POWER**

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### **3.1. Sources of VCSOs power**

The power of VCSOs can come from various sources. It should be noted that they possess the following capacities:

- The capacity to effect or to prevent an action, to make it happen or not to happen at the level of a community, an area or at the national level (power in negative terms)
  - The capacity to empower, to develop potential so that the more disadvantaged or vulnerable can themselves develop their potential power (power in positive terms)
  - The power to advocate, lobby or attract attention to issues less cared by the government or not appropriately addressed by state agencies to make them important policy issues.
  - The capacity to make impact upon the political agenda and policy-making process
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## 3.2. Forms of VCSOs power

VCSOs power comes in various forms, including visible, hidden and visible. These forms of power interact with each other in a delicate way. The interactions between VCSOs and the state in policy process demonstrates how power relations work in three different forms, visible, hidden and visible.

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### ■ *Collective polling for suggestions in preparing legal documents:*

In the period of defining the legislative agenda, legislative issues and policy options to address the issues, social organizations should have the opportunity to participate in this part. The suggestions on the process of building policy and law documents also potentially reflect different levels of participation.

At the relatively easy and most common level of participation, CSOs collect opinions derived from their members' and adjacent communities' common interests, experience, and general knowledge to make suggestions for shaping future policies and/or solutions.

Guidelines from the Vietnam's Law on Regulatory Process requires that the government agencies in charge of legislation drafting have to consult the public, concerned organizations and individuals potentially affected by additions to the law. This has created the legal basis that should encourage CSOs in their participation in the process of constructing legal documents and regulatory statutes. CSOs in Vietnam could either actively participate, or take part in the drafting process(es) on recommendations of the agencies in charge. In reality, the participation of CSOs has been realized in many different ways such as by sending documents of suggestions or appeals to the committee overseeing the drafting process (or officially referred to universally as the Drafting Committee); or attending seminars and conferences organized by drafting agencies to express their opinions; among other forms of participation.

Recent years in Vietnam have seen law projects being publicized on the electronic portals of government agencies and popular media in order to collect opinions and suggestions from concerned individuals and organizations. CSOs offer an alternative in which people could directly forward their suggestions, opinions and concerns to the respective Drafting Committee with much less paperwork and bureaucratic overheads. Meanwhile, many law proposals have been publicly issued to invite the participation of concerned CSOs, especially in high-stake proposals such as the draft Law on Business, Law on Construction, Land Law (a cadastral statutory law), the Civil Code, and most importantly the draft Amendments to the Constitution.

Examples can be sourced from the process of drafting the Law on Construction, in which the Drafting Committee took suggestions from the State management agencies at central and local levels from participants who are directly affected by the ensuing documents and any change/adjustment or amendment involved; at the same time holding opinion pollings from major associations such as the Vietnam Federation of Civil Engineering Associations, Vietnam Association of Architects, Vietnam Urban Planning & Development Association, Vietnam Construction Technology & Structural Association, Vietnam Association of Construction Contractors, among many others.

During the process of drafting Land Law, the Prime Minister has issued Decision No. 239/QĐ-TTg on the publishing of an Organized Polling Plan for collecting opinions, suggestions and feedbacks from citizens. Within the categorization of the polled groups and individuals, the definition of “Social movement organizations, socio-political organizations, career/ profession - specific unions, and other civil society organizations” was included as viable sources of opinions, suggestions and feedbacks. On the basis of this Plan issued by the Prime Minister, the Ministries, Departments, and the People’s Committees at provincial level have synchronized on a polling plan specified for internal organization polling, industry-level polling, and provincial polling in order to collect on a widest and most consistent scale of public opinions from individuals and special-interest organizations alike, including CSOs as previously defined. Records show that the Vietnam Chamber of Commerce & Industry alone have participated in 74 projects including legislation draftings in 2012<sup>1</sup> ; and 113 legislation draftings in 2013 when polling on the private business community<sup>2</sup>. Opinions, suggestions and feedbacks from the concerned organizations have contributed to their respective Drafting Committees with field-relevant evidences, scientific basis and practical rationale for the process of problem solving when drafting contents for consideration in new law proposals.

During the public polling for constructing, adjustment and amending the 1992 Constitution, CSOs have assumed the role of popularizing and attracting public attentions, in the process circulating millions of citizen’s suggestions and opinions through the overseeing government agencies to contribute democratic materials for the draft Amendment to the Constitution. CSOs have demonstrated their flexible utilization of various channels and forms of public contribution in the draft 1992 Amendment to the Constitution, especially in Articles that constitute human rights and the rights of citizen.

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1 Including 12 Laws, 1 National Assembly’s Decision, 16 Decrees, 6 Decisions by the Prime Minister, 27 Circulars and 12 Other Documents.

2 Consisting of 13 Laws, 1 Ordinance, 36 Decrees, 10 Decisions by the Prime Minister, 45 Circulars and 8 Other Documents.

Another prominent example is the participation of these CSOs in constructing the draft 2000 Law on Marriage & Family. The public polling for the drafting of this Law commenced since May 2012 when the Ministry of Justice issued an ordinance requesting consultation and Q&A time from concerned agencies, in which a question stood out: whether or not matters regarding same-sex marriage should be included in the contents to be amended to the body of the law. This drafting of Law on Marriage and Family was considered by many independent parties including the United Nations, mutual-benefit assistance funds, and community-based organizations as one of the most open and transparent regulatory process, with evident participation of the broad community and open discussion over various media channels including participation of government agencies involved.

In the case of community-based groups and associations, public polling and suggestions/requests on legislation issuance/appeal have been mostly conducted via popular, conventional methods such as: mailing official documents or petitions, or voicing independent opinions in conferences & seminars. At local/provincial level, such depths of participation have for the most part been paid attention to at the Committee level, with potential assistive collaborations to be sourced from the Vietnamese Fatherland Front and other authorities. Nevertheless, the process is usually slow, bureaucratically procedural and often requires patience/dedication for optimal results<sup>1</sup>.

CSOs & NGOs have implemented various methods to help collect constructive opinions for the legislation drafting & regulatory process. The most commonly practiced is organizing conferences and seminars aimed to collect inputs from directly involved government agencies, concerned organizations, specialists, and scientists on the subjects of the proposed draftings that have potentially wide scale of public implications. Most notably of this practice is where the Vietnam Chamber of Commerce & Industry frequently holding public polling from business enterprises, specialists, scientists, and managers on many legislation projects and regulatory draftings such as the Draft Proposal of Vietnam Maritime Law, Draft Proposal of Vietnam Law on Competition, Draft Adjustment and Amendment to Commercial Law, Draft Proposal of Ordinance on Anti-dumping of Imported Products, Draft Proposal of Decree on the issuance of Regulatory Framework on State-funded enterprises and State-financed investments, Draft Proposal of Decree on specifications of legislative drafting for the Law on corporate income tax, among other legislative & executive policy drafting.

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1 *Interview response by research participants*

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Many CSOs have hosted conferences, seminars and Q&A sessions by themselves in order to collect opinions and suggestions on important draft proposals such as the draft 1992 Amendment to the Constitution; draft Amendment to Land law; Draft Proposal of the Civil Code; draft Amendment to the Constitution, etc. According to the Decree No. 38/2012/QH13 by the 13th National Assembly of the Socialist Republic of Vietnam on November 23, 2012 on the organized polling of public opinion on the draft 1992 Amendment to the Constitution, 17 NGOs have collaborated in polling over 980 representative citizens from 13 provinces covering 7 different categorized community groups (including the physically challenged, HIV patients, immigrants, youth unions, women's unions, ethnic minority communities, and the LGBT community).

These are the groups of people least likely to have equal opportunity to express their opinions and have them heard at the legislative authorities and have popular media coverage. Furthermore, these are the people often specified with "special needs" by NGOs, who usually pay a delicate attention to principles of impartiality (unbiased practice) and equality (anti - discriminatory practice). Therefore, the primary subject discussed at these conferences, seminars and Q&A sessions are focused on the 2nd Chapter of the Constitution: Human rights and the Rights & Responsibilities of Citizen. The objectives of hosting a Q&A session are the first details to be clarified, including:

- i. Accumulation of expectations, suggestions and opinions from communities with special needs, the minorities and those challenged with disabilities for further review by overseeing agencies;
- ii. Knowledge development and informative clarification on the Articles of the Constitution, on subjects of human rights;
- iii. Facilitation of collaboration and the functions of NGOs in participating as contributive consultation party to the regulatory process and legal documents in the making.



During the drafting of prospective amendments to the Constitution, many NGOs have hosted direct Q&A sessions in various provinces throughout Vietnam. These Q&As and debates are conducted with the service of both NGO personnel and representatives of the respective communities and concerned citizens. In one example of a provincial-based Q&A, not only ISEE personnel and volunteers but also representatives from minority ethnic groups have participated, in some cases in their native languages. Similarly, in a Q&A about treatment and care for HIV patients, representatives participating in the Q&A were the volunteers subjecting to HIV treatment & care themselves, so as to create an environment where HIV patients are least likely to feel outcasted or discriminated. In yet another example, the Q&A experience sampled in the public polling process for the draft 1992 Amendment to the Constitution includes stages of:

- i. Introduction of the objectives and methodology/theoretical methodology for inquiries;
  - ii. Identification of the general consensus on the most urgent problems to be solved so as to design an appropriate content development path for the Q&A;
  - iii. Selection of most prioritized subjects for inquiries;
  - iv. Assigning small discussion groups to engage individual participants into teamed discussion efforts contributive to the Draft Amendment to the Constitution in the comparative differences to the wording of the 1992 Constitution in effect, in the comparative differences to international standards or commonly institutionalized human rights, and in the consideration of practical implementation;
  - v. Summary of contributions from Q&A participants;
  - vi. Consolidating results and learnings from the session
- (La, 2013)

These proceedings and reports were consolidated into a “Feedbacks of the draft 1992 Amendment to the Constitution from 7 social groups, disadvantaged groups, and vulnerable groups”<sup>1</sup>. NGOs have held a conference to share and discuss Q&A proceedings with concerned parties, especially including members of the Constitutional Amendment Editorial Committee. The entirety of the feedback reports has been relayed to Mr. PHAN Trung Ly, Editorial Chief of the Constitutional Amendment Editorial Committee on March 29, 2013 in the Office of the National Assembly.

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<sup>1</sup> Full text accessible at: <http://isee.org.vn/Content/Home/Library/civil-society/gop-y-voi-du-thao-sua-doi-hien-phap-1992-cua-7-nhom-xa-hoi-nhom-yeu-the-va-de-bi-ton-thuong.pdf>



Another popular approach to participation in the regulatory process is through development and improvement of CSOs' and NGOs' personnel, as well as representatives of the special-need groups they mean to assist. For instance, during the discussion and feedback polling for the draft Amendment to the Constitution, many organizations spent time working with representatives of the minority and special-need groups in clarifying the content of proposed amendment, as well as in improving Q&A communicative skill for the otherwise politically uninvolved citizens. This particular activity was delivered by specialists with standing professions of educators/trainers on Constitutional Law from the Faculty of Law, Vietnam National University in Hanoi. Also participating were independent expert consultants/activists on human rights. As a result, 50 representatives from both NGO personnel and from different community groups were trained and adequately informed on matters regarding constitutional law and implications on human rights, as well as the communicative skills required to effectively participate in subsequent citizen-oriented Q&As or public debates. This training and informative activity helps create the knowledge base and refining the abilities for community Q&A sessions held in even the most local and grassroots levels.

CSOs & NGOs have for the most part begun utilizing available media tools including social media to complement their activities in participating in regulatory process. In the process of drafting amendments to the Constitution, many CSOs and NGOs have established and implement media campaigns on the Constitution, promoting Q&A regarding Constitutional values and implications, as well as encouraging expression of independent opinions and citizen participation in the drafting process. News agencies such as VTV (Vietnam Television), VOV (Voice of Vietnam), Labor News, Grand Solidarity Periodicals, People's Electorate Periodicals, Youth Magazine, etc. were all invited to participated in the earliest of the engagement process. Reporters and correspondents from major newspapers, periodicals and magazines may tag along with the voluntary efforts reaching the most local and grassroots levels, approaching for example communities of the physically challenged in Lang Son Province through IDEA-sponsored Q&A; the ethnic minority communities in Lao Cai Province in an iSEE-sponsored Q&A; women's union in Dak Nong in a CEPEW program; LGBT communities in an ICS program; or HIV-patient groups as approached by Vietnam Network of People Living with HIV/AIDS (VNP+). The fieldwork approach by the major news stations not only helped record actual feedbacks from the people, they helped spread the news and information reflecting progress on human rights and related contents to all parts of society much quicker and more comprehensively.

Another method for CSOs and NGOs offer feedbacks backed by actual evidence and findings is through conducting organized scientific researches. An example of this approach in the Draft Proposal of Amendment to Law on Marriage and Family, whose social participation from CSOs such as iSEE had already been conducting research on and particularly with regards to the Vietnamese LGBT communities, their legal rights and implications (such as gender transition, change of name and designations, and healthcare); or alternatively researches on categorically homeless children peddling through the streets for a living, on violence in educational environment, and on addictive substance abuse; or researches on domestic violence, mental health, suicidal tendencies, sex education, and discriminatory malpractices in healthcare institutions; especially there were also broad surveys on the needs of the LGBT communities in marriage and same-sex union. Besides, comparative analysis putting Vietnamese contexts against the regulatory body in many countries on same-sex marriage, including that of the United States of America, European countries, or of the Oceania.

These researches and analytical comparisons make the scientific basis on which the Editorial Committee as well as National Assembly's elected deputies. Additionally, as disadvantaged and typically discriminated-against communities such as the LGBT have voiced their opinions and suggestions, the regulatory body and legislative drafting process involved may have more persuasive inputs on how policies governed by regulatory body such as Law on Marriage and Family could be amended to address the rights and alleviate existing discrimination or unfair treatments. This method and process have seen increasing utilization since 2008 with notably the establishment of the ICS Center including community leaders from the LGBT communities. Thus in the media campaigns that ensued, any legal "lobbying" often always included LGBT-inclusive representatives. A wide-spread media campaign was then conducted aiming at improving social compassion and pluralistic understanding, targeting discriminatory treatments. On this basis made up from research materials collected from fieldworks and studies by CSOs in representation of the LGBT communities, many comprehensive and broadly inclusive contents have been included in the considerations by the Ministry of Justice and National Assembly elected deputies regarding the rights of the LGBT communities. Particularly, iSEE was invited directly by the Ministry of Justice and the Editorial Committee to consult in direct Q&A seminars<sup>1</sup>.

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<sup>1</sup> LE, Quang-Binh, 2014, "Experiences and practical lessons in the participation of civil society organizations in the regulatory process concerning new and sensitive matters in Vietnam". Quang Ninh: National Assembly's Legislative Research Institute



■ ***Directly participating in the work of the Editorial Committee for drafting proposal projects for new laws, law amendments, and decrees:***

CSOs have encountered many opportunities for regulatory process participation and were invited into holding many input positions directly involved with the legislation drafting, from presiding editorial task, to being official members of Editorial Committees of the respective processes. Recently, the National Assembly has assigned the legislative drafting process of various legislation projects to CSOs for drafting and consultation, including the Draft Proposal for Law on Commercial Arbitration and the Draft Proposal for Referendum Law to the Vietnam Lawyers Association; or the Draft Proposal for Law on the Elderly to be assigned to the drafting and consultation of the Vietnam Association of the Elderly.

Today, regulations in effect have not yet enforced the presence of CSOs in the standing composition of the Editorial Committee membership. Law on the Regulatory Process has only had guidelines with open interpretation on possibilities that officially presiding agencies may invite certain CSOs to participate in the drafting and editorial processes. In practice, these official invitations are limited and sometimes only bear nominal implications in making a statement that the official processes have non-governmental inputs and that those inputs are in official consideration for supporting the legislative drafting in question. However, there have been legislation projects that did actually include the official presence and influence of directly relevant CSOs in the drafting process and even in the presiding Editorial Committees. Notably of these examples are the Editorial Committees overseeing the drafting of the Law on Enterprises, and Law on Electronic Transactions. In 2012, CSOs have participated as standing members of the editorial staffs in 10 regulatory processes for laws, decrees, and ordinances. Vietnam Lawyers Association during their 2009-2014 term have had their representatives liaised into the Editorial Committee and/or editorial teams working on 16 legislative drafting projects, including high-stake work such as amending the Civil Code, amending the Criminal Code, and constructing the Law on Regulatory Process<sup>1</sup>. The participation of CSOs with official editorial membership statuses have many positive implications that in practice help reflect directly to official consideration the most severe problems that need to be addressed in regards to protection of rights and legal benefits of the communities directly impacted by implications of the regulatory bodies in question.

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<sup>1</sup> Vietnam Lawyers' Association's Draft Final Report of the 11th Term's Operations (2009-2014, the direction and mission for the 12th Term) (draft submitted on May 23, 2014)

## ■ *Consultative advice and critical review of policies and legislative drafting projects:*

These activities by CSOs and NGOs have political and legal basis derived from the government's and the Communist Party's own documents instructing political and regulatory policy-making. Decrees from the 10th and 11th National Congress of the Communist Party of Vietnam have both confirmed the directive stating the purpose of "issuing regulatory frameworks in order for the Vietnamese Fatherland Front and subordinate organizations could function better in monitoring and debating public issues". In order to assist in double-proofing the implications of the regulatory process and legislative drafting projects, not only public polling carried out in the authoritative circle of the Ministries and Departments involved, but also social engagement and argumentative social movement have to be included to help evaluate, supervise and maintain integrity of the projects and processes in question. Public debate with social argumentative discourse can be carried out in any stage during the regulatory process, in multiple discourse "passes", with varying depths of argumentative discussions, and by various social participants including individuals and organizations, including international parties. Practical experience shows that the argumentative discourse brought by the Ministries, Departments and authoritative agencies usually involved in the regulatory process have always been, and may increasingly be bureaucratic, demonstrative and in overly rigid procedural progression. The typical one-sided insights and outdated/ irrelevant reference materials brought into discourse by these government agencies have sometimes failed to produce practical or realistic arguments towards constructive objectives of the legislation drafting and policy-making.

All the while, the arguments pushed forward by the presiding editorials and supervising bodies have for the most part been very limited. Due to this bureaucratic nature of government-run discourse, consultation and debate, the resulting regulatory statutes will unfortunately reflect all of the limitations encountered in the preceding legislative drafting. It is for this very reason that social argumentative discourse is encouraged to be practiced in all regulatory processes and legislation in the making, demonstrating practical, real-world concerns from the broad coverage of civil society including many communities, people from different walks of life and varying experiences with existing regulations and their limitations. Especially, the wishful participation of the more knowledgeable and talented individuals can be more effectively sourced when approaching a broader involvement of civil society in the construction, maintenance and enforcement of the rule of law.

The establishment of clearer requirements for the mechanism by which social argumentative discourse could be encouraged and the public's feedbacks accurately reflected is crucial to the regulatory process in the advance towards better involvement, more active participation and more effective construction of the rule of law. These requirements should address the importance of social participation, through association, through union and representative CSOs to influence policy-making, official guidelines and directives for legislation implementations, in research and compilation of regulations from the drafting processes, in ultimately authorizing the development of certain laws, codes or statutes.

Argumentative discourse may be a participatory method inherent to CSOs, albeit not specifically categorized in legal terms and frameworks. However, this approach has begun to show their utilization, mostly in the way CSOs have been participating in the debates and discourse concerning legislative policies on popular topics such as economic policies, or major development plans on either local or national scope. Vietnam Electronic Industries Association could be a notable example of this participation: with about 100 members, this association has actively participated in the planning and design of official directives and management policies regarding information technology and computer science, effectively functioning as the communicative conduit between electronic-age enterprises with the respective overseeing government agencies. The association has accumulated opinions and suggestions from its member enterprises for proposal of strategic development of national information technology infrastructure and in doing so, this civil society organization contributed their part in the development and improvement of the regulatory body and the respective rule of law over their industry.

Additionally, their functions helped completing the directive's mission by the government agencies in guiding the legislative drafting projects towards perfecting this regulation framework along with all legal documents it pertains.

- *Monitoring/supervising the policy process's implementation and addressing social, counter-argumentative pressure to maintain accountability, transparency and integrity of the regulations in the making:*

As previously remarked, CSOs stand at an advantageous position with the right vantage point to monitor the implementation of legal documents, completion of official duties and integrity of the civil servants. From monitoring and supervision of the exercise of the regulatory guidelines according to the rule of law and within their legitimate roles and functions, CSOs/NGOs may actively participate in summarizing and reporting on the implementations of legal documents that have been issued and in effect, at the same time providing further references and fieldwork materials for subsequent researches and drafting adjustment, amendments, or new legal frameworks of which their operational experiences are relevant.

Through monitoring and supervising the drafting of legal documents and other regulatory processes, CSOs and NGOs may be able to spot the discrepancies, loopholes and sometimes intentional, malicious exploits that could have been missed in the original constructs. On that basis, their consultation and recommendations in collaborative work with authorized government agencies should help push forward the necessary adjustment, amendments, or appeals to help mitigate the implications that otherwise would have gone underway without detection. Such is an active form of participation that could be beneficial for these CSOs and NGOs themselves and concerned parties with interests tied to a more effective and transparent regulatory process. In a certain light, to some extent such contribution by CSOs and NGOs may even be available to contend for the rights to participate in constructing and maintaining constitutional values as well as developing the regulatory bodies to uphold said values, albeit never actually officially defined and regulated with legal recognition. In practice, this social participation has been more and more positively supported in regulatory discussion forums, in which implications of the participation are expanded to many approaches that could comply with the specific needs and characteristics of organizational charters.

Additionally, in the context of globalization and Vietnam's association with many international codes and regulatory systems, especially in Vietnam's participation in international agreements within United Nation's many affiliations in which Vietnam is recognized as standing member, the independent reports, expertise consultation and international information channels made available by CSOs have begun showing their significance, again as the bridge between international interests, national priorities, and a supervision party to monitor Vietnam's compliance to international codes. The process of providing informative reports through both official and independent channels to and from international parties has showcased a lively example of how these CSOs have been operating with their internationally-scoped objectives, most notably seen in reports such as universal periodic review (UPR) submitting regularly to the Human

Rights Council of the United Nation, or international convention-related reports such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), or the International Covenant on Civil and Political Rights (ICCPR).

Yet another important activity by CSOs lies in their abilities to create social influence or pressure upon the exercise of accountability and transparency by government agencies, government employees. Several trade unions within the Vietnam Union of Science and Technology Associations (VUSTA) consider the monitoring and supervision of government-directed programs, especially those with public funding, to be their priority focus. Many unions and/or associations even have establishments at the local provinces in order to dedicate resources to deliver this particular function (Kerkvliet, 2008).

On the other hand, the participation of civil society organizations also has certain negative effects, such as generating social movements in a sensitive or outright vulnerable direction which could be exploited or manipulated by certain groups following their own undisclosed agendas. For example, in recent commotions there was the incidence in which the Vietnam Standard and Consumers Association (VINASTAS) have publicized incomplete testing information about certain fish sauce products containing arsenic compounds in excess of national safety standards. Details of this testing were omitted in regards to the organic origin of many compounds in the arsenic category, yet nonetheless created a mass-media commotion and generated tension in the consumer market, severely damaging the fish sauce production industry as a result.

On October 18, 2016, VINASTAS announced on its own website the following content: “Only 25 out of the total of 150 fish sauce test samples have passed the standard governed by TCVN 5107:2003, c.104 in the concentration of arsenic content, which is a highly toxic chemical element”. Many newspapers have promptly expanded coverage of this information from VINASTAS, causing great public anxiety given the popularity of fish sauce as a cuisine complement in Vietnamese culinary culture. On October 22, 2016, the Ministry of Health announced their own testing of 247 fish sauce samples randomly sourced from 82 manufacturers in which none was found with a standard-breaking inorganic arsenic concentration. On October 24, only 2 days after official test results were published by the Ministry of Health, the Vietnam Competition Authority from the Ministry of Commerce and Industry organized a joint inspectorate tasked with inspecting the legal compliance of VINASTAS. On October 26, the Ministry of Internal Affairs have reviewed a cease and desist order to VINASTAS for further inspection.

Meanwhile in Ho Chi Minh City on October 24, the Food & Foodstuff Association of Ho Chi Minh City had collaborated with the Production Association of Phu Quoc Fish Sauce and their equivalent peers in the provinces of Phan Thiet, Nha Trang, as well as the Vietnam Association of Seafood Export Product in a joint announcement concerning the commotion seemed to indicate arsenic contamination of a large portion of fish sauce products in the market. According to the joint conference minutes and announcement contents:

The information indicating arsenic contamination has brought many fish sauce production businesses into severe troubles, as their products cannot be listed by retailers or stocked in supermarkets and even in the common marketplace. It was to the point that in many ethnic market compounds in the more remote and isolated regions, said information had caused a general boycotting of the fish sauce product altogether. More destructively yet, this information of arsenic contamination has also caused a commercial reverberation that could potentially devastate the reputation of made-in-Vietnam fish sauce products in the global market.

The Ministry of Information and Communications has issued the decision to impose an administrative penalty on VINASTAS together with 50 news agencies that participated in the publication of misleading information regarding arsenic contamination of fish sauce products.

According to announcement made by the Ministry of Commerce and Industry on November 11, 2016, the fish sauce testing done by VINASTAS was not carried out under the principles of independent interest, the principle of upholding reliability of testing standards, and the principle of transparency in publicizing testing information & results. The testing carried out by VINASTAS appeared to have been initiated by the organization's chairperson and several other individuals, with specific details not having been authorized and supervised by the organization's Management Board. The process of sampling was of unreliable accuracy and even VINASTAS have confirmed sponsorship of the testing activities by external organizations. This incident made a perfect example of the conflict of interest that fueled public debate on the way some interest-driven groups could work against the public interest through exploits and manipulations. This arsenic contamination story showcased a bigger picture on the scale of influence that CSOs could potentially reach and the critical necessity of supervising their participations, with questions of accountability and transparency being put to a much more serious discussion.

On the flipside of this same incident, should CSOs dedicated to monitoring and supervision of regulatory policy implementation had performed any less actively, less timely and with less direct involvement, the consequences could have reached a level of social or even economic crisis that potentially may escalate further into more serious conflicts. The environmental crisis in which large aggregations of fish died on the shoreline of the central region of Vietnam, or the Formosa incident in April 2016 are notable examples. The incident in which massive aggregations of sea fish died on the shoreline of Vung Anh (a municipality of Ha Tinh Province) was spotted on April 6, 2016 as the mass mortality spread to the shores of the provinces of Quang Binh, Quang Tri, and Hue. By April 25, there were about 10 tons of dead fish carcasses estimated on the shore of Ha Tinh, with up to 30 tons in Quang Tri. By April 29, Quang Binh saw an astonishing 100 tons of dead fish carcasses washing up the province's shoreline. This was a disaster in any measurable scale and it massively affected



the livelihood and economic activities of the fishery community by the unfortunate shores. In Quang Binh Province alone there were 18 wards collectively dedicated to the profession of sea-faring fishery, with more than 14,000 families and 24,000 labor working dependently on natural provisions of the sea. VNExpress - a leading Vietnamese electronic news station, cited information from a national tourism agency that, by November 2016 the pollution from industrial waste disposal by the Formosa company dispersing along the shorelines of the central region of Vietnam since first spotted in April 2016, had more or less completely demolished the entire tourism industry in the region, with 90% decrease in tourism income. The subsequent inspection showed that the large volume of waste disposal from the Formosa company in Ha Tinh Province contained toxic compositions that, when dispersed in sea water along the shorelines, caused mass mortality of marine life in the deep-sea layer along the sea bed. The government estimated that waste materials that the Formosa factory in Ha Tinh had admitted disposing into the sea, was the cause of direct negative influence over the life and livelihood of over 200 thousand people, in which 41 thousand were fishery labor. Due to the large-scale effect of this environmental crisis, over 500 people submitted a legal claim for damages to the People's Court in Ky Anh district, Ha Tinh Province where Formosa stationed its Vietnamese headquarter. Many citizens also expressed their dissent through spontaneous protesting. In many communal wards of Quang Trach districts in Quang Binh Province, many public protests against Formosa took place since April 28 through the night of April 29, during which people publicly demonstrated their grievances along the 1A national motorway, many even camped out in the open. Fishermen with fish catch that they could not possible sell given the commotion, dumped their entire catches on the motorway, effective blocking about 20km length of traffic through the 1A.


This "Formosa" incident showcased a rather complete lack of participation by civil society organizations in the monitoring of the regulatory body in place, which harbor tremendous potential consequences in the form of an environmental crisis and a crisis on public trust. Had CSOs with high credibility could have participated in the implementation of existing regulatory frameworks and environmental policies, the underlying problems could have been detected and reported much earlier with far less public tension.



Part 4

**SPACES OF**

**VNGOs POWER**



The spaces of VCSOs power associates with the idea that CSOs can and should influence government policy and law-making processes. Even the concept of “lobbying” (vận động hành lang), is now better understood and used by many in Vietnam. Some CSOs have become involved more actively in policy matters as result of other activities and forms of engagement with the state; it was not something they had started out to do. Traditional view of VCSOs hold that only closed space exists in Vietnam, even CIVICUS (2017) confirms this view. However, in practice, VCSOs operates in much more complex and inter-mingled spaces that involved three dimensions that is closed, invited, and created.

**Closed space:** In this space, CSOs are excluded from policy-making process. Thus the power relation is unilateral where the CSOs are much more dependent on the powerful actors, including the state.

**Invited space:** In this space, the CSOs cannot create the rules of the game or control them but they are invited to formulate the rules and can influence the rules in formal and informal way. These are the fora for policy and decision-making that invite the participation of CSOs.


**Created space:** CSOs create their own space where the new rules of the game are formulated and the CSOs play an active role in setting the agenda and the rules to meet their demand and involve successfully other actors, including the more powerful actors in participate in this kind of space.



Part 5

**LEVELS OF**


**VNGOs POWER**



VCSOs interact with themselves and various actors at three major levels: global, national and local. At the local level, the grassroots organizations and community-based organizations (CBOs) are in a better position to make their voices heard. Their power can be magnified with the solidarity and support from other VCSOs as well as other actors at all levels.

CSOs at any level should have the support in different forms from actors across all levels to have a stronger impact. A local issue that is formulated as a national policy can only be addressed with active participation of CSOs at the national level and international NGOs so that it can be included in the national agenda and debated. Nowadays, many of the local issues have the national and international magnitude of impacts. Formosa in Ha Tinh at first was a local issue.

However, the consequences and impact of the case quickly developed far beyond the local level. It is related to critical issues in the national policy on environmental protection and land use. The inter-level and intra-level interaction of VCSOs with other actors has become a character of their power and determined the depth of their influence over policy processes.



## CONCLUSION

Vietnamese CSOs are now a key player in the development process of the country. Their power relations with other actors depend on how the forms, spaces and level of power are used and developed. As a rubric of power is evolving, the impact and influence of VCSOs on different policy issues quickly shift. Understanding this rubric of power and the change process is important to VCSOs to make their voices better heard and make change happen.

An analysis of power relations of VCSOs on the three dimensions of the rubric is useful for assessing interests and incentives of various actors that can support or block a particular policy. This is an important way of understanding complex change processes. Conducting a power analysis can contribute to answering major questions that VCSOs often face like how does change occur and what can change agents (civil society, donors...) do to support it and identifying behaviors of individuals, organizations and groups, as shaped by incentives, opportunities, and external events which provide short-term opportunities or impediments to change.



## REFERENCE

1. Anon., 2006. *Deepening Democracy and Increasing Popular Participation in Vietnam*, Hanoi: UNDP Vietnam Policy Dialogue Paper.
2. Bui, H.-T., 2016. *Draft Law on Associations: For associations to be the people's voice*. Vietnam Human Rights Magazine, 11.
3. Dalton, R. J. & Ong, N.-N. T., 2005. *Civil society and social capital in Vietnam*, s.l.: s.n.
4. Duong, V.-C., 2012. *Civil Society: A peaceful menace*. *People's Periodicals*, 31 August.
5. Gray, M., 1998. *Creating civil society? The emergences of NGOs in Vietnam*. *Development and Change*, 10.
6. Jamieson, N., 1995. *Understanding Vietnam*. Hawaii: Hawaii University Press.
7. Kerkvliet, B., Nguyen, Q.-A. & Bach, T.-S., 2008. *Forms of Engagement Between State Agencies & Civil Society Organizations in Vietnam*, Hanoi: UNDP.
8. La, K.-T., *Các tổ chức phi chính phủ Việt Nam với tiến trình sửa đổi Hiến pháp trong năm 2013*. *Non-governmental organizations in Vietnam over the 2013 Constitutional amendment process*, Hanoi: Hanoi National University Publishing.
9. Le, Q.-B., 2014. *Experiences and practical lessons in the participation of civil society organizations in the regulatory process concerning new and sensitive matters in Vietnam*. Quang Ninh, National Assembly's Legislative Research Institute.
10. Mansuri, G. & Rao, V., 2013. *Localizing Development: Does Participation Work?*, Washington, DC: World Bank.
11. Ministry of Internal Affairs, 2006. *Report on the Organization, Operation and Management of Funds/Foundations in Vietnam*, Hanoi: NGO Law Department, Ministry of Internal Affairs.
12. Nguyen, M.-C., 2006. *Civil Society in Vietnam: Accountability Problems*, s.l.: s.n.
13. Nguyen, N.-L., 2007. *Legal Regulations on Organization, Management of Association, and Measures of refinement*. Hanoi: LERAP Workshop.
14. Nguyen, V.-K., 2006. *Report on assessment of public delivery provision*, s.l.: s.n.
15. Norlund, I., 2007. *Filling the Gap: The Emerging Civil Society in Viet Nam*, Hanoi: s.n.
16. Norlund, I. et al., 2006. *The Emerging Civil Society - An initial Assessment of Civil Society in Vietnam*, Hanoi: CSI-SAT Vietnam.
17. O'Rourke, D., 2004. *Community-Driven Regulation: Balancing Development and the Environment in Vietnam*. Cambridge(MA): MIT Press.
18. Parag, Y., 2006. *A system perspective for policy analysis and understanding: the policy process networks*. Oxford : Oxford University Centre for the Environment.
19. PPWG, GPAR & Gencomnet, 2016. *Role of Civil Society Organizations in Economic & Socio-cultural Development in Vietnam*. Hanoi, s.n.
20. SGT & Associates, 2000. *Civil Society Participation in Poverty Reduction Strategy Papers*, Hanoi: Department for International Development.

21. Sidel, M., 2012. *Maintaining Firm Control: Recent Development in Nonprofit Law and regulation in Vietnam*, s.l.: s.n.
22. Stromseth, J. R., 1998. *Reform and Response in Vietnam: State-Society Relations and the Changing Political Economy*, New York: Columbia University.
23. Taylor, W., Nguyen, T.-H., Pham, Q.-T. & Huynh, T. N.-T., 2012. *Civil Society in Vietnam: A Comparative Study of Civil Society Organizations in Hanoi and Ho Chi Minh City*, Hanoi: The Asia Foundation.
24. Thang, V.-P., 2010. *An Overview of Associations, NGOs, and Legal Framework for Social Organizations in Vietnam*, Hanoi: Vietnam Union of Science and Technology Association.
25. Thang, V.-P., Nguyen, X.-H., Nguyen, N.-L. & Nguyen, Q.-T., 2002. *The Role of Organizations in National Modernization and Development*. Hanoi: National Political Publishing House.
26. The Asia Foundation, 2008. *Training Needs Assessment of Civil Society Organizations in Vietnam: Organizational Development and Community Mobilization in the Policy and Lawmaking Process*, Hanoi: The Asia Foundation.
27. The Asia Foundation, n.d. *Evaluation of the Civil Society Empowerment Program*, Hanoi: The Asia Foundation.
28. Tran, N.-H., 2013. Characteristics of Civil Society in Southeast Asia and Its Role in Development: A Vietnamese Review. [Online] Available at: <https://vanhoanghean.com.vn/chuyen-muc-goc-nhin-van-hoa/nhung-goc-nhin-van-hoa/dac-diem-xa-hoi-dan-su-o-dong-nam-a-va-vai-tro-cua-no-trong-phat-trien,-chu-y-den-viet-nam> [Accessed 16 February 2017].
29. Tran, N.-N., 2014. *Roles of Civil Society Organizations in the Regulatory Process and Subsequent Monitoring of Implementation*. Quang Ninh, National Assembly's Legislative Research Institute.
30. Vasavakul, T., 2003. *From Fence-Breaking to Networking: Interests, Popular Organizations and Policy Influences in Post-Socialist Vietnam*. In: B. Kerkvliet, R. Heng & D. Koh, eds. *Getting Organized in Vietnam: Moving in and around the Socialist State*. Singapore: ISEAS Publications, pp. 25-61.
31. Vo, K.-S., 2014. *The State of Legal Frameworks for Civil Society Organizations' Participation in Regulatory Process: Discussion and Recommendations*. Quang Ninh, National Assembly's Legislative Research Institute.
32. Vu, D.-P., 2008. *Civil Society: A Selective Review*. Hanoi: s.n.
33. Vu, Q.-T., 2010. *Salary & Benefits of Government Employees*. [Online] Available at: <http://www.doanhnhansaigon.vn/online/doanh-nhan/trong-mat-nha-kinh-doanh/2010/09/1047411/luong-va-lau-cua-cong-chuc/> [Accessed 16 February 2017].
34. Wells-Dang, A., 2012. *Civil Society Networks in China and Vietnam*. London: Palgrave MacMillan.







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